



June 2, 2022

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

Re: Transmittal of Planning Department Case Number 2022-002926PCA:  
Affordable Housing Code Enforcement  
Board File No.220262

**Planning Commission Recommendation: Approval**

Dear Ms. Calvillo and Mayor Breed,

On May 26, 2022, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Mayor Breed, that would amend the Planning Code to permit the Mayor's Office of Housing and Community Development to enforce, and collect fines and penalties for violations of, Planning Code provisions governing affordable housing, and amend the Administrative Code to allow the Mayor's Office of Housing and Community Development (MOHCD) to use the proceeds in the Affordable Housing Enforcement Fund for all Planning Code enforcement activities by MOHCD relating to affordable housing. At the hearing the Planning Commission recommended approval.

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

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

Sincerely,

*Audrey Merlone*

Audrey Merlone  
*Legislative Affairs Planner*

cc: Kristen Jensen, Deputy City Attorney  
Tom Paulino, Office of Mayor Breed  
Erica Major, Office of the Clerk of the Board

**Attachments :**

Planning Commission Resolution  
Planning Department Executive Summary



# PLANNING COMMISSION RESOLUTION NO. 21122

**HEARING DATE: MAY 26, 2022**

**Project Name:** Affordable Housing Code Enforcement  
**Case Number:** 2022-002926PCA [Board File No. 220262]  
**Initiated by:** Mayor Breed/ Introduced March 15, 2022  
**Staff Contact:** Audrey Merlone, Legislative Affairs  
Audrey.merlone@sfgov.org, 628-652-7534  
**Reviewed by:** Aaron D Starr, Manager of Legislative Affairs  
aaron.starr@sfgov.org, (628) 652-7533

**RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO PERMIT THE MAYOR’S OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT TO ENFORCE, AND COLLECT FINES AND PENALTIES FOR VIOLATIONS OF PLANNING CODE PROVISIONS GOVERNING AFFORDABLE HOUSING; AMENDING THE ADMINISTRATIVE CODE TO ALLOW THE MAYOR’S OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT (MOHCD) TO USE THE PROCEEDS IN THE AFFORDABLE HOUSING ENFORCEMENT FUND FOR ALL PLANNING CODE ENFORCEMENT ACTIVITIES BY MOHCD RELATING TO AFFORDABLE HOUSING; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.**

WHEREAS, on March 15, 2022 Mayor Breed introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 220262, which would amend the Planning Code to permit the Mayor’s Office of Housing and Community Development to enforce, and collect fines and penalties for violations of, Planning Code provisions governing affordable housing; amending the Administrative Code to allow the Mayor’s Office of Housing and Community Development (MOHCD) to use the proceeds in the Affordable Housing Enforcement Fund for all Planning Code enforcement activities by MOHCD relating to affordable housing;

WHEREAS, The Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on May 26, 2022; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Sections 15378 and 15060(c); and

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

WHEREAS, all pertinent documents may be found in the files of the Department, as the Custodian of Records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

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

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby **approves** the proposed ordinance.

## Findings

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

The Commission supports the overall goals of the proposed ordinance to establish a more organized and fair system for the enforcement of affordable housing violations by Planning and MOHCD. The lack of structure and designation of Lead Agency on affordable housing enforcement cases in the past has led to a less than fair distribution of penalties between the two agencies and caused confusion among staff and responsible parties. The ordinance will create mechanisms that empower MOHCD to enforce affordable housing violations that occur post-construction directly, instead of having to rely on the Zoning Administrator to issue NOV's. It will establish a fund for MOHCD to deposit their own penalties and T&M costs into the Affordable Housing Fund so that they may recoup their own costs of enforcement for these types of cases, thereby creating a more equitable distribution of funds.

## General Plan Compliance

The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

### HOUSING ELEMENT

#### OBJECTIVE 7

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

Policy 7.3

Recognize the importance of funds for operations, maintenance and services to the success of affordable housing programs.

**OBJECTIVE 8**

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

Policy 8.1

Support the production and management of permanently affordable housing.

