



DRAFT MEMORANDUM OF UNDERSTANDING (MOU)
Affordable Housing Enforcement

1. Purpose

The Planning Code (Code) authorizes the Zoning Administrator to enforce against violations of the Planning Code. The Mayor's Office of Housing and Community Development (MOHCD) assists the Planning Department (Planning), as-needed, to enforce on violations of affordable housing requirements in the Code, including the Inclusionary Affordable Housing Program (Code Section 415) and other affordable housing created through the Planning Code. Typically Planning works with a developer throughout the development process up through construction. As developments are near completion, MOHCD works with developers to market affordable units, sell/lease units, and implement requirements of Affordable Housing Programs post-occupancy pursuant to the Procedures Manual.

Violations of the Planning Code may occur at various points in the development process and into the post-occupancy stage. To facilitate the enforcement of violations that occur during MOHCD's implementation of Affordable Housing programs, the Zoning Administrator seeks to call upon MOHCD to enforce Code requirements related to affordable housing. The purpose of this Memorandum of Understanding (MOU) between Planning and MOHCD is to identify the types of affordable housing enforcement cases, the lead enforcement agency for each type of affordable housing enforcement case, and the process by which Planning and MOHCD will work separately or together to resolve affordable housing compliance issues.

2. Responsibilities and Obligations of the Parties

Code Section 176(b)(5) states that the Zoning Administrator has the authority to call upon MOHCD to enforce affordable housing violations. The manner in which the Zoning Administrator will delegate enforcement of affordable housing Code violations to MOHCD is further described below.

2.1. Case Types and the Lead Agency Determination

[Exhibit A](#) lists the types of cases Planning and MOHCD identified as possible affordable housing enforcement cases. Exhibit A may be modified as necessary by mutual agreement between Planning and MOHCD.

Generally, Planning is the Enforcement Lead for cases where the violation occurs prior to construction completion regarding specific provisions of the Code, whereas MOHCD is the Enforcement Lead for cases where the violations occur after construction completion regarding specific provisions of the Procedures Manual. In cases where construction is complete, but the project owner must return to Planning or the Planning Commission for an approval, Planning will serve as the Enforcement Lead.

In some cases, both Planning or MOHCD will work jointly on an affordable housing enforcement case, especially if multiple violations have occurred and one or more violations require work by Planning to abate and one or more violations require work by MOHCD to abate. In such cases, the Enforcement Lead shall be identified during the initial stages of the enforcement process. The Departments shall work with the Zoning Administrator to determine the Enforcement Lead if the case is not identified in Exhibit A, or

the matter involves multiple violations that would require both agencies' involvement to correct.

Notwithstanding the provisions of this MOU, the Zoning Administrator shall reserve the right to not delegate an affordable housing enforcement case to MOHCD. If the Zoning Administrator elects to not delegate such a case to MOHCD that is identified in this MOU as a case that would generally be delegated, they shall provide written notice to MOHCD of such decision.

2.2. Administrative Case Tracking, Billing for Time and Materials, Billing for Penalties

For joint cases, Planning and MOHCD shall use a shared Excel file on OneDrive ("Tracking Sheet") to track each case by property address, type of enforcement, Enforcement Lead, and status.

Each Agency's staff are responsible for tracking and billing their own time and materials (T&M) related to an enforcement case. In instances where both Planning and MOHCD work jointly on an enforcement case, the Enforcement Lead shall draft the Notice of Penalty (NOP) on behalf of both agencies to bill the owner with instructions to send payments for T&M amounts to each agency separately. The lead agency drafting the NOP shall confirm the correct T&M and penalty amounts with the other agency. The Enforcement Lead shall receive all administrative penalties from the enforcement case.

2.3. Regular Meetings

Planning and MOHCD shall meet on a regular basis, at a frequency agreed upon by both parties, to review, track, and update the status of each shared enforcement case, or any administrative penalty cases where MOHCD serves as the Enforcement Lead and has issued a Notice of Violation. This will ensure that Planning enforcement staff and the Zoning Administrator will have ample notice of a request for a Zoning Administrator Hearing and/or appeal to the Board of Appeals.

2.4. Billing for CAO Time

If the City Attorney Office (CAO) is needed for further investigation and assistance, the Enforcement Lead will make the decision regarding whether to refer the case to CAO and if such referral is needed, the Enforcement Lead would refer the case to CAO. CAO will bill their time to the referring Department.

3. Terms of Understanding

3.1. Amendments to the MOU

The terms of this MOU may be amended by written agreement of the parties hereto. The parties hereto agree to review this MOU every 2 years and execute amendments, if necessary, to reflect changes to the terms set forth in this MOU.

