

1 [Planning Code - Authorize Increases to the Affordable Price and Income Limits for Certain
2 Below Market Rate Owned Units and Require Amenities to be Resold with Unit]

3 **Ordinance amending the Planning Code to allow certain Below Market Rate (BMR)**
4 **Owned Units to be resold at a price affordable to households at an increased Area**
5 **Median Income (AMI) level, increase the qualifying AMI limit for BMR purchasers, and**
6 **require BMR Owned Units originally purchased with parking spaces and other**
7 **amenities to be resold with the same parking and amenities; affirming the Planning**
8 **Department’s determination under the California Environmental Quality Act; and**
9 **making findings of consistency with the General Plan, and the eight priority policies of**
10 **Planning Code, Section 101.1, and making findings of public necessity, convenience,**
11 **and welfare pursuant to Planning Code, Section 302.**

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

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

20 Section 1. Environmental and Land Use Findings.

21 (a) The Planning Department has determined that the actions contemplated in this
22 ordinance comply with the California Environmental Quality Act (California Public Resources
23 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
24 Supervisors in File No. 240802 and is incorporated herein by reference. The Board affirms
25 this determination.

1 (b) On October 17, 2024, the Planning Commission, in Resolution No. 21626, adopted
2 findings that the actions contemplated in this ordinance are consistent, on balance, with the
3 City’s General Plan and eight priority policies of Planning Code Section 101.1. The Board
4 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
5 Board of Supervisors in File No. 240802, and is incorporated herein by reference.

6 (c) Pursuant to Planning Code Section 302, this Board finds that these Planning Code
7 amendments will serve the public necessity, convenience, and welfare for the reasons set
8 forth in Planning Commission Resolution No. 21626, and the Board incorporates such
9 reasons herein by reference. A copy of said resolution is on file with the Clerk of the Board of
10 Supervisors in File No. 240802.

11
12 Section 2. Article 4 of the Planning Code is hereby amended by revising Sections 401
13 and 415.8, to read as follows:

14 **SEC. 401. DEFINITIONS.**

15 In addition to the specific definitions set forth in Section 102 and elsewhere in this
16 Article 4, the following definitions shall govern interpretation of this Article:

17 “Affordable Price.” The price at which the Owned Unit would be Affordable to Qualifying
18 Households.

19 “Affordable Unit” or “Affordable Housing Unit.” A unit that is Affordable to Qualifying
20 Households under Section 415 et seq.

21 * * * *

22 “Program” or “Inclusionary Housing Program.” The Inclusionary Affordable Housing
23 Program as detailed in Sections 415-417.

24 “Qualifying Income.” The income at which a household meets the income eligibility
25 requirements for a particular BMR Unit. The Qualifying Income may be higher than the maximum

1 income limit or income range required in the Notice of Special Restrictions or other document
2 establishing affordability restrictions for the BMR Unit.

3 * * * *

4
5 **SEC. 415.8. DURATION AND MONITORING OF AFFORDABILITY.**

6 (a) For any units permitted under the Program:

7 (1) All units constructed pursuant to Sections 415.6 (On-site Affordable Housing
8 Alternative) and 415.7 (Off-site Affordable Housing Alternative) must be owner-occupied, as
9 defined in the Procedures Manual, in the case of Owned Units, or occupied by qualified
10 households in the case of Rental Units.

11 (2) Units shall not remain vacant for a period exceeding 60 days without the written
12 consent of MOHCD.

13 (3) All units constructed pursuant to Sections 415.6 and 415.7 must remain Affordable
14 to Qualifying Households for the life of the project.