*The proposed ordinance would make organizational changes that would improve the efficiency of, and more broadly, enforcement of affordable housing produced by the Planning Code. It would additionally establish financing mechanisms that enable MOHCD to collect owed fees and penalties resulting from their enforcement actions, which will assist MOHCD with the reimbursement of their costs of enforcing these types of violations. These changes will support the effective management of the City's affordable housing units.*

**Planning Code Section 101 Findings**

The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.*

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

*The proposed Ordinance would not have a negative effect on housing or neighborhood character.*

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

*The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.*

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

*The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

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

employment and ownership in these sectors be enhanced;

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

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

*The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.*

7. That the landmarks and historic buildings be preserved;

*The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.*

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

*The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.*

### **Planning Code Section 302 Findings.**

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

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

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on May 26, 2022.



Jonas P Ionin Digitally signed by Jonas P Ionin  
DN: cn=Jonas P Ionin, o=City and County of San Francisco

Jonas P. Ionin  
Commission Secretary

AYES: Ruiz, Diamond, Fung, Koppel, Tanner

NOES: Imperial, Moore

ABSENT: None

ADOPTED: May 26, 2022



# EXECUTIVE SUMMARY

## PLANNING CODE TEXT AMENDMENT

**HEARING DATE: May 26, 2022**

**90-Day Deadline: June 16, 2022**

**Project Name:** Affordable Housing Code Enforcement  
**Case Number:** 2022-002926PCA [Board File No. 220262]  
**Initiated by:** Mayor Breed/ Introduced March 15, 2022  
**Staff Contact:** Audrey Merlone, Legislative Affairs  
Audrey.merlone@sfgov.org, 628-652-7534  
**Reviewed by:** Aaron Starr, Manager of Legislative Affairs  
aaron.starr@sfgov.org, 628-652-7533

**Recommendation:** Approval

### Planning Code Amendment

The proposed Ordinance would amend the Planning Code to permit the Mayor’s Office of Housing and Community Development (MOHCD) to enforce and collect fees and penalties for violations of Planning Code provisions governing affordable housing; amending the Administrative Code to allow MOHCD to use the proceeds in the Affordable Housing Enforcement Fund for the administration and enforcement of all Planning Code requirements and regulations relating to affordable housing.

#### The Way It Is Now:

MOHCD and Planning often work together on enforcement of affordable housing violations of the Planning Code. Violations of the Planning Code may occur at various points in the development process, when Planning implements requirements of the Planning Code, and into the occupancy stage, when MOHCD implements requirements of the Planning Code. MOHCD has no mechanism to enforce Planning Code requirements, nor directly charge for their staffs’ time and materials costs or assess penalties. They are reliant on Planning’s enforcement authority to send Notice of Violation letters and collect time and materials fees, and penalties.

Violations of the Planning Code may occur at various points in the development process, when Planning implements requirements of the Planning Code, and into the occupancy stage, when MOHCD implements requirements of the Planning Code.

### **The Way It Would Be:**

The Code would be amended to state that Planning may collect Time & Materials costs (T&M) for other departments and authorize those departments to collect their T&M directly from responsible parties. A new fund called the Affordable Housing Code Enforcement Fund would be established at MOHCD. All fees and penalties collected by MOHCD for affordable housing enforcement would be deposited there. Amendments to Planning Code Sec. 176 would allow the Zoning Administrator to delegate enforcement of certain affordable housing violations to MOHCD. MOHCD would enter into a Memorandum of Understanding (MOU) with Planning wherein the types of cases each agency takes the lead in enforcing would be specified.

## **Issues and Considerations**

### **Affordable Housing Units**

Affordable Housing units created under the Planning Code are predominantly created under the Inclusionary Affordable Housing Program through Section 415 of the Planning Code. These units are more commonly called “Below-Market-Rate” (BMR) units. BMR units are residential units priced to be affordable to households that are low to moderate income. BMR owners and renters must occupy the home as their primary residence and cannot sublet the unit. The City requires BMR units for market-rate residential developments proposing ten or more units and projects utilizing density bonuses.

Affordable units are also created through the State density bonus program, development agreements, regulatory agreements, Home SF, Planning Code Section 124(f), “artist units”, SB35, units created under a Development Agreement, and voluntary affordable units. BMR units and other affordable units created through the Planning Code are managed by MOHCD through their lottery system.

Many affordable housing units have specific requirements for not only the maximum price they may be rented or sold for, but also for their physical specifications. Bedroom and bathroom count, size, location, and other physical elements are determined by the Planning Department or Commission and memorialized in the building’s entitlements and permits. Affordable housing violations of the Planning Code may occur during construction (e.g. failing to construct the unit according to entitlements or plans), or post-construction (e.g. illegal rental of affordable ownership unit, keeping vacant units off-market, etc.). Currently, MOCHD and Planning work together on the enforcement of affordable housing violations, and in some cases, MOHCD works directly with the City Attorney’s Office on cases that occur during the post-occupancy phase. This collaboration is largely because MOHCD does not have the ability to charge directly for T&M costs or administrative or civil penalties.

