



# SAN FRANCISCO PLANNING DEPARTMENT

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January 25, 2018

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

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

**Re: REVISED Transmittal of Planning Department Case Number 2017-014892PCA:  
Amending the Inclusionary Affordable Housing Program  
Board File No. 171193  
Planning Commission Recommendation: Approval**

Dear Ms. Calvillo and Supervisor Peskin,

On January 11, 2017, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Peskin that would amend Planning Code Section 415. At the hearing the Planning Commission recommended approval, as modified by staff to incorporate proposed changes to Planning Code Section 406.

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 note that this transmittal packet supersedes the transmittal packet that was submitted to you previously, dated January 24, 2018. The Resolution was updated to reflect the Commission's consideration of an additional technical modification to the proposed Ordinance.

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,

A handwritten signature in black ink, appearing to read "Aaron Starr", written over a white background.

Aaron D. Starr  
Manager of Legislative Affairs

cc:  
Audrey Pearson, Deputy City Attorney

Lee Hepner, Aide to Supervisor Peskin  
Sunny Angulo, Aide to Supervisor Peskin  
Alisa Somera, Office of the Clerk of the Board

Attachments :

Planning Commission Resolution No. 20087

Planning Department Executive Summary

Errata Sheet presented to the Planning Commission on January 11, 2018



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Resolution No. 20087

HEARING DATE JANUARY 11, 2018  
CORRECTED DATE JANUARY 25, 2018

*Project Name:* Inclusionary Affordable Housing Program Amendment  
*Case Number:* 2017-014892PCA [Board File No. 171193]  
*Initiated by:* Supervisor Peskin / Introduced November 20, 2017  
*Staff Contact:* Carly Grob, Current Planning  
carly.grob@sfgov.org, 415-575-9138  
*Reviewed by:* Kate Conner, Housing Implementation Specialist  
kate.conner@sfgov.org, 415-575-6914

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**RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND SECTION 415 OF THE PLANNING CODE TO REMOVE THE REQUIREMENT THAT ON-SITE AND OFF-SITE AFFORDABLE UNITS WITHIN A NEW DEVELOPMENT BE OWNERSHIP UNITS RATHER THAN RENTAL UNITS; 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 November 20, 2017 Supervisor Peskin introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 171193, which would amend Section 415 of the Planning Code to remove the requirement that on-site and off-site Affordable Units within a new development be ownership units rather than rental units;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on January 11, 2018; and,

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

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

WHEREAS, the Planning Commission has considered additional amendments to Planning Code Section 406 as presented by staff and included in the Case File; and

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

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

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:

1. The proposed Ordinance will correct the Planning Code so that it is in line with the newly adopted California State Assembly Bill 1515 (“AB 1505” or “The Palmer Fix”).
2. The Ordinance would allow the Department to require on-site or off-site affordable rental housing without requiring a project to be eligible to enter into a Costa Hawkins Agreement. This would allow Code-Compliant projects to provide on-site rental units without seeking any exceptions or bonuses.
3. The Ordinance would reduce the amount of staff time spent to review, track and execute Costa Hawkins Agreements, which incrementally reduces the amount of process required on a project-level basis. This is consistent with the Mayor’s Executive Directive No. 17-02, which charged the Planning Department to enhance regulatory and development review functions in order to streamline the approval and construction of housing in the City.
4. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

## HOUSING ELEMENT

### OBJECTIVE 4

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

#### Policy 4.4

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

*The proposed Ordinance will enhance the City’s supply of permanently affordable rental housing by increasing the number of mixed-use/residential projects that are eligible to comply with the Inclusionary Affordable Housing Program by providing on-site affordable rental units. The Ordinance would also reduce the administrative processes related to the provision of affordable units in rental projects, which may make rental projects more attractive to project sponsors and ultimately may encourage the development of more rental housing.*

5. **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 enhance the City's supply of affordable housing by allowing project sponsors to provide on-site affordable rental units through the Inclusionary Affordable Housing Program. Project sponsors would no longer need to demonstrate that they qualify for an exemption from Costa Hawkins, which could result in a greater number of projects that are eligible to provide on-site affordable rental housing. The Ordinance would also result in the reduction of process for Planning Staff, which could have incremental impacts on the overall timeline for the project, and ultimately provide both the market-rate and affordable units more quickly. 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.*

6. **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 described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on January 11, 2018.