15 (4) The income levels specified in the Notice of Special Restrictions and/or conditions
16 of approval for the project shall be the required income percentages for the life of the project.
17 Notwithstanding the foregoing sentence, if approved by MOHCD and as provided in the
18 Procedures Manual, an exception to the required income percentage may be made in the
19 following cases:

20 (A) a rental unit that converts to an Owned Unit, with Qualifying Income up to a
21 maximum of ~~120~~150% of AMI and a sales price established pursuant to Section 415.8(b)(5);

22 (B) where there is an existing tenant who has undergone re-certification as defined in
23 the Procedures Manual, the existing tenant's household income may increase ~~by~~ up to ~~200% of~~
24 ~~the levels specified in the Notice of Special Restrictions or conditions of approval~~ a maximum of 200%
25 of AMI;

1 (C) new Owned Units where the project sponsor has used good faith efforts to
2 secure a contract with a qualified buyer but is unable to secure such a contract in a timely
3 manner from the initiation of marketing;

4 (D) resale Owned Units where the owner has used good faith efforts to secure a
5 contract with a qualified buyer but is unable to secure a buyer contract at a maximum resale
6 price specified by MOHCD in a timely manner; ~~or~~

7 (E) the ~~Qualifying~~ ~~Income~~ level for new or resale Owned Units may be set at
8 ~~1020%~~ above the income level stated in the Notice of Special Restrictions or conditions of
9 approval; or

10 (F) resale Owned Units where the owner has requested an adjustment to the maximum
11 income limit stated in the existing Notice of Special Restrictions or other document establishing
12 affordability requirements for the unit and/or has requested an increase to the Qualifying Income level,
13 pursuant to subsection (b)(9).

14 (5) The Commission or the Department shall require all housing projects subject to
15 Section 415.1 et seq. to record a Notice of Special Restrictions ~~with the Recorder in the official~~
16 records of the City and County of San Francisco. The Notice of Special Restrictions must
17 incorporate the affordability restrictions. All projects described in Section 415.3(a)(1) ~~and~~
18 ~~415.3(a)(3)~~ must incorporate all of the requirements of this Section 415.8 into the Notice for
19 Special Restrictions, including any provisions required to be in the conditions of approval for
20 housing projects described in Section 415.3(a)(2). These Section 415.3(a)(2) projects which
21 are housing projects ~~that~~ ~~which~~ go through the conditional use or planned unit development
22 process shall have conditions of approval. The conditions of approval shall specify that project
23 applicants shall adhere to the marketing, monitoring, and enforcement procedures outlined in
24 the Procedures Manual, as amended from time to time, in effect at the time of project
25 approval. The Commission shall file the Procedures Manual in the case file for each project

1 requiring inclusionary housing pursuant to this Program. The Procedures Manual will be
2 referenced in the Notice of Special Restrictions for each project.

3 (b) For any units permitted to be Owned Units under the Program, the MOHCD shall:

4 (1) Establish and implement a process for reselling an affordable unit in the
5 Procedures Manual;

6 (2) Provide that owners may not change title on the unit without review and approval
7 by MOHCD and according to guidelines published in the Procedures Manual, as amended from
8 time to time.

9 (3) Provide that owners must comply with refinancing procedures and limitations as
10 published in the Procedures Manual, as amended from time to time.

11 (4) Provide that, in order to retain all units restricted as affordable under this Program
12 within the City's affordable housing stock, the specific procedures for passing an affordable
13 unit through inheritance are contained in the Procedures Manual. All transfers through
14 inheritance must be reviewed and approved by MOHCD and, in all cases, the heir must
15 acknowledge and agree to the provisions of the Program. The following households may
16 inherit the ability to occupy a unit restricted under this Program: (i) a spouse or registered
17 domestic partner, regardless of income; or (ii) a child of the owner if the child is a qualifying
18 household for the unit. If the heir qualifies under one of these categories, the heir must occupy
19 the unit or the heir must market and sell the unit at the restricted price through a public lottery
20 process and retain the proceeds from the sale. If the heir does not qualify to occupy the unit,
21 the heir must market and sell the unit at the restricted price to a qualified buyer through a
22 public lottery process. The heir would retain the proceeds of such sale.