## Convolutd Enforcement Process

### The Powers of the Zoning Administrator

Planning Code Section 176 designates certain police powers to the Planning Department's Zoning Administrator, including:

- (1) Serving notice requiring the correction of any violation of the Planning Code upon the person who commits or assists in such violation, and assessing upon the responsible party an administrative penalty for each violation (up to \$250.00 for each day the violation continues unabated);
- (2) Calling upon the City Attorney to maintain an action for injunction to correct violations of the Planning Code, and for assessment and recovery of a civil penalty for such violation as well as any attorneys' fees or costs;
- (3) Calling upon the District Attorney to institute criminal proceedings in enforcement of this Code against any such violation; and
- (4) Calling upon the Chief of Police and authorized agents to assist in the enforcement of this Code.

Violations of affordable housing requirements are usually pursued through either the administrative or civil penalties process. Currently, MOHCD does not possess administrative penalty power. As such, MOHCD relies on the Zoning Administrator to issue Notice of Violation letters to assess administrative penalties. The proposed ordinance would amend the Zoning Administrator's police powers to call on MOHCD to enforce Planning Code requirements related to affordable housing. This will allow MOHCD to issue Notices of Violation and assess administrative penalties and their staffs' T&M costs for affordable housing violations directly. A memorandum of understanding will be entered into by both MOHCD and Planning to determine which kinds of cases shall be enforced by each agency.

### Memorandum of Understanding

The proposed ordinance would require Planning and MOHCD to enter into a memorandum of understanding (MOU) to identify which agency will be the lead on each type of affordable housing violation. The two agencies have been working collaboratively for nearly one year drafting a detailed MOU which lists each type of potential affordable housing violation and which agency will serve as the "Lead". The departments have agreed that whoever is the lead agency will be responsible for the assessment and collection of fees and penalties. Generally, Planning will be the Enforcement Lead for cases where the violation occurs prior to the completion of construction, whereas MOHCD will be the Enforcement Lead for cases where the violation occurs post-construction. In cases where construction is complete, but the project owner would need to return to Planning or the Planning Commission for an approval, Planning would serve as the Enforcement Lead.

In some cases, Planning and MOHCD will need to work together on an affordable housing enforcement case. Collaborative efforts may be necessary in cases where multiple violations have occurred and one or more require work by Planning to abate the violation, and one or more require work by MOHCD to abate the violation. In these cases, the draft MOU states the Enforcement Lead would be identified during the initial stages of the enforcement process by the two agencies.



The draft MOU's delineation of cases lists how both agencies currently enforce affordable housing violations, as Planning is the expert agency on building and entitlement requirements, and MOHCD is the expert agency on occupancy requirements. The proposed ordinance is intended to memorialize and organize these roles and is not intended to establish brand new enforcement methods.

### Administrative and Civil Fees

The Planning Department deposits all fees collected through enforcement actions into their Code Enforcement Fund. The Planning Code Enforcement Fund was established by Administrative Code Section 10.100-166. The Planning Department, through the Planning Code Enforcement Fund, uses the fund to reimburse City departments and agencies, including the City Attorney's Office, for all costs and fees incurred in the enforcement of Section 176.

MOHCD does not have a fund to deposit penalties collected through affordable housing enforcement cases. Currently, all administrative and civil penalties collected through affordable housing enforcement cases are deposited in the Planning Department's Code Enforcement Fund. This is the case even when MOHCD conducts much of the enforcement work. Because MOHCD has no way of charging for their own T&M and has no fund to deposit penalties, they are losing revenue. This legislation will create a more organized and fair system for the enforcement of affordable housing violations by MOHCD and Planning.

### **General Plan Compliance**

Policy 7.3 of the Housing Element is to recognize the importance of funds for operations, maintenance and services to the success of affordable housing programs. Additionally, Policy 8.1 is to support the production and management of permanently affordable housing. The proposed ordinance would make organizational changes that would improve the efficiency of, and more broadly, enforcement of affordable housing produced by the Planning Code. It would additionally establish financing mechanisms that enable MOHCD to collect owed fees and penalties resulting from their enforcement actions, which will assist MOHCD with the reimbursement of their costs of enforcing these types of violations. These changes will support the effective management of the City's affordable housing units.

