



# SAN FRANCISCO PLANNING DEPARTMENT

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## MEMORANDUM

**TO:** Members of the Planning Commission

**FROM:** Dean L. Macris, Director of Planning

**ITEM:** Consideration Of Adoption Of A Commission Policy For The Review Of Building Permits And Approvals In The Eastern Neighborhoods Prior To The Adoption Of The Eastern Neighborhoods Area Plans And Code Amendments.

**STAFF CONTACT:** Sarah Dennis, 558-6314

**DATE:** May 11, 2007

**ACTIONS REQUESTED:** Adoption of a Resolution Applied To Building Permits And Approvals In The Eastern Neighborhoods Prior To The Adoption Of The Eastern Neighborhoods Area Plans And Code Amendments.

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In recent weeks, several projects proposed within the Eastern Neighborhoods have come before the Planning Commission for approval. The Commission has recognized that all sizeable new residential projects will place increasing demands on City services and facilities, and that in the Eastern Neighborhoods, where residential infrastructure is particularly deficient, these projects will add to the need for improvements in the project area. The Commission is also aware that staff is developing a Needs Assessment and Public Benefits Package to address these improvements, and that one component of this package will likely be a fee intended to address the impacts caused by new development.

However, staff has not yet completed the Eastern Neighborhoods planning process, and therefore has not completed the associated studies or proposed legislation required to establish such a fee. The Commission recognizes that approving projects prior to establishing the fee may inappropriately exempt them from this or other assessments placed on new development as a part of the plan's adoptions. The Commission has consequently imposed a community infrastructure fee on individual properties located in the Eastern Neighborhoods.

In the interim period between present case approvals and the conclusion of the Eastern Neighborhoods planning process, several projects may be proposed for approval. The purpose of this memo is to suggest a method of ensuring projects that are granted approval during this interim period pay their “fair share” of the cost of improvements as determined through that planning process, in a way that is equitable, fair and avoids risk of legal challenge.

### **The Eastern Neighborhoods Planning Process**

Planning Department staff is developing land use regulations as a part of a community-wide planning process to address neighborhood and citywide goals for residential and industrial land use in the Eastern Neighborhoods. The planning process currently underway aims to identify appropriate locations for housing in the City’s industrially zoned lands to meet a citywide need for more housing, especially affordable housing; to retain an adequate supply of industrial land to meet the current and future needs of the City’s production, distribution, and repair (PDR) businesses and the city’s economy; and to improve the quality of neighborhood that will continue to develop in these areas.

The proposed rezoning of the Eastern Neighborhoods is expected to result in up to 20,000 new residents, and in as many as 9,800 new households, between 2006 and 2025. These new residents will place increasing demands on City services and facilities in areas where the residential infrastructure serving current residents is already inadequate, and their needs will likely intensify demands on the area’s already deficient street network, limited open spaces, community facilities and services. As one of the planning process’s primary goals is to enhance the quality of neighborhoods in the area, this new development further emphasizes the need for, and the level of, improvements that will make the Eastern Neighborhoods viable, livable places.

### **Planning Commission Resolution 16727**

In recognition of the fact that there was limited land supply for Production, Distribution, and Repair (PDR) activities, and that these activities provide jobs that provide higher wages and cater to a variety of skill, vocation and education levels, the Planning Commission has taken several actions in past years to protect space for those activities. Planning Commission Resolution #16727, adopted in February 2004, aimed to protect PDR activities by designating Core PDR Overlay Zones where PDR activities are strongly encouraged, where displacement of PDR space or demolition of an industrial building is strongly discouraged, and where new housing is permitted only under severely limited conditions. The Resolution also established Housing/PDR Overlay Zones, where net loss of PDR space is strongly discouraged. This resolution has acted as the primary protection for PDR jobs and businesses while rezoning has been underway.

## **2660 Harrison Street Negative Declaration**

In March of this year, a negative declaration (i.e. an analysis that concludes that all significant environmental impacts can be mitigated or avoided) issued for a project in the Eastern Neighborhoods was overturned by the Board of Supervisors. The findings of the Board of Supervisors in its decision stated that the cumulative effects of the 2660 Harrison Street project, in light of other development projects within the Plan Area, may have potentially significant impacts on the loss of PDR jobs and businesses, and that therefore that project's environmental impact should be reevaluated based on its effect on PDR jobs and businesses, as well as upon the ability of the City to meet its housing needs as expressed in the General Plan.

In light of this decision and its subsequent interpretation concluding that it applied to all projects that could *potentially* contribute to environmental impacts on jobs and businesses, the Planning Department is preparing a programmatic environmental impact report (EIR) to consider the cumulative impacts of changes in land use, loss of jobs and displacement (in add to other environmental topic areas). Projects affected by 2660 Harrison decision have been given the option of waiting for the publication of this EIR, or preparing their own focused EIR that includes a cumulative impact analysis of these issues. The Planning Department's programmatic EIR is underway, and a public draft of this EIR is expected to be released summer 2007.

## **Impact Fees**

Impact fees are assessments imposed by local government on development with the intention of providing for basic infrastructure, services or facilities caused by that new development. Local governments throughout the country are increasingly using impact fees to finance public facilities, shifting the burden from the general taxpayer to the actual beneficiaries of those new facilities. In California, where Proposition 13 limits the ability of property tax revenues to cover the costs of development, many municipal agencies are turning to impact fees as a method to pay for infrastructure needs instigated by new development.

