



SAN FRANCISCO PLANNING DEPARTMENT

April 5, 2016

Ms. Angela Calvillo, Clerk
Honorable Supervisors Jane Kim and Aaron Peskin
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

**Re: Transmittal of Planning Department Case Number 2016-003040PCA:
Inclusionary Affordable Housing Fee and Requirements
Board File No. 160255
Planning Commission Recommendation: Approval with Modification**

Dear Ms. Calvillo and Supervisors Kim and Peskin,

On March 31, 2016, the Planning Commission conducted duly noticed public hearings at regularly scheduled meetings to consider the proposed Ordinance would amend the Planning and Administrative Codes to increase the Inclusionary Affordable Housing fee and other requirements; require the Controller to prepare an economic feasibility report regarding the City's inclusionary housing requirements and make recommendations by July 31, 2016 and every three years thereafter; and establish the Inclusionary Housing Technical Advisory Committee to provide advice about the economic feasibility of proposals to set maximum economically viable inclusionary housing requirements, and set forth the membership and duties of the Advisory Committee. At the hearing the Planning Commission recommended approval with modification.

The Commission's proposed modifications are included in the attached resolution, Planning Commission Resolution #19603.

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

Supervisors, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission.

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information please do not hesitate to contact me.

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Sincerely,

A handwritten signature in black ink, appearing to read "Aaron Starr", written in a cursive style.

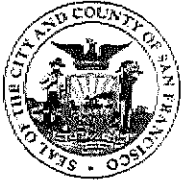
Aaron D. Starr
Manager of Legislative Affairs

cc:

Kate Stacy, Deputy City Attorney
April Ang, Aide to Supervisor Kim
Sunny Angulo, Aide to Supervisor Peskin
Alisa Somera, Office of the Clerk of the Board

Attachments :

Planning Commission Resolution
Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 19603 HEARING DATE MARCH 31, 2016

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Project Name: **Inclusionary Affordable Housing Fee and Requirements;
Preparation of Economic Feasibility Report; Establishing Inclusionary
Housing Technical Advisory Committee**

Case Number: **2016-003040PCA [Board File No. 160255]**

Initiated by: **Supervisor Kim and Supervisor Peskin / Introduced March 22, 2016**

Staff Contact: **Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362**

Reviewed by: **AnMarie Rodgers, Senior Policy Advisor
anmarie.rodgers@sfgov.org, 415-558-6395**

Recommendation: **Recommend Approval with Modifications**

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT WITH MODIFICATIONS A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING AND ADMINISTRATIVE CODES TO INCREASE THE INCLUSIONARY AFFORDABLE HOUSING FEE AND OTHER REQUIREMENTS; REQUIRE THE CONTROLLER TO PREPARE AN ECONOMIC FEASIBILITY REPORT REGARDING THE CITY'S INCLUSIONARY HOUSING REQUIREMENTS AND MAKE RECOMMENDATIONS BY JULY 31, 2016 AND EVERY THREE YEARS THEREAFTER; AND ESTABLISH THE INCLUSIONARY HOUSING TECHNICAL ADVISORY COMMITTEE TO PROVIDE ADVICE ABOUT THE ECONOMIC FEASIBILITY OF PROPOSALS TO SET MAXIMUM ECONOMICALLY VIABLE INCLUSIONARY HOUSING REQUIREMENTS, AND SET FORTH THE MEMBERSHIP AND DUTIES OF THE ADVISORY COMMITTEE; AFFIRMING THE PLANNING DEPARTMENT'S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; MAKING FINDINGS OF PUBLIC CONVENIENCE, NECESSITY, AND WELFARE UNDER PLANNING CODE SECTION 302; AND MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE SECTION 101.1.

WHEREAS, on March 22, 2016 Supervisors Kim and Peskin introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 160255, which would amend the Planning and Administrative Codes to increase the Inclusionary Affordable Housing fee and other requirements; require the Controller to prepare an economic feasibility report regarding the City's inclusionary housing requirements and make recommendations by July 31, 2016 and every three years thereafter; and establish the Inclusionary Housing Technical Advisory Committee to provide advice about the economic feasibility of proposals to set maximum economically viable inclusionary housing requirements, and set forth the membership and duties of the Advisory Committee

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on March 31, 2016; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c); and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve with modifications** the proposed ordinance. The Commission's proposed modifications are as follows:

1. **Support the production of housing, especially affordable housing.** This long-standing policy of the City seeks equity in housing for future residents. Given the current housing crisis, this goal is all the more important. This ordinance seeks to establish a regular feasibility study to ensure the requirements are neither lower nor higher than the market will support. The ordinance also seeks to raise the Inclusionary Housing requirement, the City's most expensive impact fee. Increases to this exaction in the short-term may chill the production of housing. Some projects will buckle under new onsite requirements or fees, particularly when land has already been purchased at high prices based upon an anticipated revenue. The resulting slowdown of housing production can cause harm to residents needing housing in the short-term. It is probable that over the longer term higher on-site requirements or fees set through a rigorous feasibility study could be absorbed into the costs of the land value. However, even over the long-term, the amount of additional on-site requirements or fees that can be absorbed is still limited. This is because in order for development to occur, it must offer a greater return to the landowner than the existing use. For example a parcel containing a retail/commercial use will only be developed into housing if the proposed residential project offers a greater return to the landowner than the retail/commercial rent it is already earning. By establishing a process for regular feasibility analysis, the City can continually adapt to changes in the real estate market and ensure the highest production of BMR housing in conjunction with new market-rate housing.
 - a. **Ensure no reduction would occur to existing Inclusionary Requirements.** Some districts such as UMU, Mission Street NCT, and SoMa Youth and Family Zone and have higher requirements under existing controls than would be required under the proposal. The Commission recommends keeping any existing requirements that are higher than the amounts proposed in the draft ordinance. Sections 415.6 On-site Alternative and 415.7 Off-Site Alternative include language enabling the higher requirement. Similar language should be added to 415.3 Application, Section 415.7 Off-Site Application, 415.5 Fee, and within the geographically specific Code Sections that have higher requirements such as

Section 419 UMU. Within Section 419 UMU district, the proposed grandfathering provisions do not take into account the Tiers. For instance, the existing Code requirements are varied by tiers Tier A (on-site: 14.4%, off-site: 23%); Tier B (on-site: 16%, off-site: 25%); and Tier C (on-site: 17.6%, off-site: 27%). With the proposed grandfathering provision a 30 unit project in Tier B would be required to provide 25% because it is higher, but it would be 16% if using grandfathering. The "higher percentage" language needs to be added to the grandfathering section or separate percentages should be established for each UMU Tier.

