

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

June 29, 2017

Planning Commission
Attn: Jonas Ionin
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Commissioners:

On June 19, 2017, the Land Use and Transportation Committee duplicated the following file from File No. 161351:

File No. 170760

Ordinance amending the Planning Code to revise the amount of the Inclusionary Affordable Housing Fee and the On-Site and Off-Site Affordable Housing Alternatives and other Inclusionary Housing requirements; to require minimum dwelling unit mix in most residential districts; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of public necessity, convenience, 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.

The proposed ordinance is being transmitted pursuant to Planning Code, Section 302(b), for public hearing and recommendation. The ordinance is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

c: John Rahaim, Director of Planning
Aaron Starr, Acting Manager of Legislative Affairs
Scott Sanchez, Zoning Administrator
Lisa Gibson, Acting Environmental Review Officer
AnMarie Rodgers, Senior Policy Advisor
Jeanie Poling, Environmental Planning
Laura Lynch, Environmental Planning

[Planning Code - Inclusionary Affordable Housing Fee and Dwelling Unit Mix Requirements]

1
2 **Ordinance amending the Planning Code to revise the amount of the Inclusionary**
3 **Affordable Housing Fee and the On-Site and Off-Site Affordable Housing Alternatives**
4 **and other Inclusionary Housing requirements; ~~adding reporting requirements for~~**
5 **~~density bonus projects~~ to require minimum dwelling unit mix in most residential**
6 **districts; affirming the Planning Department’s determination under the California**
7 **Environmental Quality Act; making findings of public necessity, convenience, and**
8 **welfare under Planning Code, Section 302; and making findings of consistency with the**
9 **General Plan, and the eight priority policies of Planning Code, Section 101.1.**

10 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
11 **Additions to Codes** are in *single-underline italics Times New Roman font*.
12 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
13 **Board amendment additions** are in double-underlined Arial font.
14 **Board amendment deletions** are in ~~strikethrough Arial font~~.
15 **Asterisks (* * * *)** indicate the omission of unchanged Code
16 subsections or parts of tables.

17 Be it ordained by the People of the City and County of San Francisco:

18 Section 1. General Findings.

19 (a) The Planning Department has determined that the actions contemplated in this
20 ordinance comply with the California Environmental Quality Act (California Public Resources
21 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
22 Supervisors in File No. _____ and is incorporated herein by reference. The Board affirms this
23 determination.

24 (b) On April 27, 2017, the Planning Commission, in Resolution No. 19903, adopted
25 findings that the actions contemplated in this ordinance are consistent, on balance, with the

1 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board
2 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
3 Board of Supervisors in File No. _____, and is incorporated herein by reference.

4 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code
5 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth
6 in Planning Commission Resolution No. 19903 and the Board incorporates such reasons
7 herein by reference. A copy of Planning Commission Resolution No. 19903 is on file with the
8 Board of Supervisors in File No. _____.

9
10 Section 2. Findings About Inclusionary Affordable Housing Requirements.

11 (a) The purpose of this ordinance is to adopt inclusionary or affordable housing
12 obligations following voter approval of Proposition C at the June 7, 2016 election to revise the
13 City Charter's inclusionary affordable housing requirements, which won overwhelming support
14 with 67.9% of the vote, and to update the provisions of the Planning Code that became
15 effective after the Charter Amendment passed, consistent with the process set forth in Section
16 415.10 of the Planning Code, and elaborated upon further outlined in Ordinance No. 76-16,
17 which required that the City study how to set inclusionary housing obligations in San
18 Francisco at the maximum economically feasible amount in market rate housing development
19 to create affordable housing. The inclusionary affordable housing obligations set forth in this
20 ordinance will supersede and replace any previous requirements.

21 (b) The San Francisco residential real estate market is one of the most expensive in
22 the United States. In February 2016, the California Association of Realtors reported that the
23 median priced home in San Francisco was \$1,437,500. This price is 222% higher than the
24 State of California median (\$446,460), and 312% higher than the national average
25 (\$348,900). While the national homeownership rate is approximately 63.8%, only

1 approximately 37% of San Franciscans own their own home. The majority of market-rate
2 homes for sale in San Francisco are priced out of the reach of low- and moderate-income
3 households. In 2015, the average rent was \$3,524, which is affordable to households earning
4 over \$126,864.

5 (c) The Board of Supervisors adopted San Francisco's General Plan Housing Element
6 in March 2015, and the California Housing and Community Development Department certified
7 it on May 29, 2015. The Housing Element states that San Francisco's share of the regional
8 housing need for years 2015 through 2022 includes 10,873 housing units for very-low- and
9 low-income households and 5,460 units for moderate/middle-income households, and a total
10 production of 28,870 net new units, with almost 60% to be affordable for very-low, low- and
11 moderate/middle-income San Franciscans.

12 (d) In November 2016, the City provided the updated Residential Affordable Housing
13 Nexus Analysis that confirms and quantifies the impact of new market rate housing
14 development on the demand for affordable housing for households earning up to 120% of
15 area median income. The study demonstrates a need of 31.8% affordable housing for rental
16 housing, and 37.6% affordable housing for ownership housing, and a need of 24.1% onsite
17 affordable housing for rental housing, and 27.3% onsite affordable housing for ownership
18 housing for households with incomes up to 120% of Area Median Income. When quantifying
19 affordable housing impacts on households making up to 150% of area median income, the
20 study demonstrates a need of 34.9% affordable housing for rental housing, and a need of
21 41.3% onsite affordable housing for ownership housing.

22 (e) In February 2017, the Office of the Controller presented a study of the economic
23 feasibility of increased inclusionary housing requirements, entitled "Inclusionary Housing
24 Working Group: Final Report." The Controller's Office, supported by a contracted consulting
25 team of three firms and advised by a Technical Advisory Committee (TAC) with

1 representatives appointed by the ~~Mayor and Board of Supervisors~~Controller, developed
2 several policy recommendations, including: (1) that the City should impose different
3 inclusionary housing requirements on rental and for-sale (condominium) properties; (2) that
4 the City ~~could~~can set the initial onsite requirements at a maximum feasible amount of 18% for
5 rental projects and 20% for ownership projects; (3) that the City ~~may adopt~~should commit to a
6 15-year schedule of increases to the inclusionary housing rate, at a rate of 0.5% increase
7 each year; and (4) that the City should revise the schedule of Inclusionary housing fees to
8 provide a more equivalent cost for developers as the on-site requirements. The Controller's
9 Office recommended updating the fee percentage to 23% and 28% to create an equivalency
10 to the recommended 18% and 20% on-site requirements, with the City conducting the specific
11 calculation of the fee itself.

12 (f) The Controller's Report further acknowledged that if either the state density bonus
13 or a local bonus program were widely implemented in San Francisco, the likely result would
14 be higher residual land values in many locations, which would support a higher inclusionary
15 requirement. ~~application of the state-provided density bonus could make a difference in the~~
16 ~~financial feasibility of housing development projects.~~

17 (g) The City's Inclusionary Affordable Housing Program is intended to help address the
18 demonstrated need for affordable housing in the City through the application of the City's land
19 use controls

20 (h) As rents and sales prices outpace what is affordable to the typical San Francisco
21 family, the City faces a continuing shortage of affordable housing for not only very low- and
22 low-income residents, but also for moderate, middle and upper-middle income families.

23 (i) In order to maximize the benefit of state and federal funds supporting affordable
24 housing construction, which are typically restricted to very low- and low-income households,
25 and to maximize the amount of affordable units constructed, the majority of the City's new

1 affordable housing production is likely to continue to focus on households at or below 60% of
2 area median income.

3 (j) The Board of Supervisors recognizes that this Inclusionary Housing Program is only
4 one small part of the City's overall strategy for providing affordable housing to very low-, low-,
5 moderate-, and middle-income households. The City will continue to acquire, rehabilitate and
6 produce units through the Mayor's Office of Housing and Community Development, provide
7 rental subsidies, and provide homeownership assistance to continue to expand its reach to
8 households in need of affordable housing.

9 (k) The City will also continue to pursue innovative solutions to provide and stabilize
10 affordable housing in San Francisco, including programs such as HOME-SF that incentivize
11 projects that set aside 30% of on-site units as permanently affordable, and 40% of units as
12 family-friendly multiple bedroom units.

13 (l) In an effort to support a mix of both ownership project and rental projects, the City is
14 providing a direct financial contribution to project sponsors who agree to rent units for a period
15 of 30 years. The direct financial contribution is in the form of a reduction in the applicable
16 affordable housing requirement.

17
18 Section 3. The Planning Code is hereby amended by revising Sections 415.2, 415.3,
19 415.5, 415.6, and 415.7, and 415.10, and adding a new Section 415.11, to read as follows:

20
21 **SEC. 415.2. DEFINITIONS.**

22 See Section 401 of this Article. ~~For purposes of Sections 415.3 et seq., "low income"~~
23 ~~households shall be defined as households whose total household income does not exceed 55%~~
24 ~~is 40% to 80% of Area Median Income for purposes of renting an affordable unit, or 80% to~~
25 ~~100% of Area Median Income for purposes of purchasing an affordable unit, and "moderate~~

1 income" and "middle income" households shall mean households whose total household
2 income ~~does not exceed 100%~~ is 80% to 120% of Area Median Income for purposes of renting
3 an affordable unit, or ~~120%~~ 100% to 140% of Area Median Income for purposes of purchasing
4 an affordable unit. The Small Sites Fund, defined in Section 415.5(f)(2), and the Small Sites
5 Program may use Affordable Housing Fees to acquire sites and buildings consistent with the
6 income parameters of the Programs, as periodically updated and administered by MOHCD.

7 "Owned Unit" shall mean a dwelling unit that is a condominium, stock cooperative, community
8 apartment or detached single family home. The owner or owners of an owned unit must occupy the unit
9 as their primary residence.

10 "Rental Housing Project" shall mean a housing project consisting solely of Rental Units, as
11 defined in Section 401, which meets the following requirements:

12 (1) The units shall be rental housing for not less than 30 years from the issuance of the
13 certificate of occupancy pursuant to an agreement between the developer and the City. This agreement
14 shall be in accordance with applicable State law governing rental housing. All such agreements
15 entered into with the City must be reviewed and approved by the Planning Director and the City
16 Attorney's Office, and may be executed by the Planning Director;

17 (2) The agreement shall be recorded against the property prior to issuance of the
18 certificate of occupancy.

19
20 **SEC. 415.3. APPLICATION.**

21 * * * *

22 (b) Any development project that has submitted a complete Environmental Evaluation
23 application prior to January 1, 2013 shall comply with the Affordable Housing Fee
24 requirements, the on-site affordable housing requirements or the off-site affordable housing
25 requirements, and all other provisions of Section 415.1 et seq., as applicable, in effect on

1 January 12, 2016. For development projects that have submitted a complete Environmental
2 Evaluation application on or after January 1, 2013, the requirements set forth in Planning
3 Code Sections 415.5, 415.6, and 415.7 shall apply to certain development projects consisting
4 of 25 dwelling units or more during a limited period of time as follows.

5 (1) If a development project is eligible and elects to provide on-site affordable
6 housing, the development project shall provide the following amounts of on-site affordable
7 housing. All other requirements of Planning Code Sections 415.1 et seq. shall apply.

8 (A) Any development project that has submitted a complete
9 Environmental Evaluation application prior to January 1, 2014 shall provide affordable units in
10 the amount of 13% of the number of units constructed on-site.

11 (B) Any development project that has submitted a complete
12 Environmental Evaluation application prior to January 1, 2015 shall provide affordable units in
13 the amount of 13.5% of the number of units constructed on-site.

14 (C) Any development project that has submitted a complete
15 Environmental Evaluation application on or prior to January 12, 2016 shall provide affordable
16 units in the amount of 14.5% of the number of units constructed on-site.

17 (D) Any development project that submits an Environmental Evaluation
18 application after January 12, 2016, shall comply with the requirements set forth in Planning
19 Code Sections 415.5, 415.6 and 415.7, as applicable.