Jonas P. Ionin  
Commission Secretary

AYES: Fong, Hillis, Johnson, Koppel, Melgar, Moore, Richards

NOES: None

ABSENT: None

ADOPTED: January 11, 2018



# SAN FRANCISCO PLANNING DEPARTMENT

## Executive Summary Planning Code Text Amendment

HEARING DATE: JANUARY 11, 2018  
EXPIRATION DATE: FEBRUARY 20, 2018

*Project Name:* Inclusionary Affordable Housing Program Amendment  
*Case Number:* 2017-014892PCA [Board File No. 171193]  
*Initiated by:* Supervisor Peskin / Introduced November 20, 2017  
*Staff Contact:* Carly Grob, Current Planning  
carly.grob@sfgov.org, 415-575-9138  
*Reviewed by:* Kate Conner, Housing Implementation Specialist  
kate.conner@sfgov.org, 415-575-6914  
*Recommendation:* **-Recommend Approval**

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### PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Inclusionary Affordable Housing Ordinance (Planning Code Section 415) to remove the requirement that on-site and off-site inclusionary units within a new development be ownership units rather than rental units.

#### The Way It Is Now:

Project sponsors may comply with the requirements of the Inclusionary Affordable Housing Program, set forth in Planning Code section 415 et. seq., by paying an impact fee, providing affordable units on-site, or providing affordable units off-site. On-site or off-site affordable units must be ownership units unless a developer can demonstrate that the development qualifies for an exemption from the Costa-Hawkins Rental Housing Act (CA Civil Code Section 1954.50 – “Costa Hawkins”). Generally, Costa Hawkins prohibits rent control on new residential units, unless the development has received density bonuses or other zoning modifications. The project sponsor would enter into a Costa Hawkins Agreement with the City, demonstrating that the project's on- or off-site units are not subject to the Costa Hawkins because the project is receiving a development bonus or direct financial contribution.

#### The Way It Would Be:

This Ordinance would amend Planning Code Section 415 to allow affordable units on-site and off-site rental units without the need to qualify for an exemption from Costa Hawkins.

### BACKGROUND

In 1995, the Costa Hawkins Act was enacted to prohibit municipal rent control ordinances which did not allow landlords to raise rents to market level when tenants vacated a unit. Under the Costa Hawkins Act, municipalities could regulate the amount of rent increase while the tenant is occupying the unit, but the landlord would be able to set the initial rent for a new tenant when a unit is vacated.

The Palmer/Sixth Street Properties v. City of Los Angeles case found that a city's application of an affordable housing requirement is preempted by the provisions of the Costa Hawkins Act- meaning that instead of the Mayor's Office of Housing regulating the rent of an affordable unit, the landlord retains that right.

Currently, our Inclusionary Affordable Housing Program requires that any on-site affordable units be ownership-only as a result of the Palmer case, unless the project qualifies for an exception to the Costa Hawkins Act.

On September 29, 2017, Governor Jerry Brown signed Assembly Bill 1505 (AB-1505), which is also known as "The Palmer Fix." AB 1505 restores the City's ability to require on-site and off-site inclusionary affordable rental housing without qualifying for an exemption from Costa Hawkins. The bill specifically allows legislative bodies to adopt ordinances that require, as a condition of development, that the development include a certain percentage of affordable rental units, as long as the ordinances provide alternative means of compliance, such as payment of in-lieu fees or provision of on-site or off-site ownership units. AB 1505 became effective on January 1, 2018.

## ISSUES AND CONSIDERATIONS

### **Affordable Rental Housing**

The proposed Ordinance would allow the Department to implement the Palmer Fix by removing requirements that affordable units must be ownership, or must qualify for an exemption from Costa Hawkins. The exemption is memorialized in a Costa Hawkins Agreement which demonstrates that the project's on- or off-site units are not subject to the Costa Hawkins because the project is receiving an exception or modification resulting in additional density or a direct financial contribution. In some cases, these restrictions effectively prohibited code-complying projects from providing affordable rental units on-site or off-site, since they weren't receiving an exception or modification to allow more density. By removing these requirements, a greater number of projects would be eligible to comply with the Inclusionary Housing Program by providing on-site or off-site affordable rental units, which could lead to more affordable rental units in the MOHCD Inclusionary portfolio, and potentially more rental housing overall.