In general, the courts have required a "nexus," or reasonable relationship, between the amount of the fee and the development being proposed. In California, the Mitigation Fee Act requires local agencies to make specific findings when establishing an impact fee, identifying the purpose of the fee, identifying the use to which the fee is to be put, determining the reasonable relationship between the need and the development upon which the fee is imposed, and determining the relationship between the amount of the fee and the improvement to be paid for with the fee. This nexus requirement also means fees that can only address needs generated by the development itself, and cannot be used to remedy existing deficiencies or community needs not related to new development.

The City of San Francisco assesses a number of impact fees, on both a citywide and area-plan basis. Existing citywide impact fees fund increases to childcare, schools and transit services, wastewater capacity, and downtown parks that are due to new development. The City has also adopted several area-specific impact fees intended to cover a broader range of community needs in developing residential areas through the Rincon Hill Community Infrastructure Impact Fee, the South of Market Area Community Stabilization Fee, the Visitacion Valley Community Facilities and Infrastructure Fee, and the (pending) Market & Octavia Community Improvements Fee. This method has also been identified as a source of financing for improvements in other plan areas under study by the Planning Department, and is a primary component of the Public Benefits Package being developed for the Eastern Neighborhoods.

### **Public Benefits Package for the Eastern Neighborhoods**

Through a combination of staff work, consultant analysis, and community input, the Planning Department is in the process of crafting a comprehensive public benefits package of improvements of the Eastern Neighborhoods that will address the neighborhood's needs for community facilities and services, parks and open space, and public infrastructure. The Planning Department has engaged a consultant to establish a Needs Assessment by analyzing existing and future conditions. Based on the build-out projections of 15 - 20,000 new residents, the consultant's findings demonstrate significant need for additional open space and recreational facilities, middle and elementary schools, licensed child care spaces, library materials, police equipment, retail space and affordable housing.

Draft results of this analysis have provided a basis for community discussion of needs and impacts at a series of public workshops, and will serve as the foundation for the public benefits package to be created as a part of the Eastern Neighborhoods planning process. One of the elements of this package will be a proposed impact fee to fund mitigation of the impacts of new development. However, as the needs described in the analysis include both existing deficiencies as well as needs generated by new development, and as per the California Mitigation Fee Act, this Fee can not address already existing deficiencies; the existing needs will be met through sources other than an impact fee.

The amount of the Fee will be set at the conclusion of the planning process, in conjunction with a nexus analysis of new development's impacts on the infrastructure, social services and public safety services of the Eastern Neighborhoods.

## **“Fair Share” Assessments**

One of the primary purposes of this impact fee, if imposed, would be to ensure that new growth pays its “fair share” of the costs of improvements required to serve the residents it brings. Development approved now, in advance of the conclusion of the Eastern Neighborhoods planning process and its associated studies or proposed legislation establishing an impact fee, will have the same impact as development approved after the plan’s conclusion, so it would logically follow that these developments should also pay their “fair share” towards needs they will generate. However, as no nexus between new development and the extent of its impacts has been formally established in the Eastern Neighborhoods, the exact amount of this fee has yet to be determined, and therefore is difficult to accurately – or fairly - impose upon developers at this time.

Yet, the impacts of new development on a municipality’s infrastructure are well documented, and the fact that new development in the Eastern Neighborhoods will create demands for improved urban infrastructure including water and sewer services, public school services, child-care services, transportation infrastructure, open space, recreational facilities, library services, and safety services, is undeniable. Therefore, staff recommends that conditions be placed on *current* project approvals attaching *future* assessments to these projects to address the fact that projects are moving forward in advance of the conclusion of the planning process, and therefore in advance of the fee that will address these impacts. However, staff also recognizes that a level of certainty is required for financing of development projects, and therefore also recommends that a cap be placed on the amount of any “springing” fee applied to such projects.

One additional option the Commission may wish to consider is grandfathering, wherein projects filed before a certain date are exempted from these conditions. If the Commission wishes to pursue the concept of grandfathering, staff recommends the date be set to coincide with the 2660 Harrison decision date, because this project put all developments filing in the Eastern Neighborhoods on notice; that is, that projects would be evaluated according to their cumulative impacts on PDR jobs, businesses, and housing, and would potentially be responsible for mitigation.

A final option for the Commission to consider adopting a threshold relative to project size. For example, the Inclusionary Affordable Housing Program currently applies to projects of 5 units or more, while the Visitacion Valley Community Impact Fee applies to residential development projects of 20 residential units or more. However, please recall that no threshold is necessarily required: another example, the Market & Octavia Community Improvement Fee, applies to new development projects of all sizes.

## **Recommendation**

Staff recommends that the Planning Commission adopt a standard set of conditions for all projects granted approval in the Eastern Neighborhoods Plan Areas prior to

conclusion of the planning process, that requires these projects to adhere to any forthcoming impact fee requirements at the time they are adopted. Attached is a draft resolution which does the following:

1. sets policy establishing springing conditions triggering the imposition of any future adopted impact fees on all residential projects;
2. sets a cap on such future adopted impact fees, to ensure certainty for project sponsors in the financial development of their projects; and
3. directs staff to prepare an interim "Program Document" in advance of the nexus studies or proposed legislation that will be part of any final adopted impact fee.

In addition to adoption of this resolution, staff recommends that the Planning Commission apply this fee uniformly to all projects over (*X square feet / or X units?*) without discretion, and that they incorporate this Resolution and its findings by reference in all project approvals that will be subject to the interim fee

*(Draft Resolution TBD)*

### **Summary**

In summary, staff recommends that the Commission adopt a standard set of conditions to be applied to all project approvals granted in the Eastern Neighborhoods plan areas prior to the conclusion of the planning process. These conditions are intended to ensure that these projects contribute to any requirements that may be adopted as a part of that planning process, and thereby pay their "fair share" of the cost of improvements to the project area.