- b. **Support the production of additional affordable housing through the use of density bonuses.** The proposed Ordinance encourages project sponsors to achieve 25% affordable housing on-site in association with the use of the existing State Density Bonus Law. Generally, the Planning Code should establish standards and requirements and should not have vague language. Encouragement language is better placed in policy documents. Further, by codifying language of encouragement such as "use best efforts" and "consult with the Planning Department about achieving [higher levels of affordability than required by the State] may set unrealistic community expectations that are unachievable under State Law. Such language of encouragement provides no real benefit as it does not prohibit a project sponsor from providing less than 25% and the City may not circumvent the State Law in this way. The Commission agrees that a higher provision of affordable housing with density bonuses would better align the State Law with City policy, but State Law circumscribes the City's ability in denying a density bonus to projects providing of less than 25% affordable housing or in imposing a higher inclusionary requirement on a density bonus project. If the City adopts the local Affordable Housing Bonus Program (AHBP), the Local Program could incentivize an even higher level of affordability while shaping the built form of projects to be more compatible with San Francisco's neighborhoods. At this time, the Commission recommends removing the undefined term of "use best efforts" and an undefined process of "consultation" with the Department and instead encourages the Board to consider incentives such as the AHBP as the best vehicle for achieving higher affordability in light of the State Law.
- c. **Allow some flexibility in the AMI requirements to encourage variety of levels of affordability.** The on-site requirement for projects with 25 units or more has a degree of flexibility written into the new requirements. It mandates 25% Inclusionary of on-site units provide 15% of the units are affordable to low, and very low-income and allows the remaining 10% of the requirement to be provided with housing serving either very low, low- or middle-income households. This flexibility in the final 10% allows for some projects to qualify for tax credits while other projects may serve middle-income households. This same flexibility should be added to the off-site requirement on page 17, line 8: 415.7 (a)(1) (B) The number of units constructed off-site shall be 33 percent, with a minimum of 20% of the units affordable to low- and very low-income households and another 13% of the units affordable to low-, very low-income and middle- income households, so that a project applicant shall construct .33 times the total number of units produced in the principal project.

2. **Create fair, uniform grandfathering provisions for pipeline projects.** Because projects that are further along in the entitlement process are less able to adapt to new fees, the proposal makes accommodations by stepping the rate upwards incrementally. However, as proposed, the grandfathering currently is unnecessarily complicated. Lastly the timeline for securing a site permit may not be feasible for certain projects.
 - a. **Ensure uniform treatment of pipeline projects across zoning districts and project building types until further analysis can support the rationale.** Remove the provision that exempts from the grandfathering provisions projects in the UMU zoning that propose the demolition of PDR, projects located within the Mission Street NCT, projects in the SOMA Youth and Family Zone, and project building types that exceed 120 feet in height. All projects that have been planned consistent with existing zoning controls should be treated equally under the proposed grandfathering provision and new, permanent controls. If the feasibility study or changes in City policy demonstrate a rationale for differentiating certain projects within the Inclusionary requirements, then more specific requirements should be applied to future projects not those in the pipeline.
 - b. **Ensure grandfathered projects have a reasonable, but not excessive amount of time to complete project.** Make the following modifications to the timeline restriction for grandfathering on page 10, Line 1:

Any development project that constructs on-site or off-site affordable housing units as set forth in this Section 415.3(b) shall diligently pursue completion of such units. In the event ~~that the project sponsor does not procure~~ a building permit is not issued for construction of the affordable housing units by within 36 months from the entitlement date in order to remain subject to grandfathering provisions. If the building permit is not issued within 36 months of entitlement December 7, 2018, the development project shall comply with the inclusionary affordable housing requirements set forth in Planning Code Sections 415.5, 415.6 and/or 415.7, as applicable.

3. **Make a commitment to ensure that the City gets the most affordable housing even as the real estate market will vary over time.** The Board of Supervisors would need to hold a hearing within three months of the completion of the feasibility study to consider increasing, decreasing or keeping the fees in light of the results. The Planning Commission should also consider initiating legislative amendments to the Inclusionary Requirement for the Board's consideration as described in the proposed edits to the "Modifications to the Feasibility Report" language on Page 24, Lines 3-14 as follows:
 - (d) Planning Commission Hearing. The Planning Commission shall hold a hearing within one to two months after publication of each Triennial Economic Feasibility study to consider initiating an ordinance that would update the inclusionary requirement based upon the Triennial Economic Feasibility Analysis.
 - ~~(d)~~-(e) **Report to Board of Supervisors.** The Board of Supervisors will review the feasibility analyses, as well as the commensurate updates to the City's Nexus Study evaluating the necessary affordable housing in order to mitigate the impacts of market rate housing. The Board of Supervisors, in its sole and absolute discretion, will review the feasibility analyses within three to four months of completion and will consider legislative amendments to the City's Inclusionary Housing in-lieu fees, on-site, off-site or other

alternatives recommended by the Controller and/or the Planning Commission adjusting levels of inclusionary or affordable housing obligations and income levels based on the feasibility analyses, with the objective of maximizing affordable Inclusionary Housing in market rate housing production, with guidance from the City's Nexus Study.

(b) **Triennial Economic Feasibility Analysis.** With the support of independent consultants as deemed appropriate by the Controller and with advice on setting qualifications and criteria for consultant selection from the *Inclusionary Inclusionary* Housing Technical Advisory Committee established in Administrative Code Chapter 5, Article XXIX, the Controller, in consultation with relevant City Departments and the Inclusionary Housing Technical Advisory Committee, shall conduct a feasibility study of the City's inclusionary affordable housing obligations set forth in Planning Code Section 415 et seq., including but not limited to the affordable housing fee and on-site and off-site alternatives, and shall submit a report to the Board of Supervisors by July 31, 2016 and by October 31 for subsequent years. The Planning Commission shall hold a hearing within one to two months after publication of each Triennial Economic Feasibility to consider initiating an ordinance that would update the inclusionary requirement based upon the Triennial Economic Feasibility Analysis. The Board of Supervisors shall hold a hearing three to four months after the publication of each Triennial Economic Feasibility. At the hearing, the BOS shall consider increasing, decreasing or retaining the established inclusionary rate. Thereafter, the Controller, in consultation with the Department and the Inclusionary Housing Technical Advisory Committee, shall repeat this process at least every 36 months, or more frequently as deemed necessary by the Controller in response to a significant shift in economic or market conditions.

4. **For projects pursuing a State Density Bonus, individual project sponsors are required to do a project-specific feasibility study, this should only be tied to requested concessions.** The proposed Ordinance requires a feasibility study if the project sponsor is not providing on-site affordable units in the amount of 25% of the number of units constructed. The Commission recommends that such analysis be linked to a relevant decision, such as approval of a requested concession or incentive. Per State law, approvals of increased density are not reliant on feasibility; however, concessions do have feasibility thresholds. The feasibility of the density bonus itself, rather than the separate category of concessions, cannot factor into the City's decision as to whether or not to approve the density bonus when a proposed project does not meet the stated goal of 25% affordable units. The State has already determined that the added density is permitted. However, a feasibility study can help inform the City as to whether or not concessions should be granted.
5. **Small Sites Acquisition.** Ensure that this new option allowing pipeline projects to satisfy Inclusionary requirements through the acquisition of existing buildings is crafted to mirror applicable elements of the Small Sites Acquisition Program administered by MOHCD. Applicable elements would include income eligibility and requirements, financial underwriting guidelines, and use restrictions. Notably, the Ordinance creates new options that

are specifically intended to differ from the existing Small Sites Acquisition program. As currently drafted, it appears that the explicit requirement is that buildings acquired for this purpose would be converted from a non-residential use to a residential use. This creates new policy implications to be weighed such as would the City encourage the conversion from a PDR use, for example, to housing. Further, policymakers should note that the inclusion of commercial property acquisition by private parties represents a change in policy as the small sites program currently is only a vehicle for MOHCD to implement by the purchase existing residential projects. Additional clarity should be added about what existing buildings would be appropriate and what is intended with the phrase "an existing building that is *not currently and primarily* in residential use" (emphasis added). Lastly, there is no mention of income eligibility in the current proposal.

