

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689  
Tel. No. (415) 554-5184  
Fax No. (415) 554-5163  
TDD/TTY No. (415) 554-5227

---

---

## MEMORANDUM

---

---

Date: July 5, 2023  
To: Planning Department / Commission  
From: Erica Major, Clerk of the Land Use and Transportation Committee  
Subject: Board of Supervisors Legislation Referral - File No. 230769  
Planning, Administrative Codes - Development Impact Fee Reductions

---

- California Environmental Quality Act (CEQA) Determination  
(*California Public Resources Code, Sections 21000 et seq.*)
  - Ordinance / Resolution
  - Ballot Measure
  
- Amendment to the Planning Code, including the following Findings:  
(*Planning Code, Section 302(b): 90 days for Planning Commission review*)
  - General Plan
  - Planning Code, Section 101.1
  - Planning Code, Section 302
  
- Amendment to the Administrative Code, involving Land Use/Planning  
(*Board Rule 3.23: 30 days for possible Planning Department review*)
  
- General Plan Referral for Non-Planning Code Amendments  
(*Charter, Section 4.105, and Administrative Code, Section 2A.53*)  
(Required for legislation concerning the acquisition, vacation, sale, or change in use of City property; subdivision of land; construction, improvement, extension, widening, narrowing, removal, or relocation of public ways, transportation routes, ground, open space, buildings, or structures; plans for public housing and publicly-assisted private housing; redevelopment plans; development agreements; the annual capital expenditure plan and six-year capital improvement program; and any capital improvement project or long-term financing proposal such as general obligation or revenue bonds.)
  
- Historic Preservation Commission
  - Landmark (*Planning Code, Section 1004.3*)
  - Cultural Districts (*Charter, Section 4.135 & Board Rule 3.23*)
  - Mills Act Contract (*Government Code, Section 50280*)
  - Designation for Significant/Contributory Buildings (*Planning Code, Article 11*)

Please send the Planning Department/Commission recommendation/determination to Erica Major at [Erica.Major@sfgov.org](mailto:Erica.Major@sfgov.org).

1 [Planning, Administrative Codes - Development Impact Fee Reductions]

2

3 **Ordinance amending the Planning Code to: 1) reduce Inclusionary Housing Program**  
4 **requirements of the Planning Code, for projects exceeding a stated unit size that have**  
5 **been approved prior to November 1, 2023, and that receive a first construction**  
6 **document within a specified period; 2) adopt a process for those projects to request a**  
7 **modification to conditions of approval related to development impact fees, subject to**  
8 **delegation by the Planning Commission; 3) reduce Article 4 development impact fees,**  
9 **including Inclusionary Affordable Housing fees, for projects approved before**  
10 **November 1, 2026, that receive a first construction document within 30 months of**  
11 **entitlement; and 4) modify the Inclusionary Housing Program Ordinance effective**  
12 **November 1, 2026, to reduce applicable fees, and on-site or off-site unit requirements,**  
13 **for projects that exceed a stated unit size; amending the Administrative Code to update**  
14 **the Inclusionary Housing Technical Advisory Committee member requirements;**  
15 **affirming the Planning Department’s determination under the California Environmental**  
16 **Quality Act; making public necessity, convenience, and welfare findings under**  
17 **Planning Code, Section 302; and making findings of consistency with the General Plan,**  
18 **and the eight priority policies of Planning Code, Section 101.1.**

19 **NOTE:** **Unchanged Code text and uncodified text** are in plain Arial font.  
20 **Additions to Codes** are in *single-underline italics Times New Roman font.*  
21 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font.*~~  
22 **Board amendment additions** are in double-underlined Arial font.  
23 **Board amendment deletions** are in ~~Arial font.~~  
24 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
25 subsections or parts of tables.

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

25

1 Section 1.

2 (a) The Planning Department has determined that the actions contemplated in this  
3 ordinance comply with the California Environmental Quality Act (California Public Resources  
4 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
5 Supervisors in File No. \_\_\_\_ and is incorporated herein by reference. The Board affirms this  
6 determination.

7 (b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_,  
8 adopted findings that the actions contemplated in this ordinance are consistent, on balance,  
9 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The  
10 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of  
11 the Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.

12 (c) Pursuant to Planning Code Section 302, this Board finds that these Planning Code  
13 amendments will serve the public necessity, convenience, and welfare for the reasons set  
14 forth in in Planning Commission Resolution No. \_\_\_\_\_, and the Board adopts such  
15 reasons as its own. A copy of said resolution is on file with the Clerk of the Board of  
16 Supervisors in File No. \_\_\_\_\_ and is incorporated herein by reference.

17

18 Section 2. General Findings.

19 (a) San Francisco's Inclusionary Affordable Housing Program is intended to help  
20 address the demonstrated need for affordable housing in San Francisco. As rents and sales  
21 prices for housing outpace what is affordable to the typical San Francisco family, the City  
22 faces a continuing shortage of affordable housing for all but households with the highest  
23 incomes. The California Association of Realtor's "California Housing Affordability Update," for  
24 the first quarter of 2023, reported that the median home price in San Francisco was  
25 \$1,550,000, requiring a minimum qualifying income of \$384,000 to purchase such a home.

1 San Francisco's median home prices are over twice the State of California's median of  
2 \$619,900, and over four times the national median home price of \$371,200. The majority of  
3 market-rate homes for sale in San Francisco are priced out of the reach of low- and moderate-  
4 income households.

5 (b) San Francisco is facing a shortage of all types of housing. To meet San  
6 Francisco's share of the regional need for housing between 2023-2031, the City must  
7 accommodate over 82,000 units, including 32,881 units for extremely low, very-low and low-  
8 income households, and 49,188 units for moderate and above-moderate income households.  
9 The Inclusionary Housing Program is an important part of the City's overall strategy for  
10 providing affordable housing to very-low, low- moderate-, and middle-income households, and  
11 has created more than 3,300 units since its inception. But the success of the Inclusionary  
12 Housing Program is contingent on the overall feasibility of residential development. For that  
13 reason, Planning Code Section 415.10 requires periodic review of the program's  
14 requirements.

15 (c) From October 2022 through April 2023, consistent with Planning Code Section  
16 415.10, the Controller and the Affordable Housing Technical Advisory Committee (TAC) met  
17 to conduct and review the feasibility of the City's inclusionary affordable housing obligations.  
18 The Controller and the TAC studied five condominium prototypes and five rental apartment  
19 prototypes, and considered key economic parameters, such as: interest rates, capitalization  
20 rates, land prices, construction costs, use of the State Density Bonus law, rents and sale  
21 prices.

22 (d) The Controller and TAC found that none of the development prototypes studied  
23 were financially feasible at the current inclusionary housing rates in the Planning Code. Most  
24 prototypes studied had significant negative land value, indicating that the prototype would not  
25 be financially feasible, even setting aside the cost of land. The prototypes, which were studied

1 because they represent the types of residential development that are common in San  
2 Francisco, account for a majority of the housing production in San Francisco. The finding that  
3 these two prototypes are not feasible suggests that residential development is, broadly  
4 speaking, not financially feasible under current economic conditions at current inclusionary  
5 housing rates.

6 (e) Economic conditions that render residential development infeasible threaten  
7 several important policy priorities of the City, including the expansion of the City's housing  
8 supply, the production of inclusionary affordable housing units, as well as the creation of jobs  
9 and growth in tax revenue.

10 (f) On June 30, 2023, the Controller will submit a report to the Board of Supervisors  
11 that summarizes the residential development feasibility analysis and the recommendations  
12 developed by the Controller, with TAC agreement, between October 2022 and April 2023.  
13 That report will recommend that the City's inclusionary housing rates be reduced from the  
14 current rates of 22% - 33%, to a range of 12% to 16%.

15 (g) The City's inclusionary housing requirements are an important policy lever, that, if  
16 optimized, can facilitate robust and ongoing production of both market rate housing and  
17 inclusionary housing. The Controller and the TAC found that the current citywide rates of 22%  
18 to 33% directly contribute to the economic infeasibility of residential development. By reducing  
19 the rates in line with the Controller and TAC's recommendation, the City will stimulate  
20 residential development, increase production of inclusionary affordable housing, create jobs,  
21 and grow tax revenue.

22 (h) In addition to reducing the inclusionary obligations for new projects seeking  
23 entitlement from the City, the TAC discussed and recommended reducing inclusionary  
24 obligations for projects that already have been approved, but have not been constructed.  
25 These "pipeline projects" represent tens of thousands of units that could quickly move into the

1 construction phase of development should the project's economics improve. The sponsors of  
2 these pipeline projects have likely spent considerable money securing land, pursuing  
3 entitlements, and advancing design, but have also been subject to significant construction  
4 cost escalation and rising interest rates during the time between project conception and today.  
5 By reducing their inclusionary obligation below that of new projects seeking entitlement over  
6 the next three years, the City will incentivize these projects to advance into the construction  
7 phase, and swiftly provide much needed market rate and inclusionary units.

8 (i) This ordinance amends the Inclusionary Housing Ordinance to create a temporary  
9 program to reduce the inclusionary obligations for projects approved before November 1,  
10 2023; and (2) a temporary program to reducing inclusionary housing obligations for projects  
11 that are approved between November 1, 2023 and November 1, 2026, so long as they obtain  
12 a first construction document within 30 months. The ordinance requires the TAC to convene  
13 again, no later than January 1, 2026, to review the economic feasibility of the City's  
14 inclusionary housing obligations and sets the requirements for projects approved after  
15 November 1, 2026, unless the City amends the requirements before that date. The ordinance  
16 creates a temporary program to reduce other development impact fees for projects that get a  
17 first construction document within 30 months of project approval, thereby providing an  
18 incentive for projects to advance to the construction stage.

19  
20 Section 3. Article 4 of the Planning Code is hereby amended by adding new Section  
21 415A, to read as follows:

22  
23 **SECTION 415A. TEMPORARY REDUCTION OF INCLUSIONARY REQUIREMENTS FOR**  
24 **RESIDENTIAL AND LIVE/WORK DEVELOPMENT PROJECTS APPROVED PRIOR TO**  
25 **NOVEMBER 1, 2023.**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**SEC. 415A.1. PURPOSE.**

In order to encourage the construction of residential and live/work development projects that have been Finally Approved prior to November 1, 2023, but have not procured a First Construction Document, the City hereby establishes a temporary program to: (1) reduce certain inclusionary affordable housing fees and obligations; (2) extend the time such developments have to obtain a site permit after project approval; and (3) allow the modification of certain findings required by Planning Code Section 206.6 (“State Density Bonus Program: Individually Requested.”)

**SEC. 415A.2. DEFINITIONS.**

The following terms shall have the following definitions:

“Pipeline Project” means a residential or live/work project that (1) is subject to the Inclusionary Affordable Housing Ordinance, Planning Code Section 415.1 et seq., and (2) was Finally Approved prior to November 1, 2023, and (3) has not been issued a First Construction Document prior to November 1, 2023.

“Finally Approved” or “Final Approval” shall mean (1) approval of a project’s first Development Application, unless such approval is appealed; or (2) if a project only requires a building permit, issuance of the first site or building permit, unless such permit is appealed; or (3) if the first Development Application or first site or building permit is appealed, then the final decision upholding the Development Application, or first site or building permit, on the appeal by the relevant City Board or Commission. “Finally Approved” or “Final Approval” shall not include any modification of the approval under Section 415A.5.