23 (5) Require that affordable Rental Units permitted by the Commission to be
24 converted to Owned Units ~~must~~ satisfy the requirements of the Procedures Manual, as
25 amended from time to time, including that the units shall be sold at restricted sales prices to

1 households meeting the income qualifications specified in the Notice of Special Restrictions or
2 conditions of approval, with a right of first refusal for the occupant(s) of such units at the time
3 of conversion. If the current tenant qualifies for and purchases the unit, the unit shall be sold
4 at a sales price corresponding to the affordability level required for the unit as a Rental Units
5 as specified in the Notice of Special Restrictions or conditions of approval ~~or to the affordability level~~
6 ~~for the specific tenant household, whichever is higher~~, with a maximum allowable ~~Qualifying~~
7 ~~Income level up to 120150%~~ of AMI. If the unit is sold to ~~anyone else~~ buyer who is not a current
8 tenant, the sales price shall correspond to the affordability level required for the unit as an
9 Owned Units as specified in the Notice of Special Restrictions or conditions of approval. Upon
10 conversion to ownership, the units are subject to the resale and other restrictions of this
11 Program for the life of the project, as defined in the Notice of Special Restrictions or
12 conditions of approval for the Project.

13 (6) For Owned Units approved pursuant to Sections 415.6 or 415.7, the Notice of
14 Special Restrictions or conditions of approval will include provisions restricting resale prices
15 and purchaser income levels according to the formula specified in the Procedures Manual, as
16 amended from time to time. All amenities and parking spaces that were purchased with the initial
17 sale of the Owned Unit must be sold with the Owned Unit upon resale and shall be included in the
18 resale price. In the ~~case that~~ event subordination of the Affordability Conditions contained in a
19 recorded Notice of Special Restrictions may be necessary to ensure the ~~P~~project ~~A~~applicant's
20 receipt of adequate construction and/or permanent financing for the project, or to enable first-
21 time home buyers to qualify for mortgages, the project applicant may follow the procedures for
22 subordination of affordability restrictions as described in the Principal Project's conditions of
23 approval or in the Procedures Manual. A release following foreclosure or other transfer in lieu
24 of foreclosure may be authorized if required as a condition to financing pursuant to the
25 procedures set forth in the Procedures Manual.

1 (7) Purchasers of Affordable Units shall secure the obligations contained in the
2 Notice of Special Restrictions or conditions of approval by executing and delivering to the City
3 a promissory note secured by a deed of trust encumbering the applicable affordable unit as
4 described in the Procedures Manual or by an alternative means if so provided for in the
5 Procedures Manual, as amended from time to time.

6 (8) **Procedures ~~For~~ Units Unable ~~To~~ Resell.** The Board of Supervisors finds that
7 certain requirements of this Program and the Procedures Manual may create hardship for
8 owners of Affordable Units restricted under this Program. However, the Board also recognizes
9 that the requirements of this Program are important to preserve the long-term affordability of
10 units restricted under the Program. In order to allow some relief for owners of Affordable Units
11 during a time of economic downturn, but to provide the maximum protection for the long-term
12 affordability of the units, the Board directs MOHCD to analyze the following issues and, if it
13 deems appropriate, to propose amendments to the Procedures Manual to address the issues:

14 ~~(H)(A)~~ **Waiver of Resale~~Re-Sale~~ Requirements and Maximum Qualifying**
15 **Income Level for New Buyers of Resale BMR Units.** The Board recognizes that the risk to
16 low- and moderate-income homeowners during times of economic downturn can increase the
17 risk of default and foreclosure of units restricted under this Program. The Board directs
18 MOHCD to study ways to reduce such risks in the below market rate unit context and, if it
19 deems appropriate, to make recommendations to the Planning Commission to amend the
20 Procedures Manual to allow MOHCD discretion, in certain limited circumstances, to waive
21 requirements for owners of Affordable Units who have used good faith efforts to secure a
22 contract with a qualified buyer but are unable to resell their unit in a timely manner. Such
23 amendments to the Procedures Manual may include, but are not limited to, authorizing
24 MOHCD to make one or more allowances for owners of Affordable Units unable to resell,
25 such as: ~~(i)~~ a one-time waiver of the first-time homebuyer rule for the purchasing household;