6. **Evaluate whether or not the UMU inclusionary percentages should be tiered in the proposed Inclusionary requirements.** Currently UMU districts have higher inclusionary rates based on the increased development potential obtained from the Eastern Neighborhood rezoning. The proposed ordinance does not account for this. The Commission recommends looking into whether or not the proposed UMU rates should also be tiered based on increased development potential.
7. **Reconcile the definitions for affordability levels in the proposed ordinance with those already in the Planning Code.** The proposed ordinance amends sections of the Planning Code to define new affordability levels for on- and off-site inclusionary units; however, the draft does not remove or alter the existing definitions, which define the affordability levels differently. If the draft Ordinance is adopted as-is, the result will be that the Planning Code includes two different and conflicting affordability levels for on- and off-site inclusionary units.
8. **Establish June 7, 2016 as the exemption date for projects that have received an entitlement from Planning.** Under the proposed ordinance projects that have already received their entitlements from the Planning Department or the Planning Commission would still be required to increase their inclusionary rate based on when their environmental evaluation application was filed. The Commission recommends that projects that have already received their entitlements from the Planning Department or the Planning Department should be allowed to maintain the inclusionary requirement percentage that was part of their entitlement approval.
9. **Consider the earliest environmental application date as the date to grandfather projects.** A revised project may require an amended environmental evaluation. The Commission recommends that the original filing date be used to determine grandfathering, not the filing date for the amended environmental review.
10. **Consider special circumstances for the grandfathering clause, by looking at other application filing dates.** Some project sponsors have held off on filing their environmental evaluation application as a good faith effort to the community while they seek more community engagement. The Commission recommends taking this into consideration when considering whether or not a project is eligible for grandfathering.

11. Various technical amendments including:

- a. Organizing the grandfathering dates and percentages into charts would make these sections easier to use and implement.
- b. Section 415.6(a)(1) On-Site Alternative should be clarified to ensure that the 12% requirement is dedicated to low-income AMIs. Currently the ordinance is silent, but it is assumed that the 12% for buildings with 10-25 units serve to low-income AMIs.
- c. If the Board retains the exemptions for certain projects within the UMU district, the proposed Ordinance should be amended to clarify whether or not a project in the UMU District is grandfathered if it demolishing PDR but would also replace the PDR use. Currently the proposed Ordinance is silent on projects that demolish and replace PDR in the UMU District.
- d. The proposed provision for the state density bonus in Section 415.3(b)(1)(F) follows other grandfathering provisions and it would appear because of its location that this is also a grandfathering provision; however there is not acknowledgement in the specific section that this provision only applies to projects already in the pipeline. This section should be amended to clarify that it applies only to projects submitted prior to January 12, 2016 if that is the intention of the sponsor.
- e. In order to preserve the higher inclusionary rate in certain districts, the following language should be added to Section 415.3(b)(1) which starts on page 6, line 19 of the ordinance: "Specific Geographic Areas. For any housing development that is located in an area with a specific affordable housing requirement set forth in a Special Use District or in any other section of the Code such as Section 419, the higher housing requirement shall apply."
- f. The findings in Section 415.1 should be updated to reflect current available information. It should also be removed from the Planning Code and added to the proposed Ordinance as part of the findings. These findings are not legally required to be in the Planning Code and removing them will help simplify Section 415.
- g. Page 9, Line 13, and everywhere else in the ordinance that this type of provision occurs, the following amendments should be made: "Notwithstanding the provisions set forth in subsections (b)(2)(A), (B) and (C) of this Section 415.3, if a development project proposes a building whose height is measured per the Planning Code to be over 120 feet ~~or greater~~, such development project shall pay a fee or provide off-site housing in an amount equivalent to 33% of the number of units constructed on-site.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The Planning Commission supports the Ordinance on balance because it establishes a process for regular feasibility analysis so that the City can continually adapt to changes in the real estate market and ensure the highest production of BMR housing in conjunction with new market-rate housing.

2. The current economic cycle has created an unprecedented affordability crisis in the City. It is in the City's interest to ensure that we are maximizing the number of inclusionary units we get from private developers through the Inclusionary Program. By increasing the inclusionary rate based on feasibility, the City will be able to maximize the potential of its inclusionary program, ensuring more permanently affordable housing units without using tax payer funds.
3. This proposed technical review and evaluation of the City's Inclusionary program by professionals is good public policy. Emphasizing the committee members' technical expertise will help ensure that this report is given thorough and detailed oversight.
4. The proposed amendments allow for some flexibility in the AMI requirements to encourage variety of levels of affordability. The Commission finds that this same flexibility should be allowed for the off-site requirement.
5. The Commission finds that in order to provide certainty for projects, the proposed ordinance should create a fair and uniform grandfathering provision for pipeline projects.
6. The Commission finds that in addition to the Board considering increasing, decreasing or keeping the fees in light of the results of the feasibility study, it should also consider initiating legislative amendments to the Inclusionary Requirement for the Board's consideration.
7. In general, the Commission finds that the Planning Code should establish standards and requirements and should not have vague language. Encouragement language is better placed in policy documents.
8. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

OBJECTIVE 4

FOSTER A HOUSING STOCK THAT MEETS THE NEEDS OF ALL RESIDENTS ACROSS LIFECYCLES.

Policy 4.4

Encourage sufficient and suitable rental housing opportunities, emphasizing permanently affordable rental units wherever possible.

The proposed ordinance will require more inclusionary units than is currently required in the Planning Code. Inclusionary units can be rental and are permanently affordable housing.

Policy 4.5

Ensure that new permanently affordable housing is located in all of the city's neighborhoods, and encourage integrated neighborhoods, with a diversity of unit types provided at a range of income levels.

On-site inclusionary housing units integrate permanently affordable housing into all of the city's neighborhoods, helping to establish a range of income levels across the city. This ordinance will increase the number of inclusionary units required for project of 25 units or more, further achieving this policy goal.

OBJECTIVE 7

SECURE FUNDING AND RESOURCES FOR PERMANENTLY AFFORDABLE HOUSING, INCLUDING INNOVATIVE PROGRAMS THAT ARE NOT SOLELY RELIANT ON TRADITIONAL MECHANISMS OR CAPITAL .

Policy 7.1

Expand the financial resources available for permanently affordable housing, especially permanent sources.

The proposed ordinance will increase the amount of money that individual developers would have to pay into the City's Housing Trust Fund. This money would then be used to pay for permanently affordable housing.

Policy 7.7

Support housing for middle income households, especially through programs that do not require a direct public subsidy.

The proposed inclusionary program does not require public subsidies and a portion of the units or fees collect would be dedicated to middle income households.

OBJECTIVE 8

BUILD PUBLIC AND PRIVATE SECTOR CAPACITY TO SUPPORT, FACILITATE, PROVIDE AND MAINTAIN AFFORDABLE HOUSING.

Policy 8.1

Support the production and management of permanently affordable housing.

This ordinance supports the production of permanently affordable housing by increasing the inclusionary housing requirement for individual projects.

9. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:
 1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance will not have a negative effect on existing neighborhood serving retail uses as it only addresses the City's inclusionary housing program.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance will help maintain a diversity of housing types and income types in the City's various neighborhoods; helping to preserving the cultural and economic diversity of the City's neighborhoods.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance will have a positive effect on the City's supply of affordable housing by increasing the inclusionary requirement for individual projects with 25 units or more.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking as it only addresses the City's inclusionary housing program.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance will not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance will not have an adverse effect on City's preparedness against injury and loss of life in an earthquake because the Ordinance modifies the City's inclusionary housing requirements.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance will not have an adverse effect on the City's Landmarks and historic buildings because the Ordinance only addresses the City's inclusionary housing requirements.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance will not have an adverse effect on the City's parks and open space and their access to sunlight and vistas because it only addresses the City's inclusionary housing requirements.

9. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on March 31, 2016.



Jonas P. Ionin
Commission Secretary

AYES: Commissioners Antonini, Fong, Hillis, and Johnson

NOES: Commissioners Moore, Richards and Wu

ABSENT: None

ADOPTED: March 31, 2016



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment

HEARING DATE: MARCH 31, 2016

EXPIRATION DATE: JUNE 22, 2016

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Project Name: Inclusionary Affordable Housing Fee and Requirements;
Preparation of Economic Feasibility Report; Establishing Inclusionary
Housing Technical Advisory Committee

Case Number: 2016-003040PCA [Board File No. 160255]

Initiated by: Supervisor Kim and Supervisor Peskin / Introduced March 22, 2016

Staff Contact: Aaron D Starr, Manager of Legislative Affairs
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Reviewed by: AnMarie Rodgers, Senior Policy Advisor
anmarie.rodgers@sfgov.org, 415-558-6395

Recommendation: **Recommend Approval with Modifications**

PLANNING CODE AMENDMENT

The proposed ordinance amends the Planning and Administrative Codes to:

1. Increase the Inclusionary Affordable Housing fee, establish grandfathering provisions for existing pipeline projects, and establish other requirements;
2. Require the Controller to prepare an economic feasibility report regarding the City's inclusionary housing requirements and make recommendations by July 31, 2016 and every three years thereafter; and
3. Establish the Inclusionary Housing Technical Advisory Committee to provide advice about the economic feasibility of proposals to set maximum economically viable inclusionary housing requirements, and set forth the membership and duties of the Advisory Committee.

The ordinance would not take effect unless and until the voters approve amendments to the Charter at the June 7, 2016 election. This ordinance would supersede and replace the interim Inclusionary Housing requirements set forth in the proposed Charter amendment.

The Way It Is Now:

1. Qualifying Projects: Projects with 10 or more units are subject to the Planning Code's Inclusionary Housing Requirements.
2. On-Site Alternative: Planning Code Section 415.7 typically requires Project Sponsors electing the On-Site alternative to designate 12% of the total number of units constructed as inclusionary units. These units are dedicated to low and very low-income households

3. In-Lieu Fee Alternative: Planning Code Section 415.7 typically requires Project Sponsors electing the In-Lieu Fee to pay a fee equivalent to 17-20% of the total number of units produced in the principal project. The fee is deposited into the Housing Trust Fund and is generally required to be used to increase the supply of housing affordable to qualifying households.
4. Off-Site Alternative: Code Section 415.7 typically requires Project Sponsors electing the Off-Site alternative to construct off-site units equivalent to 17-20% of the total number of units produced in the principal project. These units are dedicated to low and very low-income households.
5. Existing Building Alternative: Currently, projects sponsors are not able to acquire an existing building that is *not* currently and primarily in residential use to fulfill all or part of their Off-Site requirement.
6. Economic Feasibility Analysis: The City commissioned an economic feasibility analysis in July of 2006 to examine the economic impacts of adjusted inclusionary requirements on market-rate housing projects. There is no need and no requirement for the City to conduct periodic economic feasibility analysis since the current rate is dictated by the City's Charter.
7. Inclusionary Housing Technical Advisory Committee: The 2006 Economic Feasibility Analysis was guided by the Planning Department and Mayor's Office of Housing and Community Development, and informed by a Technical Advisory Committee that was comprised of a variety of experts from the San Francisco Housing Development and Affordable Housing Advocacy Communities. There is no formal requirement that future economic feasibility analysis be informed by a Technical Advisory Committee, nor are there requirements on who must be on such a committee.
8. Permanent Changes & Non-grandfathered project applications: The City's current Inclusionary Housing rate is fixed within the City's Charter, and cannot be amended unless by a vote of the people. Should they be changed by voter initiative, there is no language that grandfather's existing projects from having to pay the new rates.
9. Expiration of Grandfathering Clauses: in general, the City does not place an expiration date on grandfathering clauses.
10. Small Sites Acquisition. The Small Sites Acquisition Program is a vehicle that MOHCD can use to purchase existing residential buildings in order to provide permanently affordable housing. This program is funded through a combination of Housing Trust Fund revenues and affordable housing fees paid by housing developers in San Francisco. MOHCD is required to designate 10% of Inclusionary Housing Fees, up to \$15 million, received to support acquisition and rehabilitation of properties consisting of less than 25 units. Program funding may be used to support a variety of housing development activities, including property acquisition and minor rehabilitation. The use of these "Small Sites Funds" are limited to the acquisition and rehabilitation of residential rental properties with fewer than 25 units that are designated as affordable for a minimum of 55 years. The sites may be rental properties, vacant properties that were formerly rental properties as long as they have been vacant for a minimum of two years, foreclosed upon properties, or buildings structured as Limited Equity Housing Coops or Community Land Trusts.
11. State Density Law: The State Density law allows project sponsors to get a "bonus" in exchange for the provision of affordable housing. A State Density Bonus project could provide less on-site affordable housing than the City's Inclusionary Requirements, given how the State law is written.

In San Francisco the on-site Inclusionary Requirement for affordable units is calculated as the percentage of the total units provided. Under the State law, the percentage of affordable units is determined by a "base case" project and then adding the "bonus" units to the final project. For example, under existing City law a project that proposes to build 100 units would provide 12 Inclusionary Units and 88 market-rate units. If a project sponsor used the State Density law with a rental project, the proposal could show a base project with 100 units (12 Inclusionary and 88 market-rate) and then use of the State Law could add 23 market-rate units (a 23% density bonus) to the final project. The resulting final project would have an overall percentage of affordable units of 9.7%.

The Way It Would Be:

1. Qualifying Projects: Projects with 10 or more units would be subject to the current Inclusionary Housing Requirements; however additional requirements will be placed on housing projects with 25 units or more.
2. Inclusionary Housing On-Site Alternative Grandfathering Provision: For qualifying projects consisting of ten to 24 dwelling units, 12% of the total units constructed on-site would be required to be dedicated to affordable to low and very low-income households. For qualifying projects with 25 dwelling units or more, 25 percent of all units constructed would be dedicated to the inclusionary program, with a minimum of 15 percent of the units affordable to low and very low-income households and another ten percent of the units affordable to very low, low- or middle income households.