### **Process Improvements and Streamlining**

Currently, a project must demonstrate that it is receiving a density bonus or other zoning modification, and is eligible for an exemption from Costa Hawkins. In some cases, projects that are completely Code-compliant are unable to provide on-site affordable rental units because they are not seeking any exceptions or modifications that would result in a density bonus. These projects must either pay the Inclusionary Affordable Housing Fee, or they must revise their project to create the need for an exception or modification, resulting in additional hearings for the Commission and the Zoning Administrator.

If a project was able to demonstrate that it was eligible for a waiver from Costa Hawkins, Planning Staff would coordinate with the project sponsor and City Attorney's Office to draft, sign, and notarize the Costa Hawkins Agreement. This was often a time-consuming process, and had the potential to result in project delays if the Agreement wasn't completed in time for the Commission-a required hearing. The proposed Ordinance would remove the Section of the Planning Code that required project sponsors to



enter into a Costa Hawkins Agreement, which would ultimately save staff time and result in fewer delays.

Although the Agreements are written to address any future modifications to the project, they must also be updated if there are changes to the Inclusionary Housing Program Requirements which would apply to the project. Approved ownership projects that are seeking to switch tenure to rental projects must also demonstrate eligibility to enter into a Costa Hawkins Agreement.

### IMPLEMENTATION

#### Implementation

This Ordinance would be a step in simplifying Inclusionary Housing processes for Current Planners. Approximately six weeks prior to any required hearing, the Current Planner assigned to the project must engage the Housing Implementation Specialist to coordinate the Costa Hawkins Agreement. The Housing Implementation Specialist provides a Costa Hawkins Agreement template to the Project Sponsor, who revises the Agreement to fit the project. The Sponsor submits the agreement to Planning Staff, who transmit the Agreement to the City Attorney. The City Attorney may provide comments to the Project Sponsor, and often works directly with them to address any errors or discrepancies. When the Agreement is finalized, the City Attorney and Project Sponsor sign and notarize the agreement, and submit it to Planning Staff. The Agreement is signed by the Planning Director and notarized following project approval, and recorded on the property. Currently, a project must demonstrate that it is receiving a density bonus or other zoning modification, and is eligible for an exemption from Costa Hawkins. In some cases, projects that are completely Code compliant are unable to provide on-site affordable rental units because they are not seeking any exceptions or modifications that would result in a density bonus. These projects must either pay the Inclusionary Affordable Housing Fee, or they must revise their project to create the need for an exception or modification.

Projects seeking an exemption from Costa Hawkins must enter into a Costa Hawkins Agreement with the City, which is time consuming for Planning Staff and for the City Attorney. The sponsor must work with the City Attorney to finalize a draft of the Agreement, which is included in the Commission Case Packet. If the Costa Hawkins Agreement is not prepared by any required Planning Commission hearing, the project must be continued to a later hearing, resulting in further delays for the project and more crowded calendars for future projects. The Planning Director must sign off on the agreement after project approval, and the agreement is then recorded on the property.

Although the Agreements are written to address any future modifications to the project, they must also be updated if there are changes to the Inclusionary Housing Program Requirements which would apply to the project. Approved ownership projects that are seeking to switch tenure to rental projects must also demonstrate eligibility to enter into a Costa Hawkins Agreement.

#### **General Plan Compliance**

One of the goals of the General Plan is to preserve and enhance the City's supply of affordable housing. Policy 4.4 of the Housing Element of the General Plan encourages sufficient and suitable rental housing opportunities, especially permanently affordable rental units. The proposed Ordinance will enhance the City's supply of permanently affordable rental housing by increasing the number of mixed-

Comment [KC1]: Does this go at the end? If so, great, but I feel like the action should be last?