20 (E) Notwithstanding the provisions set forth in subsections (b)(1)(A), (B)
21 and (C) of this ~~s~~Section 415.3, if a development project is located in a UMU Zoning District or
22 in the South of Market Youth and Family Zoning District, and is eligible and elects to provide
23 on-site units pursuant to Section 415.5(g), such development project shall comply with the on-
24 site requirements applicable within such Zoning Districts, as they existed on January 12,
25 2016, plus the following additional amounts of on-site affordable units: (i) if the development

1 project has submitted a complete Environmental Evaluation application prior to January 1,
2 2014, the Project Sponsor shall provide additional affordable units in the amount of 1% of the
3 number of units constructed on-site; (ii) if the development project has submitted a complete
4 Environmental Evaluation application prior to January 1, 2015, the Project Sponsor shall
5 provide additional affordable units in the amount of 1.5% of the number of units constructed
6 on-site; or (iii) if the development project has submitted a complete Environmental Evaluation
7 application on or prior to January 12, 2016, the Project Sponsor shall provide additional
8 affordable units in the amount of 2% of the number of units constructed on-site.

9 (F) Any development project that has submitted a complete
10 Environmental Evaluation application on or before January 12, 2016 and seeks to utilize a
11 density bonus under State Law shall use its best efforts to provide on-site affordable units in
12 the amount of 25% of the number of units constructed on-site and shall consult with the
13 Planning Department about how to achieve this amount of inclusionary affordable housing.
14 ~~Any project. An applicant~~ seeking a density bonus under the provisions of State Law shall
15 provide reasonable documentation to establish eligibility for a requested density bonus, incentives or
16 concessions, and waivers or reductions of development standards. prepare a report analyzing how the
17 concessions and incentives requested are necessary in order to provide the required on-site affordable
18 housing.

19 (2) If a development project pays the Affordable Housing Fee or is eligible and
20 elects to provide off-site affordable housing, the development project shall provide the
21 following fee amount or amounts of off-site affordable housing during the limited periods of
22 time set forth below. All other requirements of Planning Code Sections 415.1 et seq. shall
23 apply.
24
25

1 (A) Any development project that has submitted a complete
2 Environmental Evaluation application prior to January 1, 2014, shall pay a fee or provide off-
3 site housing in an amount equivalent to 25% of the number of units constructed on-site.

4 (B) Any development project that has submitted a complete
5 Environmental Evaluation application prior to January 1, 2015, shall pay a fee or provide off-
6 site housing in an amount equivalent to 27.5% of the number of units constructed on-site.

7 (C) Any development project that has submitted a complete
8 Environmental Evaluation application on or prior to January 12, 2016 shall pay a fee or
9 provide off-site housing in an amount equivalent to 30% of the number of units constructed
10 on-site.

11 (D) Any development project that submits an Environmental Evaluation
12 application after January 12, 2016 shall comply with the requirements set forth in Sections
13 415.5, 415.6, and 415.7, as applicable.

14 (E) Notwithstanding the provisions set forth in subsections (b)(2)(A), (B)
15 and (C) of this Section 415.3, for development projects proposing buildings over 120 feet in
16 height, as measured under the requirements set forth in the Planning Code, except for
17 buildings up to 130 feet in height located both within a special use district and within a height
18 and bulk district that allows a maximum building height of 130 feet, such development projects
19 shall pay a fee or provide off-site housing in an amount equivalent to ~~33~~30% of the number of
20 units constructed on-site. Any buildings up to 130 feet in height located both within a special
21 use district and within a height and bulk district that allows a maximum building height of 130
22 feet shall comply with the provisions of subsections (b)(2)(A), (B) and (C) of this Section 415.3
23 during the limited periods of time set forth therein.

24 (F) Notwithstanding the provisions set forth in subsections (b)(2)(A), (B)
25 and (C) of this ~~s~~Section 415.3, if a development project is located in a UMU Zoning District or

1 in the South of Market Youth and Family Zoning District, and pays the Affordable Housing Fee
2 or is eligible and elects to provide off-site affordable housing pursuant to Section 415.5(g), or
3 elects to comply with a land dedication alternative, such development project shall comply
4 with the fee, off-site or land dedication requirements applicable within such Zoning Districts,
5 as they existed on January 12, 2016, plus the following additional amounts for the Affordable
6 Housing Fee or for land dedication or off-site affordable units: (i) if the development project
7 has submitted a complete Environmental Evaluation application prior to January 1, 2014, the
8 Project Sponsor shall pay an additional fee, or provide additional land dedication or off-site
9 affordable units, in an amount equivalent to 5% of the number of units constructed on-site; (ii)
10 if the development project has submitted a complete Environmental Evaluation application
11 prior to January 1, 2015, the Project Sponsor shall pay an additional fee, or provide additional
12 land dedication or off-site affordable units, in an amount equivalent to 7.5% of the number of
13 units constructed on-site; or (iii) if the development project has submitted a complete
14 Environmental Evaluation application on or prior to January 12, 2016, the Project Sponsor
15 shall pay an additional fee, or provide additional land dedication or off-site affordable units, in
16 an amount equivalent to 10% of the number of units constructed on-site. Notwithstanding the
17 foregoing, a development project shall not pay a fee or provide off-site units in a total amount
18 greater than the equivalent of ~~33~~30% of the number of units constructed on-site.

19 (G) Any development project consisting of 25 dwelling units or more that
20 has submitted a complete Environmental Evaluation application on or prior to January 12,
21 2016, and is eligible and elects to provide off-site affordable housing, may provide off-site
22 affordable housing by acquiring an existing building to fulfill all or part of the requirements set
23 forth in this Section 415.3 and in Section 415.7 with an equivalent amount of units as specified
24 in this Section 415.3(b)(2), as reviewed and approved by the Mayor's Office of Housing and
25 Community Development and consistent with the parameters of its Small Sites Acquisition

1 and Rehabilitation Program, in conformance with the income limits for the Small Sites
2 Program.

3 * * * *

4 (d) Notwithstanding the provisions set forth in Section 415.3(b), or the inclusionary
5 affordable housing requirements contained in Sections 415.5, 415.6, and 415.7, such
6 requirements shall not apply to any project that has not submitted a complete Environmental
7 Evaluation Application on or before January 12, 2016, if the project is located within the
8 Eastern Neighborhoods Mission Planning Area, the North of Market Residential Special Use
9 District Subarea 1 or Subarea 2, or the SOMA Neighborhood Commercial Transit District,
10 because inclusionary affordable housing levels for those areas will be addressed in
11 forthcoming area plan processes or an equivalent community planning process. Until such
12 planning processes are complete and new inclusionary housing requirements for projects in
13 those areas are adopted, projects shall (1) pay a fee or provide off-site housing in an amount
14 equivalent to 30% or (2) provide affordable units in the amount of 25% of the number of
15 Rental Units constructed on-site or 27% of the number of Owned Units constructed on-site.
16 For Rental Units, 15% of the on-site affordable units shall be affordable to low-income
17 households, 5% shall be affordable to moderate-income households and 5% shall be
18 affordable to middle-income households. For Owned Units, 15% of the on-site affordable
19 units shall be affordable to low-income households, 6% shall be affordable to moderate-
20 income households and 6% shall be affordable to middle-income households.

21 (de) The City may continue to enter into development agreements or other similar
22 binding agreements for projects that provide inclusionary affordable housing at levels that may
23 be different from the levels set forth in Sections 415.1 et seq.

24 (f) Section 415.1 et seq., the Inclusionary Housing Program, shall not apply to:
25

1 (1) That portion of a housing project located on property owned by the United
2 States or any of its agencies or leased by the United States or any of its agencies, for a period
3 in excess of 50 years, with the exception of such property not used exclusively for a
4 governmental purpose;

5 (2) That portion of a housing project located on property owned by the State of
6 California or any of its agencies, with the exception of such property not used exclusively for a
7 governmental or educational purpose; or

8 (3) That portion of a housing project located on property under the jurisdiction of
9 the San Francisco Office of Community Investment and Infrastructure or the Port of San
10 Francisco where the application of Section 415.1 et seq. is prohibited by California or local
11 law.

12 (4) A 100% affordable housing project in which rents are controlled or regulated
13 by any government unit, agency or authority, excepting those unsubsidized and/or unassisted
14 units which are insured by the United States Department of Housing and Urban Development.
15 The Mayor's Office of Housing and Community Development must represent to the Planning
16 Commission or Planning Department that the project meets this requirement.

17 * * * *

18 (5) A Student Housing project that meets all of the following criteria:

19 * * * *

20 (C) The Mayor's Office of Housing and Community Development
21 (MOHCD) is authorized to monitor this program. MOHCD shall develop a monitoring form and
22 annual monitoring fee to be paid by the owner of the real property or the Post-Secondary
23 Educational Institution or Religious Institutions, as defined in Section 102 of this Code. The
24 owner of the real property and each Post-Secondary Educational Institution or Institutions
25

1 shall agree to submit annual documentation to MOHCD and the Planning Department, on or
2 before December 31 of each year, that which addresses the following:

3 * * * *

4 (iii) The owner of the real property records a Notice of Special
5 Restrictions (NSR) against fee title to the real property on which the Student Housing is
6 located that states the following:

7 * * * *

8 d. The Post-Secondary Educational Institution is required to
9 report annually as required in Subsection (e)(5)(C) above;

10 * * * *

11
12 **SEC. 415.5. AFFORDABLE HOUSING FEE.**

13 * * * *

14 (b) **Amount of Fee.** The amount of the fee ~~which~~ that may be paid by the project
15 sponsor subject to this Program shall be determined by MOHCD utilizing the following factors:

16 (1) The number of units equivalent to the applicable off-site percentage of the
17 number of units in the principal housing project.

18 (A) For housing development projects consisting of 10 dwelling units or more,
19 but less than 25 dwelling units, the applicable percentage shall be 20% for housing development
20 projects consisting of 10 dwelling units or more, but less than 25 dwelling units.

21 (B) The applicable percentage for For development projects consisting of
22 25 dwelling units or more, the applicable percentage shall be 33% if such units are Owned Units.

23 (C) For development projects consisting of 25 dwelling units or more, the
24 applicable percentage shall be 30% if such units are Rental Units in a Rental Housing Project. In the
25 event one or more of the Rental Units in the principal Rental Housing Project become ownership units,

1 for each Rental Unit or for the principal Rental Housing Project in its entirety, as applicable, the
2 Project Sponsor shall pay to either (A) reimburse the City the difference in the proportional
3 amount of the applicable inclusionary affordable housing fee so that the total fee Inclusionary
4 Affordable Housing Fee, which would be equivalent to the current Inclusionary Affordable
5 Housing Fee requirement for Owned Units, which is 33% of for (B) provide additional on-site or
6 off-site affordable units equivalent to the current inclusionary requirements for Owned Units,
7 apportioned among the required number of total units at various income levels in compliance
8 with the principal project, or such current percentage that has been adjusted annually by
9 MOHCD requirements in effect at the time of conversion.

