

REVISED LEGISLATIVE DIGEST
(Amended in Committee, 9/11/2023)

[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, including projects approved under the Housing Opportunities Means Equity – San Francisco (HOME-SF) program, 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, and HOME-SF requirements, 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.

Housing Opportunities Means Equity – San Francisco (HOME-SF)

The HOME-SF program, Planning Code section 206.3, is a locally adopted density bonus program. In exchange for a minimum percentage of on-site affordable units (20% for small projects (10-24 units) and 23% for large projects (25+ units)), projects are entitled to form-based density (where the number of units on a lot is limited only by the building envelope, rather than a maximum number of units per lot) and a ground floor ceiling height increase of 5 feet. If a project (10+ units) provides 25% affordable units, it can also receive an additional 10 feet in height; if a project (10+ units) provides 30% affordable units, it can also receive an additional 20 feet in height.

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 10 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, including HOME-SF, 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 10-24 units would be required to provide 12% of units on-site, or pay a fee or provide off-site units equivalent to 16.4% of the total units. 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, including HOME-SF, 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 existing 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.

Ordinance History:

On July 24, 2023, the Land Use and Transportation Committee of the Board of Supervisors amended the ordinance in Board File No. 230769 to amend section (b) and (f) of the General Findings in Section 2 of the ordinance; correct a reference in new Section 415B.1 of the Planning Code; and correct the numbering in amended Section 403. The Committee then duplicated the file, creating Board File No. 230855. The original ordinance, in Board File No. 230769, was then approved by the Board of Supervisors on first reading on July 25, 2023, and approved by the Board on second reading on September 5, 2023.

This ordinance, in the duplicate file (Board File No. 230855), includes additional amendments to the ordinance, which were adopted by the Land Use and Transportation Committee on September 11, 2023. The additional amendments reduce impact fees for Pipeline Projects, as defined; and reduce the inclusionary requirements for Pipeline Projects, including HOME-SF projects, with 10-24 units. Because the ordinance in Board File No. 230769 is not yet effective, both sets of Committee amendments (those adopted by the Committee on July 24, 2023 in the ordinance in Board File No. 230769, and those adopted by the Committee on September 11, 2023 in the ordinance in Board File No. 230855) are shown in this ordinance in Board amendment font.

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