### **Racial and Social Equity Analysis**

The proposed ordinance would make organizational and fee distribution changes. It does not propose to make significant policy changes. As such, it cannot be directly tied to a positive or negative effect on racial and social equity.

### **Implementation**

The Department has determined that this ordinance will impact our current implementation procedures in the following ways:

The ordinance would divide the casework and fees associated with affordable housing violation enforcement more appropriately and fairly between MOHCD and Planning. Currently, Planning collects all of the administrative penalties and the majority of the civil penalties for all BMR related enforcement cases. Planning's

Finance Division has determined the potential loss of revenue from *administrative* penalties is a small percentage of the Department's overall budget.

The penalties collected through settlement of *civil* affordable housing enforcement cases however, have been no small amount in the last several years. This is largely due to Planning's and MOHCD's proactive efforts to examine all affordable housing units approved and built, and to enforce those that are not in compliance. If approved, the proposed ordinance would divide the casework. As such, it is anticipated that Planning may not be the enforcement lead in many of the civil cases, and as such may not be the recipient of some of these penalties. This is because many of the enforcement cases are about compliance with the adopted procedural manual, tenant qualification and occupancy, etc. It has been mutually agreed upon that MOHCD is the appropriate agency lead for these types of violations. Though Planning may not receive as much of the civil penalty settlements as they have in the past, Planning's Finance Division believes this change will have an immaterial effect on the Planning Department's budget. The number of affordable housing related enforcement cases are declining. While many new related enforcement cases may arise in the future, there is no expectation there will be large settlements as previously seen in the past.

## Recommendation

The Department recommends that the Commission *approve* the proposed Ordinance and adopt the attached Draft Resolution to that effect.

## Basis for Recommendation

The Department supports the overall goals of the proposed ordinance to establish a more organized and fair system for the enforcement of affordable housing violations by Planning and MOHCD. The lack of structure and designation of Lead Agency on affordable housing enforcement cases in the past has led to a less than fair distribution of penalties between the two agencies and caused confusion among staff and responsible parties. The ordinance will create mechanisms that empower MOHCD to enforce affordable housing violations that occur post-construction directly, instead of having to rely on the Zoning Administrator to issue NOV's. It will establish a fund for MOHCD to deposit their own penalties and T&M costs into the Affordable Housing Fund so that they may recoup their own costs of enforcement for these types of cases, thereby creating a more equitable distribution of funds.

## Required Commission Action

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

## Environmental Review

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

## Public Comment

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

### Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 220262



# PLANNING PRESERVATION COMMISSION DRAFT RESOLUTION

**HEARING DATE: May 26, 2022**

**Project Name:** Affordable Housing Code Enforcement  
**Case Number:** 2022-002926PCA [Board File No. 220262]  
**Initiated by:** Mayor Breed/ Introduced March 15, 2022  
**Staff Contact:** Audrey Merlone, Legislative Affairs  
Audrey.merlone@sfgov.org, 628-652-7534  
**Reviewed by:** Aaron D Starr, Manager of Legislative Affairs  
aaron.starr@sfgov.org, (628) 652-7533

**RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO PERMIT THE MAYOR’S OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT TO ENFORCE, AND COLLECT FINES AND PENALTIES FOR VIOLATIONS OF PLANNING CODE PROVISIONS GOVERNING AFFORDABLE HOUSING; AMENDING THE ADMINISTRATIVE CODE TO ALLOW THE MAYOR’S OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT (MOHCD) TO USE THE PROCEEDS IN THE AFFORDABLE HOUSING ENFORCEMENT FUND FOR ALL PLANNING CODE ENFORCEMENT ACTIVITIES BY MOHCD RELATING TO AFFORDABLE HOUSING; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.**

WHEREAS, on March 15, 2022 Mayor Breed introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 220262, which would amend the Planning Code to permit the Mayor’s Office of Housing and Community Development to enforce, and collect fines and penalties for violations of, Planning Code provisions governing affordable housing; amending the Administrative Code to allow the Mayor’s Office of Housing and Community Development (MOHCD) to use the proceeds in the Affordable Housing Enforcement Fund for all Planning Code enforcement activities by MOHCD relating to affordable housing;

WHEREAS, The Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on May 26, 2022; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Sections 15378 and 15060(c); and

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

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

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

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby **approves** the proposed ordinance.