10 *For the purposes of this Section 415.5, the City shall calculate the fee using the*
11 *direct fractional result of the total number of units multiplied by the applicable percentage, rather than*
12 *rounding up the resulting figure as required by Section 415.6(a).*

13 (2) The affordability gap shall be calculated using data on the MOHCD's cost of
14 construction of residential of construction of to construct affordable residential housing. No
15 later than January 31, 2018, the Controller, with the support of consultants as necessary, and
16 in consultation with the Inclusionary Housing Technical Advisory Committee (TAC)
17 established in Planning Code Section 415.10, shall conduct a study to develop an appropriate
18 methodology for calculating, indexing, and applying the appropriate amount of the
19 Inclusionary Affordable Housing Fee. To support the Controller's study, and annually
20 thereafter, MOHCD shall provide the following documentation: (1) schedules of sources and
21 uses of funds and independent auditor's reports ("Cost Certifications") for all MOHCD-funded
22 developments completed within three years of the date of reporting to the Controller; and, (2)
23 for any MOHCD-funded development that commenced construction within three years of the
24 reporting date to the Controller but for which no Cost Certification is yet complete, the sources
25 and uses of funds approved by MOHCD and the construction lender as of the date of the

1 development's construction loan closing. Cost Certifications completed in years prior to the
2 year of reporting to the Controller may be increased or decreased by the applicable annual
3 Construction Cost Index percentage(s) for residential construction for San Francisco reported
4 in the Engineering News Record. MOHCD, together with the Controller and TAC, shall
5 evaluate the cost-to-construct data, including actual and appraised land costs, state and/or
6 federal public subsidies available to MOHCD-funded projects, and determine MOHCD's
7 average costs. Following completion of this study, the Board of Supervisors will review the
8 analyses, methodology, fee application, and the proposed fee schedule; and may consider
9 adopting legislation to revise the Inclusionary Affordable Housing fees. The method of
10 calculating, indexing, and applying the fee shall be published in the Procedures Manual. for
11 three different building heights, as applicable: (A) up to 55 feet; (B) above 55 feet up to 85
12 feet; and (C) above 85 feet and the Maximum Purchase Price for the equivalent unit size. The fee
13 shall be calculated individually for these three different building types and two types of tenure,
14 ownership and rental, rather than a single fee calculation uniformly applied to all types of
15 projects. The Department and MOHCD shall calculate the affordability gap within 6 months of
16 the effective date of this ordinance and shall update the fee methodology and technical report
17 every two three years, with analysis from the Technical Advisory Committee, from time to time
18 as they deem appropriate in order to ensure that the affordability gap remains current, and to
19 reflect current costs of construction consistent with the requirements set forth below in Section
20 415.5(b)(3) and Section 415.10.

21 (3) Annual Fee Update. *For all housing developments, no No* later than January 1
22 of each year, MOHCD shall adjust the fee based on adjustments in the City's cost of constructing
23 affordable housing, including development and land acquisition costs. MOHCD shall provide
24 the Planning Department, DBI, and the Controller with current information on the adjustment
25 to the fee so that it can be included in the Planning Department's and DBI's website notice of

1 the fee adjustments and the Controller's Citywide Development Fee and Development Impact
2 Requirements Report described in Section 409(a). MOHCD is authorized to shall develop an
3 appropriate methodology for calculating and indexing the fee, in consultation with the
4 Technical Advisory Committee consistent with the procedures set forth in Section 415.10,
5 based on adjustments in the cost of constructing housing *based on adjustments in the cost of*
6 *constructing housing and the Maximum Purchase Price for the equivalent unit size*. The method of
7 indexing shall be published in the Procedures Manual and shall be provided to the Board of
8 Supervisors when it is updated.

9 (4) *Specific Geographic Areas.* For any housing development that is located in an
10 area with a specific affordable housing requirement set forth in a Special Use District, or in
11 any other section of the Code such as Section 419, the higher affordable housing requirement
12 shall apply.

13 *(5) In the event the project sponsor does not procure a building permit or site permit for*
14 *construction of the principal project within two years (2430 months) of the project's approval, the*
15 *development project shall comply with the inclusionary affordable housing requirements applicable*
16 *thereafter at the time when the project sponsor does proceed with pursuing a building permit. Such*
17 *time period shall be extended in the event of any litigation seeking to invalidate the City's approval of*
18 *such project, for the duration of the litigation.*

19 (6) The fee shall be imposed on any additional units or square footage
20 authorized and developed under California Government Code Sections 65915 et seq. This
21 subsection 415.5(b)(6) shall not apply to development projects that have submitted a
22 complete Environmental Evaluation application on or before January 1, 2016.

23 (7) If the principal project has resulted in demolition, conversion, or removal of
24 affordable housing units that are subject to a recorded covenant, ordinance, or law that
25 restricts rents to levels affordable to persons and families of moderate-, low- or very low-

1 income, or housing that is subject to any form of rent or price control through a public entity's
2 valid exercise of its police power and determined to be affordable housing, the Commission or
3 the Department shall require that the project sponsor pay the Inclusionary Affordable Housing
4 Fee equivalent for the number of affordable units removed, in addition to compliance with the
5 inclusionary requirements set forth in this Section.

6 (c) **Notice to Development Fee Collection Unit of Amount Owed.** Prior to issuance
7 of the first construction document for a development project subject to Section 415.5, MOH
8 the Planning Department shall notify the Development Fee Collection Unit at DBI
9 electronically or in writing of its calculation of the amount of the fee owed.

10 (d) **Lien Proceedings.** If, for any reason, the Affordable Housing Fee imposed
11 pursuant to Section 415.5 remains unpaid following issuance of the first Certificate of
12 Occupancy, the Development Fee Collection Unit at DBI shall institute lien proceedings to
13 make the entire unpaid balance of the fee, plus interest and any deferral surcharge, a lien
14 against all parcels used for the development project in accordance with Section 408 of this
15 Article and Section 107A.13.15 of the San Francisco Building Code.

16 (e) If a housing project is located in an Area Plan with an additional or specific
17 affordable housing requirements such as those set forth in a special use district or sSections
18 416, 417, and 419 or elsewhere in this code, the higher housing requirement shall apply. more
19 ~~specific provisions shall apply in lieu of or in addition to those provided in this Program, as~~
20 ~~applicable.~~

21 (f) **Use of Fees.** All monies contributed pursuant to the Inclusionary Affordable
22 Housing Program shall be deposited in the Citywide Affordable Housing Fund ("the Fund"),
23 established in Administrative Code Section 10.100-49. The Mayor's Office of Housing and
24 Community Development ("MOHCD") shall use the funds collected under this Section in the
25 following manner:

1 (1) Except as provided in subsection (2) below, the funds collected under this
2 Section shall be used to:

3 (A) increase the supply of housing affordable to qualifying households
4 subject to the conditions of this Section; and

5 (B) provide assistance to low- and moderate-income homebuyers; and

6 (C) pay the expenses of MOHCD in connection with monitoring and
7 administering compliance with the requirements of the Program. MOHCD is authorized to use
8 funds in an amount not to exceed \$200,000 every 5 years to conduct follow-up studies under
9 Section 415.9(e) and to update the affordable housing fee amounts as described above in
10 Section 415.5(b). All other monitoring and administrative expenses shall be appropriated
11 through the annual budget process or supplemental appropriation for MOHCD.

12 (2) **"Small Sites Funds."**

13 (A) Designation of Funds. MOHCD shall designate and separately
14 account for 10% percent of all fees that it receives under Section 415.1 et seq. that are
15 deposited into the Citywide Affordable Housing Fund, established in Administrative Code
16 Section 10.100-49, excluding fees that are geographically targeted such as those referred to
17 in Sections 415.5(b)(1) and 827(b)(1), to support acquisition and rehabilitation of Small Sites
18 ("Small Sites Funds"). MOHCD shall continue to divert 10% of all fees for this purpose until
19 the Small Sites Funds reach a total of \$15 million at which point, MOHCD will stop designating
20 funds for this purpose. At such time as designated Small Sites Funds are expended and dip
21 below \$15 million, MOHCD shall start designating funds again for this purpose, such that at
22 no time the Small Sites Funds shall exceed \$15 million. When the total amount of fees paid to
23 the City under Section 415.1 et seq. totals less than \$10 million over the preceding 12 month
24 period, MOHCD is authorized to temporarily divert funds from the Small Sites Fund for other
25 purposes. MOHCD must keep track of the diverted funds, however, such that when the

1 amount of fees paid to the City under Section 415.1 et seq. meets or exceeds \$10 million over
2 the preceding 12 month period, MOHCD shall commit all of the previously diverted funds and
3 10% percent of any new funds, subject to the cap above, to the Small Sites Fund.

4 (B) **Use of Small Sites Funds.** The funds shall be used exclusively to
5 acquire or rehabilitate "Small Sites" defined as properties consisting of 2-25 units. Units
6 supported by monies from the fund shall be designated as housing affordable to qualified
7 households ~~as set forth in Section 415.2 for the life of the project no less than 55 years.~~

8 Properties supported by the Small Sites Funds must be:

9 (i) rental properties that will be maintained as rental properties;
10 (ii) vacant properties that were formerly rental properties as long
11 as those properties have been vacant for a minimum of two years prior to the effective date of
12 this legislation;

13 (iii) properties that have been the subject of foreclosure; or
14 (iv) a Limited Equity Housing Cooperative as defined in
15 Subdivision Code Sections 1399.1 et seq. or a property owned or leased by a non-profit entity
16 modeled as a Community Land Trust.

17 (C) **Initial Funds.** If, within 18 months from April 23, 2009, MOHCD
18 dedicates an initial one-time contribution of other eligible funds to be used initially as Small
19 Sites Funds, MOHCD may use the equivalent amount of Small Sites Funds received from
20 fees for other purposes permitted by the Citywide Affordable Housing Fund until the amount of
21 the initial one-time contribution is reached.

22 (D) **Annual Report.** At the end of each fiscal year, MOHCD shall issue a
23 report to the Board of Supervisors regarding the amount of Small Sites Funds received from
24 fees under this legislation, and a report of how those funds were used.

1 (E) Intent. In establishing guidelines for Small Sites Funds, the Board of
2 Supervisors does not intend to preclude MOHCD from expending other eligible sources of
3 funding on Small Sites as described in this Section 415.5, or from allocating or expending
4 more than \$15 million of other eligible funds on Small Sites.

5 (3) For all projects funded by the Citywide Affordable Housing Fund, MOHCD
6 requires the project sponsor or its successor in interest to give preference as provided in
7 Administrative Code Chapter 47.

8 (g) **Alternatives to Payment of Affordable Housing Fee.**

9 (1) **Eligibility:** A project sponsor must pay the Affordable Housing Fee unless it
10 qualifies for and chooses to meet the requirements of the Program through an Alternative
11 provided in this subsection (g). The project sponsor may choose one of the following
12 Alternatives:

13 (A) **Alternative #1: On-Site Units.** Project sponsors may elect to
14 construct units affordable to qualifying households on-site of the principal project pursuant to
15 the requirements of Section 415.6.

16 (B) **Alternative #2: Off-Site Units.** Project sponsors may elect to
17 construct units affordable to qualifying households at an alternative site within the City and
18 County of San Francisco pursuant to the requirements of Section 415.7.

19 (C) **Alternative #3: Small Sites.** Qualifying project sponsors may elect
20 to fund buildings as set forth in Section 415.7-1.

21 (D) **Alternative #4: Combination.** Project sponsors may elect any
22 combination of payment of the Affordable Housing Fee as provided in Section 415.5,
23 construction of on-site units as provided in Section 415.6, or construction of off-site units as
24 provided in Section 415.7, provided that the project applicant constructs or pays the fee at the
25 appropriate percentage or fee level required for that option. Development Projects that have

1 submitted a complete Environmental Evaluation application after January 12, 2016 that are
2 providing on-site units under Section 415.6 and that qualify for and receive additional density
3 under California Government Code Section 65915 et seq. shall use Alternative #4 to pay the
4 Affordable Housing Fee on any additional units or square footage authorized under Section
5 65915.

6 (2) **Qualifications:** If a project sponsor wishes to comply with the Program
7 through one of the Alternatives described in subsection (g)(1) rather than pay the Affordable
8 Housing Fee, they must demonstrate that they qualify for the Alternative to the satisfaction of
9 the Department and MOHCD. A project sponsor may qualify for an Alternative by the
10 following methods:

11 (i) **Method #1 - Ownership Units.** All affordable units provided under
12 this Program shall be sold as ownership units and will remain ownership units for the life of
13 the project. Project sponsors must submit the 'Affidavit of Compliance with the Inclusionary
14 Affordable Housing Program' to the Planning Department prior to project approval by the
15 Department or the Commission; or

16 (ii) **Method #2 - Government Financial Contribution.** Submit to the
17 Department a contract demonstrating that the project's on- or off-site units are not subject to
18 the Costa Hawkins Rental Housing Act, California Civil Code Section 1954.50 because, under
19 Section 1954.52(b), it has entered into an agreement with a public entity in consideration for a
20 direct financial contribution or any other form of assistance specified in California Government
21 Code Sections 65915 et seq. and it submits an Affidavit of such to the Department. All such
22 contracts entered into with the City and County of San Francisco must be reviewed and
23 approved by ~~the Mayor's Office Housing~~ MOHCD and the City Attorney's Office. All contracts
24 that involve 100% affordable housing projects in the residential portion may be executed by
25 the Mayor or the Director of ~~the Mayor's Office of Housing~~ MOHCD. Any contract that

1 involves less than 100% affordable housing in the residential portion, may be executed by
2 either the Mayor, the Director of ~~the Mayor's Office of Housing~~ MOHCD or, after review and
3 comment by ~~the Mayor's Office of Housing~~ MOHCD, the Planning Director. A Development
4 Agreement under California Government Code Sections 65864 et seq. and Chapter 56 of the
5 ~~San Francisco~~ Administrative Code entered into between a project sponsor and the City and
6 County of San Francisco may, but does not necessarily, qualify as such a contract.

