

File No. 160255

Committee Item No. 4

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation

Date April 25, 2016

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Resolution                                   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ordinance                                    |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | Memorandum of Understanding (MOU)            |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Form 126 - Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Form 700                                     |
| <input type="checkbox"/>            | <input type="checkbox"/> | Vacancy Notice                               |
| <input type="checkbox"/>            | <input type="checkbox"/> | Information Sheet                            |
| <input type="checkbox"/>            | <input type="checkbox"/> | Public Correspondence                        |

OTHER (Use back side if additional space is needed)

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|-------------------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Letter – Clerk of the Board – Advisory Committee</u> |
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Completed by: Andrea Ausberry Date April 21, 2016

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

AMENDED IN COMMITTEE  
4/18/16

FILE NO. 160255

ORDINANCE NO.

1 [Planning, Administrative Codes – Inclusionary Affordable Housing Fee and Requirements;  
2 Preparation of Economic Feasibility Report; Establishing Inclusionary Housing Technical  
3 Advisory Committee]

4 **Ordinance amending the Planning and Administrative Codes to increase the**  
5 **Inclusionary Affordable Housing fee and other requirements; require the Controller to**  
6 **prepare an economic feasibility report regarding the City’s inclusionary housing**  
7 **requirements and make recommendations by July 31, 2016 and every three years**  
8 **thereafter; and establish the Inclusionary Housing Technical Advisory Committee to**  
9 **provide advice about the economic feasibility of proposals to set maximum**  
10 **economically viable inclusionary housing requirements, and set forth the membership**  
11 **and duties of the Advisory Committee; affirming the Planning Department’s**  
12 **determination under the California Environmental Quality Act; making findings of**  
13 **public convenience, necessity, and welfare under Planning Code Section 302; and**  
14 **making findings of consistency with the General Plan and the eight priority policies of**  
15 **Planning Code Section 101.1.**

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

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

24 Section 1. Findings.

25 (a) The Planning Department has determined that the actions contemplated in this 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. 160255 and is incorporated herein by reference.

3 (b) On March 31, 2016, the Planning Commission, in Resolution No. 19603, adopted  
4 findings that the actions contemplated in this ordinance are consistent, on balance, with the  
5 City's General Plan and the eight priority policies of Planning Code Section 101.1. The Board  
6 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the  
7 Board of Supervisors in File No. 160255, and is incorporated herein by reference.

8 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code  
9 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth  
10 in Planning Commission Resolution No. 19603 and the Board incorporates such reasons  
11 herein by reference.

12  
13 Section 2. Findings Regarding Inclusionary Affordable Housing Requirements.

14 (a) The amendments to Planning Code Sections 415.1, 415.3, 415.5, 415.6 and 415.7  
15 set forth in Section 3 of this ordinance will become effective only on the effective date of the  
16 Charter amendment revising Section 16.110 at the June 7, 2016 election, permitting the City  
17 to change the inclusionary affordable housing requirements. In the event the voters do not  
18 adopt such Charter amendment, the amendments to Planning Code Sections 415.1, 415.3,  
19 415.5, 415.6 and 415.7 set forth in Section 3 of this ordinance shall have no effect, and the  
20 City Attorney shall not cause them to be published in the Municipal Code.

21 (b) The purpose of this ordinance is to adopt new inclusionary or affordable housing  
22 obligations following the process set forth in Section 16.110(g) of the proposed Charter  
23 amendment on the ballot at the June 7, 2016 election to revise the City's inclusionary  
24 affordable housing requirements. The inclusionary affordable housing obligations set forth in  
25 this ordinance will supersede and replace the interim requirements set forth in Section

1 16.110(g) of the Charter amendment, so that the interim requirements will be removed from  
2 the Charter pursuant to the requirements set forth in the Charter amendment.

3 (c) In the event the City's updated Nexus Study in support of the Inclusionary  
4 Affordable Housing Program demonstrates that a lower affordable housing fee is lawfully  
5 applicable based on an analysis of all relevant impacts, the City may utilize the method of fee  
6 calculation supported by the Nexus Analysis in lieu of the fee requirements set forth herein.  
7

8 Section 3. Findings About the Need for an Inclusionary Affordable Housing Program.

9 (a) San Francisco faces a continuing shortage of affordable housing for very low and  
10 low-income residents. The San Francisco Planning Department reported that for the five-year  
11 period between 2005 and 2009, 14,397, total new housing units were built in San Francisco.  
12 This number includes 3,707 units for low and very low-income households out of a total need  
13 of 6,815 low and very low-income housing units for the same period. According to the state  
14 Department of Housing and Community Development, there will be a regional need for  
15 214,500 new housing units in the nine Bay Area counties from 2007 to 2014. Of that amount,  
16 over 58%, or 125,258 units, are needed for moderate/middle, low and very low-income  
17 households. The Association of Bay Area Governments (ABAG) is responsible for allocating  
18 the total regional need numbers among its member governments which includes both  
19 counties and cities. ABAG estimated that San Francisco's low and very low-income housing  
20 production need from 2007 through 2014 is 12,124 units out of a total new housing need of  
21 31,193 units, or 39 percent of all units built. The production of low and moderate/middle  
22 income units fell short of the ABAG goals.