1 (ii) a one-time waiver of qualifying household size requirements for the purchasing
2 household; (iii) ~~and~~ a one-time waiver of owner occupancy rules to allow a temporary rental;
3 (iv) a one-time modification of the asset test for the new buyer household; and (v) allowing
4 MOHCD discretion to increase the ~~Qualifying~~ ~~Income~~ level for the unit by up to 20% above
5 the maximum income limit currently allowed by the Use Restrictions for the ~~Unit~~ but at no
6 time higher than ~~120~~150% of AMI. MOHCD and the Commission shall set forth criteria for
7 granting such allowances such as establishing a minimum time that the units must have been
8 advertised by MOHCD without selling; establishing criteria related to unusual economic or
9 personal circumstances of the owner; providing a maximum percentage for the increase
10 above the maximum income limit currently allowed; providing that the increase may only be
11 granted on a one-time basis; and requiring the owner to clearly establish that the BMR unit is
12 being resold at the ~~original purchase price plus the current repricing mechanism under the Program~~
13 ~~which calculates the percentage change in AMI from the time of purchase to resale plus the~~
14 ~~commission and any eligible capital improvements or special assessments~~maximum resale price
15 specified in the Procedures Manual, as amended from time to time.

16 ~~(2)(B)~~ **Waiver of Maximum Qualifying Income Level ~~F~~for New Buyers of**
17 **Initial Sale BMR Units.** The Board of Supervisors recognizes that the current Program
18 provides that the income of a new buyer of a below market rate household cannot exceed the
19 maximum income stated in the Planning Approval or Notice of Special Restrictions for the
20 BMR Unit. Due to less desirable developments or geographic areas, a ~~P~~project ~~S~~ponsor is
21 sometimes unable to find a buyer for a BMR Unit within the maximum income stated in the
22 Planning Approval or Notice of Special Restrictions for the ~~Unit~~. This situation makes it
23 difficult, if not impossible, for certain current owners of below market rate units to resell their
24 units. In order to minimize this situation, the Board of Supervisors directs MOHCD to study
25 ways to address this issue and, if it deems appropriate, to make recommendations to the

1 Planning Commission to amend the Procedures Manual to allow MOHCD to assist ~~P~~project
2 ~~S~~sponsors who have used good faith efforts as determined by MOHCD to secure a contract with
3 a qualified buyer but who are unable to secure such a contract in a timely manner from the
4 initiation of marketing. Such amendments may include allowing MOHCD discretion to increase
5 the ~~q~~Qualifying ~~i~~Income level for the unit by up to 20% above the maximum income limit
6 currently allowed by the Use Restrictions for the ~~U~~unit but at no time higher than ~~120~~150% of
7 AMI. MOHCD and the Planning Commission shall establish limits to this or a similar proposal
8 such as: providing a maximum percentage for the increase above the maximum income limit
9 currently allowed; requiring that a certain period without securing a buyer would pass before
10 such an allowance would be made; and providing that the increase may only be granted on a
11 one-time basis.