7 (3) The Planning Commission or the Department may not require a project
8 sponsor to select a specific Alternative. If a project sponsor elects to meet the Program
9 requirements through one of the Alternatives described in subsection (g)(1), they must choose
10 it and demonstrate that they qualify 30 days prior to any project approvals from the Planning
11 Commission or Department. The Alternative will be a condition of project approval and
12 recorded against the property in an NSR. Any subsequent change by a project sponsor that
13 results in the reduction in the number of on-site units shall require public notice for a hearing
14 and approval from the Planning Commission. Notwithstanding the foregoing, if a project
15 sponsor qualifies for an Alternative described in subsection (g)(1) and elects to construct the
16 affordable units on- or off-site, they the project sponsor must submit the 'Affidavit of
17 Compliance with the Inclusionary Housing Program' based on the fact that the units will be
18 sold as ownership units. A project sponsor who has elected to construct affordable ownership
19 units on- or off-site may only elect to pay the Affordable Housing Fee up to the issuance of the
20 first construction document if the project sponsor submits a new Affidavit establishing that the
21 units will not be sold as ownership units. If a project sponsor fails to choose an Alternative
22 before project approval by the Planning Commission or Planning Department or if a project
23 becomes ineligible for an Alternative, the provisions of Section 415.5 shall apply.

24 (4) If at any time, the project sponsor eliminates the on-site or off-site affordable
25 ownership-only units, then the project sponsor must immediately inform the Department and

1 MOH MOHCD and pay the applicable Affordable Housing Fee plus interest and any
2 applicable penalties provided for under this Code. If a project sponsor requests a modification
3 to its conditions of approval for the sole purpose of complying with this Section, the Planning
4 Commission shall be limited to considering issues related to Section 415et seq. in considering
5 the request for modification

6 **SEC. 415.6. ON-SITE AFFORDABLE HOUSING ALTERNATIVE.**

7 *The requirements set forth in this Section 415.6 will be reviewed when the City completes an*
8 *Economic Feasibility Study.* If a project sponsor is eligible and elects to provide on-site units
9 pursuant to Section 415.5(g), the development project shall meet the following requirements:

10 (a) Number of Units. The number of units constructed on-site shall be as follows:

11 (1) For housing development projects consisting of 10 dwelling units or more, but less
12 than 25 dwelling units, the number of affordable units constructed on-site shall generally be
13 12% of all units constructed on the project site for housing development projects consisting of 10
14 dwelling units or more, but less than 25 dwelling units. The affordable units shall all be affordable
15 to low- and lower-income households. Owned Units shall be affordable to households earning
16 80% up to 100% of Area Median Income, with an average affordable sales price set at 90% of
17 Area Median Income or less. Rental Units shall be affordable to households earning 40% up to
18 80% of Area Median Income, with an average affordable rent set at 60% of Area Median
19 Income or less. The number of units constructed on-site shall generally be 25% of all units constructed
20 on the project site for housing development projects consisting of 25 dwelling units or more, with a
21 minimum of 15% of the units affordable to low-income households and 10% of the units affordable to
22 low- or moderate/middle-income households.

23 (2) For any housing development project consisting of 25 or more Owned Units,
24 the number of affordable units constructed on-site shall generally be 20% of all units
25 constructed on the project site. A minimum of 10% of the units shall be affordable to low-

1 income households, 5% of the units shall affordable to moderate-income households, and 5%
2 of the units shall be affordable to middle-income households. In no case shall the total
3 number of affordable units required exceed the number required as determined by the
4 application of the applicable on-site requirement rate to the total project units. Owned Units
5 for low-income households shall have an affordable purchase price set at 80% of Area
6 Median Income or less, with households earning up to 100% of Area Median Income eligible
7 to apply for low-income units. Owned Units for moderate-income households shall have an
8 affordable purchase price set at 105% of Area Median Income or less, with households
9 earning from 95% to 120% of Area Median Income eligible to apply for moderate-income
10 units. Owned Units for middle-income households shall have an affordable purchase price set
11 at 130% of Area Median Income or less, with households earning from 120% to 150% of Area
12 Median Income eligible to apply for middle-income units. For any affordable units with
13 purchase prices set at 130% of Area Median Income or above, studio units shall not be
14 allowed. MOHCD may reduce Area Median Income pricing and the minimum income required
15 for eligibility in each ownership category.

16 (3) For any Rental Housing Project consisting of 25 or more Rental Units, the
17 number of affordable units constructed on-site shall generally be 18% of all units constructed
18 on the project site, with a minimum of 10% of the units affordable to low-income households,
19 4% of the units affordable to moderate-income households, and 4% of the units affordable to
20 middle-income households. In no case shall the total number of affordable units required
21 exceed the number required as determined by the application of the applicable on-site
22 requirement rate to the total project units. Rental Units for low-income households shall have
23 an affordable rent set at 55% of Area Median Income or less, with households earning up to
24 65% of Area Median Income eligible to apply for low-income units. Rental Units for moderate-
25 income households shall have an affordable rent set at 80% of Area Median Income or less,

1 with households earning from 65% to 90% of Area Median Income eligible to apply for
2 moderate-income units. Rental Units for middle-income households shall have an affordable
3 rent set at 110% of Area Median Income or less, with households earning from 90% to 130%
4 of Area Median Income eligible to apply for middle-income units. For any affordable units with
5 rental rates set at 110% of Area Median Income or above, studio units shall not be allowed.
6 MOHCD may reduce Area Median Income pricing and the minimum income required for
7 eligibility in each rental category.

8 (4) Notwithstanding the foregoing, Area Median Income limits for Rental Units
9 and Owned Units, the maximum affordable rents or sales price shall be no higher than 20%
10 below median rents or sales prices for the neighborhood within which the project is located,
11 which shall be defined in accordance with the American Community Survey Neighborhood
12 Profile Boundaries Map Planning Department's Neighborhood Groups Map. MOHCD shall
13 adjust the allowable rents and sales prices, and the eligible households for such units,
14 accordingly, and such potential readjustment shall be a condition of approval upon project
15 entitlement. The City shall review the updated data on neighborhood rents and sales prices
16 on an annual basis.

17 (5) Starting on January 1, 2018, and no later than January 1 of each year
18 thereafter, MOHCD shall increase the percentage of units required on-site for projects
19 consisting of 10 – 24 units, as set forth in Section 415.6(a)(1), by increments of 0.5% each
20 year, until such requirement is 15%. For all development projects with 25 or more Owned or
21 Rental Units, the required on-site affordable ownership housing to satisfy this Section 415.6
22 shall increase by 1.0% annually for two consecutive years starting January 1, 2018. The
23 increase shall be apportioned to units affordable to low-income households, as defined above
24 in subsection 415.6(a)(3). Starting January 1, 2020, the increase to on-site rental and
25 ownership developments with 25 or more units shall increase by 0.5% annually, with such

1 increases allocated equally for rental and ownership units to moderate and middle income
2 households, as defined above in subsection 415.6(a)(3). The total on-site inclusionary
3 affordable housing requirement shall not exceed 26% for development projects consisting of
4 Owned Units or 24% for development projects consisting of Rental Units, and the increases
5 shall cease at such time as these limits are reached. MOHCD shall provide the Planning
6 Department, DBI, and the Controller with information on the adjustment to the on-site
7 percentage so that it can be included in the Planning Department's and DBI's website notice
8 of the fee adjustments and the Controller's Citywide Development Fee and Development
9 Impact Requirements Report described in Section 409(a).

10 ~~(2) For any housing development project consisting of 25 or more Owned Units,~~
11 ~~the number of affordable units constructed on-site shall be 27% of all units constructed on the~~
12 ~~project site, with a minimum of 15% of the units affordable to low or lower income households~~
13 ~~and 12% of the units affordable to moderate/middle income households. Owned Units for~~
14 ~~low and lower income households shall be affordable to a range of households from 80% to~~
15 ~~400% of Area Median Income, with an average affordable sales price set at 90% of Area~~
16 ~~Median Income or less. Owned Units for middle/moderate income households shall be~~
17 ~~affordable to a range of households from 100% to 140% of Area Median Income, with an~~
18 ~~average affordable sales price set at 120% of Area Median Income or less; provided that a~~
19 ~~middle/moderate income unit shall have a maximum sales price set at 100% of Area Median~~
20 ~~Income for a single income household. MOHCD may reduce the average Area Median~~
21 ~~Income upon request by the project sponsor.~~

22 ~~———— (3) For any Rental Housing Project consisting of 25 or more Rental Units, the~~
23 ~~number of affordable units constructed on-site shall generally be 24% of all units constructed~~
24 ~~on the project site, with a minimum of 15% of the units affordable to low or lower income~~
25 ~~households and 9% of the units affordable to moderate/middle income households. Rental~~

1 Units for low and lower income households shall be affordable to a range of households
2 earning from 40% to 80% of Area Median Income, with an average affordable rent set at 60%
3 of Area Median Income or less. Rental Units for middle/moderate income households shall be
4 affordable to a range of households earning from 80% to 120% of Area Median Income, with
5 an average affordable rent set at 100% of Area Median Income or less; provided that a
6 middle/moderate income unit shall have a maximum rent set at 100% of Area Median Income
7 for a single income household. MOHCD may reduce the average Area Median Income upon
8 request by the project sponsor. MOHCD shall set forth in the Procedures Manual the
9 administration of rental units within this range.

10 ~~————(4) A minimum of 40% of the on-site affordable units shall consist of two~~
11 ~~bedroom units and a minimum of 20% of the on-site affordable units shall consist of three~~
12 ~~bedrooms or larger. Units shall have minimum floor areas that conform to the standards~~
13 ~~developed by the California Tax Credit Allocation Committee (CTCAC) for affordable units.~~
14 ~~The total residential floor area devoted to the affordable units shall not be less than the~~
15 ~~applicable percentage applied to the total residential floor area of the principal project,~~
16 ~~provided that a 10% variation in floor area is permitted.~~

17 ~~————(5) In the event one or more of the Rental Units in the principal Rental Housing~~
18 ~~Project become ownership units, each converted Rental Unit shall reimburse the City the~~
19 ~~proportional difference between the amount of the then-current inclusionary affordable~~
20 ~~housing requirement for Rental Units and Owned Units. If a Rental Housing Project is~~
21 ~~converted to an ownership housing project in its entirety, an additional 3% of the units shall be~~
22 ~~designated as affordable to qualifying households, apportioned between the required number~~
23 ~~of low and lower income and moderate/middle income on-site units in compliance with the~~
24 ~~requirements currently in effect at the time of conversion.~~

1 (6) The Department shall require as a condition of Department approval of a
2 project's building permit, or as a condition of approval of a Conditional Use Authorization or
3 Planned Unit Development or as a condition of Department approval of a live/work project,
4 that ~~12%, 24% or 27% 25%, 18%, or 20%~~, as applicable, or such current percentage that has
5 been adjusted annually by MOHCD, of all units constructed on the project site shall be
6 affordable to qualifying households so that a project sponsor must construct ~~.12, .24 or .27 or~~
7 ~~.25~~ .18, or .20 times, or such current number as adjusted annually by MOHCD, as applicable,
8 the total number of units produced in the principal project. If the total number of units is not a
9 whole number, the project sponsor shall round up to the nearest whole number for any portion
10 of .5 or above. In no case shall the total number of affordable units required exceed the
11 number required as determined by the application of the applicable on-site requirement rate to
12 the total project units.