23 (b) In response to the direction from the California Legislature and the projections of  
24 housing needs for San Francisco, San Francisco has instituted several strategies for  
25 producing new affordable housing units. The Housing Element of the General Plan recognizes

1 the need to support affordable housing production by increasing site availability by identifying  
2 and securing opportunity sites for permanently affordable housing, by enhancing and  
3 expanding financial resources for permanent affordable housing through coordination at the  
4 regional, state, and Federal levels, and by supporting efforts to produce and manage  
5 permanently affordable housing. Further, the City, as established in the General Plan, seeks  
6 to encourage the distribution of affordable housing throughout all neighborhoods and, thereby,  
7 offer diverse housing choices to promote economic and social integration. The Housing  
8 Element calls for an increase in the production of new affordable housing for greater  
9 economic integration and for a range of housing options and opportunities Section 415.1 *et*  
10 *seq.* furthers the goals of the State directives and the General Plan.

11 (c) The 2015 Consolidated Plan for July 1, 2015 to June 30, 2020, issued by the  
12 Mayor's Office of Housing, establishes that extreme housing pressures face San Francisco,  
13 particularly in regard to low- and moderate/middle-income residents. Many elements constrain  
14 housing production in the City. This is especially true of affordable housing. San Francisco is  
15 largely built out, with very few large open tracts of land to develop. There is no available  
16 adjacent land to be annexed, as the cities located on San Francisco's southern border are  
17 also dense urban areas. Thus new construction of housing is limited to areas of the City not  
18 previously designated as residential areas, infill sites, or to areas with increased density. New  
19 market-rate housing absorbs a significant amount of the remaining supply of land and other  
20 resources available for development and thus limits the supply of affordable housing.

21 There is a great need for affordable rental and owner-occupied housing in the City.  
22 Housing cost burden is one of the major standards for determining whether a locality is  
23 experiencing inadequate housing conditions, defined as households that expend 30 percent  
24 or more of gross income for rent or 35% or more of household income for owner costs.  
25 According to more recent data from the Comprehensive Housing Affordability Study (CHAS)

1 67,015 total renter households, or 34%, were cost burdened in 2005-07. A significant number  
2 of owners are also cost burdened. The 2005-07 CHAS indicates that 46,985 owner  
3 households are cost burdened, or 38%.

4 The San Francisco residential real estate market is one of the most expensive in the  
5 United States. In February 2016, the California Association of Realtors reported that the  
6 median priced home in San Francisco was \$1,437,500. This price is 222% higher than the  
7 State of California median (\$446,460), and 312% higher than the national average  
8 (\$348,900). While the national homeownership rate is approximately 63.8%, only  
9 approximately 37% of San Franciscans own their own home. The majority of market-rate  
10 homes for sale in San Francisco are priced out of the reach of low and moderate income  
11 households. In 2015, the average rent was \$3,524, which is affordable to households earning  
12 over \$126,864.

13 These factors contribute to a heavy demand for affordable housing in the City that the  
14 private market cannot meet. For many years, the number of market rate units that are  
15 affordable to low income households has been reduced by rising market rate rents and sales  
16 prices. The number of households benefiting from rental assistance programs is far below the  
17 need established by the 2000 Census. Because the shortage of affordable housing in the City  
18 can be expected to continue for many years, it is necessary to maintain the affordability of the  
19 housing units constructed by housing developers under this Program. The Housing Element  
20 of the General Plan recognizes this need, and one of its primary objectives is to protect the  
21 affordability of the existing housing stock. The Housing Element also sets the goal of securing  
22 funding and permanent resources for permanently affordable housing, including innovative  
23 programs that are not solely reliant on traditional mechanisms or capital, including the  
24 production of affordable housing through process and zoning accommodations and support  
25 for moderate/middle income housing.

1 In 2004 the National Housing Conference issued a survey entitled "Inclusionary  
2 Zoning: The California Experience." The survey found that as of March 2003, there were 107  
3 cities and counties using inclusionary housing in California, one-fifth of all localities in the  
4 State. Overall, the inclusionary requirements were generating large numbers of affordable  
5 units. Only six percent of jurisdictions reported voluntary programs, and the voluntary nature  
6 appears to compromise the local ability to guarantee affordable housing production. While  
7 there was a wide range in the affordability percentage-requirements for inclusionary housing,  
8 approximately half of all jurisdictions require at least 15% to be affordable, and one-quarter  
9 require 20% or more to be affordable.

