

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Budget and Legislative Analyst

FROM: John Carroll, Assistant Clerk, Land Use and Transportation Committee

DATE: February 5, 2025

SUBJECT: LEGISLATION AMENDED - FISCAL IMPACT DETERMINATION

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The Board of Supervisors' Land Use and Transportation Committee (a nonfiscal committee) amended the following legislation on February 3, 2025. Pursuant to Administrative Code, Section 2.6-3, the new version is being forwarded to you as it was initially determined not to have fiscal impact. The amendments made were substantive and another review for a fiscal impact determination is required.

**File No. 240873-3**

**Ordinance amending the Planning Code to permit the use of California Debt Limit Allocation Committee tax-exempt bond financing and tax credits under the Tax Credit Allocation Committee for certain affordable housing projects that provide additional affordable units or deeper affordability levels than required by the Inclusionary Housing Ordinance, and require the Mayor's Office of Housing and Community Development to report on such projects; 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.**

If the new version is determined to have fiscal impact, the legislation will need to be referred to a fiscal committee before it can be referred to the full Board for approval.

Please send your determination or contact with me any questions at (415) 554-4445 or email: [john.carroll@sfgov.org](mailto:john.carroll@sfgov.org).

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**RESPONSE FROM THE BUDGET AND LEGISLATIVE ANALYST - Date:** \_\_\_\_\_

- This matter has fiscal impact.
- This matter does not have fiscal impact.
- Additional information attached.

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**Budget and Legislative Analyst**

1 [Planning, Health Codes - Inclusionary Housing Ordinance, Non-Potable Water Exemption

2  
3 **Ordinance amending the Planning Code to permit the use of California Debt Limit**  
4 **Allocation Committee tax-exempt bond financing and tax credits under the Tax Credit**  
5 **Allocation Committee for certain affordable housing projects that provide additional**  
6 **affordable units or deeper affordability levels than required by the Inclusionary**  
7 **Housing Ordinance, and require the Mayor's Office of Housing and Community**  
8 **Development to report on such projects; amending the Health Code to exempt such**  
9 **affordable housing projects from compliance with the requirement that new buildings**  
10 **be constructed, operated, and maintained using alternate water sources for non-**  
11 **potable uses; affirming the Planning Department's determination under the California**  
12 **Environmental Quality Act; making public necessity, convenience, and welfare findings**  
13 **under Planning Code, Section 302; and making findings of consistency with the**  
14 **General Plan and the eight priority policies of Planning Code, Section 101.1.**

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

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

23 Section 1. Environmental and Land Use Findings.

24 (a) The Planning Department has determined that the actions contemplated in this  
25 ordinance comply with the California Environmental Quality Act (California Public Resources

1 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
2 Supervisors in File No. 240873 and is incorporated herein by reference. The Board affirms  
3 this determination.

4 (b) On October 24, 2024, the Planning Commission, in Resolution No. 21634, adopted  
5 findings that the actions contemplated in this ordinance are consistent, on balance, with the  
6 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board  
7 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the  
8 Board of Supervisors in File No. 240873, and is incorporated herein by reference.

9 (c) Pursuant to Planning Code Section 302, this Board finds that these Planning Code  
10 amendments will serve the public necessity, convenience, and welfare for the reasons set  
11 forth in Planning Commission Resolution No. 21634, and the Board adopts such reasons as  
12 its own. A copy of said resolution is on file with the Clerk of the Board of Supervisors in File  
13 No. 240873 and is incorporated herein by reference.

14

15 Section 2. General Findings.

16 (a) The California Debt Limit Allocation Committee (CDLAC) administers the State's  
17 tax-exempt bond financing program that helps spur affordable housing production by assisting  
18 developers of multifamily rental housing units with the acquisition and construction of new  
19 units, or the purchase and rehabilitation of existing units.

20 (b) The California Tax Credit Allocation Committee (TCAC) administers the State's  
21 Low Income Housing Tax Credit Programs to facilitate the investment of private capital into  
22 the development of affordable rental housing for low-income Californians. TCAC allocates  
23 federal and state tax credits to the developers of these projects.

24 (c) Currently, the Inclusionary Housing Ordinance permits housing projects to use  
25 financing awarded from CDLAC and TCAC if (1) 20% of the project's units are affordable to

1 households at 50% of Area Median Income; or (2) 10% of the project’s units are affordable to  
2 households at 50% of Area Median Income, and 30% of the units are affordable to  
3 households at 60% of Area Median Income for on-site housing.

4 (d) Certain affordable housing projects that exceed these thresholds, but do not meet  
5 the minimum affordability levels, are unable to use the CDLAC and TCAC financing. It is  
6 reasonable and in the public interest to allow the use of these financing programs when the  
7 project will provide additional affordable units, or units at deeper affordability levels.

8 (e) Pursuant to Administrative Code Chapter 43, Article IX, the Mayor’s Office of  
9 Housing & Community Development administers the Multifamily Securities Program and has  
10 adopted the Multifamily Securities Program Manual (the “Manual”) for administering the  
11 issuance of tax exempt multifamily revenue bonds for affordable housing projects that have  
12 received an allocation from CDLAC and TCAC. Under the Manual, MOHCD monitors the  
13 regional allocation to the San Francisco Bay Area and competitiveness under TCAC and  
14 CDLAC regulations. Based on the availability of TCAC and CDLAC allocations and  
15 competitiveness within the Bay Area, MOHCD may request non-City funded affordable  
16 housing projects to temporarily delay an application for a TCAC and CDLAC allocation if there  
17 is an insufficient amount of allocation for City funded affordable housing that are ready for  
18 construction.

19  
20 Section 3. Article 4 of the Planning Code is hereby amended by revising Section  
21 415.6, to read as follows:

22 **SEC. 415. HOUSING REQUIREMENTS FOR RESIDENTIAL AND LIVE/WORK**  
23 **DEVELOPMENT PROJECTS.**

24 \* \* \* \*

25 **SEC. 415.6. ON-SITE AFFORDABLE HOUSING ALTERNATIVE.**

1 \* \* \* \*

2 (g) **Marketing the Units.** MOHCD shall be responsible for overseeing and monitoring  
3 the marketing of Affordable Units by the Project Sponsor under this Section 415.6. In general,  
4 the marketing requirements and procedures shall be contained in the Procedures Manual as  
5 amended from time to time and shall apply to the Affordable Units in the project. MOHCD may  
6 develop occupancy standards for units of different bedroom sizes in the Procedures Manual in  
7 order to promote an efficient allocation of Affordable Units. MOHCD may require in the  
8 Procedures Manual that prospective purchasers complete homebuyer education training or  
9 fulfill other requirements. MOHCD shall develop a list of minimum qualifications for marketing  
10 firms that market Affordable Units under Section 415.6 *et seq.*, referred to in the Procedures  
11 Manual as Below Market Rate (BMR units). Developers marketing Affordable Units under  
12 Section 415.6 shall market the Affordable Units through a marketing firm meeting all of the  
13 minimum qualifications. The Notice of Special Restrictions or conditions of approval shall  
14 specify that the marketing requirements and procedures contained in the Procedures Manual  
15 as amended from time to time, shall apply to the Affordable Units in the project.

16 (1) **Notice of Special Restrictions.** The Notice of Special Restrictions (“NSR”)  
17 required pursuant to *this* Section 415.6 shall be completed and recorded by the project  
18 sponsor no later than the issuance of the architectural addendum for the site permit and at  
19 least 12 months prior to the first certificate of occupancy.

20 (2) **Pricing Determination.** The project sponsor shall submit a request for a  
21 pricing determination from MOHCD at least 8 months prior to issuance of a first certificate of  
22 occupancy.

23 (3) **Timeline for Construction.** After the project has been approved by the  
24 Planning Commission or Department, the project sponsor must submit an update to the  
25 Department and MOHCD which includes an estimated timeline for the construction of the

1 project. The estimated construction timeline must assume the requirements of subsections  
2 (g)(1) and (g)(2) above. Failure to finalize the NSR or initiate marketing within the time frames  
3 set forth in this Section 415.6(g), or to submit an estimated construction timeline will be  
4 deemed a violation of the Planning Code subject to enforcement and penalties.

5 (42) **Lottery.** At the initial offering of Affordable Units in a housing project and  
6 when Affordable Units become available for re-sale or re-rent in any housing project subject to  
7 this Program after the initial offering, MOHCD must require the use of a public lottery  
8 approved by MOHCD to select purchasers or tenants.

9 (53) **Preferences.** MOHCD shall create a lottery system that gives preference  
10 according to the provisions of Administrative Code Chapter 47. MOHCD shall propose policies  
11 and procedures for implementing these preferences to the Planning Commission for inclusion  
12 as an addendum to the Procedures Manual. Otherwise, it is the policy of the City to treat all  
13 households equally in allocating affordable units under this Program.

14 (h) Use of Subsidies.

15 (1) Generally Prohibited. Individual affordable units constructed under Section  
16 415.6 as part of an on-site project shall not have received development subsidies from any  
17 Federal, State, or local program established for the purpose of providing affordable housing  
18 ~~and. Units that have received such development subsidies~~ shall not be counted to satisfy any  
19 affordable housing requirement. ~~Other units in the same on-site project may have received such~~  
20 ~~subsidies. In addition,~~

21 (2) Exceptions:

22 (A) Notwithstanding subsection (h)(1), subsidies may be used, ~~only with the~~  
23 ~~express written permission by MOHCD,~~ to deepen the affordability of an affordable unit beyond  
24 the level of affordability required by this Program, with the express written permission of MOHCD.  
25

1                                    *(iB) CDLAC and TCAC.* Notwithstanding the provisions of *S*subsection  
2 415.6 (h)(1) and (h)(2)(A) above, a project may use California Debt Limit Allocation Committee  
3 (CDLAC) tax-exempt bond financing, ~~and~~ 4% tax credits under the Tax Credit Allocation  
4 Committee (TCAC), and tax credits allocated under the TCAC guidelines to help fund its  
5 obligations under Section 415.1 et seq. as long as the project provides at least one of the  
6 following: (i) 20% of the units as affordable to households at 50% of Area Median Income for  
7 on-site housing; ~~or~~ (ii) 10% of the units as affordable to households at 50% of Area Median  
8 Income, and 30% of the units as affordable to households at 60% of Area Median Income for  
9 on-site housing; or (iii) the same number of on-site affordable units as required by the applicable on-  
10 site affordable housing requirement in this Section 415 et seq. or any temporary reduction as set  
11 forth in Sections 415A et seq. or 415B et seq., plus an additional number of on-site affordable  
12 units equal to ~~25~~40% of the applicable on-site affordable units as affordable to households at or below  
13 80% of Area Median Income. The income table to be used for such projects when the units are  
14 priced at 50%, ~~or~~ 60%, or 80% of Area Median Income is the income table used by MOHCD  
15 for the Inclusionary Affordable Housing Program, not that used by TCAC or CDLAC. Except  
16 as provided in this subsection *(h)(2)(iB)*, all units provided under this Section must meet all of  
17 the requirements of Section 415.1 et seq. and the Procedures Manual for on-site housing.

18                    (3) Reporting. MOHCD shall monitor state and federal funding for 100% affordable  
19 housing projects, awards made by TCAC and CDLAC to 100% affordable housing projects in  
20 San Francisco, and any changes to the regulations of TCAC and CDLAC. MOHCD shall  
21 provide to the Inclusionary Housing Technical Advisory Committee, established in  
22 Administrative Code Chapter 5 Article XXIX, a written report of projects approved under  
23 Section 415.6(h)(2)(B), 100% affordable housing projects applying for tax exempt bond  
24 financing under CDLAC and tax credits under TCAC, and challenges for 100% affordable  
25 housing projects to obtain an award from CDLAC and TCAC.

1 \* \* \* \*

2  
3 Section 4. Article 12C of the Health Code is hereby amended by revising Section  
4 12C.2, to read as follows:

5  
6 **SEC. 12C.2 DEFINITIONS.**

7 \* \* \* \*

8 **Development Project:** Construction of a new building or buildings. Development  
9 Projects are Large Development Projects and Small Development Projects. Development  
10 Project does not include rehabilitation of buildings constructed prior to August 1, 2015.  
11 Development Project does not include (1) any 100% Affordable Housing Project, 100%  
12 Permanent Supportive Housing Project, ~~or~~ housing project funded or constructed pursuant to  
13 the HOPE SF Program sponsored and developed by the San Francisco Housing Authority  
14 and either the Mayor's Office of Housing and Community Development or the Office of  
15 Community Investment and Infrastructure, or housing project that is issued a First  
16 Construction Document, as that term is defined in Building Code Section 107A.13.1, prior to  
17 July 1, 2025, uses California Debt Limit Allocation Committee tax-exempt bond financing and  
18 tax credits under the Tax Credit Allocation Committee, as set forth in Planning Code Section  
19 415.6(h)(2)(B), and provides at least 100 total on-site affordable units; (2) Hospital Buildings,  
20 Health Service Buildings, and Institutional Healthcare Use Buildings; (3) Industrial Use  
21 Buildings; (4) Production, Distribution, and Repair Use Buildings; (5) construction of a new  
22 building that will receive water service from the San Francisco Public Utilities Commission  
23 through no larger than a 5/8" domestic water meter or a 5/8" recycled water domestic meter,  
24 as determined in accordance with the San Francisco Public Utilities Commission's rules for  
25 water service; (6) for District projects located within the boundaries of the Reclaimed Water



1 Use Map, construction of new buildings subject to a disposition and development agreement  
2 or similar contractual agreement approved before November 1, 2015, that includes in its  
3 applicable infrastructure plan the construction and operations of water treatment facilities  
4 within the project boundaries that would provide recycled water to the project; (7) for District  
5 projects located within the boundaries of the Reclaimed Water Use Map, construction of new  
6 buildings subject to a development agreement or similar contractual agreement, within a  
7 development phase or subphase, a street improvement plan, or a tentative map or vesting  
8 tentative map approved before November 1, 2015; or (8) for District projects located outside  
9 the boundaries of the Reclaimed Water Use Map, construction of new buildings subject to a  
10 development agreement or similar contractual agreement, within a development phase or  
11 subphase, a street improvement plan, or a tentative map or vesting tentative map approved  
12 before November 1, 2017.

13 \* \* \* \*

14 Section 45. Effective Date. This ordinance shall become effective 30 days after  
15 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
16 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
17 of Supervisors overrides the Mayor's veto of the ordinance.

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**REVISED LEGISLATIVE DIGEST**  
*(Amended in Committee – February 3, 2025)*

[Planning, Health Codes - Inclusionary Housing Ordinance, Non-Potable Water Exemption]

**Ordinance amending the Planning Code to permit the use of California Debt Limit Allocation Committee tax-exempt bond financing and tax credits under the Tax Credit Allocation Committee for certain affordable housing projects that provide additional affordable units or deeper affordability levels than required by the Inclusionary Housing Ordinance, and require the Mayor’s Office of Housing and Community Economic Development to report on such projects; amending the Health Code to exempt such affordable housing projects from compliance with the requirement that new buildings be constructed, operated, and maintained using alternate water sources for non-potable uses; 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

The Inclusionary Ordinance generally requires certain residential projects to pay a fee or provide on-site inclusionary housing units. For projects that provide on-site units, the Planning Code generally does not allow those projects to use the California Debt Limit Allocation Committee (CDLAC) tax-exempt bond financing or tax credits under the Tax Credit Allocation Committee (TCAC), unless the project provides deeper levels of affordability. The Planning Code currently considers deeper affordability to be the following: 20% of the units as affordable to households at 50% of Area Median Income for on-site housing; or 10% of the units as affordable to households at 50% of Area Median Income, and 30% of the units as affordable to households at 60% of Area Median Income for on-site housing.

Health Code Chapter 12C generally requires new buildings to construct, operate, and maintain an Alternative Water Source System using Rainwater, Graywater, and Foundation Drainage.

Amendments to Current Law

This ordinance would allow projects to use tax credits allocated under TCAC, in addition to the CDLAC tax-exempt bond financing and TCAC tax credits. The ordinance would also create a third circumstance for projects to use financing from the California Debt Limit Allocation Committee tax-exempt bond financing and tax credits under the Tax Credit Allocation Committee. This would be permissible if the project provides the same number of on-site affordable units as required by the applicable on-site affordable housing requirement in this

Section 415 et seq, plus an additional number of on-site affordable units equal to 25% of the applicable on-site affordable units at or below 80% of Area Median Income. This ordinance would also require MOHCD to report on projects approved under Section 415.6(h)(2)(B), 100% affordable housing projects applying for tax exempt bond financing under CDLAC and tax credits under TCAC, and challenges for 100% affordable housing projects to obtain an award from CDLAC and TCAC.

This ordinance would create an exception from the requirements of Health Code Chapter 12c for projects that are issued a First Construction Document prior to 7/1/25, use the exception in Planning Code 415.6(h)(2)(B), and provide at least 100 on-site affordable units.

#### Background

At the Land Use and Transportation Committee meeting on 2/3/25, the ordinance was amended to:

- Add an uncodified finding to section 2 re: MOHCD's responsibilities.
- Make a technical correction related to references to Section 415A and 415B.
- Raise the minimum number of affordable units required to use the exception in subsection (h)(2)(B) to 25% from 10%.
- Add a reporting requirement in new subsection (h)(3).
- Create an exception from Health Code Chapter 12C (the non-potable water ordinance) for projects that are issued a First Construction Document prior to 7/1/25, use the exception in Planning Code 415.6(h)(2)(B), and provide at least 100 on-site affordable units.

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