## Findings

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

The Commission supports the overall goals of the proposed ordinance to establish a more organized and fair system for the enforcement of affordable housing violations by Planning and MOHCD. The lack of structure and designation of Lead Agency on affordable housing enforcement cases in the past has led to a less than fair distribution of penalties between the two agencies and caused confusion among staff and responsible parties. The ordinance will create mechanisms that empower MOHCD to enforce affordable housing violations that occur post-construction directly, instead of having to rely on the Zoning Administrator to issue NOV's. It will establish a fund for MOHCD to deposit their own penalties and T&M costs into the Affordable Housing Fund so that they may recoup their own costs of enforcement for these types of cases, thereby creating a more equitable distribution of funds.

## General Plan Compliance

The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

### HOUSING ELEMENT

#### OBJECTIVE 7

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

Policy 7.3

Recognize the importance of funds for operations, maintenance and services to the success of affordable housing programs.

### OBJECTIVE 8

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

##### Policy 8.1

Support the production and management of permanently affordable housing.

*The proposed ordinance would make organizational changes that would improve the efficiency of, and more broadly, enforcement of affordable housing produced by the Planning Code. It would additionally establish financing mechanisms that enable MOHCD to collect owed fees and penalties resulting from their enforcement actions, which will assist MOHCD with the reimbursement of their costs of enforcing these types of violations. These changes will support the effective management of the City's affordable housing units.*

#### **Planning Code Section 101 Findings**

The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.*

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

*The proposed Ordinance would not have a negative effect on housing or neighborhood character.*

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

*The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.*

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

*The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

5. That a diverse economic base be maintained by protecting our industrial and service sectors from

displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

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

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

*The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.*

7. That the landmarks and historic buildings be preserved;

*The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.*

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

*The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.*

**Planning Code Section 302 Findings.**

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

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

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on May 26, 2022.

Jonas P. Ionin  
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: May 26, 2022

1 [Planning, Administrative Codes - Affordable Housing Code Enforcement]

2

3 **Ordinance amending the Planning Code to permit the Mayor's Office of Housing and**  
 4 **Community Development to enforce, and collect fines and penalties for violations of,**  
 5 **Planning Code provisions governing affordable housing; amending the Administrative**  
 6 **Code to allow the Mayor's Office of Housing and Community Development (MOHCD) to**  
 7 **use the proceeds in the Affordable Housing Enforcement Fund for all Planning Code**  
 8 **enforcement activities by MOHCD relating to affordable housing; affirming the Planning**  
 9 **Department's determination under the California Environmental Quality Act; and**  
 10 **making findings of consistency with the General Plan, and the eight priority policies of**  
 11 **Planning Code, Section 101.1, and findings of public necessity, convenience, and**  
 12 **welfare under Planning Code, Section 302.**

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

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

21 Section 1. Environmental and Land Use Findings.

22 (a) The Planning Department has determined that the actions contemplated in this  
 23 ordinance comply with the California Environmental Quality Act (California Public Resources  
 24 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
 25 Supervisors in File No. 220262 and is incorporated herein by reference. The Board affirms  
 this determination.



1 (b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_,  
2 adopted findings that the actions contemplated in this ordinance are consistent, on  
3 balance, with the City's General Plan and eight priority policies of Planning Code Section  
4 101.1. The Board adopts these findings as its own. A copy of said Resolution is on file with  
5 the Clerk of the Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by  
6 reference.

7 (c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this  
8 ordinance will serve the public necessity, convenience, and welfare for the reasons set forth in  
9 Planning Commission Resolution No. \_\_\_\_\_, and incorporates such reasons by this  
10 reference thereto. A copy of said resolution is on file with the Clerk of the Board of  
11 Supervisors in File No. \_\_\_\_\_.

12 Section 2. The Planning Code is hereby amended by revising Sections 176, 350, and  
13 415.9, to read as follows:

14 **SEC. 176. ENFORCEMENT AGAINST VIOLATIONS.**

15 (a) **Violations Unlawful.** Any use, structure, lot, feature, or condition in violation of  
16 this Code is hereby found and declared to be unlawful and a public nuisance. Should any  
17 permit or license have been issued that was not then in conformity with the provisions of this  
18 Code, such permit or license shall be null and void.