**SEC 415A.3. APPLICATION.**

This Section 415A shall apply to Pipeline Projects. This Section 415A shall not apply to (1) any mixed-use project that has entered into a development agreement executed pursuant to Chapter 56 of the Administrative Code or other similar binding agreement with the City on or before November 1,

1 2023, or (2) projects that have chosen to comply with affordable housing requirements by dedicating  
2 land, including but not limited to projects meeting the requirements set forth in Sections 419.5(a)(2) or  
3 249.33(b)(16), or (3) projects that have paid development impact fees, including inclusionary impact  
4 fees, on or before November 1, 2023.

5 **SEC. 415A.4. MODIFICATION OF PIPELINE PROJECTS.**

6 On or before November 1, 2026, project sponsors of Pipeline Projects shall be entitled to  
7 request a modification under Section 415A.5 to that project's conditions of approval, conditions on a  
8 project permit, notice of special restrictions, or other requirements related to: (1) specified  
9 requirements of the Inclusionary Affordable Housing Program, Planning Code Section 415.1 et seq., or  
10 other applicable inclusionary housing requirement; (2) conditions that require a project sponsor to  
11 obtain a site permit within a certain timeframe after project approval; and (3) findings required by  
12 Planning Code Section 206.6. Except as specifically set forth herein, or as modified under the  
13 procedure set forth in subsection 415A.5, Pipeline Projects shall comply with all other conditions of  
14 approval, conditions on a project permit, or notice of special restrictions and any applicable  
15 requirements of the Planning Code, including the requirements set forth in Sections 415.1 through  
16 415.11. Project sponsors may request the following modifications:

17 (a) **Affordable Housing Fee.** If a project sponsor of a Pipeline Project elected to pay  
18 the inclusionary housing fee pursuant to Section 415.5, the project shall be entitled to a modification of  
19 the inclusionary housing requirements set forth in Section 415.5(b)(1)(B) or 415.5(b)(1)(C), or if  
20 applicable 415.3(b)(2)(A) through (2)(C), as follows:

21 (1) For Ownership or Rental Housing Pipeline Projects consisting of 25 units or  
22 more, the applicable percentage shall be 16.4%.

23 (2) For any Pipeline Project consisting of 25 units or more located in an area  
24 with a specific affordable housing requirement set forth in a Special Use District, Area Plan, or in any  
25 other section of the Code, including 415.3(d), 419, or 428, the applicable percentage shall be 54.5% of



1 the rate for Rental Housing Projects in the specific area, rounded to the nearest tenth of one percent.  
2 This reduction shall not apply to fees subject to the Temporary Fee Reduction Program set forth in  
3 Section 403.

4 (3) Notwithstanding subsections (1) and (2), in no case shall a Pipeline Project  
5 be entitled to a modification of an affordable housing fee that would result in an applicable percentage  
6 lower than 16.4%.

7 (b) On-site Affordable Housing Alternative. If a project sponsor of a Pipeline Project  
8 elected to provide on-site affordable units pursuant to Section 415.5(g), the development project shall  
9 be entitled to the following modifications to the on-site percentages in Section 415.6(a)(2) or (a)(3), or  
10 if applicable, the on-site percentages set forth in 415.3(b)(1)(A) to (b)(1)(D):

11 (1) For Pipeline Projects consisting of 25 units or more, the number of  
12 Affordable Units constructed on-site shall be 12% of all units constructed on the project site. Such  
13 projects shall ensure that a minimum of 8% of the units are affordable to low-income households, 2%  
14 are affordable to moderate-income households, and 2% are affordable to middle-income households.

15 (2) For any Pipeline Project consisting of 25 units or more that is located in an  
16 area with a specific affordable housing on-site requirement set forth in a Special Use District, Area  
17 Plan, or in any other section of the Code, including Sections 415.3(b)(1)(E), 415.3(d), 419, or 428, the  
18 applicable percentage shall be 54.5% of the rate for Rental Housing Projects in that specific area,  
19 rounded to the nearest tenth of one percent.

20 (3) Notwithstanding subsections (1) and (2), in no case shall a Pipeline Project  
21 be entitled to a modification of an on-site affordable housing obligation that would result in an  
22 applicable percentage lower than 12%.

23 (c) Off-Site Affordable Housing Alternative. If a project sponsor of a Pipeline Project  
24 elected to provide off-site units pursuant to Section 415.5(g), the development project shall be entitled  
25 to a modification of the requirements in Section 415.7(a) as follows:

1 (1) For Pipeline Projects consisting of 25 units or more, the applicable  
2 percentage shall be 16.4%. Such projects shall ensure that a minimum of 9.4% of the units are  
3 affordable to low-income households, 4% are affordable to moderate-income households, and 3% are  
4 affordable to middle-income households.

5 (2) For any Pipeline Project consisting of 25 units or more located in an area or  
6 Special Use District or in any other section of the Code, including Sections 415.3(d), 419, and 428 with  
7 a specific affordable housing requirement, the applicable percentage shall 54.5% of the rate for Rental  
8 Housing Projects in the specific area, rounded to the nearest tenth of one percent.

9 (3) Notwithstanding subsections (1) and (2), in no case shall a Pipeline Project  
10 be entitled to a modification of the off-site affordable housing alternative that would result in a  
11 percentage lower than 16.4%.

12 (d) Site Permit and First Construction Document Timing Requirements; Conditions of  
13 Approval.

14 (1) Notwithstanding any contrary provision in this Code, project sponsors of  
15 Pipeline Projects shall be entitled to a modification under Section 415A.5 of any conditions of approval  
16 or conditions on a project permit, requiring procurement of a site permit within a specified time, but in  
17 no event may such a deadline be extended past May 1, 2029.

18 (2) Notwithstanding any contrary provision in this Code, any modification under  
19 Section 415A.5 shall require as a condition that the project sponsor procure a First Construction  
20 Document on or before May 1, 2029. Failure to meet this condition shall invalidate the modification.  
21 Pipeline Projects that fail to procure a First Construction Document on or before May 1, 2029 shall be  
22 subject to the Inclusionary Affordable Housing requirements in effect on May 1, 2029 that are  
23 applicable to a project at the same location, size, and tenure.

24 (e) Density Bonus Projects: Affordability Levels, Concessions, Incentives and  
25 Waivers.

1 If a Pipeline Project elected to proceed under the State Density Bonus law, Government Code  
2 section 65915 and/or Planning Code section 206.6. (State Density Bonus Program: Individually  
3 Requested), the project sponsor may request the following modifications to a condition of approval or  
4 regulatory agreement pursuant to Section 415A.5, provided that the project continues to meet the  
5 requirements of the State Density Bonus law and/or Section 206.6:

6 (1) the number of units to be restricted as affordable units and the affordability levels of  
7 those units;

8 (2) the number and type of concessions, incentives, and waivers granted under 206.6(e).

9  
10 **SEC. 415A.5 PROCESS FOR MODIFICATION OF INCLUSIONARY AFFORDABLE**  
11 **HOUSING PROGRAM REQUIREMENTS.**

12 The purpose of this Section 415A.5 is to provide for the efficient review and approval of  
13 requests for modifications to conditions of approval, conditions on a project permit, or notice of special  
14 restrictions, for projects eligible for such modifications under Section 415A. The Planning Commission  
15 shall be responsible for reviewing and approving such requests, or may delegate those functions to the  
16 Planning Director.

17 (a) **Planning Commission Review.** Notwithstanding Section 415A.5(b), any  
18 modification of the conditions of approval, conditions on a project permit, or notice of special  
19 restrictions consistent with Section 415A that would result in the significant modification of approved  
20 plans shall require review and approval by the Planning Commission under the modification process  
21 otherwise applicable to the project, including but not limited to Planning Code Sections 303(e), 309(j)  
22 or 329(f)(7)). All modifications pursuant to this subsection 415A.5(a), including any appeal of such  
23 modifications, shall be granted prior to November 1, 2026. A significant modification shall include, but  
24 is not limited to:

1 (1) a change in the number of Residential or Group Housing units by more than  
2 20%, or a change of more than 10% in Gross Floor Area; or,

3 (2) a change of use from Dwelling Units to Group Housing.

4 (b) Administrative Modifications. Notwithstanding Section 415A.5(a), if the Planning  
5 Commission has delegated its authority to the Planning Department to review and approve requests for  
6 modifications consistent with Section 415A.5, the following modifications shall be reviewed and  
7 approved by the Director of the Planning Department, and the Planning Commission shall not hold a  
8 public hearing for discretionary review. Modifications under this subsection 415A.5(b) shall not be  
9 subject to review under Planning Code sections 303(e), 309(f), 309(j) or 329(f)(7). Any modifications  
10 pursuant to this Section 415A.5(b) must be granted prior to November 1, 2026. If so delegated, the  
11 Planning Director shall be authorized to modify:

12 (1) the applicable inclusionary fee required consistent with Section 415A.4(a).

13 (2) the applicable percentage of off-site units required consistent with Section  
14 415A.4(b).

15 (3) the applicable percentage of on-site units required, consistent with Section  
16 415A.4(c).

17 (4) for projects that elected to develop using the State Density Bonus Law,  
18 Government Code section 65915 or State Density Bonus Program: Individually Requested, under  
19 Planning Code section 206.6, the number of on-site Affordable Units, and the affordability levels of  
20 those units if such levels require modification for the project to continue to qualify for the same amount  
21 of density bonus previously approved, and findings required by Section 206.6(e) related to eligibility  
22 for a density bonus, concessions and incentives and/or waivers of development standards, consistent  
23 with Section 415A.4(e). Notwithstanding the previous sentence, modifications to a density bonus project  
24 that are significant as set forth in subsection (a), shall be reviewed by the Planning Commission.

1                                    (5) performance standards consistent with Section 415A.4(d), including the time  
2 of validity, expiration and renewal.

3                                    (c) **Additional Conditions.** Any modification to conditions of approval under this  
4 Section 415A.5 shall include a condition that a project must secure a First Construction Document on  
5 or before May 1, 2029 and if a project sponsor fails to secure a First Construction Document on or  
6 before May 1, 2029, the inclusionary requirements applicable to the project shall be those  
7 requirements in place at the time a First Construction Document is secured applicable to a project of  
8 the same size, location, and tenure.

9                                    **SEC. 415A.6 SUNSET PROVISION.**

10                                   This section 415A shall expire by operation of law on May 1, 2029, unless extended by an  
11 ordinance effective on or before that date. Upon expiration of this Section 415A, the City Attorney shall  
12 cause the section to be removed from the Planning Code.

13  
14                                   Section 4. Article 4 of the Planning Code is hereby amended by adding new Section  
15 415B, to read as follows:

16  
17                                   **SEC. 415B. TEMPORARY REDUCTION IN REQUIREMENTS FOR NEW**  
18 **RESIDENTIAL AND LIVE/WORK DEVELOPMENT PROJECTS.**

19                                   In order to encourage construction of residential and live/work development projects subject to  
20 the Inclusionary Affordable Housing Program, Planning Code Sections 415.1 et seq, this Section 415B  
21 shall apply to housing and live/work development projects that are Finally Approved, as defined in  
22 Planning Code Section 415A.2, between November 1, 2023 and November 1, 2026, provided that such  
23 projects receive a First Construction Document within 30 months from Final Approval. Such deadline  
24 shall be extended in the event of any litigation seeking to invalidate the City's approval of such project,  
25 for the duration of the litigation. Housing development projects that fail to obtain a First Construction

1 Document within 30 months of Final Approval shall be subject to the requirements of Section 415.1 et  
2 seq. in effect on the date a First Construction Document is finally obtained. Except as specifically set  
3 forth herein, all other Inclusionary Affordable Housing requirements in Sections 415.1 et seq shall  
4 continue to apply.