3.2. Confidentiality

For any compliance cases that may involve the handling, storing, and sharing of personal identifying information (PII) or protected health information (PHI) of tenants or homeowners, Planning and MOHCD staff agree to follow MOHCD's PII/PHI Guidelines, which may be found here:

<https://sfgov1.sharepoint.com/:b:/r/sites/MYR-MOHCD/Shared%20Documents/Data%20Evaluation%20and%20Compliance%20Team/Data%20Resource%20Hub%20Files/Guidelines/MOHCD%20Guidelines%20for%20Handling%20PII/MOHCD%20PII%20and%20PHI%20Guidelines%20-%20June%202020.pdf?csf=1&web=1&e=qZWTx8>

3.3. Notices

Notices and other communications to Planning shall be addressed as follows:

San Francisco Planning Department

49 S Van Ness Ave., Suite 1400

San Francisco, CA 94103

Attn: Code Enforcement

Notices and other communications to MOHCD shall be addressed as follows:

Mayor's Office of Housing and Community Development

1 South Van Ness, 5th Floor

San Francisco, CA 94103

Attn: HBMR Compliance

3.4. Designated Contact Person

Planning's designated contact person for this MOU shall be Corey Teague, Zoning Administrator, at corey.teague@sfgov.org (628-652-7328). MOHCD's designated contact person for this MOU shall be Maria Benjamin, Deputy Director of Homeownership and Below Market Rate Programs, at maria.benjamin@sfgov.org (628-652-5925). The parties shall attempt to notify each other at least 30 days prior to changing the designated contact person.

This MOU was entered into in duplicate on the date(s) below.

Rich Hillis
Director
San Francisco Planning Department

Date

Corey A. Teague
Zoning Administrator
San Francisco Planning Department

Date

Eric Shaw
Director
Mayor’s Office of Housing and
Community Development

Date

Attachment: Exhibit A – Affordable Housing Enforcement Case Types

DRAFT Exhibit A – Affordable Housing Enforcement Case Types

Affordable Housing Enforcement Case Types	Source of Requirement (415/NSR, Manual, closing documents, etc.)	Pre or Post Construction Completion	Tenure	Enforcement Lead	Best Enforcement Approach	Time and Materials Billing	Administrative Penalty Allocation
Designation NSR not recorded	415, COA/Permit	Pre	Rental/Ownership	Planning	Administrative	Enforcement Lead sends Notice of Penalty for T&M billing. If Planning and MOHCD are both involved, NOP will indicate T&M for each agency. Owner to pay Planning and MOHCD separately.	Full penalty allocated to Enforcement Lead
# of BMR Units not constructed as required	415/NSR	Pre	Rental/Ownership	Planning	Administrative		
Construction issues (units not in correct location, constructed units not consistent with approved plans, etc.)	415/NSR	Pre	Rental/Ownership	Planning	Administrative		
Tenure inconsistent with NSR	415/NSR	Post	Rental/Ownership	Planning	Administrative		
Building/Unit owner illegally rents BMR unit as short-term rental	415/NSR; OSTR	Post	Rental/Ownership	Planning	Administrative		
Illegal conversion of use (i.e., residential to office or group housing)	415/NSR	Post	Rental/Ownership	Planning	Administrative		
"Ad hoc" BMR units (units that are not required by 415 but are restricted as affordable) not provide as required under COA	COA, Manual	Post	Rental/Ownership	Planning/MOHCD	Administrative		
# of BMR Units not sold/leased as required	415/NSR	Post	Rental/Ownership	MOHCD	Administrative		
Development out of compliance with marketing (timing)	Manual	Post	Rental/Ownership	MOHCD	Administrative		
Development out of compliance with marketing (technical requirements such as Preferences, etc.)	Manual	Post	Rental/Ownership	MOHCD	Administrative		
Development out of compliance with lease up/sales (>60 days vacant)	415, Manual	Post	Rental/Ownership	MOHCD	Administrative		
Development out of compliance with annual reporting	Manual	Post	Rental	MOHCD	Administrative		

DRAFT Exhibit A – Affordable Housing Enforcement Case Types

Development out of compliance with annual recertification	Manual	Post	Rental	MOHCD	Administrative		
Owner changes title without City approval	Manual, Closing documents	Post	Ownership	MOHCD	Administrative		
Owner refinances without City approval	Manual, Closing documents	Post	Ownership	MOHCD	Administrative		
Owner encumbers new lien on BMR unit without City approval	Manual, Closing documents	Post	Ownership	MOHCD	Administrative		
Owner does not occupy property as primary residence (including owner death)	Manual, Closing documents	Post	Ownership	MOHCD	Administrative		
Owner does not perform required monitoring/occupancy certification	Manual, Closing documents	Post	Ownership	MOHCD	Administrative		
Owner delinquent on 1st mortgage payments/HOA payments (i.e., foreclosure)	Manual, Closing documents	Post	Ownership	MOHCD	Administrative		
Owner illegally rents BMR unit	Manual, Closing documents	Post	Ownership	MOHCD	Civil	N/A	
Owner sells property outside of BMR program	Manual, Closing documents	Post	Ownership	MOHCD	Civil	N/A	