19 (b) **Methods of Enforcement.** The Zoning Administrator shall have authority to  
20 enforce this Code against violations thereof by any of the following actions:

21 (1) Serving notice requiring the cessation, removal, or correction of any  
22 violation of this Code upon the owner, agent, or tenant of the property that is the subject of the  
23 violation, or upon the architect, builder, contractor, or other person who commits or assists in  
24 such violation;

1 (2) Calling upon the City Attorney to maintain an action for injunction to restrain  
2 or abatement to cause the correction or removal of any such violation, and for assessment  
3 and recovery of a civil penalty for such violation as well as any attorneys' fees or costs,  
4 including but not limited to expert witness fees, incurred in maintaining such an action;

5 (3) Calling upon the District Attorney to institute criminal proceedings in  
6 enforcement of this Code against any such violation; ~~and~~

7 (4) Calling upon the Chief of Police and authorized agents to assist in the  
8 enforcement of this Code; and

9 (5) Calling upon the Mayor's Office of Housing and Community Development  
10 (MOHCD) to enforce Planning Code requirements relating to affordable housing. The Department and  
11 MOHCD shall enter into a memorandum of understanding to identify the types of enforcement cases to  
12 be delegated to MOHCD.

13 (c) **Penalties.**

14 (1) **Administrative Penalties.** In the notice requiring the cessation, removal, or  
15 correction of any violation of this Code, the Zoning Administrator may assess upon the  
16 responsible party an administrative penalty for each violation in an amount up to \$250.00 for  
17 each day the violation continues unabated. The "responsible party" is the owner(s) of the real  
18 property on which the code violation is located, as listed in the records of the San Francisco  
19 Assessor, and the current leaseholder if different from the current owner(s) of the real  
20 property.

21 The responsible party may request a Zoning Administrator's hearing in order to  
22 show cause why the notice requiring the cessation, removal, or correction of the violation and  
23 any assessment of administrative penalties is in error and should be rescinded. The Zoning  
24 Administrator may designate a member of Department staff to act as the hearing officer in ~~his~~  
25 ~~or her~~ the Zoning Administrator's place. The Department shall send a notice of the date, hour,

1 and place of the hearing to the responsible party at the address specified in the request for  
2 hearing and to any member of the public who has expressed an interest in the matter.

3 The responsible party may also request that the Zoning Administrator terminate  
4 abatement proceedings under Section 176 and refer the matter to the Director for  
5 enforcement action under the process set forth in Section 176.1 ~~of this Code~~. If the Zoning  
6 Administrator determines that the enforcement case will proceed under Section 176, that  
7 determination shall be made as part of the final written decision and is not appealable  
8 separately from the decision on the merits.

9 The responsible party may waive the right to a Zoning Administrator's hearing  
10 and proceed directly to an appeal to the Board of Appeals under Section 308.2 ~~of this Code~~.  
11 Administrative penalties shall not accrue during the period of time that the matter is pending  
12 before the Zoning Administrator on a request for hearing or before the Board of Appeals on  
13 appeal. If the responsible party elects to request a Zoning Administrator's hearing, the request  
14 for hearing must be in writing and submitted to the Zoning Administrator prior to the expiration  
15 date of the Notice of Violation and Penalty. If a request for a Zoning Administrator's hearing is  
16 timely filed, any appeal to the Board of Appeals shall be from the decision of the Zoning  
17 Administrator rendered after the hearing.

18 The Zoning Administrator or the Zoning Administrator's designee, after a full and  
19 fair consideration of the evidence and testimony received at the hearing, shall render within  
20 ~~thirty~~<sup>30</sup> days following the conclusion of the hearing a written decision that either rescinds the  
21 notice of violation and dismisses the proceedings, upholds the original decision, or modifies  
22 the original decision. In rendering a decision, the Zoning Administrator or the Zoning  
23 Administrator's designee shall consider:

- 24 (A) whether the responsible party was properly identified;

- 1 (B) whether the accrual dates for the administrative penalties are  
2 accurate;
- 3 (C) the amount of documented staff time spent in order to secure  
4 abatement of the violation;
- 5 (D) the nature of the violation;
- 6 (E) the duration of the violation;
- 7 (F) efforts made by the responsible party to correct the violation;
- 8 (G) the impact of the violation upon the community;
- 9 (H) any instance in which the responsible party has been in violation of  
10 the same or similar laws at the same or other locations in the City and County of San  
11 Francisco;
- 12 (I) the responsible party's good faith efforts to comply;
- 13 (J) whether the violation is easy to correct; and
- 14 (K) such other factors as the Zoning Administrator or ~~his or her~~ the Zoning  
15 Administrator's designee may consider relevant.