5 **SEC. 415B.1. AFFORDABLE HOUSING FEE.** If a project sponsor elects to pay the  
6 affordable housing fee under Section 415.5, the project shall comply the requirements set forth in  
7 Section 415.6(b)(1), except as follows:

8 (a) For any housing development consisting of 25 units or more, the applicable  
9 percentage shall be 20.5%.

10 (b) For any housing development located in an area with a specific affordable housing  
11 requirement set forth in a Special Use District, Area Plan, or in any other section of the Code,  
12 including 415.3(d), 419, or 428, the percentage shall be 68% of the rate applicable to Rental Housing  
13 Projects, rounded to the nearest tenth of one percent. This section shall not apply to fees subject to the  
14 Temporary Fee Reduction Program set forth in Section 403.

15 **SEC. 415B.2. ON-SITE AFFORDABLE HOUSING ALTERNATIVE.** If a project sponsor  
16 elects to provide on-site Affordable Units pursuant to Section 415.5(g), the housing development shall  
17 be subject to the following required percentages rather than the percentage of units set forth in Section  
18 415.6(a):

19 (a) For any housing development consisting of 25 or more units, the number of  
20 Affordable Units constructed on-site shall be 15% of all units constructed on the project site. Project  
21 sponsors shall ensure that a minimum of 10% of the Affordable Units shall be affordable to low-income  
22 households, 2.5% of the Affordable Units shall be affordable to moderate-income households, and  
23 2.5% of the Affordable Units shall be affordable to middle-income households.

24 (b) For any housing development located in an area with a specific affordable housing  
25 requirement set forth in a Special Use District, Area Plan, or in any other section of the Code such as

1 Section 415.3(d), 419, or 428, the percentage shall be 68% of the rate applicable to Rental Housing  
2 Projects in such area, rounded to the nearest tenth of one percent.

3 **SEC. 415B.3. OFF-SITE AFFORDABLE HOUSING ALTERNATIVE.**

4 If a project sponsor elects to provide off-site units to satisfy the requirements of Section 415.1 et  
5 seq. pursuant to 415.5(g)(1)(B), the housing development project shall be subject to the requirements of  
6 Section 415.7(a), except as follows:

7 (a) For any housing development consisting of 25 units or more, the applicable  
8 percentage shall be 20.5%. Project sponsors shall ensure that a minimum of 11.5% of the Affordable  
9 Units shall be affordable to low-income households, 5% of the Affordable Units shall be affordable to  
10 moderate-income households, and 4% of the Affordable Units shall be affordable to middle-income  
11 households.

12 (b) For any housing development that is located in an area with a specific off-site  
13 affordable housing requirement set forth in a Special Use District, Area Plan, or in any other section of  
14 the Code including Section 415.3(d), 419, or 428, the percentage shall be the 68% of the applicable  
15 rate for Rental Housing Projects in the area, rounded to the nearest tenth of one percent.

16 **SEC. 415B.4. INCLUSIONARY FEE ANNUAL FEE UPDATES.**

17 Notwithstanding any other provision of the Code, during the period that this Section 415B  
18 applies:

19 (a) the amount of the inclusionary housing fee shall be adjusted consistent with the  
20 factors set forth in Sections 415.5(b)(2) and 415.5(b)(3), but in no case shall the fee be increased by  
21 more than 2% annually; and

22 (b) the provisions of 415.6(a)(5) shall not apply.

23 **SEC. 415B.5. SUNSET PROVISION.** This section 415B shall expire by operation of law on  
24 November 1, 2026, unless extended by an ordinance on or effective before that date. Upon expiration of  
25 this Section 415B, the City Attorney shall cause the section to be removed from the Planning Code.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Section 5. Article 4 of the Planning Code is hereby amended by revising Sections 403 and 415.10, to read as follows:

**SEC. 403. PAYMENT OF DEVELOPMENT FEE(S) OR SATISFACTION OF DEVELOPMENT IMPACT REQUIREMENT(S) AS A CONDITION OF APPROVAL ~~PLANNING COMMISSION REVIEW; TEMPORARY FEE REDUCTION PROGRAM RECOMMENDATION CONCERNING EFFECTIVENESS OF FEE DEFERRAL PROGRAM.~~**

~~(a) Condition of Approval.~~ In addition to any other condition of approval that may otherwise be applicable, the Department or Commission shall require as a condition of approval of a development project subject to a development fee or development impact requirement under this Article that such development fee or fees be paid prior to the issuance of the first construction document for any building or buildings within the development project, in proportion to the amount required for each building if there are multiple buildings.

**Temporary Fee Reduction Program.** *The following development fees assessed on or before November 1, 2026 shall be reduced by 33% for (1) projects that receive a First Construction Document, as defined in Building Code Section 107A.13.1, within 30 months of Final Approval, as defined in Section 415A.2; and (2) for Pipeline Projects modified under Section 415A.5, if such Pipeline Projects receive a First Construction Document on or before May 1, 2029. Projects approved pursuant to a development agreement under Chapter 56 of the Administrative Code shall not be eligible for a fee reduction under this Section 403. Upon receipt of a First Construction Document, the Planning Department shall determine whether the project is eligible for the Temporary Fee Reduction Program, and update the fees assessment as applicable. If the project is found eligible, the following fees shall be reduced:*

- (1) The Transportation Sustainability Fee (Section 411A);



- 1 (2) The Downtown Park Fee (Section 412);
- 2 (3) The Jobs Housing Linkage Program (Section 413);
- 3 (4) The Childcare Requirement for Office and Hotel Development Projects
- 4 (Section 414);
- 5 (5) The Childcare Requirements for Residential Projects (Section 414A);
- 6 (6) Market and Octavia Area Plan and Upper Market Neighborhood
- 7 Commercial District Affordable Housing Fee (Section 416);
- 8 (7) Eastern Neighborhoods Area Plan Affordable Housing Requirement
- 9 (Section 417);
- 10 (8) Rincon Hill Community Improvements Fund and SOMA Community
- 11 Stabilization Fund (Section 418);
- 12 (9) Visitation Valley Community Facilities and Infrastructure Fee and Fund
- 13 (Section 420);
- 14 (8) The Market and Octavia Community Improvements Fund (Section 421);
- 15 (10) Balboa Park Community Improvements Fund (Section 422);
- 16 (11) Eastern Neighborhood Impact Fees and Public Benefits Fund (Section
- 17 423);
- 18 (12) Van Ness & Market Affordable Housing and Neighborhood Infrastructure
- 19 Fee and Program (Section 424);
- 20 (13) Transit Center District Open Space Impact Fee and Fund (Section 424.6)
- 21 and Transportation and Street Improvement Impact Fee (Section 424.7);
- 22 (14) Van Ness and Market Community Facilities Fee and Fund (Section 425);
- 23 (15) Open Space requirements (Sections 426 and 427);
- 24 (16) Public Art Fee (Section 429);
- 25 (17) Bicycle Parking fee (Section 430);

1 (18) Central SOMA Community Services Facilities Fees and Fund (Section  
2 432);

3 (19) Central SOMA Infrastructure Fee and Fund (Section 433);

4 (20) Union Square Park, Recreation, and Open Space Fee (Section 435);

5 Fees eligible for reduction under this section, including the amount with a reduction, shall be  
6 included in the Controller's Citywide Development Fee and Development Impact Requirements Report  
7 described in Section 409(a).

8 ~~(b) Hearing to Review Effectiveness of Fee Deferral Program. Under 107A.13.3 of the San~~  
9 ~~Francisco Building Code, the option to defer the payment of development fees expires on July 1, 2013~~  
10 ~~unless the Board of Supervisors extends the Fee Deferral Program. Prior to the July 1, 2013 expiration~~  
11 ~~date, the Planning Commission shall hold a public hearing to review the effectiveness of the Fee~~  
12 ~~Deferral Program, the economy at large, and whether the simulative effects of the Fee Deferral~~  
13 ~~Program are still necessary. Following the public hearing, the Commission shall forward a~~  
14 ~~recommendation to the Board of Supervisors as to whether the Fee Deferral Program should be~~  
15 ~~continued, modified, or terminated.~~

16  
17 **SEC. 415.10. REPORTING TO BOARD OF SUPERVISORS.**

18 (a) Findings.

19 San Francisco continues to experience a housing crisis that requires a broad spectrum  
20 of land use and financing tools to address. The 2022 Housing Element Update of the City's  
21 General Plan calls for 40% ~~38%~~ of all new housing production to be affordable for lower  
22 income households below 80% of area median income and ~~19%~~ 17% of new housing  
23 affordable to be built for moderate/middle income households up to 120% of area median  
24 income. San Francisco's inclusionary housing program, which requires housing developers to  
25 provide affordable units as part of their projects, is a critical component of the City's programs

1 to expand affordable housing options. The Inclusionary Housing program is one of the City's  
2 tools for increasing affordable housing dedicated to lower income San Franciscans without  
3 using public subsidies, and in particular it is a useful tool for creating any affordable housing to  
4 meet the growing need of moderate/middle income households.

5 The City adopted an Inclusionary Housing ordinance in 2002 that set requirements on  
6 market rate development to include affordable units at 12% of the total for the first time. The  
7 inclusionary program has successfully resulted in more than ~~2,000~~ 3,330 units of below-market,  
8 permanently affordable housing since its adoption. The City prepared a Nexus Study in 2007  
9 in support of the program, which was updated in 2016. The reports demonstrated the necessary  
10 affordable housing in order to mitigate the impacts of market rate housing, ~~and the inclusionary~~  
11 ~~requirements were increased to 15% of total units.~~ The City's inclusionary housing requirements,  
12 which have been set at various levels since 2002 in response to changing economic conditions, are  
13 codified in Section 415 of the Planning Code. ~~The City is now in the process of updating that nexus~~  
14 ~~analysis.~~

15 ~~In 2011, Governor Jerry Brown dissolved the State Redevelopment Agency, which was the~~  
16 ~~City's primary permanent funding stream for affordable housing. In 2012, in response to this loss, the~~  
17 ~~voters amended the San Francisco Charter to create the Affordable Housing Trust Fund, which~~  
18 ~~included a provision to lower the on-site inclusionary requirement to 12%. In November 2014, in~~  
19 ~~response to an escalating affordable housing crisis, the voters passed Proposition K, which set forth a~~  
20 ~~policy directive to the City to ensure that additional affordable housing is a minimum of 33% of its~~  
21 ~~overall housing production to low and moderate/middle income households up to 120% of the Area~~  
22 ~~Median Income and at least another 17% affordable to households from 120% to 150% of the Area~~  
23 ~~Median Income.~~

24 ~~The Board of Supervisors has proposed to the voters a Charter amendment that will appear on~~  
25 ~~the June 7, 2016 ballot. The Charter amendment would authorize the City to enact by ordinance~~

1 ~~subsequent changes to the inclusionary housing requirements, including changes to the minimum or~~  
2 ~~maximum inclusionary or affordable housing obligations applicable to market rate housing projects.~~

3 ~~On March 1, 2016, the Board of Supervisors unanimously adopted Resolution No. 79-16~~  
4 ~~declaring that (1) it shall be City policy to maximize the economically feasible percentage of affordable~~  
5 ~~inclusionary housing in market rate housing development to create housing for lower and~~  
6 ~~moderate/middle income households; (2) if the voters adopt the proposed Charter amendment on June~~  
7 ~~7, the Board intends to adopt a future ordinance requiring the Controller and other City departments to~~  
8 ~~conduct a periodic economic study to maximize affordability in the City's inclusionary housing~~  
9 ~~requirements; and (3) the future ordinance would create an advisory committee to ensure that the~~  
10 ~~economic study is the result of a transparent and inclusive public process.~~

11 The purpose of this Section 415.10 is to provide for the ongoing study of how to set  
12 inclusionary housing obligations in San Francisco at the maximum economically feasible  
13 amount in market rate housing development to create housing for low and moderate/middle  
14 income households, at the income levels set forth in Section 415.10(d), and with guidance  
15 from the City's Nexus Study, which ~~should~~ shall be periodically updated.

