



SAN FRANCISCO PLANNING DEPARTMENT

New Planning Code Transit Impact Development Fee Update

Amended Sections: Article Four
Case Number: Board File No. 120523/ Ord. No 247-12
Legislative Sponsors: Mayor Edwin Lee, Supervisors Wiener and Olague

Effective Date: January 17, 2013 (while generally effective on January 17, 2013, portions of this law become effective February 1, 2013 and January 1, 2014)

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The Way It Was:

The Transit Impact Development Fee (TIDF) is an impact fee levied on most non-residential new development citywide to offset new development's impacts on the transit system. Revenue generated by the fee is directed to the San Francisco Municipal Transportation Agency (SFMTA) and is used to fund Muni capital and operations. Residential projects, projects under 3,000 gross square feet, projects considered "charitably exempt", and some specific land uses, such as automotive services, are currently exempted from the fee. Development projects may be given a credit against the fee for a prior use so long as the prior use was active on the site within five years of the new development's application. When a new development project constitutes a change of use, the new development is charged the difference between the TIDF rate for Office and the TIDF rate for the proposed use, when such a difference exists.

The TIDF was first enacted by local ordinance in 1981 as an outgrowth of the work on the Downtown Plan¹. The TIDF was created to acknowledge that new office development in the Downtown would result in increased demand for transit to accommodate that area's new workers. The original TIDF preceded the creation at the State level of the Mitigation Fee Act, which subsequently established a framework by which local jurisdictions could identify the impacts of new development on City services and adopt "impact fees" to address those impacts². While cities had used "exactions" to fund infrastructure projects since the 1920's, the San Francisco Transit Impact Development Fee Ordinance remained the only developer fee specifically dedicated to

¹ The San Francisco Transit Impact Development Fee was first established by Ordinance No. 224-81.

² The California Mitigation Fee Act was enacted in 1987. See "A Short Overview of Development Impact Fees". Peter N. Brown, City Attorney, City of Carpinteria and Graham Lyons, Deputy City Attorney, City of Carpinteria. February 27, 2003.

public transit for more than 20 years after its adoption.³ Chapter 38 of the Administrative Code held the first TIDF regulations.

In 2001, the SFMTA commissioned a nexus study on the TIDF which determined that new non-residential uses outside the Downtown core also have an impact on the City's transit system. In 2004, the Board of Supervisors enacted a new TIDF ordinance which expanded the application of the fee citywide to most new non-residential uses and which increased the rates at which the TIDF is charged⁴. In 2010, the Board of Supervisors enacted changes to the Planning and Building Codes to consolidate assessment and imposition of most impact fees with the Planning Department, and collection of those fees with the Department of Building Inspection. These changes were encompassed in the creation of Article 4 of the Planning Code. Article 4 also established rules and procedures for updating and reporting on impact fees, and moved the TIDF from the Administrative Code to the Planning Code.

The Way It Is Now:

The Ordinance made adjustments to the TIDF rates based on a new nexus study on the TIDF completed in 2011. Effective February 1, 2013, it lowers the threshold for triggering the TIDF from 3000 square feet of new development to 800 square feet. The legislation, however, establishes a new Policy Credit against the fee that would be available for small businesses and projects that provide less parking than the maximum authorized under the Code. In addition, the legislation revised or eliminated several existing exemptions from the fee. Finally, the legislation clarified the process for collecting the fee for projects where a building or site permit was issued prior to July 1, 2010, but the fee remains unpaid. These revisions are explained in further detail below.

The newly adjusted TIDF rates are consistent with the rates contained in the proposed Transportation Sustainability Fee (TSF) legislation. The rate for the Cultural/Institution/Education (CIE), Medical and Health Services, and Retail/Entertainment economic activity categories was increased to \$13.30 per square foot, except that the rate for museums, a subcategory of CIE, are \$11.05 per square foot, a reduction from the current amount. The rate for the Management, Information and Professional Services (MIPS) and Visitor Services economic activity categories was increased to \$12.64 per square foot, and the rate for the Production/Distribution/Repair (PDR) category was reduced to \$6.80 per square foot.

³ San Francisco Planning Department, prepared by Nelson\Nygaard Consulting (2001), Transit Impact Development Fee Analysis. Final Report for San Francisco, 1-1.

⁴ Ordinance Number 199-04, approved August 5, 2004.

The legislation added a new Policy Credit that would be available to offset the fee in the case of (1) new development by small businesses (except formula retail) re-using existing vacant space as long as the gross square footage of the space is 5000 square feet or less; or (2) projects that provide less parking than the maximum authorized under the Code. Policy Credits would be capped at no more than 3% of the anticipated TIDF revenue for the fiscal year.

The legislation also clarified the application of several exemptions to the fee, including clarifying that the exemption for public facilities and utilities does not apply in the case of new development on private property that is leased to the City, and eliminates the exemption for several uses that are captured under the PDR economic activity category. In addition, the exemptions from the fee for automotive services and wholesale storage of materials and equipment would be eliminated as of January 1, 2014.

The proposed legislation also clarified the process for imposition and collection of the TIDF in those cases where a building or site permit was issued prior to July 1, 2010, but the fee has not been imposed. In such cases, the SFMTA would continue to calculate the fee due and would notify the project sponsor of the fee amount. In cases where a certificate of occupancy has not been issued, DBI would then assume responsibility for collecting the fee in accordance with the existing procedures in the Planning Code. In cases where a certificate of occupancy has been issued, the MTA would be responsible for collecting the fee in accordance with procedures set forth in the legislation. The procedures would largely parallel the existing procedures in the Planning Code, except that MTA would be responsible for reviewing objections to the determination of the fee, and any appeal would be to the MTA Board of Directors rather than to the Board of Appeals. In addition, a project sponsor seeking to appeal to the MTA Board would be required to pay the fee upon filing an appeal (with a refund, with interest, on any portion of the fee not upheld).

The legislation also made several technical corrections and minor revisions to better integrate administration of the TIDF into the development fee administration process set forth in Article 4 of the Planning Code.

The link to signed legislation:

File Number	Enacted Number	Effective Date	Short Title
120523	0247-12	1/17/13	Planning Code - Transit Impact Development Fee Increase and Updates http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances12/o0247-12.pdf