16 In hearing any appeal of the Zoning Administrator's determination, the Board of  
17 Appeals shall consider the above factors. If the Board upholds the Zoning Administrator's  
18 decision in whole or in part but reduces the amount of the penalty, it may not reduce the  
19 amount of the penalty below \$100.00 for each day that the violation exists, excluding the  
20 period of time that the matter has been pending either before the Zoning Administrator on a  
21 request for hearing or before the Board of Appeals on appeal.

22 In addition to any administrative penalties imposed under this subsection (c)(1),  
23 the Zoning Administrator may recover any attorneys' fees and costs, including but not limited  
24 to expert witness fees, incurred by the City in pursuing administrative remedies. The provision  
25

1 of administrative penalties is not intended to be punitive in nature but is intended to secure  
2 compliance with the Planning Code and to compensate the City for its costs of enforcement.

3 (2) **Civil Penalties.** Any individual, firm, partnership, corporation, company,  
4 association, society, group, or other person or legal entity that violates any provision of this  
5 Code shall be liable for the City's costs of enforcement and a civil penalty, of not less than  
6 \$200.00 for each day such violation is committed or permitted to continue, which penalty shall  
7 be assessed and recovered in a civil action brought in the name of the people of the City and  
8 County of San Francisco by the City Attorney in any court of competent jurisdiction. The City  
9 Attorney may seek recovery of any attorneys' fees and costs, including but not limited to  
10 expert witness fees, incurred by the City in bringing such civil action. For civil actions to  
11 enforce Municipal Code provisions related to general advertising signs, the penalties,  
12 attorneys' fees, and costs set forth in this Section 176 shall be in addition to those authorized  
13 by Section 610 of this Code.

14 (3) **Criminal Penalties.** Any individual, firm, partnership, corporation, company,  
15 association, society, group, or other person or legal entity that violates any provision of this  
16 Code shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in  
17 an amount not less than \$200.00 or be imprisoned for a period not exceeding six months or be  
18 both so fined and imprisoned. Each day such violation is committed or permitted to continue  
19 shall constitute a separate offense and shall be punishable as such hereunder.

20 (4) **Planning Code Enforcement Fund.** Any fees and penalties collected  
21 pursuant to this Section 176 except those collected pursuant to subsection (b)(5) shall be  
22 deposited in the Planning Code Enforcement Fund established by Administrative Code  
23 Section 10.100-166. The Planning Department, through the Planning Code Enforcement  
24 Fund, shall reimburse City departments and agencies, including the City Attorney's Office, for  
25 all costs and fees incurred in the enforcement of this Section 176.

1                   (5) Affordable Housing Enforcement Fund. Any fees and penalties described in  
2 subsection (c)(2) that are collected as a result of the enforcement efforts of MOHCD as provided in  
3 subsection (b)(5), shall be deposited in the Affordable Housing Enforcement Fund established by  
4 Administrative Code Section 10.100-10. MOHCD shall reimburse City departments and agencies,  
5 including the City Attorney's Office, for all costs and fees incurred in the enforcement of this Section  
6 176, from the Affordable Housing Enforcement Fund.

7                   \* \* \* \*

8                   **SEC. 350. FEES.**

9                   \* \* \* \*

10                  (g) **Time and Materials.** The Planning Department shall charge the applicant for any  
11 time and materials cost incurred in excess of the initial fee charged if required to recover the  
12 Department's costs for providing services.

13                  (1) The Department shall charge time and materials to recover the cost of  
14 correcting code violations and violations of Planning Commission and Department conditions  
15 of approval of use if such costs are not covered by the monitoring fee for conditions of  
16 approval specified in the Planning Department Fee Schedule.

17                  (2) Where a different limitation on time and material<sub>s</sub> charges is set forth  
18 elsewhere in this Article 3.5, that limitation shall prevail.

19                  (3) The Planning Department may also charge the applicant for any time and  
20 materials costs incurred by another department or agency of the City and County of San Francisco, or  
21 may authorize such other departments or agencies of the City and County to charge directly for any  
22 time and material<sub>s</sub> costs incurred by the respective department or agency to recover the cost of  
23 correcting code violations, violations of Planning Commission and Department conditions of  
24 approval. ~~other departments or agencies of the City and County of San Francisco.~~

1 (4) Any balance of time and materials costs for active and open projects must  
2 be paid in full one week in advance of a scheduled public hearing before the Planning  
3 Commission to consider the project or before issuance of the first site permit if no hearing is  
4 required.