16 \* \* \* \*

17  
18 Section 6. Article XXIX of Chapter 5 of the Administrative Code Chapter is hereby  
19 amended to revise Sections 5.29-1, 5.29-4, and 5.29-6 to read as follows:

20 **ARTICLE XXIX:**

21 **INCLUSIONARY HOUSING TECHNICAL ADVISORY COMMITTEE**

22 **SEC. 5.29-1. CREATION OF ADVISORY COMMITTEE.**

23 The Board of Supervisors hereby establishes the Inclusionary Housing Technical  
24 Advisory Committee (the "Advisory Committee") of the City and County of San Francisco.

25 \* \* \* \*

1           **SEC. 5.29-4. ORGANIZATION AND TERMS OF OFFICE.**

2           (a) Each member shall serve at the pleasure of the member's appointing authority, and  
3 may be removed by their appointing officer at any time for any reason. Each member appointed to  
4 the Advisory Committee shall serve for an unlimited term. ~~in 2016 shall serve until three months~~  
5 ~~after the date the Controller produces the first economic feasibility analysis required by Planning Code~~  
6 ~~Section 415.10, at which point the member's term shall expire. The Board of Supervisors and the Mayor~~  
7 ~~shall appoint members to the Advisory Committee in anticipation of each subsequent economic~~  
8 ~~feasibility analysis by the Controller, and those members' terms shall similarly expire three months~~  
9 ~~after the date the Controller produces the economic feasibility analysis required by Planning Code~~  
10 ~~Section 415.10. Members shall not may hold over after the expiration of their terms.~~

11           \* \* \* \*

12           **SEC. 5.29-6. MEETINGS AND PROCEDURES.**

13           The Advisory Committee shall hold a regular meeting not less than once every four  
14 months until the sunset date set forth in Section 5.29-7. Notwithstanding any other provision of  
15 this Section 5.29 or Planning Code section 415.10, the Advisory Committee shall convene no later than  
16 January 1, 2026.

17           \* \* \* \*

18  
19           Section 7. Article 4 of the Planning Code is hereby amended to revise Sections 415.3,  
20 415.5, 415.6, 415.7, 419.3, 419.5, 428, and 428.3, to read as follows:

21  
22           **SECTION 415.3 APPLICATION.**

23           \* \* \* \*

24           (b) Except as provided in subsection (3) below, any development project that has  
25 submitted a complete Environmental Evaluation application prior to January 12, 2016 shall

1 comply with the Affordable Housing Fee requirements, the on-site affordable housing  
2 requirements or the off-site affordable housing requirements, and all other provisions of  
3 Section 415.1 et seq., as applicable, in effect on January 12, 2016. For development projects  
4 that have submitted a complete Environmental Evaluation application on or after January 1,  
5 2013, the requirements set forth in Planning Code Sections 415.5, 415.6, and 415.7 shall  
6 apply to certain development projects consisting of 25 dwelling units or more during a limited  
7 period of time as follows.

8 (1) If a development project is eligible and elects to provide on-site affordable  
9 housing, the development project shall provide the following amounts of on-site affordable  
10 housing.

11 \* \* \* \*

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

19 (2) If a development project pays the Affordable Housing Fee or elects to provide  
20 off-site affordable housing, and such requirements have not been amended on or before November 1,  
21 2026, the development project shall provide the following fee amount or amounts of off-site  
22 affordable housing during the limited periods of time set forth below.

23 (A) Any development project that has submitted a complete Environmental  
24 Evaluation application prior to January 1, 2014, shall pay a fee or provide off-site housing in  
25 an amount equivalent to ~~25%~~ 20.5% of the number of units constructed on-site.

1 (B) Any development project that has submitted a complete Environmental  
2 Evaluation application prior to January 1, 2015, shall pay a fee or provide off-site housing in  
3 an amount equivalent to ~~27.5%~~ 22.5% of the number of units constructed on-site.

4 (C) Any development project that has submitted a complete Environmental  
5 Evaluation application on or prior to January 12, 2016 shall pay a fee or provide off-site  
6 housing in an amount equivalent to ~~30%~~ 24.5% of the number of units constructed on-site.

7 (D) Any development project that submits an Environmental Evaluation  
8 application after January 12, 2016 shall comply with the requirements set forth in Sections  
9 415.5, 415.6, and 415.7, as applicable.

10 (E) Notwithstanding the provisions set forth in subsections (b)(2)(A), (B) and  
11 (C) of this Section 415.3, for development projects proposing buildings over 120 feet in height,  
12 as measured under the requirements set forth in the Planning Code, except for buildings up to  
13 130 feet in height located both within a special use district and within a height and bulk district  
14 that allows a maximum building height of 130 feet, such development projects shall pay a fee  
15 or provide off-site housing in an amount equivalent to ~~30%~~ 24.5% of the number of units  
16 constructed on-site. Any buildings up to 130 feet in height located both within a special use  
17 district and within a height and bulk district that allows a maximum building height of 130 feet  
18 shall comply with the provisions of subsections (b)(2)(A), (B) and (C) of this Section 415.3  
19 during the limited periods of time set forth therein.

20 (F) Notwithstanding the provisions set forth in subsections (b)(2)(A), (B) and  
21 (C) of this Section 415.3, if a development project is located in a UMU Zoning District or in the  
22 South of Market Youth and Family Zoning District, and pays the Affordable Housing Fee or  
23 elects to provide off-site affordable housing pursuant to Section 415.5(g), or elects to comply  
24 with a Land Dedication Alternative, such development project shall comply with the fee, off-  
25 site or land dedication requirements applicable within such Zoning Districts, as they existed on

1 January 12, 2016, plus the following additional amounts for the Affordable Housing Fee or for  
2 land dedication or off-site affordable units: (i) if the development project has submitted a  
3 complete Environmental Evaluation application prior to January 1, 2014, the Project Sponsor  
4 shall pay an additional fee, or provide additional land dedication or off-site affordable units, in  
5 an amount equivalent to 5% of the number of units constructed on-site; (ii) if the development  
6 project has submitted a complete Environmental Evaluation application prior to January 1,  
7 2015, the Project Sponsor shall pay an additional fee, or provide additional land dedication or  
8 off-site affordable units, in an amount equivalent to 7.5% of the number of units constructed  
9 on-site; or (iii) if the development project has submitted a complete Environmental Evaluation  
10 application on or prior to January 12, 2016, the Project Sponsor shall pay an additional fee, or  
11 provide additional land dedication or off-site affordable units, in an amount equivalent to 10%  
12 of the number of units constructed on-site. Notwithstanding the foregoing, a development  
13 project shall not pay a fee or provide off-site units in a total amount greater than the equivalent  
14 of ~~30%~~ 24.5% of the number of units constructed on-site.

15 \* \* \* \*

16 (d) Notwithstanding the provisions set forth in Section 415.3(b), or the inclusionary  
17 affordable housing requirements contained in Sections 415.5, 415.6, and 415.7, such  
18 requirements shall not apply to any project, consisting of 25 dwelling units or more, that has  
19 not submitted a complete Environmental Evaluation Application on or before January 12,  
20 2016, if the project is located within the Eastern Neighborhoods Mission Planning Area, the  
21 North of Market Residential Special Use District Subarea 1 or Subarea 2, or the SOMA  
22 Neighborhood Commercial Transit District, because inclusionary affordable housing levels for  
23 those areas will be addressed in forthcoming area plan processes or an equivalent community  
24 planning process. Until such planning processes are complete and new inclusionary housing  
25 requirements for projects in those areas are adopted, projects consisting of 25 units or more



1 shall (1) pay a fee or provide off-site housing in an amount equivalent to ~~30%~~ 24.5% if the  
2 Principal Project is a Rental Housing Project, or ~~33%~~ 27% if the Proposed Project is an  
3 Ownership Housing Project, or (2) provide Affordable Units in the amount of ~~25%~~ 20.5% of the  
4 number of units constructed on-site in a Rental Housing Project, or ~~27%~~ 22.1% of the number  
5 of units constructed on-site in an Ownership Housing Project. For Rental Housing Projects,  
6 15.5% of the on-site Affordable Units shall be affordable to low-income households, ~~5%~~ 2.5%  
7 shall be affordable to moderate-income households and ~~5%~~ 2.5% shall be affordable to  
8 middle-income households. For Ownership Housing Projects, ~~15%~~ 16.1% of the on-site  
9 Affordable Units shall be affordable to low-income households, ~~6%~~ 3% shall be affordable to  
10 moderate-income households and ~~6%~~ 3% shall be affordable to middle-income households.

11 \* \* \* \*

12

13 **SEC. 415.5. AFFORDABLE HOUSING FEE.**

14 ~~The fees set forth in this Section 415.5 will be reviewed when the City completes an Economic~~  
15 ~~Feasibility Study.~~ Except as provided in Section 415.5(g), all development projects subject to  
16 this Program shall be required to pay an Affordable Housing Fee subject to the following  
17 requirements:

18 (a) **Timing of Fee Payments.** The fee shall be paid to DBI for deposit into the  
19 Citywide Affordable Housing Fund at the time required by Section 402(d).

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

22 (1) The number of units equivalent to the applicable off-site percentage of the  
23 number of units in the Principal Project.

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

1 (B) For development projects consisting of 25 units or more, the  
2 applicable percentage shall be 27%~~33%~~ if such units are Owned Units.

3 (C) For development projects consisting of 25 units or more, the  
4 applicable percentage shall be 24.5%~~30%~~ if the development project is a Rental Housing  
5 Project. In the event a Rental Housing Project becomes an Ownership Housing Project, the  
6 Project Sponsor shall either (A) reimburse the City the proportional amount of the Inclusionary  
7 Affordable Housing Fee, which would be equivalent to the current Inclusionary Affordable  
8 Housing Fee requirement for Ownership Housing Projects, or (B) provide additional on-site or  
9 off-site Affordable Units equivalent to the current inclusionary requirements for Ownership  
10 Housing Units, apportioned among the required number of units at various income levels in  
11 compliance with the requirements in effect at the time of conversion. Any additional Affordable  
12 Units provided on-site or off-site shall comply with Section 415 and the Procedures Manual.