13 (7) In the event one or more of the Rental Units in the principal Rental Housing
14 Project become ownership units, for each converted Rental Unit, or for the principal Rental
15 Housing Project in its entirety, as applicable, the project sponsor shall either (A) reimburse the
16 City the proportional amount of the inclusionary affordable housing fee, which would be
17 equivalent to the then-current inclusionary affordable fee requirement for Owned Units, or (B)
18 provide additional on-site or off-site affordable units equivalent to the then-current inclusionary
19 requirements for Owned Units, apportioned among the required number of units at various
20 income levels in compliance with the requirements in effect at the time of conversion.

21 (8) **Specific Geographic Areas.** For any housing development that is located
22 in an area with a specific affordable housing requirement set forth in a Special Use District or
23 in any other section of the Code such as Section 419, the higher housing requirement shall
24 apply. The Planning Department, in consultation with the Controller, shall undertake a study of areas
25 where an Area Plan, Special Use District, or other re-zoning is being considered for adoption or

1 has been adopted after January 1, 2015, to determine whether a higher on-site inclusionary affordable
2 housing requirement is feasible on sites that have received a 20% or greater increase in developable
3 residential gross floor area or a 35% or greater increase in residential density over prior zoning, and
4 shall submit such information to the Planning Commission and Board of Supervisors.

5 (89) If the principal project has resulted in demolition, conversion, or removal of
6 affordable housing units that are subject to a recorded covenant, ordinance, or law that
7 restricts rents to levels affordable to persons and families of moderate-, low- or very-low-
8 income, or housing that is subject to any form of rent or price control through a public entity's
9 valid exercise of its police power and determined to be affordable housing, the Commission or
10 the Department shall require that the project sponsor replace the number of affordable units
11 removed with units of a comparable number of bedrooms and sales prices or rents, in addition
12 to compliance with the requirements set forth in this Section. ~~renting or selling to households~~
13 ~~at income levels and/or for a rental rate or sales price below corresponding income thresholds~~
14 ~~for units affordable to low income households, the Commission or the Department shall~~
15 ~~require that the project sponsor replace the number of affordable units removed with units of a~~
16 ~~comparable number of bedrooms in addition to compliance with the inclusionary requirements~~
17 ~~set forth in this Section 415.6 or provide that 25% of all units constructed as part of the new project~~
18 ~~shall be affordable to low income or moderate/middle income households, whichever is greater.~~

19 (9) **Annual indexing.** ~~The required on-site affordable housing to satisfy this~~
20 ~~section 415.6 shall increase by 0.75% annually for all development projects with 10-24 units~~
21 ~~of housing, beginning on January 1, 2018.~~

22 (10) Any development project that constructs on-site affordable housing units as set
23 forth in this Section 415.6 shall diligently pursue completion of such units. In the event the project
24 sponsor does not procure a building permit or site permit for construction of the principal project
25 within two years (24, 30 months) of the project's approval, the development project shall comply with

1 the inclusionary affordable housing requirements applicable thereafter at the time when the project
2 sponsor procures a building permit. Such deadline shall be extended in the event of any litigation
3 seeking to invalidate the City's approval of such project, for the duration of the litigation.

4 (b) Any On-site units provided through this Section 415.6 may be used to qualify for a
5 density bonus under California Government Code Section 65915, any ordinance
6 implementing Government Code Section 65915, or one of the Affordable Housing Bonus
7 Programs currently proposed in an contained in the ordinance in Board of Supervisors File
8 No. 150969 or its equivalent if such ordinance is adopted. An applicant seeking a density
9 bonus under State Law shall provide reasonable documentation to establish eligibility for a
10 requested density bonus, incentive or concession, and waiver or reduction of development
11 standards, as provided for under State Law and as consistent with the process and
12 procedures detailed in a locally adopted ordinance implementing the State Law.

13 (c) Beginning in January 2018, the Planning Department shall prepare an annual
14 report to the Planning Commission about the number of density bonus projects under
15 California Government Code Section 65915, the number of density bonus units, and the types
16 of concessions and incentives and waivers provided to each density bonus project.

17 (d) Unless otherwise specified in this Section 415.1 et seq., in the event the project
18 sponsor is eligible for and elects to receive additional density under California Government
19 Code Section 65915, the Sponsor shall pay the Affordable Housing Fee on any additional
20 units or square footage authorized under that section in accordance with the provisions in
21 Section 415.5(g)(1)(D).

22 **(be) Timing of Construction.** On-site affordable housing required by this Section
23 415.6 shall be constructed, completed, ready for occupancy, and marketed no later than the
24 market rate units in the principal project.

25 **(ef) Type of Housing.**

1 (1) Equivalency of Units. All on-site units constructed under this Section 415.6
2 shall be provided as ownership units unless the project sponsor meets the eligibility
3 requirement of Section 415.5(g). ~~All on-site units must be affordable to low income households.~~ In
4 general, affordable units constructed under this Section 415.6 shall be comparable in number
5 of bedrooms, exterior appearance and overall quality of construction to market rate units in
6 the principal project. A Notice of Special Restrictions shall be recorded prior to issuance of
7 the first construction document and shall specify the number, location and sizes for all
8 affordable units required under this subsection (e). The affordable units shall be evenly
9 distributed throughout the building. For buildings over 120 feet in height, as measured under
10 the requirements set forth in the Planning Code, the affordable units may be distributed
11 throughout the lower 2/3 of the building, as measured by the number of floors. The interior
12 features in affordable units should be generally the same as those of the market rate units in
13 the principal project, but need not be the same make, model or type of such item as long as
14 they are of good and new quality and are consistent with then-current standards for new
15 housing. ~~The square footage of affordable units does not need to be the same as or~~
16 ~~equivalent to that in market rate units in the principal project, so long as it is consistent with~~
17 ~~then-current standards for new housing. The affordable units are not required to be the same~~
18 ~~size as the market rate units, and may be 90% of the average size of the specific unit type.~~
19 ~~For buildings over 120 feet in height, as measured under the requirements set forth in the~~
20 ~~Planning Code, the average size of the unit type may be calculated for the lower 2/3 of the~~
21 ~~building, as measured by the number of floors. Where applicable, parking shall be offered to~~
22 ~~the affordable units subject to the terms and conditions of the Department's policy on~~
23 ~~unbundled parking for affordable housing units as specified in the Procedures Manual and~~
24 ~~amended from time to time. On-site affordable units shall be ownership units unless the project~~
25 ~~applicant meets the eligibility requirement of Section 415.5(9).~~

1 (2) Minimum Size of Affordable Units. The affordable units are not required to
2 be the same size as the market rate units, and may be 90% of the average size of the specific
3 unit type. For buildings over 120 feet in height, as measured under the requirements set forth
4 in the Planning Code, the average size of the unit type may be calculated for the lower 2/3 of
5 the building, as measured by the number of floors. All units shall be no smaller than the
6 minimum unit sizes set forth by the California Tax Credit Allocation Committee as of May 16,
7 2017, and no smaller than 300 square feet for studios. For affordable dwelling units,
8 individual unit square footage shall not be less than the following for each unit type:

- 9 ———— Studios: 350 square feet
- 10 ———— 1 Bedrooms: 550 square feet
- 11 ———— 2 Bedrooms: 800 square feet
- 12 ———— 3 Bedrooms: 1,000 square feet
- 13 ———— 4 Bedrooms: 1,250 square feet

14 ———— Units priced to be affordable for households earning 100% of Area Median
15 Income or above shall not include studios. The total residential floor area devoted to the
16 affordable units shall not be less than the applicable percentage applied to the total residential
17 floor area of the principal project, provided that a 10% variation in floor area is permitted.

18 ———— (2) Density Bonus Projects. An applicant seeking a density bonus under the
19 provisions of State Law shall provide reasonable documentation to establish eligibility for a
20 requested density bonus, incentives or concessions, and waivers or reductions of
21 development standards. The Planning Department shall provide information about the value
22 of the density bonus, concessions and incentives for each density bonus project and include it
23 in the Department's case report or decision on the application. In addition, beginning in
24 January 2018, the Planning Department shall prepare an annual report to the Planning
25 Commission about the number of density bonus projects, density bonus units and the kinds of

1 ~~density bonuses, concessions and incentives provided to each density bonus project, which~~
2 ~~should be presented at the same time as the Housing Balance Report.~~

3 ~~(d)(g)~~ **Marketing the Units.** The Mayor's Office of Housing and Community
4 Development ("MOHCD") shall be responsible for overseeing and monitoring the marketing of
5 affordable units under this Section 415.6. In general, the marketing requirements and
6 procedures shall be contained in the Procedures Manual as amended from time to time and
7 shall apply to the affordable units in the project. MOHCD may develop occupancy standards
8 for units of different bedroom sizes in the Procedures Manual in order to promote an efficient
9 allocation of affordable units. MOHCD may require in the Procedures Manual that prospective
10 purchasers complete homebuyer education training or fulfill other requirements. MOHCD
11 shall develop a list of minimum qualifications for marketing firms that market affordable units
12 under Section 415.6 ~~415.5-et seq.~~, referred to in the Procedures Manual as Below Market
13 Rate (BMR units). No developer marketing units under the Program shall be able to market
14 affordable units except through a firm meeting all of the minimum qualifications. The Notice of
15 Special Restrictions or conditions of approval shall specify that the marketing requirements
16 and procedures contained in the Procedures Manual as amended from time to time, shall
17 apply to the affordable units in the project.

18 (1) **Lottery.** At the initial offering of affordable units in a housing project
19 and when ownership units become available for re-sale in any housing project subject to this
20 Program after the initial offering, MOHCD must require the use of a public lottery approved by
21 MOHCD to select purchasers or tenants.

22 (2) **Preferences.** MOHCD shall create a lottery system that gives
23 preference according to the provisions of Administrative Code Chapter 47. MOHCD shall
24 propose policies and procedures for implementing these preferences to the Planning
25 Commission for inclusion as an addendum to ~~in~~ the Procedures Manual. Otherwise, it is the

1 policy of the City to treat all households equally in allocating affordable units under this
2 Program.

3 (e) (h) Individual affordable units constructed under Section 415.6 as part of an on-site
4 project shall not have received development subsidies from any Federal, State or local
5 program established for the purpose of providing affordable housing, and shall not be counted
6 to satisfy any affordable housing requirement. Other units in the same on-site project may
7 have received such subsidies. In addition, subsidies may be used, only with the express
8 written permission by MOHCD, to deepen the affordability of an affordable unit beyond the
9 level of affordability required by this Program.

10 (f) (i) Notwithstanding the provisions of Section ~~415.6(e)~~ 415.6(h) above, a project may
11 use California Debt Limit Allocation Committee (CDLAC) tax-exempt bond financing and 4%
12 tax credits under the Tax Credit Allocation Committee (TCAC) to help fund its obligations
13 under Section 415.1 et seq. this ordinance as long as the project provides 20% percent of the
14 units as affordable to households at 50% percent of Area Median Income for on-site housing
15 or 10% of the units as affordable to households at 50% of Area Median Income, and 30% of
16 the units as affordable to households at 60% of Area Median Income for on-site housing. The
17 income table to be used for such projects when the units are priced at 50% or 60% percent of
18 Area Median Income is the income table used by MOHCD for the Inclusionary Affordable
19 Housing Program, not that used by TCAC or CDLAC. Except as provided in this subsection
20 (i), all units provided under this Section must meet all of the requirements of Section 415.1 et
21 seq. this ordinance and the Procedures Manual for on-site housing.