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use/residential projects that are eligible to comply with the Inclusionary Affordable Housing Program by providing on-site affordable rental units. The Ordinance would also reduce the administrative processes related to the provision of affordable units in rental projects, which may make rental projects more attractive to project sponsors and ultimately may encourage the development of more rental housing.

### RECOMMENDATION

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

### BASIS FOR RECOMMENDATION

- The Ordinance would bring the Planning Code into compliance with California State Law (AB 1505);
- The Ordinance would allow the Department to require on-site or off-site affordable rental housing without requiring a project to be eligible to enter into a Costa Hawkins Agreement. This would allow Code-Compliant projects to provide on-site rental units without seeking any exceptions or bonuses;
- ~~Planning Staff reviewed XXX Costa Hawkins Agreements in 2017.~~ This Ordinance would reduce the amount of Staff time required to review and process rental housing projects, which ultimately facilitates a quicker approval and construction of much-needed housing in the City.

**Comment [CG2]:** I need to do this tomorrow – I hadn't updated the CH tracking sheet in a minute so I need to do it before I land on a number

### REQUIRED COMMISSION ACTION

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

### IMPLEMENTATION

~~This Ordinance would be a step in simplifying Inclusionary Housing processes for Current Planners. Currently, a project must demonstrate that it is receiving a density bonus or other zoning modification, and is eligible for an exemption from Costa Hawkins. In some cases, projects that are completely Code-compliant are unable to provide on-site affordable rental units because they are not seeking any exceptions or modifications that would result in a density bonus. These projects must either pay the Inclusionary Affordable Housing Fee, or they must revise their project to create the need for an exception or modification.~~

~~Projects seeking an exemption from Costa Hawkins must enter into a Costa Hawkins Agreement with the City, which is time consuming for Planning Staff and for the City Attorney. The sponsor must work with the City Attorney to finalize a draft of the Agreement, which is included in the Commission Case Packet. If the Costa Hawkins Agreement is not prepared by any required Planning Commission hearing, the project must be continued to a later hearing, resulting in further delays for the project and more crowded calendars for future projects. The Planning Director must sign off on the agreement after project approval, and the agreement is then recorded on the property.~~

**Comment [KC3]:** Does this go at the end? If so, great, but I feel like the action should be last?

~~Although the Agreements are written to address any future modifications to the project, they must also be updated if there are changes to the Inclusionary Housing Program Requirements which would apply to the project. Approved ownership projects that are seeking to switch tenure to rental projects must also demonstrate eligibility to enter into a Costa Hawkins Agreement.~~

#### 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.

**RECOMMENDATION: *Recommendation of Approval***

#### Attachments:

Exhibit A: Draft Planning Commission Resolution

~~Exhibit B: Letters of Support/Opposition or other supporting documentation, etc.~~

Exhibit BC: Board of Supervisors File No. 171193

Comment [CG4]: None yet – keeping highlighted in case there's feedback

## **SEC. 406. WAIVER, REDUCTION, OR ADJUSTMENT OF DEVELOPMENT PROJECT REQUIREMENTS.**

...

### **(b) Waiver or Reduction, Based on Housing Affordability.**

(1) An affordable housing unit shall receive a waiver from the Rincon Hill Community Infrastructure Impact Fee, the Market and Octavia Community Improvements Impact Fee, the Eastern Neighborhoods Infrastructure Impact Fee, the Balboa Park Impact Fee, the Visitacion Valley Community Facilities and Infrastructure Impact Fee, the Transportation Sustainability Fee, and the Residential Child Care Impact Fee if the affordable housing unit:

(A) is affordable to a household at or below 80% of the Area Median Income (as published by HUD), including units that qualify as replacement Section 8 units under the HOPE SF program;

(B) is subsidized by MOHCD, the San Francisco Housing Authority, the Department of Homelessness and Supportive Housing and/or the Office of Community Investment and Infrastructure San Francisco Redevelopment Agency or any future successor agency to those listed herein; and

(C) is subsidized in a manner which maintains its affordability for a term no less than 55 years, whether it is a rental or ownership opportunity. Project sponsors must demonstrate to the Planning Department staff that a governmental agency will be enforcing the term of affordability and reviewing performance and service plans as necessary.