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

1 ~~decreased by the applicable annual Construction Cost Index percentage(s) for residential construction~~  
2 ~~for San Francisco reported in the Engineering News Record. MOHCD, together with the Controller~~  
3 ~~and TAC, shall evaluate the cost to construct data, including actual and appraised land costs, state~~  
4 ~~and/or federal public subsidies available to MOHCD funded projects, and determine MOHCD's~~  
5 ~~average costs. Following completion of this study, the Board of Supervisors, in its sole and absolute~~  
6 ~~discretion, and within the legal allowances of the Residential Nexus Analysis, will review the analyses,~~  
7 ~~methodology, fee application, and the proposed fee schedule; and may consider adopting legislation to~~  
8 ~~revise the Inclusionary Affordable Housing fees. The method of calculating, indexing, and applying the~~  
9 ~~fee shall be published in the Procedures Manual. The Department and MOHCD shall update the fee~~  
10 ~~methodology and technical report every three years, with analysis from the Technical Advisory~~  
11 ~~Committee, in order to ensure that the affordability gap remains current, consistent with the~~  
12 ~~requirements set forth below in Section 415.5(b)(3) and Section 415.10.~~

13 \* \* \* \*

14 (5) The applicable amount of the inclusionary housing fee shall be determined  
15 based upon the date that the project sponsor has submitted a complete Project Application  
16 ~~Environmental Evaluation application~~. In the event the project sponsor does not procure a  
17 building permit or site permit for construction of the principal project within 30 months of the  
18 project's approval, the development project shall comply with the inclusionary affordable  
19 housing requirements applicable thereafter at the time when the project sponsor does  
20 proceed with pursuing a building permit. Such time period shall be extended in the event of  
21 any litigation seeking to invalidate the City's approval of such project, for the duration of the  
22 litigation.

23 \* \* \* \*

24 \* \* \* \*

25

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

2           If a project sponsor elects to provide on-site units pursuant to Section 415.5(g), the  
3 development project shall meet the following requirements:

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

5                   ~~(1) For housing development projects consisting of 10 dwelling units or more, but less~~  
6 ~~than 25 dwelling units, the number of affordable units constructed on site shall generally be 12% of all~~  
7 ~~units constructed on the project site. The affordable units shall all be affordable to low income~~  
8 ~~households. Owned Units shall be affordable to households earning up to 100% of Area Median~~  
9 ~~Income, with an affordable sales price set at 80% of Area Median Income or less. Rental Units shall be~~  
10 ~~affordable to households earning up to 65% of Area Median Income, with an affordable rent set at 55%~~  
11 ~~of Area Median Income or less.~~

12                   ~~(2) For any Ownership Housing Project consisting of 25 or more units, the number of~~  
13 ~~Affordable Units constructed on site shall generally be 20% of all units constructed on the project site.~~  
14 ~~A minimum of 10% of the units shall be affordable to low income households, 5% of the units shall be~~  
15 ~~affordable to moderate income households, and 5% of the units shall be affordable to middle income~~  
16 ~~households. In no case shall the total number of Affordable Units required exceed the number required~~  
17 ~~as determined by the application of the applicable on site requirement rate to the total project units.~~  
18 ~~Owned Units for low income households shall have an affordable purchase price set at 80% of Area~~  
19 ~~Median Income or less, with households earning up to 100% of Area Median Income eligible to apply~~  
20 ~~for low income units. Owned Units for moderate income households shall have an affordable purchase~~  
21 ~~price set at 105% of Area Median Income or less, with households earning from 95% to 120% of Area~~  
22 ~~Median Income eligible to apply for moderate income units. Owned Units for middle income~~  
23 ~~households shall have an affordable purchase price set at 130% of Area Median Income or less, with~~  
24 ~~households earning from 120% to 150% of Area Median Income eligible to apply for middle income~~  
25 ~~units. For any Affordable Units with purchase prices set at 130% of Area Median Income, the units~~

1 ~~shall have a minimum occupancy of two persons. This unit requirement shall be outlined within the~~  
2 ~~Mayor's Office of Housing Preferences and Lottery Procedures Manual no later than February 26,~~  
3 ~~2018. MOHCD may reduce Area Median Income pricing and the minimum income required for~~  
4 ~~eligibility in each ownership category.~~

5 ~~(3) For any Rental Housing Project consisting of 25 or more units, the number of~~  
6 ~~Affordable Units constructed on site shall generally be 18% of all units constructed on the project site,~~  
7 ~~with a minimum of 10% of the units affordable to low income households, 4% of the units affordable to~~  
8 ~~moderate income households, and 4% of the units affordable to middle income households. In no case~~  
9 ~~shall the total number of Affordable Units required exceed the number required as determined by the~~  
10 ~~application of the applicable on site requirement rate to the total project units. Rental Units for low-~~  
11 ~~income households shall have an affordable rent set at 55% of Area Median Income or less, with~~  
12 ~~households earning up to 65% of Area Median Income eligible to apply for low income units. Rental~~  
13 ~~Units for moderate income households shall have an affordable rent set at 80% of Area Median Income~~  
14 ~~or less, with households earning from 65% to 90% of Area Median Income eligible to apply for~~  
15 ~~moderate income units. Rental Units for middle income households shall have an affordable rent set at~~  
16 ~~110% of Area Median Income or less, with households earning from 90% to 130% of Area Median~~  
17 ~~Income eligible to apply for middle income units. For any Affordable Units with rental rates set at~~  
18 ~~110% of Area Median Income, the units shall have a minimum occupancy of two persons. This unit~~  
19 ~~requirement shall be outlined within the Mayor's Office of Housing Preferences and Lottery~~  
20 ~~Procedures Manual no later than February 26, 2018. MOHCD may reduce Area Median Income~~  
21 ~~pricing and the minimum income required for eligibility in each rental category.~~

22 (1) For housing development projects consisting of 10 dwelling units or more, but less  
23 than 25 dwelling units, the number of affordable units constructed on-site shall generally be 15% of all  
24 units constructed on the project site. The affordable units shall all be affordable to low-income  
25 households. Owned Units shall be affordable to households earning up to 100% of Area Median

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

4 (2) For any Ownership Housing Project consisting of 25 or more units, the number of  
5 Affordable Units constructed on-site shall generally be 20% of all units constructed on the project site.  
6 A minimum of 10% of the units shall be affordable to low-income households, 5% of the units shall be  
7 affordable to moderate-income households, and 5% of the units shall be affordable to middle-income  
8 households. In no case shall the total number of Affordable Units required exceed the number required  
9 as determined by the application of the applicable on-site requirement rate to the total project units.  
10 Owned Units for low-income households shall have an affordable purchase price set at 80% of Area  
11 Median Income or less, with households earning up to 100% of Area Median Income eligible to apply  
12 for low-income units. Owned Units for moderate-income households shall have an affordable purchase  
13 price set at 105% of Area Median Income or less, with households earning from 95% to 120% of Area  
14 Median Income eligible to apply for moderate-income units. Owned Units for middle-income  
15 households shall have an affordable purchase price set at 130% of Area Median Income or less, with  
16 households earning from 120% to 150% of Area Median Income eligible to apply for middle-income  
17 units. For any Affordable Units with purchase prices set at 130% of Area Median Income, the units  
18 shall have a minimum occupancy of two persons. This unit requirement shall be outlined within the  
19 Mayor's Office of Housing Preferences and Lottery Procedures Manual no later than February 26,  
20 2018. MOHCD may reduce Area Median Income pricing and the minimum income required for  
21 eligibility in each ownership category.

22 (3) For any Rental Housing Project consisting of 25 or more units, the number of  
23 Affordable Units constructed on-site shall generally be 18% of all units constructed on the project site,  
24 with a minimum of 10% of the units affordable to low-income households, 4% of the units affordable to  
25 moderate-income households, and 4% of the units affordable to middle-income households. In no case

1 shall the total number of Affordable Units required exceed the number required as determined by the  
2 application of the applicable on-site requirement rate to the total project units. Rental Units for low-  
3 income households shall have an affordable rent set at 55% of Area Median Income or less, with  
4 households earning up to 65% of Area Median Income eligible to apply for low-income units. Rental  
5 Units for moderate-income households shall have an affordable rent set at 80% of Area Median Income  
6 or less, with households earning from 65% to 90% of Area Median Income eligible to apply for  
7 moderate-income units. Rental Units for middle-income households shall have an affordable rent set at  
8 110% of Area Median Income or less, with households earning from 90% to 130% of Area Median  
9 Income eligible to apply for middle-income units. For any Affordable Units with rental rates set at  
10 110% of Area Median Income, the units shall have a minimum occupancy of two persons. MOHCD  
11 may reduce Area Median Income pricing and the minimum income required for eligibility in each  
12 rental category.

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

21 (5) Starting on January 1, ~~2018~~2028, and no later than January 1 of each year  
22 thereafter, MOHCD shall increase the percentage of units required on-site for projects  
23 ~~consisting of 10-24 units, as set forth in Section 415.6(a)(1), by increments of 0.5% each year, until~~  
24 ~~such requirement is 15%. For all development projects with 25 or more units, the required on-site~~  
25 ~~affordable ownership housing to satisfy this Section 415.6 shall increase by .5%~~1% annually for two

1 consecutive years starting January 1, ~~2018~~2028. The increase shall be apportioned to units  
2 affordable to low-income households, as defined above in subsection 415.6(a)(3). Starting  
3 January 1, ~~2020~~2030, the increase to on-site housing developments with 25 or more units shall  
4 increase by 0.5% annually, with such increases allocated equally to moderate\_ and middle\_  
5 income households, as defined above in subsection 415.6(a)(3). The total on-site inclusionary  
6 affordable housing requirement shall not exceed 26% for Ownership Housing Projects or 24%  
7 for Rental Housing Projects, and the increases shall cease at such time as these limits are  
8 reached. MOHCD shall provide the Planning Department, DBI, and the Controller with  
9 information on the adjustment to the on-site percentage so that it can be included in the  
10 Planning Department's and DBI's website notice of the fee adjustments and the Controller's  
11 Citywide Development Fee and Development Impact Requirements Report described in  
12 Section 409(a).

13 (6) The Department shall require as a condition of Department approval of a  
14 project's building permit, or as a condition of approval of a Conditional Use Authorization or  
15 Planned Unit Development or as a condition of Department approval of a live/work project,  
16 that ~~12%~~15%, 18%, or 20%, as applicable, or such percentage that has been adjusted  
17 annually by MOHCD, of all units constructed on the project site shall be Affordable to  
18 Qualifying Households so that a project sponsor must construct ~~12~~15, .18, or .20 times, or  
19 such current number as adjusted annually by MOHCD, as applicable, the total number of units  
20 produced in the Principal Project. If the total number of units is not a whole number, the  
21 project sponsor shall round up to the nearest whole number for any portion of .5 or above. In  
22 no case shall the total number of Affordable Units required exceed the number required as  
23 determined by the application of the applicable on-site requirement rate to the total project  
24 units.