22 (g) (i) **Benefits.** If the project sponsor is eligible for and elects to satisfy the affordable
23 housing requirements through the production of on-site affordable housing in this Section
24 415.6, the project sponsor shall be eligible to receive a refund for only that portion of the
25 housing project which is affordable for the following fees: a Conditional Use authorization or

1 other fee required by Section 352 of this Code, if applicable; an environmental review fee
2 required by Administrative Code Section ~~31.46B~~ 31.22, if applicable; a building permit fee
3 required by Section 355 of this Code for the portion of the housing project that is affordable.
4 The project sponsor shall pay the building fee for the portion of the project that is market-rate.
5 An application for a refund must be made within six months from the issuance of the first
6 certificate of occupancy.

7 The Controller shall refund fees from any appropriated funds to the project sponsor on
8 application by the project sponsor. The application must include a copy of the Certificate of
9 Occupancy for all units affordable to a qualifying household required by the Inclusionary
10 Housing Program. It is the policy of the Board of Supervisors to appropriate money for this
11 purpose from the General Fund.

12 13 **SEC. 415.7. OFF-SITE AFFORDABLE HOUSING ALTERNATIVE.**

14 ~~The requirements set forth in this Section 415.7 will be reviewed when the City completes an~~
15 ~~Economic Feasibility Study.~~ If the project sponsor is eligible and elects pursuant to Section
16 415.5(g) to provide off-site units to satisfy the requirements of Section 415.1 et seq., the
17 project sponsor shall notify the Planning Department and the Mayor's Office of Housing and
18 Community Development ("MOHCD") of its intent as early as possible. The Planning
19 Department and MOHCD shall provide an evaluation of the project's compliance with this
20 Section 415.7 prior to approval by the Planning Commission or Planning Department. The
21 development project shall meet the following requirements:

22 (a) **Number of Units:** The number of units constructed off-site shall be as follows:

23 (1) For any housing development that is located in an area or Special Use District
24 with a specific affordable housing requirement, or in any other Planning Code provision, such
25

1 as Section 419, set forth in Section 419 or elsewhere in this Code, the higher off-site housing
2 requirement shall apply.

3 (2) For housing development projects consisting of 10 dwelling units or more
4 but less than 25 units, the number of affordable units constructed off-site shall be 20%, so that
5 a project applicant shall construct .20 times the total number of units produced in the principal
6 project. If the total number of units is not a whole number, the project applicant shall round up
7 to the nearest whole number for any portion of .5 or above. In no case shall the total number
8 of affordable units required exceed the number required as determined by the application of
9 the applicable off-site requirement rate to the total project units. ~~The off-site affordable units~~
10 ~~shall be affordable to low — and lower — income households.~~ Owned Units shall be affordable to
11 households earning 80% up to 100% of Area Median Income, with an average affordable sales price
12 set at 90-80% of Area Median Income or less. Rental Units shall be affordable to households earning
13 40% up to 80-65% of Area Median Income, with an average affordable rent set at 60-55% of Area
14 Median Income or less.

15 (3) ~~For housing development projects consisting of 25 dwelling units or more,~~
16 ~~the number of units constructed off-site shall be 33%, with 20% of the units affordable to low-~~
17 ~~income households and 13% of the units affordable to low- or moderate/middle-income~~
18 ~~households, so that a project applicant shall construct .33 times the total number of units~~
19 ~~produced in the principal project. If the total number of units is not a whole number, the project~~
20 ~~applicant shall round up to the nearest whole number for any portion of .5 or above.~~ For any
21 housing development project consisting of 25 or more Owned Units, the number of affordable units
22 constructed off-site shall be 33% of all units constructed on the project site, with a minimum of 15% of
23 the units affordable to low- or lower-income households and 18% of the units affordable to
24 moderate/middle-income households. ~~Owned Units for low- and lower-~~ low-income
25 households, shall be 8% of the units affordable to a range of moderate-income households, from

1 80% to 100 of Area Median Income, with an average Area Median Income, with an average
2 affordable sales price set at 90% of Area Median Income or less. Owned Units for and 7% of
3 the units affordable to ~~middle/moderate~~ income households, shall be affordable to a range of
4 households from 100% to 140% of Area Median Income, with an average affordable sales
5 price set at 120% of Area Median Income or less; provided that a middle/moderate income
6 unit shall have a maximum sales price set at 100% of Area Median Income for a single
7 income household. MOHCD may reduce the average Area Median Income upon request by
8 the project sponsor. In no case shall the total number of affordable units required exceed the
9 number required as determined by the application of the applicable off-site requirement rate to
10 the total project units. Owned Units for low-income households shall have an affordable
11 purchase price set at 80% of Area Median Income or less, with households earning up to
12 100% of Area Median Income eligible to apply for low-income units. Owned Units for
13 moderate-income households shall have an affordable purchase price set at 105% of Area
14 Median Income or less, with households earning from 95% to 120% of Area Median Income
15 eligible to apply for moderate-income units. Owned Units for middle-income households shall
16 have an affordable purchase price set at 130% of Area Median Income or less, with
17 households earning from 120% to 150% of Area Median Income eligible to apply for middle-
18 income units. For any affordable units with purchase prices set at 100% of Area Median
19 Income or above, studio units shall not be allowed. MOHCD may reduce Area Median
20 Income pricing and the minimum income required for eligibility in each rental category.

21 (4) For any Rental Housing Project consisting of 25 or more Rental Units, the number
22 of affordable units constructed off-site shall generally be 30% of all units constructed on the project
23 site, with a minimum of ~~15~~18% of the units affordable to low-or lower-income households, and 15%
24 of the units affordable to moderate/middle-income households. Rental Units for low-and
25 lower-income households shall be affordable to a range of households earning from 40% to

1 80% of Area Median Income, with an average affordable rent set at 60% of Area Median
2 Income or less. Rental Units for middle/moderate income households shall be affordable to a
3 range of households earning from 80% to 120% of Area Median Income, with an average
4 affordable rent set at 100% of Area Median Income or less; provided that a middle/moderate
5 income unit shall have a maximum rent set at 100% of Area Median Income for a single
6 household. MOHCD may reduce the average Area Median Income upon request by the
7 project sponsor. 6% of the units affordable to moderate-income households, and 6% of the
8 units affordable to middle-income households. In no case shall the total number of affordable
9 units required exceed the number required as determined by the application of the applicable
10 off-site requirement rate to the total project units. Rental Units for low-income households
11 shall have an affordable rent set at 55% of Area Median Income or less, with households
12 earning up to 65% of Area Median Income eligible to apply for low-income units. Rental Units
13 for moderate-income households shall have an affordable rent set at 80% of Area Median
14 Income or less, with households earning from 65% to 90% of Area Median Income eligible to
15 apply for moderate-income units. Rental Units for middle-income households shall have an
16 affordable rent set at 110% of Area Median Income or less, with households earning from
17 90% to 130% of Area Median Income eligible to apply for middle-income units. For any
18 affordable units with rental rates set at 100% of Area Median Income or above, studio units
19 shall not be allowed. MOHCD may reduce Area Median Income pricing and the minimum
20 income required for eligibility in each rental category. MOHCD shall set forth in the Procedures
21 Manual the administration of rental units within this range.

22 (5) In the event one or more of the Rental Units in the principal Rental Housing Project
23 become ownership units, for each converted Rental Unit, or for the principal Rental Housing Project
24 in its entirety, as applicable, the Project Sponsor shall either (A) reimburse the City the proportional
25 amount of the inclusionary affordable housing fee/Inclusionary Affordable Housing Fee, which

1 would be equivalent to the then-current inclusionary affordable feeInclusionary Affordable
2 Housing Fee requirement for Owned Units, or (B) provide additional on-site or off-site affordable
3 units equivalent to the then-current inclusionary requirements for Owned Units, apportioned among
4 the required number of units at various income levels in compliance with the requirements in
5 effect at the time of conversion.

6 ~~—— (6) The Department shall require as a condition of Department approval of a~~
7 ~~project's building permit, or as a condition of approval of a Conditional Use Authorization or~~
8 ~~Planned Unit Development or as a condition of Department approval of a live/work project,~~
9 ~~that 20%, 30% or 33%, as applicable, of all units constructed on the project site shall be~~
10 ~~constructed off site and affordable to qualifying households so that a project sponsor must~~
11 ~~construct .20, .30 or .33 times, as applicable, the total number of units produced in the~~
12 ~~principal project.~~

13 ~~—— (7) A minimum of 40% of the off-site affordable units shall consist of two~~
14 ~~bedroom units and a minimum of 20% of the off-site affordable units shall consist of three~~
15 ~~bedrooms or larger. Units shall have minimum floor areas that conform to the standards~~
16 ~~developed by the California Tax Credit Allocation Committee (CTCAC) for affordable units.~~
17 ~~The total residential floor area devoted to the affordable units shall not be less than the~~
18 ~~applicable percentage applied to the total residential floor area of the principal project,~~
19 ~~provided that a 10% variation in floor area is permitted.~~

20 (86) Any development project that constructs off-site affordable housing units as set
21 forth in this Section 415.6 shall diligently pursue completion of such units. In the event the project
22 sponsor does not procure a building permit or site permit for construction of the principal project or
23 the off-site affordable housing project within two years (2430 months) of the project's approval, the
24 development project shall comply with the inclusionary affordable housing requirements applicable
25 thereafter at the time when the project sponsor procures a building permit. Such deadline shall be

1 extended in the event of any litigation seeking to invalidate the City's approval of the principal project
2 or off-site affordable housing project for the duration of the litigation.

3 ~~(94) Specific Geographic Areas.~~ (7) For any housing development that is
4 located in an area with a specific affordable housing requirement set forth in a Special Use
5 District, or in any other section of the Code such as Section 419, the higher affordable
6 housing requirement shall apply.

7 ~~——(8) If the principal project or the off-site project has resulted in demolition,~~
8 ~~conversion, or removal of affordable housing units that are subject to a recorded covenant,~~
9 ~~ordinance, or law that restricts rents to levels affordable to persons and families of moderate-~~
10 ~~low- or very low-income, or housing that is subject to any form of rent or price control through~~
11 ~~a public entity's valid exercise of its police power and determined to be affordable housing, the~~
12 ~~Commission or the Department shall require that the project sponsor replace the number of~~
13 ~~affordable units removed with units of a comparable number of bedrooms and sales prices or~~
14 ~~rents, in addition to compliance with the inclusionary requirements set forth in this Section.~~

15 * * * *

16 (e) **Marketing the Units:** MOHCD shall be responsible for overseeing and
17 monitoring the marketing of affordable units under this Section 415.7. In general, the
18 marketing requirements and procedures shall be contained in the Procedures Manual as
19 amended from time to time and shall apply to the affordable units in the project. MOHCD may
20 develop occupancy standards for units of different bedroom sizes in the Procedures Manual in
21 order to promote an efficient allocation of affordable units. MOHCD may require in the
22 Procedures Manual that prospective purchasers complete homebuyer education training or
23 fulfill other requirements. MOHCD shall develop a list of minimum qualifications for marketing
24 firms that market affordable units under Section 415.1_ *et seq.*, referred to the Procedures
25 Manual as Below Market Rate (BMR units). No project sponsor marketing units under the

1 Program shall be able to market BMR units except through a firm meeting all of the minimum
2 qualifications. The Notice of Special Restrictions or conditions of approval shall specify that
3 the marketing requirements and procedures contained in the Procedures Manual as amended
4 from time to time, shall apply to the affordable units in the project.

5 * * * *

6 (f) Individual affordable units constructed as part of a larger off-site project under this
7 Section 415.7 shall not receive development subsidies from any Federal, State or local
8 program established for the purpose of providing affordable housing, and shall not be counted
9 to satisfy any affordable housing requirement for the off-site development. Other units in the
10 same off-site project may receive such subsidies. In addition, subsidies may be used, only
11 with the express written permission by MOH MOHCD, to deepen the affordability of an
12 affordable unit beyond the level of affordability required by this Program.