Projects that are currently in the pipeline may be subject to a lower inclusionary rate, depending on when their Environmental Evaluation Application was submitted and where they are located. Application dates for the grandfathering of existing projects would be established by the dates of a completed EE application that was submitted as follows:

- prior to 1/1/2014, the inclusionary rate would be 13%
- prior to 1/1/2015, the inclusionary rate would be 13.5%
- on or prior to 1/12/2016, the inclusionary rate would be 14.5%

Projects in UMU zoning that propose the demolition of PDR, projects located within the Mission Street NCT, and projects in the SOMA Youth and Family Zone are not eligible for grandfathering and would be subject to the new inclusionary rates.

3. Inclusionary In-Lieu Fee Grandfathering Provision: Qualifying projects consisting of ten to 24 dwelling units would be required to pay an in-lieu fee equivalent 20 percent of the total number of units produced in the principal project. Qualifying projects that have 25 or more units AND under 120 feet in height would be required to pay 30 percent of the total number of units produced in the principal project. Qualifying projects that have 25 units or more AND over 120' in height would be required to pay 33 percent of the total number of units produced in the principal project.

Projects that are currently in the pipeline may be subject to a lower inclusionary rate, depending on when their Environmental Evaluation Application was submitted and where they are located.

Application dates for the grandfathering of existing projects would be established by the dates of a completed EE application that was submitted as follows:

- prior to 1/1/2014, the inclusionary rate would be 25%
- prior to 1/1/2015, the inclusionary rate would be 27.5%
- on or prior to 1/12/2016, the inclusionary rate would be 30%

Buildings with a height measured at 120 or greater are not grandfathered and have to pay a fee equal to 33% of the units constructed. Projects in UMU zoning that propose the demolition of PDR, projects located within the Mission Street NCT, and projects in the SOMA Youth and Family Zone are not eligible for grandfathering and would be subject to the new Inclusionary Rates.

4. Off-Site Alternative Grandfathering Provision: Qualifying projects consisting of ten to 24 dwelling units would be required to construct the equivalent of 20 percent of the total number of units produced in the principal project, which would be affordable to low and very low-income households. Qualifying projects that have 25 units or more would be required to construct the equivalent of 33 percent of the total number of units produced in the principal project with 20 percent of the units affordable to low and very low-income households and 13 percent affordable to middle income households.

Projects that are currently in the pipeline may be subject to a lower inclusionary rate, depending on when their Environmental Evaluation Application was submitted and where they are located. Application dates for the grandfathering of existing projects would be established by the dates of a completed EE application that was submitted as follows:

- prior to 1/1/2014, the inclusionary rate would be 25%
- prior to 1/1/2015, the inclusionary rate would be 27.5%
- on or prior to 1/12/2016, the inclusionary rate would be 30%

Buildings with a height measured at 120 or greater are not grandfathered and have to build off-site units equal to 33 percent of the units constructed. Projects in UMU zoning that propose the demolition of PDR, projects located within the Mission Street NCT, and projects in the SOMA Youth and Family Zone and that seek to build off-site units are not eligible for grandfathering and would be subject to the new Inclusionary Rates.

5. Existing Building Alternative for Off-site Alternative Grandfathering Provision: Projects sponsors would be able to acquire an existing building that is not currently and primarily in residential use to fulfill all or part of their Off-Site inclusionary requirements.
6. Economic Feasibility Analysis: The proposed Ordinance establishes an Economic Feasibility Study. The purpose of this study is to study how to set the inclusionary housing obligations in San Francisco at the maximum economically feasible amount in market rate housing development to create housing for lower-, moderate- and middle-income households, with guidance from the City's Nexus Study. The Controller, in consultation with relevant City Departments and the Inclusionary Housing Technical Advisory Committee, is responsible for conducting the study every three years. The first report is due on to the Board of Supervisors by July 31, 2016 and every other subsequent report is due by October 31.

7. Inclusionary Housing Technical Advisory Committee: The proposed ordinance establishes an Inclusionary Technical Advisory Committee that is intended to provide input and advice to the Controller, the Mayor, the Planning Department and the Board of Supervisors regarding the content of the Economic Feasibility Analysis report. The Advisory Committee would consist of eight members, four appointed by the Board of Supervisors and four appointed by the Mayor. All members must have experience and expertise in development finance. Each member would serve until three months after the date the Controller produces the first Economic Feasibility Analysis, and new members would be appointed in anticipate of each new report.
8. Permanent Changes & Non-grandfathered project applications: The text as drafted in the associated Charter Amendment necessitates that the proposed Ordinance now being considered by the Planning Commission *must* create a permanent change to the Inclusionary Requirements, in order to make grandfathering possible. Therefore, all of the projects not grandfathered by this Ordinance are subject to new higher requirements, which effectively are permanently changed. The combined effect of the passage of the proposed Charter Amendment (to be considered by the voters) and this proposed Ordinance (under consideration today), would create new, permanent and higher Inclusionary Requirements that could be altered through future action of the Board of Supervisors.
 - 20% for projects with 10-24 dwelling units
 - 30% for projects with 25+ dwelling units contained within buildings whose height is less than 120 feet, and
 - 33% for projects with 25+ dwelling units contained within buildings whose height is 120 feet or higher.
9. If the project sponsor does not procure a building permit or site permit for construction of the affordable housing units by December 7, 2018, the development project is no longer grandfathered.
10. Small Sites Acquisition. The proposed Ordinance would create a new option to satisfy of the requirements for pipeline projects subject to the grandfathering provisions that choose to pursue the off-site Inclusionary Option. In these cases, a project sponsor may provide “off-site affordable housing by acquiring an existing building that is not currently and primarily in residential use”.
11. State Density Law: The proposed Ordinance would ask that any proposed project [sponsor] seeking to use this state law, shall use “its best efforts to provide on-site affordable units in the amount of 25% of the units constructed on-site”. The project [sponsor] shall prepare a feasibility report of the on-site affordable housing and the effect of the density bonus on such feasibility.

BACKGROUND

Pending Charter Amendment

On March 1, 2016, the Board of supervisors unanimously adopted a Resolution (Board File Number 151274) that placed a proposed Charter Amendment on the June 7, 2016 ballot. The Charter Amendment would remove the existing inclusionary rates enshrined in the City’s Charter in 2012 by San Francisco voters under proposition and authorize the City to enact by ordinance subsequent changes to the inclusionary housing requirements, including changes to the minimum or maximum inclusionary or

affordable housing obligations applicable to market rate housing projects. The Charter Amendment would also set temporary Inclusionary Housing Requirements until the Board had adopted replacement rates. Those rates are as follows:

1. For housing development projects consisting of ten dwelling units or more, but less than twenty-five dwelling units, the existing requirements in effect on the date the charter amendment came into effect would still apply.
2. For housing development projects consisting of twenty-five dwelling units or more, the following would apply:
 - Fee: 33% of the total number of units in the principle project.
 - On-Site Housing: 25% of units in the principle projects, with 15% of the units affordable to low and very low income households and 10% affordable to middle income households.
 - Off-Site: to 33% of all units constructed on the principal project site as affordable housing, with 20% of the units affordable to low- and very low-income households and 13% of the units affordable to middle-income households

The charter amendment also adds interim definitions of "Lower Income" and "Middle Income" households. "Lower income" households would be defined as households whose total household income does not exceed 55 percent of Area Median Income for purposes of renting an affordable unit, or 80 percent of Area Median Income for purposes of purchasing an affordable unit. Currently those percentages are set at 55 percent and 90 percent respectively. "Middle income" households would be defined as households whose total household income does not exceed 100 percent of Area Median Income for purposes of renting an affordable unit, or 120 percent of Area Median Income for purposes of purchasing an affordable unit. Currently "middle Income" is defined as households whose combined annual gross income for all members is between 120 percent and 150 percent of the local median income for the City and County of San Francisco.