10 (d) Development of new market-rate housing makes it possible for new residents to  
11 move to the City. These new residents place demands on services provided by both public  
12 and private sectors. Some of the public and private sector employees needed to meet the  
13 needs of the new residents earn incomes only adequate to pay for affordable housing.  
14 Because affordable housing is in short supply within the City, such employees may be forced  
15 to live in less than adequate housing within the City, pay a disproportionate share of their  
16 incomes to live in adequate housing within the City, or commute ever-increasing distances to  
17 their jobs from housing located outside the City. These circumstances harm the City's ability  
18 to attain goals articulated in the City's General Plan and place strains on the City's ability to  
19 accept and service new market-rate housing development.

20 (e) The payment of an Affordable Housing Fee by developers of market rate housing  
21 is justified for the reasons stated herein and has identifiable benefits to the City. Because it is  
22 not financially feasible in most circumstances to develop new housing affordable to very-low,  
23 low, median and moderate/middle-income households, the City and County provide direct  
24 housing investments to developers to enable the creation of affordable housing. The  
25 Affordable Housing Fee will be used to help subsidize these development costs and provide

1 administrative support for these programs and other affordable housing development activities  
2 administered by the City and County. Without these funds, the City and County would be less  
3 able to meet its affordable housing needs and the Regional Housing Needs goals established  
4 by ABAG and the State of California for the City and County for 2007-2014.

5 The Affordable Housing Fee also enables affordable housing developments to leverage  
6 outside development funding from the private sector, and the State and Federal Government.  
7 This development work also creates economic activity, particularly construction work, which  
8 provides high-paying jobs to residents and workers in the City and County.

9 In addition, it is not financially feasible for the typical moderate/middle income  
10 household to purchase a home in San Francisco. For these reasons, the Affordable Housing  
11 Fee may also be used to provide down payment assistance to low and moderate/middle  
12 income homebuyers and provide administrative support for these programs and other first-  
13 time homebuyer assistance administered by the City and County.

14 However, the development of affordable housing on the same site as market-rate  
15 housing also increases social and economic integration vis-a-vis housing in the City and has  
16 corresponding social and economic benefits to the City. Inclusionary housing provides a  
17 healthy job and housing balance. Inclusionary housing provides more affordable housing  
18 close to employment centers which in turn may have a positive economic impact by reducing  
19 such costs as commuting and labor costs.

20 (f) Provided project applicants can take these requirements into consideration when  
21 negotiating to purchase land for a housing project, the requirements of Section 415.1 *et seq.*  
22 are generally financially feasible for project applicants to meet, particularly because of the  
23 benefits being conferred by the City to housing projects under Section 415.1 *et seq.*

24 Section 406 provides a means by which a project applicant may seek a reduction or  
25 waiver of the Affordable Housing Fee or a reduction or waiver of the alternative requirements



1 of this Program if the project applicant can show that imposition of these requirements would  
2 create an unlawful financial burden.

3 (g) Conditional Use Authorization and Planned Unit Development permit the  
4 development of certain uses not permitted as of right in specific districts or greater density of  
5 permitted residential uses. As the General Plan recognizes, through the Conditional Use  
6 Authorization and Planned Unit Development process, applicants for housing projects  
7 generally receive material economic benefits. Such applicants are generally permitted to build  
8 in excess of the generally applicable black letter requirements of the Planning Code for  
9 housing projects resulting in increased density, bulk, or lot coverage or a reduction in parking  
10 or other requirements or an approval of a more intensive use over that permitted without the  
11 Conditional Use Authorization or Planned Unit Development. Through the Conditional Use  
12 Authorization and Planned Unit Development process, building standards can be relaxed in  
13 order to promote lower cost home construction. An additional portion of San Francisco's  
14 affordable housing needs can be supplied (with no public subsidies or financing) by private  
15 sector housing developers developing inclusionary affordable units in their large market-rate  
16 projects in exchange for the density and other bonuses conferred by Conditional Use  
17 Authorization and Planned Unit Development approvals, provided it is financially attractive for  
18 private sector housing developers to seek such conditional use and/or planned unit  
19 development approvals.