25 \* \* \* \*



1 (11) Specific Geographic Areas. For any housing development that is located  
2 in an area with a specific affordable housing requirement set forth in a Special Use District or  
3 in any other section of the Code such as Section 419, the higher housing requirement shall  
4 apply. ~~The Planning Department, in consultation with the Controller, shall undertake a study of areas~~  
5 ~~greater than five acres in size, where an Area Plan, Special Use District, or other re-zoning is being~~  
6 ~~considered for adoption or has been adopted after January 1, 2015, to determine whether a higher on-~~  
7 ~~site inclusionary affordable housing requirement is feasible on sites that have received a 20% or~~  
8 ~~greater increase in developable residential gross floor area or a 35% or greater increase in residential~~  
9 ~~density over prior zoning, and shall submit such information to the Planning Commission and Board of~~  
10 ~~Supervisors.~~

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

19 (13) The applicable amount of the percentage required for the on-site housing  
20 units shall be determined based upon the date that the project sponsor has submitted a  
21 complete Project Application ~~Environmental Evaluation application~~. Any development project that  
22 constructs on-site affordable housing units as set forth in this Section 415.6 shall diligently  
23 pursue completion of such units. In the event the project sponsor does not procure a building  
24 permit or site permit for construction of the Principal Project within 30 months of the project's  
25 approval, the development project shall comply with the inclusionary affordable housing

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

4 \* \* \* \*

5 **SEC. 415.7. OFF-SITE AFFORDABLE HOUSING ALTERNATIVE.**

6 If the project sponsor elects pursuant to Section 415.5(g) to provide off-site units to  
7 satisfy the requirements of Sections 415.1 et seq., the project sponsor shall notify the  
8 Planning Department and MOHCD of its intent prior to approval of the project by the Planning  
9 Commission or Department. The Planning Department and MOHCD shall provide an  
10 evaluation of the project's compliance with this Section 415.7 prior to approval by the Planning  
11 Commission or Planning Department. The development project shall meet the following  
12 requirements:

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

14 (1) For any housing development that is located in an area or Special Use  
15 District with a specific affordable housing requirement, or in any other Planning Code  
16 provision, such as Section 419, the higher off-site housing requirement shall apply.

17 (2) For housing development projects consisting of 10 units or more but less  
18 than 25 units, the number of Affordable Units constructed off-site shall be 20%, so that a  
19 project applicant shall construct .20 times the total number of units produced in the Principal  
20 Project. If the total number of units is not a whole number, the project applicant shall round up  
21 to the nearest whole number for any portion of .5 or above. In no case shall the total number  
22 of Affordable Units required exceed the number required as determined by the application of  
23 the applicable off-site requirement rate to the total project units. Owned Units shall be  
24 affordable to households earning up to 100% of Area Median Income, with an affordable sales  
25 price set at 80% of Area Median Income or less. Rental Units shall be affordable to

1 households earning up to 65% of Area Median Income, with an affordable rent set at 55% of  
2 Area Median Income or less.

3 (3) For any Ownership Housing Project consisting of 25 or more units, the  
4 number of Affordable Units constructed off-site shall be ~~33%~~27% of all units constructed on the  
5 project site, with a minimum of ~~18%~~12% of the units affordable to low-income households,  
6 ~~8%~~7.5% of the units affordable to moderate-income households, and ~~7%~~7.5% of the units  
7 affordable to middle income households. In no case shall the total number of Affordable Units  
8 required exceed the number required as determined by the application of the applicable off-  
9 site requirement rate to the total project units. Owned Units for low-income households shall  
10 have an affordable purchase price set at 80% of Area Median Income or less, with  
11 households earning up to 100% of Area Median Income eligible to apply for low-income units.  
12 Owned Units for moderate-income households shall have an affordable purchase price set at  
13 105% of Area Median Income or less, with households earning from 95% to 120% of Area  
14 Median Income eligible to apply for moderate-income units. Owned Units for middle-income  
15 households shall have an affordable purchase price set at 130% of Area Median Income or  
16 less, with households earning from 120% to 150% of Area Median Income eligible to apply for  
17 middle-income units. For any Affordable Units with purchase prices set at 100% of Area  
18 Median Income or above, the units shall have a minimum occupancy of two persons. This unit  
19 requirement shall be outlined within the Mayor's Office of Housing Preferences and Lottery  
20 Procedures Manual no later than February 26, 2018. MOHCD may reduce Area Median  
21 Income pricing and the minimum income required for eligibility in each rental category.

22 (4) For any Rental Housing Project consisting of 25 or more Rental Units, the  
23 number of affordable units constructed off-site shall generally be ~~30%~~24.5% of all units  
24 constructed on the project site, with a minimum of ~~18%~~12.5% of the units affordable to low-  
25 income households, 6% of the units affordable to moderate-income households, and 6% of

1 the units affordable to middle-income households. In no case shall the total number of  
2 affordable units required exceed the number required as determined by the application of the  
3 applicable off-site requirement rate to the total project units. Rental Units for low-income  
4 households shall have an affordable rent set at 55% of Area Median Income or less, with  
5 households earning up to 65% of Area Median Income eligible to apply for low-income units.  
6 Rental Units for moderate-income households shall have an affordable rent set at 80% of  
7 Area Median Income or less, with households earning from 65% to 90% of Area Median  
8 Income eligible to apply for moderate-income units. Rental Units for middle-income  
9 households shall have an affordable rent set at 110% of Area Median Income or less, with  
10 households earning from 90% to 130% of Area Median Income eligible to apply for middle-  
11 income units. For any affordable units with rental rates set at 100% of Area Median Income or  
12 above, the units shall have a minimum occupancy of two persons. ~~This unit requirement shall be~~  
13 ~~outlined within the Mayor's Office of Housing Preferences and Lottery Procedures Manual no later~~  
14 ~~than 6 months following the effective date of the Ordinance contained in Board of Supervisors File No.~~  
15 ~~161351.~~ MOHCD may reduce Area Median Income pricing and the minimum income required  
16 for eligibility in each rental category. MOHCD shall set forth in the Procedures Manual the  
17 administration of rental units within this range.

18 (5) In the event that a Rental Housing project converts to an Ownership  
19 Housing project, the Project Sponsor shall either (A) reimburse the City the proportional  
20 amount of the Inclusionary Affordable Housing Fee, which would be equivalent to the then-  
21 current Inclusionary Affordable Housing Fee requirement for Ownership Housing Projects, or  
22 (B) provide additional on-site or off-site Affordable Units equivalent to the then-current  
23 inclusionary requirements for Ownership Housing Projects, apportioned among the required  
24 number of units at various income levels in compliance with the requirements in effect at the  
25 time of conversion.

1           (6) The applicable amount of the percentage required for the off-site housing  
2 units shall be determined based upon the date that the project sponsor has submitted a  
3 complete Project Application ~~Environmental Evaluation application~~. Any development project that  
4 constructs off-site affordable housing units as set forth in this Section 415.6 shall diligently  
5 pursue completion of such units. In the event the project sponsor does not procure a building  
6 permit or site permit for construction of the principal project or the off-site affordable housing  
7 project within 30 months of the project's approval, the development project shall comply with  
8 the inclusionary affordable housing requirements applicable thereafter at the time when the  
9 project sponsor procures a building permit. Such deadline shall be extended in the event of  
10 any litigation seeking to invalidate the City's approval of the principal project or off-site  
11 affordable housing project for the duration of the litigation.

12           \* \* \* \*

13

14           **SEC. 419.3. APPLICATION OF UMU AFFORDABLE HOUSING REQUIREMENTS.**

15           (a) Section 419.1 et seq. shall apply to any housing project located in the UMU Zoning  
16 District of the Eastern Neighborhoods, that is subject to the requirements of Sections 415 et  
17 seq.

18           (b) Additional UMU Affordable Housing Requirements to the Section 415 Inclusionary  
19 Affordable Housing Program Requirements. The requirements of Section 415 through 415.9  
20 shall apply subject to the following exceptions:

21           (1) For all projects sites designated as Tier A, a minimum of ~~14.4 percent~~ 12.3%  
22 of the total units constructed shall be affordable to and occupied by qualifying persons and  
23 families as defined elsewhere in this Code, so that a project sponsor must construct ~~144~~ 123  
24 times the total number of units produced in the principal project beginning with the  
25

1 construction of the tenth unit. If the total number of units is not a whole number, the sponsor  
2 shall round up to the nearest whole number for any portion of .5 or above.

3 (A) If the project sponsor is eligible for and elects pursuant to Section  
4 415.5(g) to build off-site units to satisfy the requirements of this program, the sponsor shall  
5 construct ~~23 percent~~ 18.8% so that a sponsor must construct ~~.23~~ .188 times the total number of  
6 units produced in the principal project beginning with the construction of the tenth unit. If the  
7 total number of units is not a whole number, the sponsor shall round up to the nearest whole  
8 number for any portion of .5 or above.

9 (B) If the project sponsor elects pursuant to Section 415.5 to pay the fee  
10 to satisfy the requirements of this program, the sponsor shall meet the requirements of  
11 Section 415 according to the number of units required above if the project applicant were to  
12 elect to meet the requirements of this Section by off-site housing development. For the  
13 purposes of this Section, the City shall calculate the fee using the direct fractional result of the  
14 total number of units multiplied by the percentage of off-site housing required, rather than  
15 rounding up the resulting figure.

16 (2) For all project sites designated Tier B, a minimum of ~~16 percent~~ 13.1% of the  
17 total units constructed shall be affordable to and occupied by qualifying persons and families  
18 as defined elsewhere in this Code, so that a project sponsor must construct ~~.16~~ .131 times the  
19 total number of units produced in the principal project beginning with the construction of the  
20 tenth unit. If the total number of units is not a whole number, the sponsor shall round up to the  
21 nearest whole number for any portion of .5 or above.

22 (A) If the project sponsor is eligible for and elects pursuant to Section  
23 415.5(g) to build off-site units to satisfy the requirements of this program, the sponsor shall  
24 construct ~~25 percent~~ 20.5% so that a sponsor must construct ~~.25~~ .205 times the total number of  
25 units produced in the principal project beginning with the construction of the tenth unit. If the

1 total number of units is not a whole number, the sponsor shall round up to the nearest whole  
2 number for any portion of .5 or above.

3 (B) If the project sponsor elects pursuant to Section 415.5(g) to pay the  
4 fee to satisfy the requirements of this program, the sponsor shall meet the requirements of  
5 Section 415 according to the number of units required above if the sponsor were to elect to  
6 meet the requirements of this Section by off-site housing development. For the purposes of  
7 this Section, the City shall calculate the fee using the direct fractional result of the total  
8 number of units multiplied by the percentage of off-site housing required, rather than rounding  
9 up the resulting figure.

10 (3) For all project sites designated Tier C, a minimum of ~~17.6 percent~~ 14.4% of  
11 the total units constructed shall be affordable to and occupied by qualifying persons and  
12 families as defined elsewhere in this Code, so that a project sponsor must construct ~~.176~~ .144  
13 times the total number of units produced in the principal project beginning with the  
14 construction of the tenth unit. If the total number of units is not a whole number, the sponsor  
15 shall round up to the nearest whole number for any portion of .5 or above.

16 (A) If the project sponsor is eligible for and elects pursuant to Section  
17 415.5(g) to build off-site units to satisfy the requirements of this program, the sponsor shall  
18 construct ~~27 percent~~ 22.1% so that a sponsor must construct ~~.27~~ .221 times the total number of  
19 units produced in the principal project beginning with the construction of the tenth unit. If the  
20 total number of units is not a whole number, the sponsor shall round up to the nearest whole  
21 number for any portion of .5 or above.

22 (B) If the project sponsor elects pursuant to Section 415.5 to pay the fee  
23 to satisfy the requirements of this program, the sponsor shall meet the requirements of  
24 Section 415 according to the number of units required above if the sponsor were to elect to  
25 meet the requirements of this Section by off-site housing development. For the purposes of

1 this Section, the City shall calculate the fee using the direct fractional result of the total  
 2 number of units multiplied by the percentage of off-site housing required, rather than rounding  
 3 up the resulting figure.

4 (c) Timing of Fee Payments. Any fee required by Section 419.1 et seq. shall be paid to  
 5 DBI for deposit into the Citywide Affordable Housing Fund at the time required by Section  
 6 402(d).

