

EXHIBIT C
Transit Impact Development Fee (TIDF) and
Office Space Development Fee (OSDF)
Appeal Procedures

- a) **Definitions.** Capitalized terms used in these procedures shall have the same meaning given in §38.1 of the San Francisco Administrative Code, except that the term "Board" when used in these procedures shall mean the Board of Directors of the San Francisco Municipal Transportation Agency (SFMTA).
- b) **Appeal Authorized.** A Sponsor of a development project subject to the TIDF or OSDF may appeal to the Board the determination made by the Executive Director (ED) of the SFMTA of the TIDF or OSDF due for the project under §§ 38.3-1 or 38.5 of the San Francisco Administrative Code ("Administrative Code"). An appeal must be submitted in writing and filed with the SFMTA Board of Directors in care of the Board Secretary at One South Van Ness Avenue, 7th Floor, San Francisco, CA 94103, with concurrent service on the ED in accordance with paragraph (l) of these procedures.
- c) **Time for Appeal.** The Sponsor's appeal must be filed with the Board within the time period specified for appeal in §38.5 of the Administrative Code. If no appeal is filed with the Board within this time period, the ED's determination of the TIDF or OSDF amount due shall become binding on the Sponsor pursuant to § 38.5 of the Administrative Code.
- d) **Basis for Appeal.** The appeal shall specify the Sponsor's grounds for appeal, state any facts in support of the appeal, and attach a copy of the ED's determination being appealed. Permissible grounds for appeal include, but are not limited to, challenges to the ED's determination of: (1) the number of Gross Square Feet of use subject to the TIDF as described in § 38.5 of the Administrative Code, or gross square feet of office use subject to the OSDF as described in § 38.3-1 of the Administrative Code; (2) the Economic Activity Category or Categories applied (as described in § 38.4 of the Administrative Code); or (3) any credit for prior uses eliminated (as described in § 38.6 of the Administrative Code).
- e) **Response by ED.** The ED shall file a written response to the Sponsor's appeal. For any such appeal filed after adoption of these procedures, the ED's response shall be filed with the Board and concurrently served on the Sponsor, within 30 calendar days of the date the Sponsor's appeal was filed and served.
- f) **Rebuttal by Sponsor.** The Sponsor may submit written rebuttal to the ED's response. Any rebuttal must be filed with the SFMTA Board and concurrently served on the ED, within 15 calendar days of the date the ED's response was filed and served.
- g) **Agreement to Shorten Time.** The ED and the Sponsor may agree in writing to shorten either the time period for filing either the ED's response under paragraph (e), the Sponsor's

rebuttal under paragraph (f), or both.

- h) **Ex Parte Communications Prohibited.** An “ex parte communication” is any communication regarding any aspect of an appeal under these procedures between a party to the appeal or any representative of a party, and any individual Board member, the Board as a whole, the Board Secretary or counsel, or a hearing officer if designated in accordance with paragraph (i)(2), where the other party to the case is not included in the communication. All ex parte communications, by any means, including but not limited to, by telephone, email, in person, or written correspondence, are prohibited.

The prohibition on ex parte communications does not prohibit communications where all parties to the case are included in the communication. In addition, a party or a party’s representative may have ex parte communications about the case with the Board Secretary or the Board’s counsel, provided that the communication is limited solely to procedural matters.

- i) **Board Review.** (1) The Board shall review and consider the Sponsor's appeal at a regularly scheduled Board meeting within 45 days of the deadline for filing the Sponsor's rebuttal, regardless of whether a rebuttal is actually filed. If no regularly scheduled Board meeting occurs within this time period, the appeal shall be heard at the next such meeting of the Board. The Board's review shall be a *de novo* review and shall be based on the record consisting of the Sponsor's appeal, the ED's response, any rebuttal from the Sponsor, and any oral comments received from the parties on this matter at the Board meeting. The Board Chair may set a time limit for comments. In addition, Board members may ask questions of the parties.
- (2) As an alternative to the procedure for Board review set forth in paragraph (1), the Board Chair may delegate to a hearing officer the duty to conduct a hearing to hear and receive evidence and argument from the parties, compile a record and make findings and a recommendation to the full Board. Such hearing shall be held within 45 days of the deadline for filing the Sponsor's rebuttal, regardless of whether a rebuttal is actually filed. The hearing officer may be either a member of the Board, or a qualified individual who is not an employee of the SFMTA. The hearing officer's recommendation shall be based on the Sponsor's appeal, the ED's response, any rebuttal from the Sponsor, and any oral comments received from the parties at the hearing. The hearing officer shall make a recommendation to affirm, reverse or modify the ED's determination. Following completion of this hearing, the Board Secretary shall submit the record of the proceedings, including the evidence considered by the hearing officer, and the hearing officer's findings and recommendation, to each Board Member.
- j) **Board Decision; Finality.** Where the Board has heard a direct review of the appeal under (i)(1), the Board shall deliberate and reach a decision based on the record described in paragraph (i) of these procedures. Where the Board has delegated the duty to compile an administrative hearing record under (i)(2), the Board members shall, after reviewing the

- k) **Service of the Board Decision.** The Board shall serve its decision under paragraph (j) of these procedures on the Sponsor and the ED within three business days following the issuance of the Board's written decision. In addition, the Board shall provide a copy of its decision to the Department of Building Inspection and the Treasurer within three business days following the issuance of the Board's written decision.
- l) **Filing and Service Requirements.** The parties shall file or submit any correspondence, pleading or other material for the SFMTA Board in care of the Board Secretary, One South Van Ness Avenue, 7th Floor, San Francisco, California, 94103. The parties may file or submit materials via hand delivery, email, facsimile, overnight delivery, or registered U.S. Mail, except that the initial appeal by the Sponsor must be served on the Board Secretary by hand delivery, overnight delivery, or registered U.S. Mail. When a party files or submits any correspondence, pleading or other material to the Board, the party shall concurrently submit the correspondence, pleading or other material to the other party or, if known, to that party's representative, using a method that ensures delivery on the same date as delivery to the Board. An item is "filed" or "submitted" when received by the Board Secretary.