Origins of the Ordinance

Prior to the introduction of this ordinance, the Mayor put forward a ballot initiative that would have required periodic feasibility studies of the Inclusionary housing program. Based Supervisors' feedback that a legislative ordinance would be a preferable mechanism for instituting a feasibility requirement, the Mayor withdrew his ballot initiative and Supervisor Yee introduced a resolution (Enactment #079-16) laying out the general terms that formed the basis of this proposed ordinance. In addition to creating a clear process to conduct a feasibility analysis which would guide regular adjustments to the Inclusionary rate, this ordinance would also establish grandfathering provisions for pipeline projects, and an interim Inclusionary rate. The legislative sponsors' goal is to secure an adopted ordinance with these features by the time the charter amendment passes. This ordinance, if enacted in time, will supersede and replace the interim requirements set forth in the charter amendment. Effectively this means the only change that the Charter would effectuate would be the removal of the Inclusionary requirements from the Charter so that the Inclusionary rate may be regularly adjusted through Board of Supervisor action. The timely adoption of this ordinance will ensure that the rates and definitions promulgated in the charter amendment would not take effect. Towards that end, the Planning Department has brought the Ordinance to the Planning Commission for review and recommendation at the earliest possible date.

Grandfathering Background

A Resolution (Enactment #079-16) sponsored by Supervisor Yee laid out the terms of the proposed ordinance currently before the Commission, and also specified the intent behind the grandfathering

clause in the ordinance. The Resolution specified that any grandfathering clause “shall be constructed so as to allow continued economic feasibility for projects already in the pipeline” and that the grandfathering clause “may adjust the inclusionary or affordable housing obligations applicable to pipeline projects... such that the adjusted obligations generate ... approximately 200 (additional) units.” In other words the intention behind increasing the inclusionary rate on pipeline projects and not grandfathering them to the current inclusionary rate is to make up for units that could have been created if the Inclusionary rate had not been locked in by the voters in 2012 by Proposition C. It is worth noting that while the 2012 Proposition C did reduce the Inclusionary requirement, it also created the Housing Trust Fund which raised \$ 107,290,154, and to date has effectively subsidized the creation of 230 units.

Projects in three areas of the city were specifically not grandfathered in the proposed Ordinance, which include projects in UMU zoning that propose the demolition of PDR, projects located within the Mission Street NCT, and projects in the SOMA Youth and Family Zone. All three of these districts were chosen because they currently have a higher inclusionary rate than other districts. The legislative sponsors described their intent to narrow the impact from the whole of the UMU District to just parcels in this district that would see a loss of PDR space. Therefore, the proposed Ordinance excludes these projects in the UMU districts that would removing PDR space from the grandfathering provision, requiring more Inclusionary housing for these pipeline projects.

The date at which projects are no longer eligible for grandfathering is January 16, 2016, which is the day the Charter amendment was introduced. The basis for this provision is that project sponsors would be aware of a possible change to the Inclusionary Housing requirement of the time their application was submitted.

Loss of PDR

The loss of PDR to date has not been an amount beyond what was anticipated in the Eastern Neighborhoods EIR. The EN EIR anticipated the loss of 4.933 million sf of PDR space between 2009 and 2025. To date, the City has approved the loss of 1.494 million sf of PDR space. If all of the projects which would remove PDR were to be approved, the City would have approved a total of 2.042 million sf of PDR. This is in line with the expectations of the EN rezoning.

ISSUES AND CONSIDERATIONS

San Francisco Precedent Pairs Two Studies: Nexus and Feasibility.

San Francisco has one of the nation’s most comprehensive Inclusionary Housing programs, producing thousands of units and hundreds of millions of dollars for affordable housing development since its inception in 1992. The Program demonstrates that market rate residential developers can – and do – serve as critical partners in providing much-need housing in high cost urban areas. Our program is effective in large part because the base requirement is framed by two critical studies. The first, a *nexus study*, provides quantitative analysis of the affordable housing need generated by the creation of market rate housing. The second, a *financial feasibility analysis*, takes into account the cost of residential development and the ability of market rate residential development to provide certain levels of inclusionary housing.

Changes to the Inclusionary Program must be transparent and reflect economic realities in order to survive scrutiny and potential legal challenges. Of course, the program must also deliver affordable

housing—if the requirement is set too high, then the City will provide little or no Inclusionary Housing as residential market rate development will be financially unable to meet the requirements. Therefore, to ensure that San Francisco’s Inclusionary Housing stock increases, decision-makers should consider both the nexus and financial feasibility in order to provide assurance to the public that the requirements are fair.

Immediate Housing Crisis & Need to Update Inclusionary Fee

While above average housing costs in San Francisco are nothing new, the current economic cycle has created an unprecedented affordability crisis in the City. About 63% of the homes in San Francisco are worth more than a million dollars. The average rent for a one bedroom apartment is \$3,500, making the City the most expensive place in the country to rent an apartment¹. In fact, over the past 4 years, the median rent of a one bedroom has increased by 59% from \$2,195 to in 2011, to \$3,500 as of December 2015. Over just the last year, the median rent of a one bedroom has increased 11%, from \$3,120 in 2014 to \$3,452 as of June 2015.²

Mayor Edwin Lee recognized the crisis in 2013 when he issued Directive 13-01, which among other things called on all City Departments with legal authority over the permitting and mapping of new or existing housing to prioritize their work plans on the construction and development of all net new housing, including permanently affordable housing. In 2014, the Mayor also made a pledge to construct 30,000 new and rehabilitated homes throughout the City by 2020, with at least one-third of those permanently affordable to low and moderate income families, and the majority of those within financial reach of working, middle income San Franciscans. Other initiatives have also attempted to address this crisis such as allowing Accessory Dwelling Units in certain areas of the City, higher scrutiny on the removal of unwarranted units, allowing 100% affordable housing projects as of right, and the Affordable Housing Bonus Program. The Department has also stepped up its efforts, but giving priority processing to affordable housing projects, and improving the time it takes to review smaller projects.

To date, the City’s efforts are showing results. According to the Department’s current pipeline report 34,000 units have been entitled by Planning and another 27,760 are currently under review. However, the City has established through its nexus study that building market-rate units creates a need for more below market rate units. These units help offset the demand for the existing housing stock, which tends to be older more affordable. Inclusionary units also provide security from no fault evictions and steep rent increases, and importantly, they are built without tax payer subsidies. Therefore it is in the City’s interest to ensure that we are maximizing the number of inclusionary units we get from private developers through the Inclusionary Program. By increasing the inclusionary rate based on feasibility, the City will be able to maximize the potential of its inclusionary program, ensuring more permanently affordable housing units without using tax payer funds.

¹ Anderson, Tomikka. “Cost of average San Francisco rent actually fell (a little) last month. <http://www.sfgate.com/bayarea/article/San-Francisco-rent-cost-drop-rental-6690357.php>. Published: 12/11/2015, Accessed 3/23/2016

² Editor. “The San Francisco Rent Explosion Part III. <http://priceonomics.com/the-san-francisco-rent-explosion-part-iii/> Published 8/12/2015, Accessed 3/23/2016

Pipeline Projects Which May be Subject to Grandfathering Provisions & New Inclusionary Rates

Planning Department staff are refining the pipeline database so that the most accurate data may be brought to the Commission on the date that this proposed Ordinance is considered, currently scheduled to be 3/31/16.