7  
 8 **SEC. 419.5. ALTERNATIVES TO THE INCLUSIONARY HOUSING COMPONENT.**  
 9 \* \* \* \*

10 **TABLE 419.5**  
 11 **HOUSING REQUIREMENTS FOR THE UMU DISTRICT**

Tier	On-Site Housing Requirement	Off-Site/In-Lieu Requirement	Middle Income Alternative*	Land Dedication Alternative for sites that have less than 30,000 square feet of developable area	Land Dedication Alternative for sites that have at least 30,000 square feet of developable area
A	<del>14.4%</del> <u>12.3%</u>	<del>23%</del> <u>18.8%</u>	<del>30%</del> <u>24.5%</u>	35%	30%
B	<del>16%</del> <u>13.1%</u>	<del>25%</del> <u>20.5%</u>	<del>35%</del> <u>28.6%</u>	40%	35%
C	<del>17.6%</del> <u>14.4%</u>	<del>27%</del> <u>22.1%</u>	<del>40%</del> <u>32.7%</u>	45%	40%

24  
 25



1           **SEC. 428. DIVISADERO STREET NCT AFFORDABLE HOUSING FEE AND**  
2 **REQUIREMENTS.**

3           Sections 428.1 through 428.5, hereafter referred to as Sections 428.1 *et seq.*, set forth  
4 the requirements and procedures for the Divisadero Street Neighborhood Commercial Transit  
5 District Affordable Housing Fee.

6           **SEC. 428.3. APPLICATION OF AFFORDABLE HOUSING FEE REQUIREMENT.**

7           (a) For any project for which a complete development application has been submitted  
8 before October 1, 2018, the Inclusionary Affordable Housing Program set forth in Planning  
9 Code Sections 415.1 *et seq.* shall apply in the Divisadero Street NCT, except the temporary  
10 provisions of Planning Code Section 415.3(b) shall not apply and except as set forth in  
11 Section 428.3(a). For any development site for which the Planning Department determines  
12 that the residential development potential within the Divisadero Street NCT has been  
13 increased through the adoption of the NCT rezoning set forth in Ordinance No. 127-15, as  
14 detailed in Section 428.1(e) herein, the requirements of Sections 415.1 *et seq.* of the Planning  
15 Code shall apply, except as set forth in subsections (a)(1), (a)(2), and (a)(3), below, and the  
16 temporary provisions of Planning Code Section 415.3(b) shall not apply.

17           (1) Fee. For a development project of 10 or more dwelling units that is subject  
18 to the Inclusionary Affordable Housing Program, the development project shall pay an  
19 affordable housing fee equivalent to a requirement to provide ~~33%~~ 27% of the units in the  
20 Principal Project as affordable units if those units are Owned Units, or ~~30%~~ 24.5% of the units if  
21 the project is a Rental Housing Project, using the method of fee calculation set forth in Section  
22 415.5(b).

23           (2) On-site. For a development project of 10 or more units that is subject to the  
24 Inclusionary Affordable Housing Program that elects to construct units Affordable to Qualifying  
25 Households on-site of the Principal Project as set forth in Planning Code Section 415.5(g), the

1 development project shall comply with all otherwise applicable requirements of Section 415.6,  
2 except that for all housing development projects consisting of 10 or more units, the following  
3 requirements shall apply.

4 (A) For an Ownership Housing Project, the number of affordable units  
5 constructed on site shall be ~~23%~~ 18.8% of all units constructed on the site. A minimum of ~~12%~~  
6 10% of the units shall be affordable to low-income households, ~~5.5%~~ 5% of the units shall be  
7 affordable to moderate-income households, and ~~5.5%~~ 4.8% of the units shall be affordable to  
8 middle-income households. In no case shall the total number of affordable units required  
9 exceed the number required as determined by the application of the applicable on-site  
10 requirement rate to the total project units. Owned Units for low-income households shall have  
11 an affordable purchase price set at 80% of Area Median Income or less, with households  
12 earning up to 100% of Area Median Income eligible to apply for low-income units. Owned  
13 Units for moderate-income households shall have an affordable purchase price set at 105% of  
14 Area Median Income or less, with households earning from 95% to 120% of Area Median  
15 Income eligible to apply for moderate-income units. Owned Units for middle-income  
16 households shall have an affordable purchase price set at 130% of Area Median Income or  
17 less, with households earning from 120% to 150% of Area Median Income eligible to apply for  
18 middle-income units.

19 (B) For a Rental Housing Project, the number of affordable units  
20 constructed on site shall be ~~20%~~ 16.4% of all units constructed on the site. A minimum of ~~12%~~  
21 10% of the units shall be affordable to low-income households, ~~4%~~ 3% of the units shall be  
22 affordable to moderate-income households, and ~~4%~~ 3.4% of the units shall be affordable to  
23 middle-income households. In no case shall the total number of affordable units required  
24 exceed the number required as determined by the application of the applicable on-site  
25 requirement rate to the total project units. Rental Units for low-income households shall have

1 an affordable rent set at 55% of Area Median Income or less, with households earning up to  
2 65% of Area Median Income eligible to apply for low-income units. Rental Units for moderate-  
3 income households shall have an affordable rent set at 80% of Area Median Income or less,  
4 with households earning from 65% to 90% of Area Median Income eligible to apply for  
5 moderate-income units. Rental Units for middle-income households shall have an affordable  
6 rent set at 110% of Area Median Income or less, with households earning from 90% to 130%  
7 of Area Median Income eligible to apply for middle-income units.

8 (3) Off-site. If the project sponsor of a housing development project of 10 or  
9 more units that is subject to the Inclusionary Affordable Housing Program elects to provide  
10 units Affordable to Qualifying Households off-site of the Principal Project as set forth in  
11 Section 415.5(g), the project sponsor shall construct or cause to be constructed affordable  
12 housing equal to ~~33%~~ 27% of all units constructed on the Principal Project site as affordable  
13 housing if the units in the Principal Project are owned units, and ~~30%~~ 24.5% if the project is a  
14 Rental Housing Project.

15 (b) For any project for which a complete development application has been submitted  
16 on or after October 1, 2018, the Inclusionary Affordable Housing Program set forth in Planning  
17 Code Sections 415.1 et seq. shall apply in the Divisadero Street NCT except as set forth in  
18 this subsection (b). For any development site for which the Planning Department has  
19 determined that the residential development potential has been increased through the  
20 adoption of the NCT rezoning set forth in Ordinance No. 127-15, as detailed in Section  
21 428.1(e) herein, the requirements of Planning Code Sections 415.1 et seq. shall apply, except  
22 that the following affordable housing requirements shall be applied to residential development  
23 on such sites:

24 (1) **Fee.** For a development project of 10 or more dwelling units that is subject  
25 to the Inclusionary Affordable Housing Program, the development project shall pay an

1 affordable housing fee equivalent to a requirement to provide ~~33%~~ 27% of the units in the  
2 Principal Project as Affordable Units if those units are Owned Units, or ~~30%~~ 24.5% of the units  
3 if the project is a Rental Housing Project, using the method of fee calculation set forth in  
4 Section 415.5(b).

5 (2) **On-site.** If the housing development project of 10 or more dwelling units that  
6 is subject to the Inclusionary Affordable Housing Program elects to construct units Affordable  
7 to Qualifying Households on-site of the Principal Project as set forth in Planning Code Section  
8 415.5(g), the project sponsor shall comply with all otherwise applicable requirements of  
9 Section 415.6, except that for all housing development projects consisting of 10 or more units,  
10 the number of Affordable Units constructed on-site shall be provided as follows.

11 (A) A project that consists of Owned Units shall provide ~~23%~~ 18.8% of  
12 units as Affordable Units at the following levels: 10% shall have an average affordable  
13 purchase price set at 80% of Area Median Income; ~~8%~~ 5% shall have an average affordable  
14 purchase price set at 105% of Area Median Income; and ~~5%~~ 4.8% shall have an average  
15 affordable purchase price set at 130% of Area Median Income.

16 (B) A project that consists of Rental Units shall provide ~~23%~~ 18.8% of  
17 units as Affordable Units at the following levels: 10% shall have an average affordable rent set  
18 at 55% of Area Median Income; ~~8%~~ 5% shall have an average affordable rent set at 80% of  
19 Area Median Income; and ~~5%~~ 4.8% shall have an average affordable rent set at 110% of Area  
20 Median Income.

21 (C) Notwithstanding subsections (b)(2)(A) and (b)(2)(B), ~~the percentage~~  
22 ~~and affordability levels of Affordable Units constructed on site as set forth in subsections (b)(2)(A) and~~  
23 ~~(b)(2)(B) shall be the same percentage and affordability levels as set forth in Section 206.3(f)(2)(A), as~~  
24 ~~it may be amended from time to time, and~~ in no case shall the percentage of Affordable Units  
25 constructed on-site pursuant to this subsection (b)(2) be less than the percentage required by

1 Section 415.6 for projects consisting of 25 or more units. If the percentage of Affordable Units  
2 constructed on-site pursuant to this subsection (b)(2) would be less than the percentage set  
3 forth in Section 415.6 for projects consisting of 25 or more units, the percentage of Affordable  
4 Units set forth in Section 415.6 for projects consisting of 25 or more units shall apply.

5 (3) **Off-site.** If the project sponsor of a housing development project of 10 or  
6 more units is eligible and elects to provide units Affordable to Qualifying Households off-site of  
7 the Principal Project as set forth in Section 415.5(g), the project sponsor shall construct or  
8 cause to be constructed affordable housing equal to ~~33%~~ 27% of all units constructed on the  
9 Principal Project site as affordable housing if the units in the Principal Project are owned units,  
10 and ~~30%~~ 24.5% if the project is a Rental Housing Project.

11

12 Section 8. Effective Date; Operative Dates.

13 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs  
14 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not  
15 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the  
16 Mayor's veto of the ordinance.

17 (b) Sections 1 through 6 of this ordinance, adding Planning Code Sections 415A and  
18 415B, amending Planning Code Sections 403 and 415.10, and amending Administrative Code  
19 Sections 5.29-1, 5.29-4 and 5.29-6, shall become operative on November 1, 2023.

20 (c) Section 7 of this ordinance, amending Planning Code Section 415.3, 415.5, 415.6,  
21 415.7, 419.3, 428 and 428.3, shall become operative on November 21, 2026, unless the City  
22 enacts legislation to change such operative date, or to otherwise revise or rescind the  
23 amendments set forth in Section 7.