5 \* \* \* \*

6 **SEC. 415.9. ENFORCEMENT PROVISIONS AND MONITORING OF PROGRAM.**

7 (a) A first construction document or first Certificate of Occupancy, whichever  
8 applies, shall not be issued by the Director of DBI to any unit in the Principal Project until all of  
9 the affordable housing requirements of Sections 415.1\_ *et seq.* are satisfied.

10 (b) If, after issuance of the first Certificate of Occupancy, the Commission or  
11 Department determines that a project sponsor has failed to comply with any requirement in  
12 Section 415.1\_ *et seq.* or any reporting requirements detailed in the Procedures Manual, or has  
13 violated the Notice of Special Restrictions, the Commission, Department, or DBI may, until the  
14 violation is cured, (1) revoke the Certificate of Occupancy for the Principal Project or required  
15 Affordable Units, (2) impose a penalty on the project pursuant to Section 176(c) of this Code,  
16 and/or (3) the Zoning Administrator *or MOHCD* may enforce the provisions of Section 415.1\_ *et*  
17 *seq.* through any means provided for in Section 176 of this Code.

18 (c) The Department shall notify MOHCD of any housing project subject to the  
19 requirements of Section 415.1\_ *et seq.*, including the name of the project sponsor and the  
20 number and location of the Affordable Units, within 30 days of the Department's approval of a  
21 building, or site permit for the project. MOHCD shall provide all project sponsors with  
22 information concerning the City's first time homebuyer assistance programs and any other  
23 related programs MOHCD shall deem relevant to the Inclusionary Affordable Housing  
24 Program.

1 (d) The Department shall, as part of the annual Housing Inventory, report to the  
2 Board of Supervisors on the results of Section 415.1 *et seq.* including, but not limited to, a  
3 report on the following items:

4 (1) The number of, location of, and project applicant for, housing projects which  
5 came before the Commission for a Conditional Use Authorization or Planned Unit  
6 Development, and the number of, location of, and project applicant for, housing projects which  
7 were subject to the requirements of Section 415.1 *et seq.*;

8 (2) The number of, location of, and project sponsor for, housing projects which  
9 applied for a waiver, adjustment, or reduction from the requirements of Section 415.1 *et seq.*  
10 pursuant to Section 406 of this Article, and the number of, location of, and project sponsor for  
11 housing projects which were granted such a waiver, adjustment, or reduction and, if a  
12 reduction, to what percentage; and

13 (3) The number of, location of, and project sponsor for, every housing project to  
14 which Section 415.1 *et seq.* applied and the number of market rate units and the number of  
15 affordable on- and off-site units provided, including the location of all of the affordable units.

16 \* \* \* \*

17 Section 3. The Administrative Code is hereby amended by adding Section 10.100-10,  
18 to read as follows:

19 **SEC. 10.100-10. AFFORDABLE HOUSING ENFORCEMENT FUND.**

20 (a) Establishment of Fund. The Affordable Housing Enforcement Fund is established as a  
21 category four fund to receive funds collected for penalties and fees assessed under Planning Code  
22 Section 176(c) for violations of Planning Code requirements and regulations relating to affordable  
23 housing.

24 (b) Use of Fund. Proceeds in the fund are to be expended as follows: (1) administration and  
25 enforcement of the Planning Code's requirements and regulations relating to affordable housing,



1 including but not limited to funding MOHCD personnel and the services of the City Attorney, in the  
2 administration and enforcement of Planning Code requirements and regulations relating to affordable  
3 housing; (2) enforcement of any housing contract or agreement administered by MOHCD; and (3) to  
4 the extent authorized by state law, penalties and fees collected by the City Attorney in any action to  
5 abate violations of the Planning Code's requirements and regulations relating to affordable housing  
6 shall be used to fund administration and enforcement of the requirements and regulations, including  
7 the services of the City Attorney.

8 Section 4. Effective Date. This ordinance shall become effective 30 days after  
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
11 of Supervisors overrides the Mayor's veto of the ordinance.

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

18

19 APPROVED AS TO FORM:  
20 DAVID CHIU, City Attorney

21 By: /s/  
22 KRISTEN A. JENSEN  
23 Deputy City Attorney

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