Triennial Economic Feasibility Analysis & Technical Advisory Committee for Study.

The proposed Ordinance establishes a triennial report requirement to analyze how to establish inclusionary housing requirements to produce the most Inclusionary housing. The report is to be compiled by the Controller, in consultation with relevant City departments and the Inclusionary Housing Technical Advisory Committee. Technical Advisory Committee will be staffed by people who have experience and expertise in development finance, with four members appointed by the Mayor and four by the Board. This technical review and evaluation of the City's Inclusionary program by professionals is good public policy. Emphasizing the committee members' technical expertise will help ensure that this report is given thorough and detailed oversight.

IMPLEMENTATION

This proposal will 1) increase the complexity of implementing the inclusionary requirement for projects subject to the grandfathering provision and 2) increase the frequency of feasibility studies; however the Department will be in a supporting role for these reoccurring studies.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance and adopt the attached Draft Resolution to that effect.

BASIS FOR RECOMMENDATION

The Department supports the Ordinance on balance because it establishes a process for regular feasibility analysis so that the City can continually adapt to changes in the real estate market and ensure the highest production of BMR housing in conjunction with new market-rate housing. The department recommends the modifications below to best reach this broad goal.

1. **Support the production of housing, especially affordable housing.** This long-standing policy of the City seeks equity in housing for future residents. Given the current housing crisis, this goal is all the more important. This ordinance seeks to establish a regular feasibility study to ensure the requirements are neither lower nor higher than the market will support. The ordinance also seeks to raise the Inclusionary Housing requirement, the City's most expensive impact fee. Increases to this exaction in the short-term may chill the production of housing. Some projects

will buckle under new onsite requirements or fees, particularly when land has already been purchased at high prices based upon an anticipated revenue. The resulting slowdown of housing production can cause harm to residents needing housing in the short-term. It is probable that over the longer term higher on-site requirements or fees set through a rigorous feasibility study could be absorbed into the costs of the land value. However, even over the long-term, the amount of additional on-site requirements or fees that can be absorbed is still limited. This is because in order for development to occur, it must offer a greater return to the landowner than the existing use. For example a parcel containing a retail/commercial use will only be developed into housing if the proposed residential project offers a greater return to the landowner than the retail/commercial rent it is already earning. By establishing a process for regular feasibility analysis, the City can continually adapt to changes in the real estate market and ensure the highest production of BMR housing in conjunction with new market-rate housing.

- a. **Ensure no reduction would occur to existing Inclusionary Requirements.** Some districts such as UMU, Mission Street NCT, and SoMa Youth and Family Zone and have higher requirements under existing controls than would be required under the proposal. The Department recommends keeping any existing requirements that are higher than the amounts proposed in the draft ordinance. Sections 415.6 On-site Alternative and 415.7 Off-Site Alternative include language enabling the higher requirement. Similar language should be added to 415.3 Application, Section 415.7 Off-Site Application, 415.5 Fee, and within the geographically specific Code Sections that have higher requirements such as Section 419 UMU. Within Section 419 UMU district, the proposed grandfathering provisions do not take into account the Tiers. For instance, the existing Code requirements are varied by tiers Tier A (on-site: 14.4%, off-site: 23%); Tier B (on-site: 16%, off-site: 25%); and Tier C (on-site: 17.6%, off-site: 27%). With the proposed grandfathering provision a 30 unit project in Tier B would be required to provide 25% because it is higher, but it would be 16% if using grandfathering. The “higher percentage” language needs to be added to the grandfathering section or separate percentages should be established for each UMU Tier.
- b. **Support the production of additional affordable housing through the use of density bonuses.** The proposed Ordinance encourages project sponsors to achieve 25% affordable housing on-site in association with the use of the existing State Density Bonus Law. Generally, the Planning Code should establish standards and requirements and should not have vague language. Encouragement language is better placed in policy documents. Further, by codifying language of encouragement such as “use best efforts” and “consult with the Planning Department about achieving [higher levels of affordability than required by the State] may set unrealistic community expectations that are unachievable under State Law. Such language of encouragement provides no real benefit as it does not prohibit a project sponsor from providing less than 25% and the City may not circumvent the State Law in this way. The Department agrees that a higher provision of affordable housing with density bonuses would better align the State Law with City policy, but State Law circumscribes the City's ability in denying a density bonus to projects providing of less than 25% affordable housing or in imposing a higher inclusionary requirement on a density bonus project. If the City adopts the local Affordable Housing Bonus Program (AHBP), the Local Program could incentivize an

even higher level of affordability while shaping the built form of projects to be more compatible with San Francisco's neighborhoods. At this time, the Department recommends removing the undefined term of "use best efforts" and an undefined process of "consultation" with the Department and instead encourages the Board to consider incentives such as the AHBP as the best vehicle for achieving higher affordability in light of the State Law.

- c. **Allow some flexibility in the AMI requirements to encourage variety of levels of affordability.** The on-site requirement for projects with 25 units or more has a degree of flexibility written into the new requirements. It mandates 25% Inclusionary of on-site units provide 15% of the units are affordable to low, and very low-income and allows the remaining 10% of the requirement to be provided with housing serving either very low, low- or middle-income households. This flexibility in the final 10% allows for some projects to qualify for tax credits while other projects may serve middle-income households. This same flexibility should be added to the off-site requirement on page 17, line 8: 415.7 (a)(1) (B) The number of units constructed off-site shall be 33 percent, with a minimum of 20% of the units affordable to low- and very low-income households and another 13% of the units affordable to low-, very low-income and middle- income households, so that a project applicant shall construct .33 times the total number of units produced in the principal project.
2. **Create fair, uniform grandfathering provisions for pipeline projects.** Because projects that are further along in the entitlement process are less able to adapt to new fees, the proposal makes accommodations by stepping the rate upwards incrementally. However, as proposed, the grandfathering currently is unnecessarily complicated. Lastly the timeline for securing a site permit may not be feasible for certain projects.
 - a. **Ensure uniform treatment of pipeline projects across zoning districts and project building types until further analysis can support the rationale.** Remove the provision that exempts from the grandfathering provisions projects in the UMU zoning that propose the demolition of PDR, projects located within the Mission Street NCT, projects in the SOMA Youth and Family Zone, and project building types that exceed 120 feet in height. All projects that have been planned consistent with existing zoning controls should be treated equally under the proposed grandfathering provision and new, permanent controls. If the feasibility study or changes in City policy demonstrate a rationale for differentiating certain projects within the Inclusionary requirements, then more specific requirements should be applied to future projects not those in the pipeline.
 - b. **Ensure grandfathered projects have a reasonable, but not excessive amount of time to complete project.** Make the following modifications to the timeline restriction for grandfathering on page 10, Line 1:

Any development project that constructs on-site or off-site affordable housing units as set forth in this Section 415.3(b) shall diligently pursue completion of such units. In the event ~~that the project sponsor does not procure~~ a building permit is not issued for construction of the affordable housing units by within 36 months from the entitlement date in order to remain subject to grandfathering provisions. ~~If the building permit is not issued within 36 months of entitlement December 7, 2018,~~ the development project shall comply with the inclusionary

affordable housing requirements set forth in Planning Code Sections 415.5, 415.6 and/or 415.7, as applicable.