24

25

1 Section 9. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
5 additions, and Board amendment deletions in accordance with the "Note" that appears under  
6 the official title of the ordinance.  
7

8 APPROVED AS TO FORM:  
9 DAVID CHIU, City Attorney

10 By:         /s/    
11 Audrey Pearson  
12 Deputy City Attorney

13 n:\legana\as2023\2300225\01685971.docx  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## **LEGISLATIVE DIGEST**

[Planning, Administrative Codes – Development Impact Fee Reductions]

**Ordinance amending the Planning Code to: 1) reduce Inclusionary Housing Program requirements of the Planning Code, for projects exceeding a stated unit size that have been approved prior to November 1, 2023, and that receive a first construction document within a specified period; 2) adopt a process for those projects to request a modification to conditions of approval related to development impact fees, subject to delegation by the Planning Commission; 3) reduce Article 4 development impact fees, including Inclusionary Affordable Housing fees, for projects approved before November 1, 2026, that receive a first construction document within 30 months of entitlement; and 4) modify the Inclusionary Housing Program Ordinance effective November 1, 2026, to reduce applicable fees, and on-site or off-site unit requirements, for projects that exceed a stated unit size; amending the Administrative Code to update the Inclusionary Housing Technical Advisory Committee member requirements; affirming the Planning Department’s determination under the California Environmental Quality Act; making public necessity, convenience, and welfare findings 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

#### **Inclusionary Affordable Housing Program**

The Inclusionary Affordable Housing Ordinance, Planning Code section 415 *et seq.*, applies to new market-rate housing developments of 10 units or more. There are several ways a developer can comply with the ordinance: a developer can pay a fee to the City, which the City uses to construct affordable housing, or a developer can choose to comply with the ordinance by providing affordable units within the new development (on-site units) or on in a separate building (off-site units). The number of on-site or off-site units required by the ordinance depends on a variety of factors: the size of the project; whether the project is a rental project or an ownership project; where the project is located; when the project’s environmental application was submitted; and in some cases, the height of the project. On-site requirements range from 12% to 25% of the total number of units in the project; the off-site requirement ranges from 20% to 33% of the total number of units in the project. When a developer pays the fee, the City calculates the fee by multiplying the off-site inclusionary obligation (number of units) by the “affordability gap” – the amount of subsidy the Mayor’s Office of Housing and Community Development needs to finance the construction of a unit of affordable housing.

The current Citywide inclusionary requirements were originally established in 2017, and include a legislatively set increase each year (currently .5% per year). Similarly, the amount of the fee per square foot is set each year based on the cost of constructing affordable housing.

### **Current Inclusionary Requirements**

The current Citywide requirements for new projects are as follows:

- For projects of 10-24 units, the on-site requirement is 15% and the off-site and fee requirement is 20% for both rental and ownership projects. Units must have a sales price or rental rate affordable to households earning 80% AMI for ownership projects and 55% AMI for rental projects.
- The on-site requirement for projects of 25 or more units is 22% of units for a rental project, and 24% of units for an ownership project.
- The off-site and fee requirement for projects of 25 units or more is 30% for rental projects and 33% for ownership projects.
- Projects of 25 units or more must provide on-site and off-site affordable units at three income tiers: low, moderate and middle income, or 55% of Area Median Income (AMI), 80% AMI and 110% AMI for rental projects; and 80% AMI, 105% AMI, and 130% AMI for ownership projects.

Requirements in specific geographic areas can vary, but generally are slightly higher than Citywide rates.

### **Approval Process**

Inclusionary housing requirements become conditions on a project approval. If the Planning Commission approved a development, the Planning Commission must modify the conditions of approvals, although the Zoning Administrator has authority to allow changes to project plans or minor modifications to conditions. Most projects are required to obtain a building or site permit within 36 months from project approval; projects that fail to meet this deadline must request an extension from the Planning Commission. Projects that have not obtained a building or site permit within 30 months of project approval are subject to the inclusionary rates at the time a building permit is procured.

The State Density Bonus law, implemented in Planning Code section 206.6, allows projects that provide specified amounts of on-site affordable units to receive an increase in the number of total dwellings units, and “concessions and incentives” and waivers of development standards. On-site units provided under the Inclusionary Housing Ordinance can be used to qualify for a density bonus under state law. Under State Density Bonus law, projects can receive up to a 50% increase in density and between one and four concessions and incentives depending on the amount of affordable housing provided and the level of affordability. The City must waive any development standard that would preclude the construction of the project at the density allowed and with the concessions and incentives requested. The Planning Commission must adopt findings that a project is eligible for the requested density bonus, concessions and incentives, and waivers. Projects may request, as an incentive, that units at lower income tiers (e.g. 50% AMI) count towards the Inclusionary



Program's requirement to provide units at higher tiers (e.g. 80% AMI). Conditions of approval for a density bonus project will include findings related to the amount of density bonus, eligibility for concessions, incentives and waivers, and the income tiers of the inclusionary units.

### **Development Impact Fees**

San Francisco assesses development impact fees on residential and non-residential projects for various public purposes, including fees for transit, parks, public infrastructure, and art. Development impact fees are set forth in Article 4 of the Planning Code.

### **Inclusionary Housing Technical Advisory Committee**

Planning Code section 415.10 requires the Controller, in consultation with the Inclusionary Housing Technical Advisory Committee (TAC), to conduct a feasibility study of San Francisco's inclusionary housing requirements every three years. The TAC, established in Administrative Code Section 5.29, is a policy body created to advise the Controller and the Board about the Inclusionary Ordinance. Members of the TAC are appointed by the Board or the Mayor, and serve for a limited term; members are appointed in anticipation of the three-year economic feasibility analysis, and their term ends three months after the study is finalized.

### Amendments to Current Law

This ordinance would allow for a reduction in San Francisco's inclusionary requirements and other development impact fees as follows:

### **Reduction in Inclusionary Requirements for Previously Approved Projects**

Projects finally approved before November 1, 2023 with 25 units or more would be allowed to modify their conditions of approval to reduce the required inclusionary rate: the on-site rate for both rental and ownership projects would be 12%; the rate for projects that elected to pay the fee or provide off-site units would be 16.4%. The rate for projects in areas with special inclusionary requirements would be 54.5% of the applicable rental rate, but in no case would be less than 16.4%.

The ordinance would create an administrative process for certain previously approved projects to request the reduced inclusionary rates, if the Planning Commission delegates their authority to modify conditions of approval. The Director of Planning would also be authorized to modify conditions of approval to allow projects to extend the time to get a site permit, and to allow projects to request a modification to the findings required by the City's density bonus requirements. However, projects that request significant modifications, including changing from dwelling units to group housing, increasing or decreasing the number of units by more than 20%, or modifying the gross floor area by more than 10% would require Planning Commission approval. Previously approved projects would have until November 1, 2026 to request a modification, and then until May 1, 2029 to obtain a first construction document. Modified projects that fail to obtain a first construction document by May 1, 2029 would be

subject to the inclusionary requirements in effect on the date a first construction document was issued. Projects approved under a development agreement would be ineligible to seek a modification under the administrative process.

**Temporary Reduction in Inclusionary Requirements for New Projects**

Projects approved between November 1, 2023 and November 1, 2026 would be subject to reduced inclusionary rates as follows: rental and ownership projects of 25 or more units would be required to provide 15% of units on-site, or pay a fee or provide off-site units equivalent to 20.5% of the total units. Affordable units would have to be provided at the three income tiers. Projects of 25 units or more in areas with special rates would be required to pay 68% of the otherwise required rental housing rate. If a project does not receive a first construction document within 30 months of project approval, the inclusionary requirement will be the inclusionary requirement at the time the first construction document is issued.

**Reduction in Other Development Impact Fees for Previously Approved and New Projects**

Other development impact fees, such as the Transit Sustainability Fee, the Jobs Housing Linkage Fee, various park and open space fees, and other area plan infrastructure fees, would be discounted by 33%, provided that the project receives a first construction document before May 1, 2029 for previously approved projects, or within 30 months of project approval for projects approved between November 1, 2023 and November 1, 2026. Projects approved under a development agreement would be ineligible for reduced impact fees.

**No Annual Increase to Inclusionary Rate (other than indexing)**

Between November 1, 2023 and November 1, 2026, the inclusionary rates would not automatically increase pursuant to the set schedule, and any increase in the inclusionary housing fee based on affordability gap would be capped at 2%.

**Future Inclusionary Housing Rates**

This ordinance would also amend the Inclusionary Housing Ordinance effective November 1, 2026, unless the Board of Supervisors amended the program before that date. The amendment would require rental housing projects of 25 units or more to provide 18% on-site affordable units or 24.5% if paying the fee or providing off-site units. Ownership housing projects of 25 units or more would be required to provide 20% on-site, or 27% if paying the fee or providing off-site units. Requirements in areas with specific affordable housing obligations would be decreased proportionally (according to the formula  $X/22 \times 18$ , where X equals the current required percentage). Rental and ownership housing projects of 10-24 units would be required to provide 15% of units as affordable if included on-site, or 20% if off-site or paying the fee, consistent with current requirements.

**Inclusionary Housing Technical Advisory Committee**

The ordinance would also update the findings in Planning Code Section 415.10 related to the Controller's report to the Board of Supervisors on the Inclusionary program's requirements, and amend the Administrative Code creating the Inclusionary Housing Technical Advisory

Committee, to allow members of the committee, which serve at the pleasure of the appointing member, to serve for an unlimited term. The ordinance would require the TAC to convene again, no later than January 1, 2026.

### Background Information

Consistent with Planning Code section 415.10, from October 2022 through April 2023, the Controller and the Inclusionary Housing Technical Advisory Committee (TAC) met to review the impact of the City's inclusionary housing obligations on the feasibility of residential development. The Controller and the TAC studied key economic parameters including interest rates, capitalization rate, land prices, construction costs, use of the state density bonus, and rents and sales prices for both rental and condominium projects, finding that the current rates directly contributed to the economic infeasibility of residential development in San Francisco. The Controller will issue a Technical Advisory Committee Report on June 30, 2023, recommending that the inclusionary requirements be set between 12% and 16%.

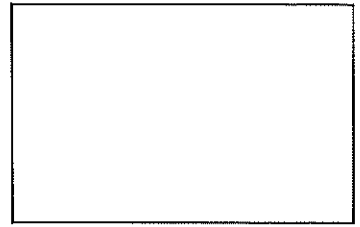
San Francisco's share of the regional housing need is over 82,000 units in the next 8 years, over 32,000 of which must be affordable for extremely low, very-low and low income households. Reduced inclusionary rates and development fees are intended to incentivize construction of housing to meet this housing need. Previously approved projects are farther along in the development process, and thus inclusionary rates are further reduced to incentivize construction of those projects.

Amendments to the Technical Advisory Committee requirement are intended to make it easier for the TAC to convene as needed in response to changing economic conditions.

n:\legana\as2023\2300225\01685446.docx

## Introduction Form

*(by a Member of the Board of Supervisors or the Mayor)*



I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)  
*(Routine, non-controversial and/or commendatory matters only)*
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor [ ] inquires..."
- 5. City Attorney Request
- 6. Call File No. [ ] from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No. [ ]
- 9. Reactivate File No. [ ]
- 10. Topic submitted for Mayoral Appearance before the Board on [ ]

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission     Youth Commission     Ethics Commission
- Planning Commission     Building Inspection Commission     Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes                       No

*(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)*

Sponsor(s):

Supervisor Peskin

Subject:

[Planning, Administrative Codes - Development Impact Fee Reductions]

Long Title or text listed:

Ordinance amending the Planning Code to: 1) reduce Inclusionary Housing Program requirements of the Planning Code, for projects exceeding a stated unit size that have been approved prior to November 1, 2023 and that receive a first construction document within a specified period; 2) adopt a process for those projects to request a modification to conditions of approval related to development impact fees, subject to delegation by the Planning Commission; 3) reduce Article 4 development impact fees, including Inclusionary Affordable Housing fees, for projects approved before November 1, 2026 that receive a first construction document within 30 months of entitlement; and, 4) modify the Inclusionary Housing Program Ordinance effective November 1, 2026 to reduce applicable fees, and on-site or off-site unit requirements, for projects that exceed a stated unit size; amending the Administrative Code to update the Inclusionary Housing Technical Advisory Committee member requirements; affirming the Planning Department's determination under the California Environmental Quality Act; making public necessity, convenience, and welfare findings 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.

Signature of Sponsoring Supervisor:

