

BOARD of SUPERVISORS



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MEMORANDUM

TO: John Rahaim, Director, Planning Department
Tom Hui, Director, Department of Building Inspection
Naomi Kelly, City Administrator, Office of the City Administrator
Ben Rosenfield, City Controller, Office of the Controller
Dan Adams, Acting Director, Mayor's Office of Housing and Community Development

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: September 18, 2019

SUBJECT: SUBSTITUTE LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed substitute legislation, introduced by Supervisor Haney on September 10, 2019:

File No. 190548-2

Ordinance amending the Planning Code to modify the Jobs Housing Linkage Fee by allowing indexing of the fee, adding options for complying with the fee, requiring payment of the fee no later than at the time of first certificate of occupancy, dedicating funds for permanent supportive housing and the preservation and acquisition of affordable housing, and to remove the monetary limit for the Small Sites Funds under the Inclusionary Housing Program; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and making findings of public necessity, convenience, and welfare pursuant to Planning Code, Section 302.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: erica.major@sfgov.org.

- c: Scott Sanchez, Planning Department
- Corey Teague, Planning Department
- Lisa Gibson, Planning Department
- Devyani Jain, Planning Department
- AnMarie Rodgers, Planning Department
- Dan Sider, Planning Department
- Aaron Starr, Planning Department
- Joy Navarrete, Planning Department
- Laura Lynch, Planning Department
- William Strawn, Department of Building Inspection
- Carolyn Jayin, Department of Building Inspection
- Lynn Khaw, Office of the Assessor-Recorder
- Lihmeei Leu, Office of the Assessor-Recorder
- Todd Rydstrom, Office of the Controller
- Peg Stevenson, Office of the Controller
- Eugene Flannery, Mayor's Office of Housing and Community Development
- Amy Chan, Mayor's Office of Housing and Community Development

1 [Planning Code - Modifying the Jobs Housing Linkage Fee]

2
3 **Ordinance amending the Planning Code to modify the Jobs Housing Linkage Fee**
4 **by allowing indexing of the fee, adding options for complying with the fee,**
5 **requiring payment of the fee no later than at the time of first certificate of**
6 **occupancy, dedicating funds for permanent supportive housing and the**
7 **preservation and acquisition of affordable housing, and to remove the monetary**
8 **limit for the Small Sites Funds under the Inclusionary Housing program; affirming**
9 **the Planning Department's determination under the California Environmental**
10 **Quality Act; making findings of consistency with the General Plan, and the eight**
11 **priority policies of Planning Code, Section 101.1; and making findings of public**
12 **necessity, convenience, and welfare pursuant to 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
23 this ordinance comply with the California Environmental Quality Act (California Public
24 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of
25 the Board of Supervisors in File No. ____ 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
4 Section 101.1. The Board adopts these findings as its own. A copy of said Resolution
5 is on file with the Clerk of the Board of Supervisors in File No. _____, and is
6 incorporated herein by reference.

7 (c) Pursuant to Planning Code Section 302, the Board finds that this Planning
8 Code amendment will serve the public necessity, convenience, and welfare for the
9 reasons set forth in Planning Commission Resolution No. _____, and the Board
10 incorporates such reasons herein by reference.

11
12 Section 2. Article 4 of the Planning Code is hereby amended by revising
13 Sections 409, 413.1, 413.4, 413.6, 413.7, 413.8, 413.9, 413.10, and 415.5, and deleting
14 Section 413.5, to read as follows:

15 **SEC. 409. CITYWIDE DEVELOPMENT FEE REPORTING REQUIREMENTS**
16 **AND COST INFLATION FEE ADJUSTMENTS.**

17 (a) **Citywide Development Fee and Development Impact**
18 **Requirements Report.** In coordination with the Development Fee Collection Unit at DBI
19 and the Director of Planning, the Controller shall issue a report within 180 days after the
20 end of each even-numbered fiscal year that provides information on all development
21 fees established in the Planning Code collected during the prior two fiscal years
22 organized by development fee account and all cumulative monies collected over the life
23 of each development fee account, as well as all monies expended. The report shall
24 include: (1) a description of the type of fee in each account or fund; (2) the beginning
25 and ending balance of the accounts or funds including any bond funds held by an

1 outside trustee; (3) the amount of fees collected and interest earned; (4) an
2 identification of each public improvement on which fees or bond funds were expended
3 and amount of each expenditure; (5) an identification of the approximate date by which
4 the construction of public improvements will commence; (6) a description of any inter-
5 fund transfer or loan and the public improvement on which the transferred funds will be
6 expended; and (7) the amount of refunds made and any allocations of unexpended fees
7 that are not refunded. The report shall also provide information on the number of
8 projects that elected to satisfy development impact requirements through the provision
9 of "in-kind" physical improvements, including on-site and off-site BMR units, instead of
10 paying development fees. The report shall also include any annual reporting information
11 otherwise required pursuant to the California Mitigation Fee Act, *California* Government
12 Code *Sections* 66001 *et seq.* The report shall be presented by the Director of Planning to
13 the Planning Commission and to the Land Use & *Economic Development Transportation*
14 Committee of the Board of Supervisors. The ~~R~~report shall also contain information on
15 the Controller's annual construction cost inflation adjustments to development fees
16 described in subsection (b) below, as well as information on MOHCD's separate
17 adjustment of the ~~Jobs-Housing Linkage and~~ Inclusionary Affordable Housing ~~f~~fees
18 described in ~~Sections 413.6(b) and~~ 415.5(b)(3).

19 (b) **Annual Development Fee Infrastructure Construction Cost**
20 **Inflation Adjustments.** Prior to issuance of the Citywide Development Fee and
21 Development Impact Requirements Report referenced in subsection (a) above, the
22 Controller shall review the amount of each development fee established in the ~~San~~
23 ~~Francisco~~ Planning Code and, with the exception of the ~~Jobs-Housing Linkage Fee in~~
24 ~~Section 413 et seq. and the~~ Inclusionary Affordable Housing Fee in Section 415 *et seq.*,
25 shall adjust the dollar amount of any development fee on an annual basis every January

1 based solely on the Annual Infrastructure Construction Cost Inflation Estimate. The
2 Office of the City Administrator's Capital Planning Group shall publish the Annual
3 Infrastructure Construction Cost Inflation Estimate, as published by the Office of the City
4 Administrator's Capital Planning Group and approved by the City's Capital Planning
5 Committee, no later than November 1 every year, without further action by the Board of
6 Supervisors. The Annual Infrastructure Construction Cost Inflation Estimate shall be
7 updated by the Capital Planning Group on an annual basis and no later than November 1
8 every year, in consultation with the Capital Planning Committee, in order to establish a
9 reasonable estimate of construction cost inflation for the next calendar year for a mix of
10 public infrastructure and facilities in San Francisco. The Capital Planning Group may
11 rely on past construction cost inflation data, market trends, and a variety of national,
12 state, and local commercial and institutional construction cost inflation indices in
13 developing their its annual estimates for San Francisco. The Planning Department and
14 the Development Fee Collection Unit at DBI shall provide notice of the Controller's
15 development fee adjustments, including the Annual Infrastructure Construction Cost
16 Inflation Estimate formula used to calculate the adjustment, and MOHCD's separate
17 adjustment of the Jobs-Housing Linkage and Inclusionary Affordable Housing Fees on the
18 Planning Department and DBI websites and to any interested party who has requested
19 such notice at least 30 days prior to the adjustment taking effect each January 1. The
20 Jobs-Housing Linkage Fee and the Inclusionary Affordable Housing fees shall be adjusted
21 under the procedures established in Sections 413.6(b) and 415.5(b)(3).

22 **SEC. 413.1. FINDINGS.**

23 The Board hereby finds and declares as follows:

24 A.(a) Large-scale entertainment, hotel, office, laboratory research and development,
25 and retail developments in the City and County of San Francisco have attracted and

1 continue to attract additional employees to the City, and there is a causal connection
2 between such developments and the need for additional housing in the City, particularly
3 housing affordable to households of lower and moderate income. Such commercial
4 uses in the City benefit from the availability of housing close by for their employees.
5 However, the supply of housing units in the City has not kept pace with the demand for
6 housing created by these new employees. Due to this shortage of housing, employers
7 will have difficulty in securing a labor force, and employees, unable to find decent and
8 affordable housing, will be forced to commute long distances, having a negative impact
9 on quality of life, limited energy resources, air quality, social equity, and already
10 overcrowded highways and public transport.

11 B.(b) There is a low vacancy rate for housing affordable to persons of lower and
12 moderate income. *In part, this low vacancy rate is due to factors unrelated to large-scale*
13 *commercial development, such as high interest rates, high land costs in the City, immigration*
14 *from abroad, demographic changes such as the reduction in the number of persons per*
15 *household, and personal, subjective choices by households that San Francisco is a desirable*
16 *place to live.* This low vacancy rate is *also* due in part to large-scale commercial
17 developments, which have attracted and will continue to attract additional employees
18 and residents to the City. Consequently, some of the employees attracted to these
19 developments are competing with present residents for scarce, vacant affordable
20 housing units in the City. Competition for housing generates the greatest pressure on
21 the supply of housing affordable to households of lower and moderate income. In San
22 Francisco, office or retail uses of land generally yield higher income to the owner than
23 housing. Because of these market forces, the supply of these affordable housing units
24 will not be expanded. Furthermore, Federal and State housing finance and subsidy
25

1 programs are not sufficient by themselves to satisfy the lower and moderate income
2 housing requirements of the City.

3 ~~C.(c) The City has consistently set housing production goals to address the regional
4 and citywide forecasts for population, households, and employment. Although San Francisco has
5 seen increased housing production each successive decade since the 1970s, the City has not been
6 able to close the gap between its housing production goals and actual production. As
7 demonstrated in the "Jobs Housing Nexus Analysis" prepared by Keyser Marston Associates,
8 Inc. in June 1997, construction of new housing units in the City decreased to a low of 288 units
9 in 1993 compared to an average annual production of 1,330 units during the years 1980 through
10 1995. Overall housing production in the City should average approximately 2,200 units a year to
11 keep up with the City's share of regional housing demand.~~

12 ~~D.(d) There is a continuing shortage of low- and moderate-income housing in
13 San Francisco. Affordable housing production in the City averaged approximately 340 units
14 per year during the years 1980 through 1995. However, the demand for new affordable housing
15 will be approximately 1,300 units per year for the years 2000 through 2015.~~

16 ~~E. Objective 1, Policy 7 of the Residence Element of the San Francisco
17 General Plan calls for the provision of additional housing to accommodate the demands of new
18 residents attracted to the City by expanding employment opportunities caused by the growth of
19 large-scale commercial activities in the City. Such development projects should assist in meeting
20 the City's housing needs by contributing to the provision of housing.~~

21 ~~F. It is desirable to impose the cost of the increased burden of
22 providing housing necessitated by large-scale commercial development projects directly
23 upon the sponsors of the development projects by requiring that the project sponsors
24 contribute land or money to a housing developer or pay a fee to the City to subsidize
25~~

1 housing development as a condition of the privilege of development and to assist the
2 community in solving those of its housing problems generated by the development.

3 *G. — The required housing exaction shall be based upon formulas derived in*
4 *the report entitled "Jobs Housing Nexus Analysis" prepared by Keyser Marston Associates, Inc.*
5 *in June 1997. The "Jobs Housing Nexus Analysis" demonstrates the validity of the nexus between*
6 *new, large-scale entertainment, hotel, office, research and development, and retail development*
7 *and the increased demand for housing in the City, and the numerical relationship between such*
8 *development projects and the formulas for provision of housing set forth in Section 413.1 et seq.*

9 *H. — In-lieu fees for new office construction to the City's Office Affordable*
10 *Housing Production Program, were last increased in 1994 to \$7.05 per square foot, based on the*
11 *"Analysis of the OAHPP Formula prepared by the Department of City Planning in November*
12 *1994." Existing law provides for potential increases to such fees up to 20% annually based on*
13 *increases to the Average Area Purchase Price Safe Harbor Limitations for New Single-Family*
14 *Residences for the San Francisco Primary Metropolitan Statistical Area ("PMSA") published by*
15 *the Internal Revenue Service.*

16 *I. — The Internal Revenue Service last published its Average Area Purchase*
17 *Price Safe Harbor Limitations for New Single-Family Residences for the San Francisco PMSA*
18 *in 1994. In 1998 and again in 2000, the City contracted for an analysis of average area purchase*
19 *price for the San Francisco PMSA, in lieu of IRS publication of the index. The 2000 report*
20 *prepared by Vernazza Wolfe Associates for mortgage purposes, which was certified by Orrick,*
21 *Herrington & Sutcliffe, indicates that the 1999 updated purchase price figures for new*
22 *construction are \$431,568, a 73.3% increase over the 1994 purchase price of \$248,969.*

23 *J. — If OAHPP fees had been increased consistent with these increases in the*
24 *Average Area Purchase Price Safe Harbor Limitations for New Single-Family Residences for the*
25 *San Francisco PMSA, the OAHPP in-lieu fee for net new office construction would be \$12.22*

1 *per square foot, or approximately 54% of the maximum derived by the "Jobs Housing Nexus*
2 *Analysis" prepared by Keyser Marston Associates, Inc. in June 1997.*

3 *K.(e) Since preparation of the Keyser Marston "Jobs Housing Nexus Analysis," the The*
4 *Bay Area has seen dramatic increases in land acquisition costs for housing, the cost of*
5 *new housing development and the affordability gap for low to moderate income workers*
6 *seeking housing. Commute patterns for the region have also changed, with more*
7 *workers who work outside of San Francisco seeking to live in the City, thus increasing*
8 *demand for housing and decreasing housing availability.*

9 *(f) As the regional job center, San Francisco has historically had the highest ratio of*
10 *jobs-to-housing units in the Bay Area.*

11 *(g) The required housing exaction shall be based upon formulas derived in a periodic*
12 *jobs housing nexus analysis. Consistent with the requirements of the California Mitigation Fee*
13 *Act, the jobs housing nexus analysis shall demonstrate the validity of the nexus between new,*
14 *large scale entertainment, hotel, office, laboratory, and retail development and the increased*
15 *demand for housing in the City, and the numerical relationship between such development*
16 *projects and the formulas for the provision of housing set forth in Section 413.1 et seq.*

17 *(h) The Board of Supervisors has reviewed the Jobs Housing Nexus Analysis*
18 *prepared by Keyser Marsten Associates, Inc., dated May 2019, which is on file with the Clerk of*
19 *the Board in Board File No. _____, and adopts the findings and conclusions of that study,*
20 *and incorporates the findings by reference herein to support the imposition of the fees under*
21 *Section 413.1 et seq.*

22 *L. Because the shortage of affordable housing created by large-scale*
23 *commercial development in the City can be expected to continue for many years, it is necessary*
24 *to maintain the affordability of the housing units constructed by developers of such projects*
25 *under this program. In order to maintain the long-term affordability of such housing, the City is*

1 *authorized to enforce affordability requirements through mechanisms such as shared*
2 *appreciation mortgages, deed restrictions, enforcement instruments, and rights of first refusal*
3 *exercisable by the City at the time of resale of housing units built under the program.*

4 *M. — Objective 8, Policy 2 of the Residence Element of the San Francisco*
5 *General Plan encourages the Commission to periodically reassess requirements placed on*
6 *large-scale commercial development under the Office Affordable Housing Production Program*
7 *("OAHPP"), predecessor to the Jobs-Housing Linkage Program.*

8 **SEC. 413.4. IMPOSITION OF HOUSING REQUIREMENT.**

9 * * * *

10 (c) **Sponsor's Choice to Fulfill Requirements.** Prior to issuance of a
11 building or site permit for a development project subject to the requirements of Section
12 413.1 *et seq.*, the sponsor shall elect one of the ~~three~~ options listed below to fulfill any
13 requirements imposed as a condition of approval and notify the Department of their
14 choice of the following:

15 (1) Contribute land of value at least equivalent to the in-lieu fee,
16 according to the formulas set forth in Section 413.1 et seq., to MOHCD pursuant to Section
17 413.7; or ~~Contribute of a sum or land of value at least equivalent to the in-lieu fee, according to~~
18 ~~the formulas set forth in Section 413.1, to one or more housing developers who will use the funds~~
19 ~~or land to construct housing units pursuant to Section 413.5; or~~

20 (2) Pay an in-lieu fee to the Development Fee Collection Unit at
21 DBI according to the formula set forth in Section 413.6; or

22 (3) Combine the above options pursuant to Section 413.8.

23 * * * *

24 **~~SEC. 413.5. COMPLIANCE BY PAYMENT TO HOUSING DEVELOPER.~~**

1 ~~(a) With the written approval of the Director of MOH, the project sponsor may elect to~~
 2 ~~pay a sum or contribute land of value at least equivalent to the in-lieu fee to one or more housing~~
 3 ~~developers to meet the requirements of Section 413.1et seq. If the sponsor elects this option and~~
 4 ~~the Director of MOH approves it, the housing developer or developers shall be required to~~
 5 ~~construct at least the number of housing units determined by the following formulas for each~~
 6 ~~type of space proposed as part of the development project and subject to Section 413.1et seq.:~~

7 Net Addition Gross Sq. Ft.	× .000140 = Housing Units
8 Entertainment Space	
9 Net Addition Gross Sq. Ft.	× .000110 = Housing Units
10 Hotel Space	
11 Net Addition Gross Sq. Ft.	× .000270 = Housing Units
12 Office Space	
13 Net Addition Gross Sq. Ft.	× .000200 = Housing Units
14 R&D Space	
15 Net Addition Gross Sq. Ft.	× .000140 = Housing Units
16 Retail Space	

17 ~~The housing units required to be constructed under the above formula must be affordable~~
 18 ~~to qualifying households continuously for 50 years. If the sponsor elects to contribute to more~~
 19 ~~than one distinct housing development under this Section, the sponsor shall not receive credit for~~
 20 ~~its monetary contribution to any one development in excess of the amount of the in-lieu fee, as~~
 21 ~~adjusted under Section 413.6, multiplied by the number of units in such housing development.~~

22 ~~(b) Prior to the issuance by DBI of the first site or building permit for a development~~
 23 ~~project subject to Section 413.1et seq. the sponsor shall submit to the Department, with a copy to~~
 24 ~~MOH:~~

1 ~~—— (1) A written housing development plan identifying the housing project or~~
2 ~~projects to receive funds or land from the sponsor and the proposed mechanism for enforcing the~~
3 ~~requirement that the housing units constructed will be affordable to qualifying households for 50~~
4 ~~years; and~~

5 ~~—— (2) A certification that the sponsor has made a binding commitment to contribute~~
6 ~~an amount of money or land of value at least equivalent to the amount of the in-lieu fee that~~
7 ~~would otherwise be required under Section 413.6 to one or more housing developers and that the~~
8 ~~housing developer or developers shall use such funds or lands to develop the housing subject to~~
9 ~~this Section.~~

10 ~~—— (3) A self-contained appraisal report as defined by the Uniform Standards of~~
11 ~~Professional Appraisal Practice prepared by an M.A.I. appraiser of the fair market value of any~~
12 ~~land to be contributed by the sponsor to a housing developer. The date of value of the appraisal~~
13 ~~shall be the date on which the sponsor submits the housing development plan and certification to~~
14 ~~the Department.~~

15 ~~If the sponsor fails to comply with these requirements within one year of the final~~
16 ~~determination or revised final determination, it shall be deemed to have elected to pay the in-lieu~~
17 ~~fee under Section 413.6, and any deferral surcharge, in order to comply with Section 413.1 et~~
18 ~~seq. In the event that the sponsor fails to pay the in-lieu fee within the time required by Section~~
19 ~~413.6, DBI shall deny any and all site or building permits or certificates of occupancy for the~~
20 ~~development project until the such payment has been made or land contributed, and the~~
21 ~~Development Fee Collection Unit at DBI shall immediately initiate lien proceedings against the~~
22 ~~sponsor's property pursuant to Section 408 of this Article and Section 107A.13 of the San~~
23 ~~Francisco Building Code to recover the fee.~~

24 ~~(e) Within 30 days after the sponsor has submitted a written housing development~~
25 ~~project plan and, if necessary, an appraisal to the Department and MOH under Subsection(b) of~~

1 ~~this Section, the Department shall notify the sponsor in writing of its initial determination as to~~
2 ~~whether the plan and appraisal are in compliance with this Section, publish the initial~~
3 ~~determination in the next Commission calendar, and cause a public notice to be published in an~~
4 ~~official newspaper of general circulation stating that such housing development plan has been~~
5 ~~received and stating the Department's initial determination. In making the initial determination~~
6 ~~for an application where the sponsor elects to contribute land to a housing developer, the~~
7 ~~Department shall consult with the Director of Property and include within its initial~~
8 ~~determination a finding as to the fair market value of the land proposed for contribution to a~~
9 ~~housing developer. Within 10 days after such written notification and published notice, the~~
10 ~~sponsor or any other person may request a hearing before the Commission to contest such initial~~
11 ~~determination. If the Department receives no request for a hearing within such 10-day period,~~
12 ~~the determination of the Department shall become a final determination. Upon receipt of any~~
13 ~~timely request for hearing, the Department shall schedule a hearing before the Commission~~
14 ~~within 30 days. The scope of the hearing shall be limited to the compliance of the housing~~
15 ~~development plan and appraisal with this Section, and shall not include a challenge to the~~
16 ~~amount of the housing requirement imposed on the development project by the Department or~~
17 ~~the Commission. At the hearing, the Commission may either make such revisions to the~~
18 ~~Department's initial determination as it may deem just, or confirm the Department's initial~~
19 ~~determination. The Commission's determination shall then become a final determination, and the~~
20 ~~Department shall provide written notice of the final determination to the sponsor, MOH, and to~~
21 ~~any person who timely requested a hearing of the Department's determination. The Department~~
22 ~~shall also provide written notice to MOH that the housing units to be constructed pursuant to~~
23 ~~such plan are subject to Section 413.1et seq.~~

24 ~~(d) Prior to the issuance by DBI of the first construction document for a development~~
25 ~~project subject to this Section, the sponsor must:~~

1 ~~_____ (1) Provide written evidence to the Department that it has paid in full the sum or~~
2 ~~transferred title of the land required by Subsection (a) of this Section to one or more housing~~
3 ~~developers;~~

4 ~~_____ (2) Notify the Department that construction of the housing units has commenced,~~
5 ~~evidenced by:~~

6 ~~_____ (A) The City's issuance of site and building permits for the entire housing~~
7 ~~development project,~~

8 ~~_____ (B) Written authorization from the housing developer and the~~
9 ~~construction lender that construction may proceed,~~

10 ~~_____ (C) An executed construction contract between the housing developer~~
11 ~~and a general contractor, and~~

12 ~~_____ (D) The issuance of a performance bond enforceable by the construction~~
13 ~~lender for 100 percent of the replacement cost of the housing project; and~~

14 ~~_____ (3) Provide evidence satisfactory to the Department that the units required to be~~
15 ~~constructed will be affordable to qualifying households for 50 years through an enforcement~~
16 ~~mechanism approved by the Department pursuant to Subsections (b) through (d) of this Section.~~

17 ~~(e) Where the sponsor elects to pay a sum or contribute land of value equivalent to the~~
18 ~~in-lieu fee to one or more housing developers, the sponsor's responsibility for completing~~
19 ~~construction of and maintaining the affordability of housing units constructed ceases from and~~
20 ~~after the date on which:~~

21 ~~_____ (1) The conditions of (1) through (3) of Subsection (d) of this Section have been~~
22 ~~met; and~~

23 ~~_____ (2) A mechanism has been approved by the Director to enforce the requirement~~
24 ~~that the housing units constructed will be affordable to qualifying households continuously for~~
25 ~~50 years.~~

PDR	\$0.00
Laboratory Research & Development	\$13.3046.43
Residential	\$0.00
Retail	\$18.62
Small Enterprise Workspace	\$15.69

**TABLE 413.6B
FEE SCHEDULE FOR REPLACEMENT OF USE OR CHANGE OF USE**

Previous Use	New Use	Fee per Gross Square Foot
Entertainment, Hotel, Integrated PDR, Office, Laboratory Research & Development, Retail, or Small Enterprise Workspace	Entertainment, Hotel, Integrated PDR, Office, Retail, or Small Enterprise Workspace	\$0.00
PDR which received its First Certificate of Occupancy on or before April 1, 2010	Entertainment, Hotel, Integrated PDR, Office, Laboratory Research & Development, Retail, or Small Enterprise Workspace	Use Fee from Table 413.6A minus \$14.09
Institutional which received its First Certificate of	Entertainment, Hotel, Integrated PDR, Office,	\$0.00

1 2 3 4	Occupancy on or before April 1, 2010	Laboratory Research & Development , Retail, or Small Enterprise Workspace	
5 6 7 8	Institutional or PDR which received its First Certificate of Occupancy on or before April 1, 2010	Institutional, PDR, Laboratory Research & Development , Residential	\$0.00
9 10 11 12	Institutional or PDR which received its First Certificate of Occupancy after April 1, 2010	Any	Use Fee from Table 413.6
13 14 15 16 17 18	Residential	Entertainment, Hotel, Integrated PDR , Office, PDR, Laboratory Research & Development , Retail, or Small Enterprise Workspace	Use Fee from Table 413.6

19 *No later than January 1 of each year, MOHCD shall adjust the in-lieu fee payment*
20 *option. No later than November 1 of each year, MOHCD shall provide the Planning*
21 *Department, DBI, and the Controller with information on the adjustment to the in-lieu fee*
22 *payment option so that it can be included in the Planning Department's and DBI's website notice*
23 *of the fee adjustments and the Controller's Citywide Development Fee and Development Impact*
24 *Requirements Report described in Section 409(a). MOHCD is authorized to develop an*
25 *appropriate methodology for indexing the fee, based on adjustments in the costs of constructing*

1 *housing and in the price of housing in San Francisco consistent with the indexing for the*
2 *Residential Inclusionary Affordable Housing Program in lieu fee set out in Section 415.6. The*
3 *method of indexing shall be published in the Procedures Manual for the Residential Inclusionary*
4 *Affordable Housing Program. In making a determination as to the amount of the fee to be paid,*
5 *the Department shall credit to the sponsor any excess Interim Guideline credits or excess credits*
6 *which the sponsor elects to apply against its housing requirement.*

7 (be) Any in-lieu fee required under this Section 413.6 is due and payable
8 to the Development Fee Collection Unit at DBI at the time of and in no event later than
9 issuance of the first construction document, with an option for the project sponsor to
10 defer payment to prior to issuance of the first certificate of occupancy upon agreeing to
11 pay a deferral surcharge that would be deposited into the Citywide Affordable Housing
12 Fund in accordance with Section 107A.13.3 of the San Francisco Building Code.

13 (c) Notwithstanding any other provision of this Code, for any project that (1)
14 received an approval from the Planning Commission or Planning Department on or before
15 December 31, 2019, stating that the project shall be subject to any new, changed, or increased
16 Jobs Housing Linkage Fee adopted prior to that project's procurement of a Certificate of
17 Occupancy or Final Completion, and (2) has not procured a Certificate of Occupancy or Final
18 Completion as of the effective date of the ordinance in Board File No. _____, amending this
19 Section 413.6, such project shall pay the difference between the amount of the fees assessed at
20 the time of site permit issuance and any additional amounts due under the new, changed, or
21 increased fee before the City may issue a Certificate of Occupancy or Final Completion.

22 **SEC. 413.7. COMPLIANCE BY LAND DEDICATION ~~WITHIN THE CENTRAL~~**
23 **~~SOMA SPECIAL USE DISTRICT.~~**

24 (a) **Controls.** *Within the Central SoMa Special Use District, P*projects may
25 satisfy all or a portion of the requirements of Section 413.1 et seq. 5, 413.6 and 413.8 via

1 dedication of land *to the City for the purpose of constructing units affordable to qualifying*
2 *households*. Projects may receive a credit against such requirements up to the value of
3 the land donated, calculated pursuant to subsection (b) below.

4 (b) **Requirements.**

5 (1) The value of the dedicated land shall be determined by the
6 Director of Property pursuant to Chapter 23 of the Administrative Code, but shall not
7 exceed the actual cost of acquisition by the project sponsor of the dedicated land in an
8 arm's length transaction. Prior to issuance by DBI of the first site or building permit for a
9 development project subject to Section 413.1 *et seq.* the sponsor shall submit to the
10 Department, with a copy to MOHCD and the Director of Property, documentation
11 sufficient to substantiate the actual cost of acquisition by the sponsor in an arm's length
12 transaction of any land to be dedicated by the sponsor to the *City and County of San*
13 *Francisco*, and any additional information that would impact the value of the land.

14 (2) Projects are subject to the requirements of Section
15 419.5(a)(2)(A) and (C) ~~through~~ (J).

16 **SEC. 413.8. COMPLIANCE BY COMBINATION OF ~~PAYMENT TO HOUSING~~**
17 **~~DEVELOPER AND~~ PAYMENT OF IN-LIEU FEE AND LAND DEDICATION.**

18 With the written approval of the Director of MOHCD, the sponsor of a
19 development project subject to Section 413.1 *et seq.* may elect to satisfy its housing
20 requirement by a combination of ~~paying money or~~ contributing land to *the City under*
21 *Section 413.7 one or more housing developers under Section 413.5* and paying a partial
22 amount of the in-lieu fee to the Development Fee Collection Unit at DBI under Section
23 413.6. In the case of such election, the sponsor must pay a sum such that each gross
24 square foot of net addition of each type of space subject to Section 413.1 *et seq.* is
25 accounted for in either the ~~payment of a sum or~~ contribution of land to *the City under*

1 ~~Section 413.7 one or more housing developers~~ or the payment of a fee to the Development
2 Fee Collection Unit. ~~The housing units constructed by a housing developer must conform to all~~
3 ~~requirements of Section 413.1 et seq., including, but not limited to, the proportion that must be~~
4 ~~affordable to qualifying households as set forth in Section 413.5.~~ All of the requirements of
5 Sections ~~413.5 and~~ 413.1 ~~et seq.~~ 6 shall apply, including the requirements with respect to
6 the timing of issuance of site and building permits, first construction documents, and
7 certificates of occupancy for the development project and payment of the in-lieu fee.