3. **Make a commitment to ensure that the City gets the most affordable housing even as the real estate market will vary over time.** The Board of Supervisors would need to hold a hearing within three months of the completion of the feasibility study to consider increasing, decreasing or keeping the fees in light of the results. The Planning Commission should also consider initiating legislative amendments to the Inclusionary Requirement for the Board's consideration as described in the proposed edits to the "Modifications to the Feasibility Report" language on Page 24, Lines 3-14 as follows:

(d) Planning Commission Hearing. *The Planning Commission shall hold a hearing within one to two months after publication of each Triennial Economic Feasibility study to consider initiating an ordinance that would update the inclusionary requirement based upon the Triennial Economic Feasibility Analysis.*

(d)(e) Report to Board of Supervisors. The Board of Supervisors will review the feasibility analyses, as well as the commensurate updates to the City's Nexus Study evaluating the necessary affordable housing in order to mitigate the impacts of market rate housing. The Board of Supervisors, in its sole and absolute discretion, will review the feasibility analyses within three *to four* months of completion and will consider legislative amendments to the City's Inclusionary Housing in-lieu fees, on-site, off-site or other alternatives recommended by the Controller and/or the Planning Commission adjusting levels of inclusionary or affordable housing obligations and income levels based on the feasibility analyses, with the objective of maximizing affordable Inclusionary Housing in market rate housing production, with guidance from the City's Nexus Study.

(b) Triennial Economic Feasibility Analysis. With the support of independent consultants as deemed appropriate by the Controller and with advice on setting qualifications and criteria for consultant selection from the ~~Inclusionary~~ Inclusionary Housing Technical Advisory Committee established in Administrative Code Chapter 5, Article XXIX, the Controller, in consultation with relevant City Departments and the Inclusionary Housing Technical Advisory Committee, shall conduct a feasibility study of the City's inclusionary affordable housing obligations set forth in Planning Code Section 415 et seq., including but not limited to the affordable housing fee and on-site and off-site alternatives, and shall submit a report to the Board of Supervisors by July 31, 2016 and by October 31 for subsequent years. *The Planning Commission shall hold a hearing within one to two months after publication of each Triennial Economic Feasibility to consider initiating an ordinance that would update the inclusionary requirement based upon the Triennial Economic Feasibility Analysis. The Board of Supervisors shall hold a hearing three to four months after the publication of each Triennial Economic Feasibility. At the hearing, the BOS shall consider increasing, decreasing or retaining the established inclusionary rate.* Thereafter, the Controller, in consultation with the Department and the Inclusionary Housing Technical Advisory Committee, shall repeat this process at least every 36 months, or more frequently as deemed necessary by the Controller in response to a significant shift in economic or market conditions.

4. For projects pursuing a State Density Bonus, individual project sponsors are required to do a project-specific feasibility study, this should only be tied to requested concessions. The proposed Ordinance requires a feasibility study if the project sponsor is not providing on-site affordable units in the amount of 25% of the number of units constructed. The Department recommends that such analysis be linked to a relevant decision, such as approval of a requested concession or incentive. Per State law, approvals of increased density are not reliant on feasibility; however, concessions do have feasibility thresholds. The feasibility of the density bonus itself, rather than the separate category of concessions, cannot factor into the City's decision as to whether or not to approve the density bonus when a proposed project does not meet the stated goal of 25% affordable units. The State has already determined that the added density is permitted. However, a feasibility study can help inform the City as to whether or not concessions should be granted.
5. **Small Sites Acquisition.** Ensure that this new option allowing pipeline projects to satisfy Inclusionary requirements through the acquisition of existing buildings is crafted to mirror applicable elements of the Small Sites Acquisition Program administered by MOHCD. Applicable elements would include income eligibility and requirements, financial underwriting guidelines, and use restrictions. Notably, the Ordinance creates new options that are specifically intended to differ from the existing Small Sites Acquisition program. As currently drafted, it appears that the explicit requirement is that buildings acquired for this purpose would be converted from a non-residential use to a residential use. This creates new policy implications to be weighed such as would the City encourage the conversion from a PDR use, for example, to housing. Further, policymakers should note that the inclusion of commercial property acquisition by private parties represents a change in policy as the small sites program currently is only a vehicle for MOHCD to implement by the purchase existing residential projects. Additional clarity should be added about what existing buildings would be appropriate and what is intended with the phrase "an existing building that is not currently and primarily in residential use" (emphasis added). Lastly, there is no mention of income eligibility in the current proposal.
6. **Various technical amendments** including:
 - a. Organizing the grandfathering dates and percentages into charts would make these sections easier to use and implement.
 - b. Section 415.6(a)(1) On-Site Alternative should be clarified to ensure that the 12% requirement is dedicated to low-income AMIs. Currently the ordinance is silent, but it is assumed that the 12% for buildings with 10-25 units serve to low-income AMIs.
 - c. If the Board retains the exemptions for certain projects within the UMU district, the proposed Ordinance should be amended to clarify whether or not a project in the UMU District is grandfathered if it demolishing PDR but would also replace the PDR use. Currently the proposed Ordinance is silent on projects that demolish and replace PDR in the UMU District.
 - d. The proposed provision for the state density bonus in Section 415.3(b)(1)(F) follows other grandfathering provisions and it would appear because of its location that this is also a grandfathering provision; however there is not acknowledgement in the specific section

that this provision only applies to projects already in the pipeline. This section should be amended to clarify that it applies only to projects submitted prior to January 12, 2016 if that is the intention of the sponsor.

- e. In order to preserve the higher inclusionary rate in certain districts, the following language should be added to Section 415.3(b)(1) which starts on page 6, line 19 of the ordinance: "Specific Geographic Areas. For any housing development that is located in an area with a specific affordable housing requirement set forth in a Special Use District or in any other section of the Code such as Section 419, the higher housing requirement shall apply."
- f. The findings in Section 415.1 should be updated to reflect current available information. It should also be removed from the Planning Code and added to the proposed Ordinance as part of the findings. These findings are not legally required to be in the Planning Code and removing them will help simplify Section 415.
- g. Page 9, Line 13, and everywhere else in the ordinance that this type of provision occurs, the following amendments should be made: "Notwithstanding the provisions set forth in subsections (b)(2)(A), (B) and (C) of this Section 415.3, if a development project proposes a building whose height is measured per the Planning Code to be over 120 feet ~~or greater~~, such development project shall pay a fee or provide off-site housing in an amount equivalent to 33% of the number of units constructed on-site.

ENVIRONMENTAL REVIEW

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c)(2) and 15378 because they do not result in a physical change in the environment.

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance. At the 3/23/16 meeting of the Building Department's Public Advisory Committee, the group requested that the grandfathering provisions within this draft Ordinance apply to all projects which have submitted PPAs prior to effective date of the Charter Amendment.

RECOMMENDATION:	Recommendation of Approval with Modification
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Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Draft Ordinance BF 160255 Inclusionary Affordable Housing Fee and Requirements; Preparation of Economic Feasibility Report; Establishing Inclusionary Housing Technical Advisory Committee