12 **(9) Adjustment of Pricing and Income Limits for Owned Units Purchased at a Price Above**
13 **the Affordable Price Determined at the Time of Resale.**

14 **(A) Findings and Purposes.** *The Board of Supervisors finds that the requirements of this*
15 *Program and the Procedures Manual may create financial hardship for certain Owners of Affordable*
16 *Units who could suffer a financial loss if said Owners sold their units at a price in compliance with the*
17 *existing Notice of Special Restrictions or other affordability restrictions for the unit. However, the*
18 *Board also recognizes that the requirements of this Program are important to preserve the long-term*
19 *affordability of units restricted under the Program. To provide flexibility while protecting the long-term*
20 *affordability of the Affordable Units and viability of the Program, this subsection (b)(9) provides*
21 *options to allow some relief for Owners of Affordable Units that are re-selling at a time when the*
22 *Affordable Price would be lower than the price at which they originally purchased their Affordable*
23 *Unit.*

24 **(B) Authorization to Reset Pricing and Income Limits.** *The Board authorizes MOHCD to*
25 *adjust the Affordable Price at the time of resale and to establish the corresponding maximum income*

1 limit or income range for eligible Owned Units, as further specified and limited in this subsection
2 (b)(9). This authorization and adjustment procedure shall be available only once per eligible Owned
3 Unit and shall result in an Affordable Price that is based on a permanent increase to the restrictions on
4 Affordable Price and maximum income limit for the Owned Unit. For the resale and any subsequent
5 resale of the Owned Unit, the Maximum Purchase Price shall be determined by MOHCD based on the
6 new, increased maximum percentage of AMI established pursuant to this subsection (b)(9).

7 (C) **Eligibility.** An Owned Unit is eligible for an increase in the Affordable Price and
8 corresponding maximum income limit or income range for the Owned Unit if the Owner purchased the
9 unit at a price above the Affordable Price at the time of resale, which Affordable Price shall be
10 determined by MOHCD based on the existing Notice of Special Restrictions or other document
11 establishing affordability requirements for the unit at the time MOHCD processes the Owner's resale
12 request. The Owner is not required to attempt to sell the unit prior to the adjustment described in this
13 subsection (b)(9) to qualify for said adjustment.

14 (D) **Maximum Allowable Adjustment.** For the resale of an Owned Unit eligible for an
15 adjustment under this subsection (b)(9), MOHCD may establish an adjusted Affordable Price up to the
16 original purchase price paid by the current Owner. MOHCD may increase the maximum income limit
17 or income range for the unit to reflect the adjusted Affordable Price, up to a maximum of 130% AMI. In
18 addition, once per eligible Owned Unit, MOHCD may increase the maximum Qualifying Income level
19 for the unit by up to 20% above the maximum income limit or income range in the new Notice of
20 Special Restrictions or other document establishing affordability requirements for the unit, provided
21 that the increased maximum Qualifying Income level does not exceed 150% of AMI. The ultimate resale
22 price may be lower or higher than the Affordable Price. Nothing in this subsection (b)(9) ensures or
23 entitles an Owner to a resale price equal to the adjusted Affordable Price when reselling their Owned
24 Unit.

1 **(E) Procedures.**

2 (i) MOHCD shall propose policies and procedures for implementing price and AMI
3 level adjustments consistent with this subsection (b)(9) to the Planning Commission for inclusion in the
4 Procedures Manual.

5 (ii) MOHCD may establish an adjusted Affordable Price and increase the maximum
6 AMI level consistent with this subsection (b)(9) for the purposes of processing the resale, including
7 marketing the Affordable Unit. If approved pursuant to subsections (b)(9)(E)(iii) through (vi), the
8 increased maximum AMI level shall be established for all other purposes by the recording of a new
9 Notice of Special Restrictions upon closing the resale of the Owned Unit that reflects the increased
10 AMI level. As a condition of MOHCD's approval of the adjustments under this subsection (b)(9), the
11 Owner shall execute and authorize the recordation of the new Notice of Special Restrictions in senior
12 lien priority upon closing the resale of the Owned Unit.