8 **SEC. 413.9. LIEN PROCEEDINGS.**

9 A project sponsor's failure to comply with the requirements of Sections ~~413.5,~~
10 413.6 and 413.7 shall be cause for the Development Fee Collection Unit at DBI to
11 institute lien proceedings to make the in-lieu fee, as adjusted under Section 413.6, plus
12 interest and any deferral surcharge, a lien against all parcels used for the development
13 project, in accordance with Section 408 of this Article 4 and Section 107A.13.15 of the
14 San Francisco Building Code.

15 **SEC. 413.10. CITYWIDE AFFORDABLE HOUSING FUND.**

16 (a) Use of Fees. All monies contributed pursuant to the Jobs Housing
17 Linkage Fee Program in Section 413.1 et seq. Sections 413.6 or 413.8 or assessed pursuant to
18 Section 413.9 shall be deposited in the Citywide Affordable Housing Fund ("Fund"),
19 established in Administrative Code Section 10.100-49. The receipts in the Fund
20 collected under Section 413.1 ~~et seq.~~ shall be used solely to increase the supply of
21 housing affordable to qualifying households subject to the conditions of this Section
22 413.10. The fees collected under this Section may not be used, by way of loan or
23 otherwise, to pay any administrative, general overhead, or similar expense of any entity.
24 The Mayor's Office of Housing and Community Development ("MOHCD") shall develop
25 procedures such that, for all projects funded by the Citywide Affordable Housing Fund,

1 MOHCD requires the project sponsor or its successor in interest to give preference in
2 occupying units as provided for in Administrative Code Chapter 47.

3 (1) Preservation and Acquisition Funds.

4 (A) Designation of Funds. MOHCD shall designate and
5 separately account for 10% of all fees that it receives under Section 413.1 et seq. that are
6 deposited into the Fund to support the acquisition and rehabilitation of rent restricted affordable
7 rental housing.

8 (B) Use of Preservation and Acquisition Funds. The funds shall
9 be used exclusively to acquire and preserve existing housing with the goal of making such
10 housing permanently affordable, including but not limited to acquisition of housing through the
11 City's Small Sites Program. Units supported by monies from the Fund shall be designated as
12 housing affordable to qualified households for the life of the project. Properties supported by
13 the Preservation and Acquisition Funds must be:

14 (i) rental properties that will be maintained as rental
15 properties;

16 (ii) vacant properties that were formerly rental properties
17 as long as those properties have been vacant for a minimum of two years prior to the effective
18 date of the ordinance in Board File No. _____, amending this Section 413.10;

19 (iii) properties that have been the subject of foreclosure;
20 or

21 (iv) a Limited Equity Housing Cooperative as defined in
22 Subdivision Code Sections 1399.1 et seq. or a property owned or leased by a non-profit entity
23 modeled as a Community Land Trust.

1 (C) Annual Report. At the end of each fiscal year, MOHCD shall
2 issue a report to the Board of Supervisors regarding the total amount of Preservation and
3 Acquisition Funds received, and how those funds were used.

4 (D) Intent. In establishing guidelines for Preservation and
5 Acquisition Funds, the Board of Supervisors does not intend to preclude MOHCD from
6 expending other eligible sources of funding on Preservation and Acquisition as described in this
7 Section 413.10.

8 (2) Permanent Supportive Housing. MOHCD shall designate and
9 separately account for 30% of all fees that it receives under Section 413.1 et seq. that are
10 deposited into the Fund to support the development of permanent supportive housing that meets
11 the requirements of Section 413.1 et seq.

12 (b) Accounting of Funds in Central SoMa Special Use District. Pursuant
13 to Section 249.78(e)(1), all monies contributed pursuant to the Jobs-Housing Linkage
14 Program and collected within the Central SoMa Special Use District shall be paid into
15 the Citywide Affordable Housing Fund, but the funds shall be separately accounted for.
16 Consistent with the allocations in subsection (a), sSuch funds shall be expended within the
17 area bounded by Market Street, the Embarcadero, King Street, Division Street, and
18 South Van Ness Avenue.

19 **SEC. 415.5. AFFORDABLE HOUSING FEE.**

20 * * * *

21 (f) **Use of Fees.** All monies contributed pursuant to the Inclusionary
22 Affordable Housing Program shall be deposited in the Citywide Affordable Housing
23 Fund ("~~the~~ Fund"), established in Administrative Code Section 10.100-49, except as
24 specified below. ~~The Mayor's Office of Housing and Community Development~~ ("MOHCD")
25 shall use the funds collected under this Section 415.5 in the following manner:

1 * * * *

2 (2) **"Small Sites Funds."**

3 (A) **Designation of Funds.** MOHCD shall designate and
4 separately account for 10% of all fees that it receives under Section 415.1 *et seq.* that
5 are deposited into the ~~Citywide Affordable Housing Fund, established in Administrative Code~~
6 ~~Section 10.100-49~~, excluding fees that are geographically targeted such as those referred
7 to in Sections 249.78(e)(1), 415.5(b)(1), and 827(b)(1), to support acquisition and
8 rehabilitation of Small Sites ("Small Sites Funds"). ~~MOHCD shall continue to divert 10% of~~
9 ~~all fees for this purpose until the Small Sites Funds reach a total of \$15 million, at which point~~
10 ~~MOHCD will stop designating funds for this purpose. At such time as designated Small Sites~~
11 ~~Funds are expended and dip below \$15 million, MOHCD shall start designating funds again for~~
12 ~~this purpose, such that at no time the Small Sites Funds shall exceed \$15 million.~~ When the
13 total amount of fees paid to the City under Section 415.1 *et seq.* is less than \$10 million
14 over the preceding 12-month period, MOHCD is authorized to temporarily divert funds
15 from the Small Sites Funds for other purposes. MOHCD shall keep track of the diverted
16 funds, however, such that when the amount of fees paid to the City under Section 415.1
17 *et seq.* meets or exceeds \$10 million over the preceding 12-month period, MOHCD
18 shall commit all of the previously diverted funds and 10% of any new funds, ~~subject to the~~
19 ~~cap above~~, to the Small Sites Funds.

20 * * * *

21 (E) **Intent.** In establishing guidelines for Small Sites Funds, the Board
22 of Supervisors does not intend to preclude MOHCD from expending other eligible
23 sources of funding on Small Sites as described in this Section 415.5, ~~or from allocating~~
24 ~~or expending more than \$15 million of other eligible funds on Small Sites.~~

25 * * * *

1 Section 3. Effective Date. This ordinance shall become effective 30 days after
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns
3 the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or
4 the Board of Supervisors overrides the Mayor's veto of the ordinance.

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

12
13 APPROVED AS TO FORM:
14 DENNIS J. HERRERA, City Attorney

15 By:


16 AUSTIN M. YANG
Deputy City Attorney

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REVISED LEGISLATIVE DIGEST

(Substituted, 9/10/2019)

[Planning Code - Jobs Housing Linkage Fee and Inclusionary Housing]

Ordinance amending the Planning Code to modify the Jobs Housing Linkage Fee by allowing indexing of the fee, adding options for complying with the fee, requiring payment of the fee no later than at the time of first certificate of occupancy, dedicating funds for permanent supportive housing and the preservation and acquisition of affordable housing, and to remove the monetary limit for the Small Sites Funds under the Inclusionary Housing Program; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and making findings of public necessity, convenience, and welfare pursuant to Planning Code, Section 302.

Existing Law

Consistent with the California Mitigation Fee Act, the Planning Code provides that certain commercial developments must pay a Jobs-Housing Linkage fee ("JHLF"). The Jobs-Housing Linkage program requires projects constructing new or expanded non-residential buildings of more than 25,000 square feet of development to offset the demand for new affordable housing created by those projects.

The JHLF is codified in Planning Code Section 413.1 *et seq.* Section 413.5 allows a project sponsor to comply with the JHLF by either making a payment, or dedicating land to a housing developer. While most citywide development fees are indexed annually according to the Annual Infrastructure Construction Cost Inflation Estimate, as set forth in Planning Code Section 409, the JHLF is indexed according to procedures developed by the Mayor's Office of Housing and Community Development, pursuant to Section 413.6. Section 413.7 allows projects within the Central SoMa Special Use District to comply with the JHLF by offering land to the City. Projects may receive credit up to the value of the land donated.

Typically, a project must pay any development fees before the issuance of the first construction document. Any funds received pursuant to the JHLF are deposited into the Citywide Affordable Housing Fund.

The Small Sites Funds is a program under the City's Inclusionary Housing program to support acquisition and rehabilitation of "Small Sites," as codified in Planning Code Section 415.1 *et seq.* Funding for the Small Sites program is capped at \$15 million.

Amendments to Current Law

This ordinance would make the following amendments to the JHLF.

- Align the indexing of the JHLF with other fees. Most citywide development fees are indexed according to the Annual Infrastructure Construction Cost Inflation Estimate, pursuant to the Section 409. This amendment would remove the exception to that requirement for the JHLF codified in Section 409, and Section 413.6
- Streamline the findings in Section 413.1. This ordinance would update many of the historical findings related to the JHLF.
- Allow a project sponsor to comply with the JHLF by: paying a fee to the City; offering the City land of equal value to the proposed fee, or a combination of fee and land dedication to the City. It no longer permits a project sponsor to comply with the JHLF by offering to pay a fee or offer land to a housing developer.
- Raise the JHLF for Office use to \$69.60, and Laboratory use to \$46.43.
- Require that certain projects pay any additional amounts due under the JHLF prior to the first Certificate of Occupancy.
- Set aside 10% of the fees received through the JHLF for the preservation and acquisition of rent restricted affordable housing, and 30% for permanent supportive housing.

The ordinance would amend the Small Sites Funds under the Inclusionary Housing program by removing the \$15 million cap.

Background Information

This ordinance was initially introduced on May 14, 2019. That ordinance made proposed amendments to the findings of section 413.1, and raised the fee for office projects to \$38.00. Substitute legislation was introduced on September 10, 2019. The City published an updated Nexus Study by Keyser Marsten Associates, Inc. in May 2019, and a Feasibility Report by Economic & Planning Systems, Inc. in June 2019. Both the Nexus Study and Feasibility Report are in this Board file.

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