13 (g) Notwithstanding the provisions of Section 415.7(f) above, a project may use
14 California Debt Limit Allocation Committee (CDLAC) tax-exempt bond financing and 4%
15 credits under the Tax Credit Allocation Committee (TCAC) to help fund its obligations under
16 this ordinance as long as the project provides 25% percent of the units as affordable at 50%
17 percent of area median income for off-site housing. The income table to be used for such
18 projects when the units are priced at 50% percent of area median income is the income table
19 used by MOH MOHCD for the Inclusionary Housing Program, not that used by TCAC or
20 CDLAC. Except as provided in this subsection, all units provided under this Section must
21 meet all of the requirements of this ordinance and the Procedures Manual for off-site housing.

22
23 **SEC. 415.10. REPORTING TO BOARD OF SUPERVISORS ~~ECONOMIC FEASIBILITY~~**
24 **STUDY TO MAXIMIZE HOUSING AFFORDABILITY.**

25 * * * *

1 ~~(d) Fee Schedule Analysis. The City shall conduct an analysis to update the~~
2 ~~Inclusionary Affordable Housing Fee, to analyze MOHCD's true costs of constructing an~~
3 ~~affordable unit, including development and land acquisition costs. The Controller, with the~~
4 ~~support of consultants as necessary, and in consultation with the Inclusionary Housing~~
5 ~~Technical Advisory Committee, shall conduct a study to examine the City's costs of~~
6 ~~constructing an affordable unit and the amount of the Inclusionary Affordable Housing Fee by~~
7 ~~January 31, 2018. Following completion of this study, the Board of Supervisors will review the~~
8 ~~analyses and the proposed fee schedule; and may consider adopting legislation to revise the~~
9 ~~Inclusionary Affordable Housing fees.~~

10 (ed) **Report to Board of Supervisors.** The Board of Supervisors may review the
11 feasibility analyses, as well as the periodic updates to the City's Nexus Study evaluating the
12 necessary affordable housing in order to mitigate the impacts of market rate housing. The
13 Board of Supervisors, ~~in its sole and absolute discretion,~~ will review the feasibility analyses
14 within three months of completion and ~~will~~ may consider legislative amendments to the City's
15 Inclusionary Housing in-lieu fees, on-site, off-site or other alternatives, and in so doing will
16 seek consultation from the Planning Commission, adjusting levels of inclusionary or affordable
17 housing obligations and income levels up to maximums as defined in Section 415.2, based on
18 the feasibility analyses, with the objective of maximizing affordable Inclusionary Housing in
19 market rate housing production, and with guidance from the City's Nexus Study. Any
20 adjustment in income levels shall be adjusted commensurate with the percentage of units
21 required so that the obligation for inclusionary housing is not reduced by any change in
22 income levels. The Board of Supervisors may also utilize the Nexus Study in considering
23 legislative amendments to the Inclusionary Housing requirements. Updates to the City's
24 Inclusionary Housing requirements shall address affordable housing fees, on-site affordable
25 housing and off-site affordable housing, as well as the provision of affordable housing

1 available to low-income households at or below 55% of Area Median Income for rental units
2 and up to 80% of Area Median Income for ownership units, and moderate/middle-income
3 households from 80% to 120% of Area Median Income.

4
5 **SEC. 415.11. SEVERABILITY.**

6 If any subsection, sentence, clause, phrase, or word of this Sections 415.1 et seq., or any
7 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
8 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
9 portions or applications of the Section. The Board of Supervisors hereby declares that it would have
10 passed this ordinance Sections 415.1 et seq. and each and every subsection, sentence, clause,
11 phrase, and word not declared invalid or unconstitutional without regard to whether any other portion
12 of this Sections 415.1 et seq. or application thereof would be subsequently declared invalid or
13 unconstitutional.

14
15 Section 4. The Planning Code is hereby amended by adding Section 207.7 to read as
16 follows:

17 **SEC. 207.7. REQUIRED MINIMUM DWELLING UNIT MIX.**

18 (a) Purpose. To ensure an adequate supply of family-sized units in new housing
19 stock, new residential construction must include a minimum percentage of units of at least two
20 and three bedrooms.

21 **(b) Applicability.**

22 (1) This Section 207.7 shall apply to all applications for building permits and/or
23 Planning Commission entitlements that propose the creation of 10 or more Dwelling Units in
24 all districts that allow residential uses, unless that project is located in the RTO, RCD, NCT,
25 DTR, and Eastern Neighborhoods Mixed Use Districts, or in an area or Special Use District

1 with higher specific bedroom mix requirements, or is a HOME SF project subject to the
2 requirements of Planning Code Section 206.3.

3 (2) This Section 207.7 shall not apply to buildings for which 100% of the
4 residential uses are: Group Housing, Dwelling Units that are provided at below market rates
5 pursuant to Section 406(b)(1) of this Code, Single Room Occupancy (SRO) Units, Student
6 Housing (all as defined in Section 102 of this Code), or housing specifically and permanently
7 designated for seniors or persons with physical disabilities, including units to be occupied by
8 staff serving any of the foregoing residential uses. This Section 207.7 shall apply to Student
9 Housing unless the educational institution with which it is affiliated has an Institutional Master
10 Plan that the City has accepted, as required under Planning Code Section 304.5.

11 (3) This Section 207.7 shall not apply to projects that filed a complete
12 Environmental Evaluation Application on or prior to January 12, 2016, or to projects that have
13 received an approval, including approval by the Planning Commission, as of June 15, 2017.

14 (c) **Controls.** In all residential districts subject to this Section 207.7, the following
15 criteria shall apply:

16 (1) No less than 25% of the total number of proposed dwelling units shall
17 contain at least two bedrooms. Any fraction resulting from this calculation shall be rounded to
18 the nearest whole number of dwelling units;

19 (2) No less than 10% of the total number of proposed dwelling units shall
20 contain at least three bedrooms. Any fraction resulting from this calculation shall be rounded
21 to the nearest whole number of dwelling units. Units counted towards this requirement may
22 also count towards the requirement for units with two or more bedrooms as described in
23 subsection (c)(1); and

24 (3) No more than 30% of the total number of proposed dwelling units shall be
25 studio units.

1 (d) Modifications.

2 (1) These requirements may be waived or modified with Conditional Use
3 Authorization. In addition to those conditions set forth in Section 303, the Planning
4 Commission shall consider the following criteria:

5 (A) The project demonstrates a need or mission to serve unique
6 populations, or

7 (B) The project site or existing building(s), if any, feature physical
8 constraints that make it unreasonable to fulfill these requirements.

9 (2) These requirements may be waived in the case of projects subject to
10 Section 329 through the procedures of that Section.

11
12 Section 45. Effective Date. This ordinance shall become effective 30 days after
13 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
14 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
15 of Supervisors overrides the Mayor's veto of the ordinance.

16
17 Section 56. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
18 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
19 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
20 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment

21 //

22 //

23 //

24 //

25 //

1 additions, and Board amendment deletions in accordance with the "Note" that appears under
2 the official title of the ordinance.

3

4 APPROVED AS TO FORM:
5 DENNIS J. HERRERA, City Attorney

6 By: 
7 KATE H. STACY
8 Deputy City Attorney

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REVISED LEGISLATIVE DIGEST
(Amended in Committee, 6/19/2017)

[Planning Code - Inclusionary Affordable Housing Fee and Dwelling Unit Mix Requirements]

Ordinance amending the Planning Code to revise the amount of the Inclusionary Affordable Housing Fee and the On-Site and Off-Site Affordable Housing Alternatives and other Inclusionary Housing requirements; to require minimum dwelling unit mix in most residential districts; affirming the Planning Department’s determination under the California Environmental Quality Act; making findings of public necessity, convenience, 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.

Existing Law

The City generally requires private developers of new market-rate housing to provide affordable housing (“Inclusionary Housing”) by paying a fee to the City. A developer could also opt to provide Inclusionary Housing on- or off-site. The City’s Inclusionary Affordable Housing Fee and other requirements are set forth in Planning Code Sections 415 et seq. and provide 3 methods of complying with the requirements.

1. Affordable Housing Fee: The development project pays a fee equivalent to the applicable off-site percentage of the number of units in the principal project:

- For development projects consisting of 10 – 24 dwelling units, the percentage is 20%.
- For development projects consisting of 25 dwelling units or more, the percentage is 33%.

2. If a developer opts to provide affordable housing on-site, the on-site Affordable Housing would be provided as follows:

- For housing development projects consisting of 10 – 24 dwelling units, the number of affordable units constructed on-site would generally be 12% of all units constructed on the project site. The units must be affordable to low-income households.
- For housing development projects consisting of 25 dwelling units or more, the number of affordable units constructed on-site would generally be 25% of all units constructed on the project site, with a minimum of 15% of the units affordable to low-income households and 10% of the units affordable to low- or middle- income households.

3. If a developer opts to provide affordable housing off-site, the off-site Affordable Housing would be provided as follows:

- For housing development projects consisting of 10-24 dwelling units, the number of affordable units constructed off-site would be 20% of the number of units in the principal project.
- For housing development projects consisting of 25 dwelling units or more, the number of affordable units constructed off-site would be 33% of the number of units in the principal project, with 20% of the units affordable to low-income households and 13% of the units affordable to low- or middle-income households.

If there is a higher Inclusionary Housing requirement in specific zoning districts, the higher requirement would apply. There are specific Inclusionary Housing requirements for the UMU and SOMA Youth & Families Zoning Districts. The Planning Code also contains a number of "grandfathering" provisions, which set the Inclusionary Housing requirements at lower percentages for a limited period of time, depending on when a complete environmental evaluation application was submitted.

The Planning Code directs the Mayor's Office of Housing and Community Development ("MOHCD") to set the amount of the fee to be paid by the project sponsor to calculate the "affordability gap" using data on the cost of construction of providing the residential housing and the Maximum Purchase Price for the equivalent unit size.

Section 401 defines a low-income household as one whose income does not exceed 55% of Area Median Income for purposes of renting an affordable unit, and 80% of Area Median Income for purposes of purchasing an affordable unit. "Moderate income" and "middle income" households shall mean households whose total household income does not exceed 100% of Area Median Income for purposes of renting an affordable unit, and 120% of Area Median Income for purposes of purchasing an affordable unit.

The Planning Code also requires an applicant seeking a density bonus under State law to provide analysis to support any requested concessions and incentives under the State law. The City has not applied its inclusionary requirements to any density bonus units.

The Planning Code requires the Controller to study the economic feasibility of the City's inclusionary housing requirements and produce a report in 2016 and every three years thereafter. The Board must consider the report within three months and 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 based on the feasibility analyses and with guidance from the City's Nexus Study, with the objective of maximizing affordable Inclusionary Housing in market rate housing production.

Amendments to Current Law

The Proposed Legislation would change the inclusionary affordable housing requirement for 3 kinds of inclusionary affordable housing in the following ways.

1. Inclusionary Affordable Housing Fee: The Amendments would set the Inclusionary Affordable Housing Fee for projects consisting of 25 dwelling units or more to 33% for an ownership housing project and 30% for a rental housing project.

The Amendments would direct MOHCD to calculate the Inclusionary Affordable Housing Fee based on the City's cost of constructing affordable housing. No later than January 31, 2018, the Controller, with the support of consultants as necessary, and in consultation with the Inclusionary Housing Technical Advisory Committee (TAC) established in Planning Code Section 415.10, shall conduct a study to develop an appropriate methodology for calculating, indexing, and applying the appropriate amount of the Inclusionary Affordable Housing Fee. To support the Controller's study, and annually thereafter, MOHCD shall provide the following documentation: (1) schedules of sources and uses of funds and independent auditor's reports ("Cost Certifications") for all MOHCD-funded developments completed within three years of the date of reporting to the Controller; and, (2) for any MOHCD-funded development that commenced construction within three years of the reporting date to the Controller but for which no Cost Certification is yet complete, the sources and uses of funds approved by MOHCD and the construction lender as of the date of the development's construction loan closing. Cost Certifications completed in years prior to the year of reporting to the Controller may be increased or decreased by the applicable annual Construction Cost Index percentage(s) for residential construction for San Francisco reported in the Engineering News Record. MOHCD, together with the Controller and TAC, shall evaluate the cost-to-construct data, including actual and appraised land costs, state and/or federal public subsidies available to MOHCD-funded projects, and determine MOHCD's average costs. Following completion of this study, the Board of Supervisors will review the analyses, methodology, fee application, and the proposed fee schedule; and may consider adopting legislation to revise the Inclusionary Affordable Housing fees. The method of calculating, indexing, and applying the fee shall be published in the Procedures Manual.