13 (iii) For units in principal projects that required Planning Commission approval, the
14 Planning Commission, in consultation with MOHCD, may modify any original conditions of approval
15 for the principal project related to the maximum price or income levels consistent with this subsection
16 (b)(9), including, but not limited to, modification to the required terms of a Notice of Special
17 Restrictions recorded or to be recorded against the project or the Owned Unit. If the Planning
18 Commission has delegated its authority to the Planning Department to review and approve requests for
19 pricing and AMI level adjustments, such adjustments shall be reviewed and considered for approval by
20 the Director of the Planning Department, and the Planning Commission shall not hold a public hearing
21 for discretionary review.

22 (iv) For units in principal projects that required Planning Department approval but
23 not Planning Commission approval, the Planning Department, in consultation with MOHCD, may
24 modify any original conditions of approval for the principal project related to the maximum price or
25

1 income levels including but not limited to modification to the required terms of a Notice of Special
2 Restrictions recorded or to be recorded against the project or the Owned Unit.

3 (v) For units in principal projects that did not require Planning Commission or
4 Planning Department approval, the Planning Department, in consultation with MOHCD, may modify
5 the required terms of a Notice of Special Restrictions recorded or to be recorded against the project or
6 the Owned Unit.

7 (vi) Any other City approval required prior to modifying the terms of a Notice of
8 Special Restrictions, such as amending a development agreement, shall be obtained.

9 (vii) Modifications under this subsection (b)(9) shall not be subject to review under
10 any other Planning Code provision applicable to a change of use or change of condition including but
11 not limited to Sections 303(e), 309(f), or 329(f)(7).

12 * * * *

13
14 Section 3. Article 1.5 of the Planning Code is hereby amended by revising Section
15 167, to read as follows:

16 **SEC. 167. PARKING COSTS SEPARATED FROM HOUSING COSTS IN NEW**
17 **RESIDENTIAL BUILDINGS.**

18 (a) All off-street parking spaces accessory to residential uses in new structures of 10
19 dwelling units or more, or in new conversions of non-residential buildings to residential use of
20 10 dwelling units or more, shall be leased or sold separately from the rental or purchase fees
21 for dwelling units for the life of the dwelling units, such that potential renters or buyers have
22 the option of renting or buying a residential unit at a price lower than would be the case if
23 there were a single price for both the residential unit and the parking space. In cases where
24 there are fewer parking spaces than dwelling units, the parking spaces shall be offered first to
25 the potential owners or renters of three-bedroom or more units, second to the owners or

1 renters of two bedroom units, and then to the owners or renters of other units. Renters or
2 buyers of on-site inclusionary affordable units provided pursuant to Section 415 *et seq.* shall
3 have an equal opportunity to rent or buy a parking space on the same terms and conditions as
4 offered to renters or buyers of other dwelling units, and at a price determined by the Mayor's
5 Office of Housing *and Community Development (MOHCD)*, subject to procedures adopted by the
6 Planning Commission notwithstanding any other provision of Section 415 et seq.

7 (b) **Exception.** The Planning Commission may grant an exception from ~~this~~
8 requirements *in subsection (a)* for projects which include financing for affordable housing that
9 requires that costs for parking and housing be bundled together.

10 (c) **Affordable Unit Resale Exemption.** *For the initial sale, Affordable Units that are both*
11 *On-site Units and Owned Units, as defined in Section 401, must be offered for sale separate from*
12 *parking spaces pursuant to subsection (a), subject to the exception provided in subsection (b). Where*
13 *the initial sale of such a unit included a parking space, the requirement of subsection (a) that parking*
14 *be sold separately from the unit shall not apply to any future resale of such unit and parking space.*

15
16 Section 4. Effective Date. This ordinance shall become effective 30 days after
17 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
18 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
19 of Supervisors overrides the Mayor's veto of the ordinance.

20
21 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
22 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
23 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
24 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
25

1 additions, and Board amendment deletions in accordance with the “Note” that appears under
2 the official title of the ordinance.

3

4 APPROVED AS TO FORM:
5 DAVID CHIU, City Attorney

6 By: /s/ HEATHER GOODMAN
7 HEATHER GOODMAN
8 Deputy City Attorney

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