The fee shall be imposed on any additional units or square footage authorized and developed under California Government Code Sections 65915 et seq. This requirement would not apply to development projects that have submitted a complete Environmental Evaluation application on or before January 1, 2016.

2. On-Site Inclusionary Affordable Housing Units: A project sponsor may elect to provide on-site affordable housing in lieu of paying the Inclusionary Fee.

For housing projects consisting of 10 – 24 units, the number of affordable units constructed on-site shall be 12% of all units constructed on the project site. The required on-site affordable housing would increase by 0.5% annually for housing projects consisting of 10 – 24

units, beginning on January 1, 2018, until the requirement reaches 15%. Owned Units shall be affordable to households earning up to 100% of Area Median Income, with an affordable sales price set at 80% of Area Median Income or less. Rental Units shall be affordable to households earning up to 65% of Area Median Income, with an affordable rent set at 55% of Area Median Income or less.

For any housing development project consisting of 25 or more Owned Units, the number of affordable units constructed on-site shall generally be 20% of all units constructed on the project site. A minimum of 10% of the units shall be affordable to low-income households, 5% of the units shall be affordable to moderate-income households, and 5% of the units shall be affordable to middle-income households.

- Owned Units for low-income households shall have an affordable purchase price set at 80% of Area Median Income or less, with households earning up to 100% of Area Median Income eligible to apply for low-income units. Owned Units for moderate-income households shall have an affordable purchase price set at 105% of Area Median Income or less, with households earning from 95% to 120% of Area Median Income eligible to apply for moderate-income units. Owned Units for middle-income households shall have an affordable purchase price set at 130% of Area Median Income or less, with households earning from 120% to 150% of Area Median Income eligible to apply for middle-income units.
- For any affordable units with purchase prices set at 130% of Area Median Income or above, studio units shall not be allowed.

For any Rental Housing Project consisting of 25 or more Rental Units, the number of affordable units constructed on-site shall generally be 18% of all units constructed on the project site, with a minimum of 10% of the units affordable to low-income households, 4% of the units affordable to moderate-income households, and 4% of the units affordable to middle-income households.

- Rental Units for low-income households shall have an affordable rent set at 55% of Area Median Income or less, with households earning up to 65% of Area Median Income eligible to apply for low-income units. Rental Units for moderate-income households shall have an affordable rent set at 80% of Area Median Income or less, with households earning from 65% to 90% of Area Median Income eligible to apply for moderate-income units. Rental Units for middle-income households shall have an affordable rent set at 110% of Area Median Income or less, with households earning from 90% to 130% of Area Median Income eligible to apply for middle-income units.
- For any affordable units with rents set at 110% of Area Median Income or above, studio units shall not be allowed.

Notwithstanding the foregoing, Area Median Income limits for Rental Units and Owned Units, the maximum affordable rents or sales price shall be no higher than 20% below

median rents or sales prices for the neighborhood within which the project is located, which shall be defined in accordance with the Planning Department's American Community Survey Neighborhood Profile Boundaries Map. MOHCD shall adjust the allowable rents and sales prices, and the eligible households for such units, accordingly, and such potential readjustment shall be a condition of approval upon project entitlement. The City must review the updated data on neighborhood rents and sales prices on an annual basis.

Starting on January 1, 2018, and each year thereafter, MOHCD shall increase the percentage of units required on-site for projects consisting of 10 – 24 units, as set forth in Section 415.6(a)(1), by increments of 0.5% each year, until such requirement is 15%. For all development projects with 25 or more Owned or Rental Units, the required on-site affordable ownership housing to satisfy this section 415.6 shall increase by 1.0% annually for two consecutive years starting January 1, 2018. The increase shall be apportioned to units affordable to low-income households, as defined above in Subsection 415.6(a)(3). Starting January 1, 2020, the increase to on-site rental and ownership developments with 25 or more units shall increase by 0.5% annually, with such increases allocated equally for rental and ownership units to moderate and middle income households, as defined above in Subsection 415.6(a)(3). The total on-site inclusionary affordable housing requirement shall not exceed 26% for development projects consisting of Owned Units or 24% for development projects consisting of Rental Units, and the increases shall cease at such time as these limits are reached. MOHCD shall provide the Planning Department, DBI, and the Controller with information on the adjustment to the on-site percentage so that it can be included in the Planning Department's and DBI's website notice of the fee adjustments and the Controller's Citywide Development Fee and Development Impact Requirements Report described in Section 409(a).

Minimum Size of Affordable Units. All units shall be no smaller than the minimum unit sizes set forth by the California Tax Credit Allocation Committee as of May 16, 2017, and no smaller than 300 square feet for studios.

The total residential floor area devoted to the affordable units shall not be less than the applicable percentage applied to the total residential floor area of the principal project, provided that a 10% variation in floor area is permitted.

MOHCD may reduce Area Median Income pricing and the minimum income required for eligibility in each rental category.

3. Off-Site Inclusionary Affordable Housing.

- For housing development projects consisting of 10 dwelling units or more but less than 25 units, Owned Units shall be affordable to households earning up to 100% of Area

Median Income, with an affordable sales price set at 80% of Area Median Income or less. Rental Units shall be affordable to households earning up to 65% of Area Median Income, with an average affordable rent set at 55% of Area Median Income or less.

- For any housing development project consisting of 25 or more Owned Units, the number of affordable units constructed off-site shall be 33% of all units constructed on the project site, with a minimum of 18% of the units affordable low-income households, 8% of the units affordable to moderate-income households, and 7% of the units affordable to middle income households. Owned Units for low-income households shall have an affordable purchase price set at 80% of Area Median Income or less, with households earning up to 100% of Area Median Income eligible to apply for low-income units. Owned Units for moderate-income households shall have an affordable purchase price set at 105% of Area Median Income or less, with households earning from 95% to 120% of Area Median Income eligible to apply for moderate-income units. Owned Units for middle-income households shall have an affordable purchase price set at 130% of Area Median Income or less, with households earning from 120% to 150% of Area Median Income eligible to apply for middle-income units.
- For any Rental Housing Project consisting of 25 or more Rental Units, the number of affordable units constructed off-site shall generally be 30% of all units constructed on the project site, with a minimum of 18% of the units affordable to low income households, 6% of the units affordable to moderate-income households, and 6% of the units affordable to middle-income households. Rental Units for low-income households shall have an affordable rent set at 55% of Area Median Income or less, with households earning up to 65% of Area Median Income eligible to apply for low-income units. Rental Units for moderate-income households shall have an affordable rent set at 80% of Area Median Income or less, with households earning from 65% to 90% of Area Median Income eligible to apply for moderate-income units. Rental Units for middle-income households shall have an affordable rent set at 110% of Area Median Income or less, with households earning from 90% to 130% of Area Median Income eligible to apply for middle-income units.

For all projects, in the event a rental housing project or unit becomes ownership housing, the owner would reimburse the cost of the fee deduction to the City, or provide additional on-site or off-site affordable units, so that the project would comply with the current inclusionary housing requirements for ownership housing.

For all projects, if a project sponsor does not procure a building permit within 30 months of project approval, the project sponsor must comply with the inclusionary housing requirements at the time of building permit procurement.

For all projects, if the principal project has resulted in demolition, conversion, or removal of affordable housing units that are subject to rental restrictions for persons and families of

moderate-, low- or very low-income, or housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power and determined to be affordable housing, the project sponsor would pay the Inclusionary Affordable Housing Fee equivalent for the number of affordable units removed, in addition to compliance with the inclusionary requirements.

All projects must notify the Planning Department which alternative for inclusionary affordable housing they are selecting 30 days prior to approval. Any subsequent change by a project sponsor that results in the removal of on-site units would require public notice for a hearing and approval from the Planning Commission.

The new inclusionary affordable housing requirements shall not apply to any project that has not submitted a complete Environmental Evaluation Application on or before January 12, 2016, if the project is located within the Eastern Neighborhoods Mission Planning Area, the North of Market Residential Special Use District Subarea 1 or Subarea 2, or the SOMA Neighborhood Commercial Transit District. Until such planning processes are complete and new inclusionary housing requirements for projects in those areas are adopted, projects shall (1) pay a fee or provide off-site housing in an amount equivalent to 30% or (2) provide affordable units in the amount of 25% of the number of Rental Units constructed on-site or 27% of the number of Owned Units constructed on-site. For Rental Units, 15% of the on-site affordable units shall be affordable to low-income households, 5% shall be affordable to moderate-income households and 5% shall be affordable to middle-income households. For Owned Units, 15% of the on-site affordable units shall be affordable to low-income households, 6% shall be affordable to moderate-income households and 6% shall be affordable to middle-income households.

An applicant seeking a density bonus under the provisions of State Law must provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, and waivers or reductions of development standards, consistent with State law. The Planning Department would provide information about the value of the density bonus, concessions and incentives for each density bonus project and include it in the Department's case report or decision on the application. Beginning in January 2018, the Planning Department shall prepare an annual report to the Planning Commission about the number of density bonus projects, density bonus units and the kinds of density bonuses, concessions and incentives provided to each density bonus project, which should be presented at the same time as the Housing Balance Report.

The Planning Department, in consultation with the Controller, must undertake a study of areas where an Area Plan, Special Use District, or other re-zoning is being considered for adoption, or has been adopted after January 1, 2015, to determine whether a higher on-site inclusionary affordable housing requirement is feasible on sites that have received a 20% or greater increase in developable residential gross floor area or a 35% or greater increase in residential density over prior zoning, and shall submit such information to the Planning Commission and Board of Supervisors.

Minimum Dwelling Unit Mix:

The amendments would require a minimum dwelling unit mix for all residential housing developments proposing 10 or more dwelling units as follows.

To ensure an adequate supply of family-sized units in new housing stock, new residential construction must include a minimum percentage of units of at least two and three bedrooms. No less than 25% of the total number of proposed dwelling units shall contain at least 2 bedrooms. No less than 10% of the total number of proposed dwelling units shall contain at least three bedrooms. No more than 30% of the total number of proposed dwelling units shall be studio units. Any fraction resulting from these calculations shall be rounded to the nearest whole number of dwelling units.

This requirement applies to all applications for building permits and/or Planning Commission entitlements that propose the creation of 10 or more Dwelling Units in all districts that allow residential uses, unless that project is located in the RTO, RCD, NCT, DTR, and Eastern Neighborhoods Mixed use Districts, or in an area or Special Use District with higher specific bedroom mix requirements, or is a HOME SF project subject to the requirements of Planning Code Section 206.3.

This requirement shall not apply to buildings for which 100% of the residential uses are Group Housing, Dwelling Units that are provided at below market rates pursuant to Section 406(b)(1) of this Code, Single Room Occupancy (SRO) Units, Student Housing (all as defined in Section 102 of the Planning Code), or housing specifically and permanently designated for seniors or persons with physical disabilities, or to projects that filed a complete Environmental Evaluation Application on or prior to January 12, 2016, or to projects that have received an approval, including approval by the Planning Commission, as of June 15, 2017. Section 207.7 shall apply to Student Housing unless the educational institution with which it is affiliated has an Institutional Master Plan that the City has accepted, as required under Planning Code Section 304.5.

These requirements may be waived or modified with Conditional Use Authorization. In addition to those conditions set forth in Section 303, the Planning Commission shall consider the following criteria:

- (A) The project demonstrates a need or mission to serve unique populations, or
- (B) The project site or existing building(s), if any, feature physical constraints that make it unreasonable to fulfill these requirements.

These requirements may be waived in the case of projects subject to Section 329 through the procedures of that Section.

Background Information

The City published the Residential Affordable Housing Nexus Analysis in November 2016.

The Controller completed the Feasibility Analysis required by Planning Code Section 415.10 in February 2017.

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