20 (h) The City wants to balance the burden on private property owners with the  
21 demonstrated need for affordable housing in the City. The Housing Element calls for the City  
22 to review its affordable Inclusionary Housing Program regularly to ensure a fair burden without  
23 constraining new housing production. The Board of Supervisors has reviewed the Inclusionary  
24 Housing Program and finds that, for purposes of the Housing Element of the General Plan,  
25 the current Affordable Housing Fee – ensures a more fair burden on all housing development

1 and that it will not constrain new housing production. The Board of Supervisors has reviewed  
2 the Inclusionary Housing Program and finds that, for purposes of the Housing Element of the  
3 General Plan, a housing project of 10 units or more is a larger housing project. Applying the  
4 Inclusionary Housing Program requirements to buildings of 10 units or more ensures a more  
5 fair burden on all housing development and will not constrain new housing production.

6 (i) The findings of former Planning Code Section 313.2 for the Jobs-Housing Linkage  
7 Program, now found in Planning Code Sections 413 *et seq.*, relating to the shortage of  
8 affordable housing, the low vacancy rate of housing affordable to persons of lower and  
9 moderate/middle income, and the decrease in construction of affordable housing in the City  
10 are hereby readopted.

11 (j) The Land Use and Economic Development Committee of the Board of Supervisors  
12 held hearings on its earlier adoption of inclusionary housing legislation on July 12 and 19,  
13 2006. At those hearings, the Committee heard testimony from Planning Department staff and  
14 consultant Kate Funk of Keyser Marston and Associates regarding a study undertaken at the  
15 direction of the Planning Department by the consultant Keyser Marston Associates. The study  
16 was entitled Inclusionary Housing Program Sensitivity Analysis, dated July 7, 2006, and was  
17 undertaken to examine the economic impacts of adjusted inclusionary requirements on  
18 market-rate housing projects ("Sensitivity Analysis"). The study can be found in Board File No.  
19 051685 and is incorporated herein by reference. The study was guided by the Planning  
20 Department and MOHCD and informed by a Technical Advisory Committee comprised of a  
21 variety of experts from the San Francisco housing development and affordable housing  
22 advocacy communities. Planning Department staff presented a report summarizing the  
23 findings of the Sensitivity Analysis and the recommendations of the Technical Advisory  
24 Committee. That report, dated July 10, 2006, is found in Board File No. 051685 and is  
25 incorporated herein by reference. After considering the Sensitivity Analysis and staff report

1 and hearing the recommendations and testimony of the Planning Department, MOHCD,  
2 members of the Technical Advisory Committee, and members of the public including  
3 representatives of housing developers, community members, and affordable housing  
4 advocates, the Land Use and Economic Development Committee considered various  
5 amendments to the legislation. The Committee found, among other things, that it was in the  
6 public interest to increase the percentage requirements of the ordinance, but not by as much  
7 as originally proposed; to modify the application dates of the ordinance to grandfather more  
8 existing projects from the increased percentage requirements, but to make most projects  
9 subject to the other requirements of the ordinance; and to require further study on some  
10 issues by the Planning Department and MOHCD.

11 (k) The City and County of San Francisco, under the direction of the Office of the  
12 Controller, has undertaken a comprehensive program of analyses to update its programs and  
13 supporting documentation for many types of fees, including updating nexus analyses in  
14 support of development impact fees. At the direction of the Board of Supervisors and as part  
15 of this larger analysis, the City contracted with Keyser Marston Associates to prepare a nexus  
16 analysis in support of the Inclusionary Affordable Housing Program, or an analysis of the  
17 impact of development of market rate housing on affordable housing supply and demand. The  
18 Planning Department and MOHCD worked closely with the consultant and also consulted with  
19 the Technical Advisory Committee, noted above, comprised of a variety of experts from the  
20 San Francisco housing development and affordable housing advocacy communities.

21 The City's current position is that the City's Inclusionary Housing Program is not subject  
22 to the requirements of the Mitigation Fee Act, Government Code Sections 66000 *et seq.* While  
23 the City does not expect to alter its position on this matter, due to past legislative actions  
24 supporting such a study, the Citywide study being undertaken to conduct nexus studies in  
25 other areas, and a general interest in determining whether the Inclusionary Housing Program

1 can be supported by a nexus type analysis as an additional support measure, the City  
2 contracted to undertake the preparation of a nexus analysis.

3 The 2007 Nexus Study can be found in the Board of Supervisors File No. 051685 and  
4 is incorporated by reference herein. The Board of Supervisors has reviewed the study and  
5 staff analysis and report of the study and, on that basis finds that the study supports the  
6 current requirements of the Inclusionary Housing Program including, but not limited to, the  
7 primary requirement that project applicants pay the Affordable Housing Fee. Specifically, the  
8 Board finds that this study: identifies the purpose of the fee to mitigate impacts on the demand  
9 for affordable housing in the City; identifies the use to which the fee is to be put as being to  
10 increase the City's affordable housing supply; and establishes a reasonable relationship  
11 between the use of the fee for affordable housing and the need for affordable housing and the  
12 construction of new market rate housing. Moreover, the Board finds that the current  
13 inclusionary requirements are less than the cost of mitigation and do not include the costs of  
14 remedying any existing deficiencies. The Board also finds that the study establishes that the  
15 current inclusionary requirements do not duplicate other city requirements or fees.

16 (l) The Board of Supervisors recognizes that this Inclusionary Housing Program is  
17 only one part of the City's overall strategy for providing affordable housing. The Mayor's Office  
18 of Housing and Community Development committed over \$54 million in capital funds to  
19 affordable housing development in 2009-10. Only \$5 million of those monies came from  
20 contributions from private developers through this Program or other similar programs. The  
21 MOHCD has budgeted approximately \$64 million for affordable housing development in 2010-  
22 11 and the expectation is that about \$14 million of those monies will come from contributions  
23 from private developers through this Program or other similar programs.

24 (m) While the Board of Supervisors in 2010 amended the Inclusionary Affordable  
25 Housing Program to provide that the primary requirement of the Program is the Affordable

1 Housing Fee, with on-site and off-site alternatives, for continuity and ease of reference the  
2 Board found that the Program should, in name, remain the Inclusionary Affordable Housing  
3 Program ("Program" or "Inclusionary Housing Program"), but the Board does not intend to  
4 suggest that paying the affordable housing fee is a policy priority over providing mixed-income  
5 housing through on-site inclusionary units or building affordable units in the same immediate  
6 neighborhood of the project.

7  
8 Section 4. The Planning Code is hereby amended by revising Sections 415.1, 415.3,  
9 415.5, 415.6 and 415.7, to read as follows:

10 **SEC. 415.1 FINDINGS.**

11 ~~*A. The Board of Supervisors hereby finds and declares as follows:*~~

12 ~~*(a)*~~ Affordable housing is a paramount statewide concern. In 1980, the California  
13 Legislature declared in Government Code Section 65580:

14 ~~*(a1)*~~ The availability of housing is of vital statewide importance, and the early  
15 attainment of decent housing and a suitable living environment for every California family is a  
16 priority of the highest order.

17 ~~*(b2)*~~ The early attainment of this goal requires the cooperative participation of  
18 government and the private sector in an effort to expand housing opportunities and  
19 accommodate the housing needs of Californians of all economic levels.

20 ~~*(e3)*~~ The provision of housing affordable to low-and moderate-income  
21 households requires the cooperation of all levels of government.

22 ~~*(d4)*~~ Local and state governments have a responsibility to use the powers  
23 vested in them to facilitate the improvement and development of housing to make adequate  
24 provision for the housing needs of all economic segments of the community.

25 ~~*(b)*~~ The Legislature further stated in Government Code Section 65581 that:

1 It is the intent of the Legislature in enacting this article:

2 (a1) To assure that counties and cities recognize their responsibilities in  
3 contributing to the attainment of the state housing goal.

4 (b2) To assure that counties and cities will prepare and implement housing  
5 elements which will move toward attainment of the state housing goal.

6 (e3) To recognize that each locality is best capable of determining what efforts  
7 are required ~~by it~~ to contribute to the attainment of the state housing goal.

8 (c) The California Legislature requires each local government agency to develop a  
9 comprehensive long-term general plan establishing policies for future development. As  
10 specified in the Government Code (at Sections 65300, 65302(c), and 65583(c)), the plan must  
11 (1) "encourage the development of a variety of types of housing for all income levels,  
12 including multifamily rental housing"; (2) "[a]ssist in the development of adequate housing to  
13 meet the needs of low- and moderate/middle-income households"; and (3) "conserve and  
14 improve the condition of the existing affordable housing stock, which may include addressing  
15 ways to mitigate the loss of dwelling units demolished by public or private action."

16 (d) The Board of Supervisors adopted San Francisco's General Plan Housing Element in  
17 March 2015, and the California Housing and Community Development Department certified it on May  
18 29, 2015. The Housing Element states that San Francisco's share of the regional housing need for  
19 years 2015 through 2022 includes 10,873 housing units for very-low and low-income households and  
20 5,460 units for moderate/middle-income households, and a total production of 28,870 net new units,  
21 with almost 60% to be affordable for very-low, low- and moderate/middle-income San Franciscans.  
22 ~~—2. San Francisco faces a continuing shortage of affordable housing for very low and low income~~  
23 ~~residents. The San Francisco Planning Department reported that for the five-year period between 2005~~  
24 ~~and 2009, 14,397, total new housing units were built in San Francisco. This number includes 3,707~~  
25 ~~units for low and very low-income households out of a total need of 6,815 low and very low-income~~

1 *housing units for the same period. According to the state Department of Housing and Community*  
2 *Development, there will be a regional need for 214,500 new housing units in the nine Bay Area*  
3 *counties from 2007 to 2014. Of that amount, over 58 percent, or 125,258 units, are needed for*  
4 *moderate, low and very low income households. The Association of Bay Area Governments (ABAG) is*  
5 *responsible for allocating the total regional need numbers among its member governments which*  
6 *includes both counties and cities. ABAG estimates that San Francisco's low and very low income*  
7 *housing production need from 2007 through 2014 is 12,124 units out of a total new housing need of*  
8 *31,193 units, or 39 percent of all units built. Within the past five years, only 25 percent of all housing*  
9 *built, or 54 percent of the previously projected housing need for low and very low income housing for*  
10 *the same period, was produced in San Francisco. The production of moderate income units also fell*  
11 *short of the ABAG goal. Only 1,093 moderate income units were produced over the previous five years,*  
12 *or almost 8 percent of all units built, compared to ABAG's call for 26 percent of all units to be*  
13 *affordable to households of moderate income.*

14 *—3. In response to the above mandate from the California Legislature and the projections of*  
15 *housing needs for San Francisco, San Francisco has instituted several strategies for producing new*  
16 *affordable housing units. The Housing Element of the General Plan recognizes the need to support*  
17 *affordable housing production by increasing site availability by identifying and securing opportunity*  
18 *sites for permanently affordable housing, by enhancing and expanding financial resources for*  
19 *permanent affordable housing through coordination at the regional, state, and Federal levels, and by*  
20 *supporting efforts to produce and manage permanently affordable housing. Further, the City, as*  
21 *established in the General Plan, seeks to encourage the distribution of affordable housing throughout*  
22 *all neighborhoods and, thereby, offer diverse housing choices and promote economic and social*  
23 *integration. The Housing Element calls for an increase in the production of new affordable housing for*  
24 *greater economic integration and for a range of housing options and opportunities Section 415.1et seq.*  
25 *further the goals of the State Legislature and the General Plan.*

1 ~~4. The 2010 Consolidated Plan for July 1, 2005 to June 30, 2010, issued by the Mayor's Office of~~  
2 ~~Housing, establishes that extreme housing pressures face San Francisco, particularly in regard to low-~~  
3 ~~and moderate income residents. Many elements constrain housing production in the City. This is~~  
4 ~~especially true of affordable housing. San Francisco is largely built out, with very few large open tracts~~  
5 ~~of land to develop. There is no available adjacent land to be annexed, as the cities located on San~~  
6 ~~Francisco's southern border are also dense urban areas. Thus new construction of housing is limited to~~  
7 ~~areas of the City not previously designated as residential areas, infill sites, or to areas with increased~~  
8 ~~density. New market rate housing absorbs a significant amount of the remaining supply of land and~~  
9 ~~other resources available for development and thus limits the supply of affordable housing.~~

10 ~~There is a great need for affordable rental and owner-occupied housing in the City. Housing cost~~  
11 ~~burden is one of the major standards for determining whether a locality is experiencing inadequate~~  
12 ~~housing conditions, defined as households that expend 30 percent or more of gross income for rent or~~  
13 ~~35 percent or more of household income for owner costs. According to more recent data from the~~  
14 ~~Comprehensive Housing Affordability Study (CHAS) 67,015 total renter households, or 34 percent,~~  
15 ~~were cost burdened in 2005-07. A significant number of owners are also cost burdened. The 2005-07~~  
16 ~~CHAS indicates that 46,985 owner households are cost burdened, or 38 percent.~~

17 ~~The San Francisco residential real estate market is one of the most expensive in the United States.~~  
18 ~~In June 2010, the California Association of Realtors reported that the median priced home in San~~  
19 ~~Francisco was \$670,000. This price is 115 percent higher than the State of California median~~  
20 ~~(\$311,950), and 266 percent higher than the national average (\$183,000). While the national~~  
21 ~~homeownership rate is approximately 67.2 percent, only approximately 39 percent of San Franciscans~~  
22 ~~own their own home. The majority of market rate homes for sale in San Francisco are priced out of the~~  
23 ~~reach of low and moderate income households. In June 2010, the average rent was \$2,230, which is~~  
24 ~~affordable to households earning over \$89,200.~~



1 — ~~These factors contribute to a heavy demand for affordable housing in the City that the private~~  
2 ~~market cannot meet. For many years, the number of market rate units that are affordable to low income~~  
3 ~~households has been reduced by rising market rate rents and sales prices. Although housing prices and~~  
4 ~~rent levels have dropped in recent years, lower income households still struggle to pay for housing in~~  
5 ~~San Francisco. The number of households benefiting from rental assistance programs is far below the~~  
6 ~~need established by the 2000 Census. Because the shortage of affordable housing in the City can be~~  
7 ~~expected to continue for many years, it is necessary to maintain the affordability of the housing units~~  
8 ~~constructed by housing developers under this Program. The Housing Element of the General Plan~~  
9 ~~recognizes this need, and one of its primary objectives is to protect the affordability of the existing~~  
10 ~~housing stock. The Housing Element also sets the goal of securing funding and permanent resources~~  
11 ~~for permanently affordable housing, including innovative programs that are not solely reliant on~~  
12 ~~traditional mechanisms or capital, including the production of affordable housing through process and~~  
13 ~~zoning accommodations and support for middle income housing.~~

14 — ~~In 2004 the National Housing Conference issued a survey entitled "Inclusionary Zoning: The~~  
15 ~~California Experience." The survey found that as of March 2003, there were 107 cities and counties~~  
16 ~~using inclusionary housing in California, one-fifth of all localities in the State. Overall, the~~  
17 ~~inclusionary requirements were generating large numbers of affordable units. Only six percent of~~  
18 ~~jurisdictions reported voluntary programs, and the voluntary nature appears to compromise the local~~  
19 ~~ability to guarantee affordable housing production. While there was a wide range in the affordability~~  
20 ~~percentage requirements for inclusionary housing, approximately half of all jurisdictions require at~~  
21 ~~least 15 percent to be affordable, and one-quarter require 20 percent or more to be affordable.~~

22 — ~~5. Development of new market rate housing makes it possible for new residents to move to the~~  
23 ~~City. These new residents place demands on services provided by both public and private sectors. Some~~  
24 ~~of the public and private sector employees needed to meet the needs of the new residents earn incomes~~  
25 ~~only adequate to pay for affordable housing. Because affordable housing is in short supply within the~~

1 ~~City, such employees may be forced to live in less than adequate housing within the City, pay a~~  
2 ~~disproportionate share of their incomes to live in adequate housing within the City, or commute ever-~~  
3 ~~increasing distances to their jobs from housing located outside the City. These circumstances harm the~~  
4 ~~City's ability to attain goals articulated in the City's General Plan and place strains on the City's ability~~  
5 ~~to accept and service new market rate housing development.~~

6 ~~— 6. The payment of an Affordable Housing Fee by developers of market rate housing is justified for~~  
7 ~~the reasons stated herein and has identifiable benefits to the City. Because it is not financially feasible~~  
8 ~~in most circumstances to develop new housing affordable to very-low, low, median and moderate-~~  
9 ~~income households, the City and County provide direct housing investments to developers to enable the~~  
10 ~~creation of affordable housing. The Affordable Housing Fee will be used to help subsidize these~~  
11 ~~development costs and provide administrative support for these programs and other affordable housing~~  
12 ~~development activities administered by the City and County. Without these funds, the City and County~~  
13 ~~would be less able to meet its affordable housing needs and the Regional Housing Needs goals~~  
14 ~~established by ABAG and the State of California for the City and County for 2007-2014.~~

15 ~~— The Affordable Housing Fee also enables affordable housing developments to leverage outside~~  
16 ~~development funding from the private sector, and the State and Federal Government. This development~~  
17 ~~work also creates economic activity, particularly construction work, which provides high-paying jobs~~  
18 ~~to residents and workers in the City and County.~~

19 ~~— In addition, it is not financially feasible for the typical moderate income household to purchase a~~  
20 ~~home in San Francisco. For these reasons, the Affordable Housing Fee may also be used to provide~~  
21 ~~down payment assistance to low and moderate income homebuyers and provide administrative support~~  
22 ~~for these programs and other first-time homebuyer assistance administered by the City and County.~~

23 ~~— However, the development of affordable housing on the same site as market rate housing also~~  
24 ~~increases social and economic integration vis-a-vis housing in the City and has corresponding social~~  
25 ~~and economic benefits to the City. Inclusionary housing provides a healthy job and housing balance.~~

1 ~~Inclusionary housing provides more affordable housing close to employment centers which in turn may~~  
2 ~~have a positive economic impact by reducing such costs as commuting and labor costs.~~

3 ~~— 7. Provided project applicants can take these requirements into consideration when negotiating to~~  
4 ~~purchase land for a housing project, the requirements of Section 415.1 et seq. are generally financially~~  
5 ~~feasible for project applicants to meet, particularly because of the benefits being conferred by the City~~  
6 ~~to housing projects under Section 415.1 et seq.~~

7 ~~— Section 406 provides a means by which a project applicant may seek a reduction or waiver of the~~  
8 ~~Affordable Housing Fee or a reduction or waiver of the alternative requirements of this Program if the~~  
9 ~~project applicant can show that imposition of these requirements would create an unlawful financial~~  
10 ~~burden.~~

11 ~~— 8. Conditional Use Authorization and Planned Unit Development permit the development of~~  
12 ~~certain uses not permitted as of right in specific districts or greater density of permitted residential~~  
13 ~~uses. As the General Plan recognizes, through the Conditional Use Authorization and Planned Unit~~  
14 ~~Development process, applicants for housing projects generally receive material economic benefits.~~  
15 ~~Such applicants are generally permitted to build in excess of the generally applicable black letter~~  
16 ~~requirements of the Planning Code for housing projects resulting in increased density, bulk, or lot~~  
17 ~~coverage or a reduction in parking or other requirements or an approval of a more intensive use over~~  
18 ~~that permitted without the Conditional Use Authorization or Planned Unit Development. Through the~~  
19 ~~Conditional Use Authorization and Planned Unit Development process, building standards can be~~  
20 ~~relaxed in order to promote lower cost home construction. An additional portion of San Francisco's~~  
21 ~~affordable housing needs can be supplied (with no public subsidies or financing) by private sector~~  
22 ~~housing developers developing inclusionary affordable units in their large market-rate projects in~~  
23 ~~exchange for the density and other bonuses conferred by Conditional Use Authorization and Planned~~  
24 ~~Unit Development approvals, provided it is financially attractive for private sector housing developers~~  
25 ~~to seek such conditional use and/or planned unit development approvals.~~

1 ~~9. The City wants to balance the burden on private property owners with the demonstrated need~~  
2 ~~for affordable housing in the City. The Housing Element calls for the City to review its affordable~~  
3 ~~Inclusionary Housing Program regularly to ensure fair burden and not constrain new housing~~  
4 ~~production. The Board of Supervisors has reviewed the Inclusionary Housing Program and finds that,~~  
5 ~~for purposes of the Housing Element of the General Plan, the current Affordable Housing Fee—set at~~  
6 ~~the equivalent to providing 20 percent of the total number of units as affordable units (or less for~~  
7 ~~projects approved under prior requirements)—ensures more fair burden on all housing development~~  
8 ~~and will not constrain new housing production. The Board of Supervisors has reviewed the~~  
9 ~~Inclusionary Housing Program and finds that, for purposes of the Housing Element of the General~~  
10 ~~Plan, a housing project of five units or more is a larger housing project. Applying the Inclusionary~~  
11 ~~Housing Program requirements to buildings of five units or more ensures more fair burden on all~~  
12 ~~housing development and will not constrain new housing production.~~

13 ~~10. The findings of former Planning Code Section 313.2 for the Jobs-Housing Linkage Program,~~  
14 ~~now found in Planning Code Sections 413et seq., relating to the shortage of affordable housing, the low~~  
15 ~~vacancy rate of housing affordable to persons of lower and moderate income, and the decrease in~~  
16 ~~construction of affordable housing in the City are hereby readopted.~~

17 ~~11. The Land Use and Economic Development Committee of the Board of Supervisors held~~  
18 ~~hearings on this legislation on July 12 and 19, 2006. At those hearings, the Committee heard testimony~~  
19 ~~from Planning Department staff and consultant Kate Funk of Keyser Marston and Associates regarding~~  
20 ~~a study undertaken at the direction of the Planning Department by the consultant Keyser Marston~~  
21 ~~Associates. The study was entitled Inclusionary Housing Program Sensitivity Analysis, dated July 7,~~  
22 ~~2006, and was undertaken to examine the economic impacts of adjusted inclusionary requirements on~~  
23 ~~market-rate housing projects ("Sensitivity Analysis"). The study can be found in Board File No. 051685~~  
24 ~~and is incorporated herein by reference. The study was guided by the Planning Department and MOH~~  
25 ~~and informed by a Technical Advisory Committee comprised of a variety of experts from the San~~

1 ~~Francisco Housing Development and Affordable Housing Advocacy Communities. Planning~~  
2 ~~Department staff presented a report summarizing the findings of the Sensitivity Analysis and the~~  
3 ~~recommendations of the Technical Advisory Committee. That report, dated July 10, 2006, is found in~~  
4 ~~Board File No. 051685 and is incorporated herein by reference. After considering the Sensitivity~~  
5 ~~Analysis and staff report and hearing the recommendations and testimony of the Planning Department,~~  
6 ~~MOH, members of the Technical Advisory Committee, and members of the public including~~  
7 ~~representatives of housing developers, community members, and affordable housing advocates, the~~  
8 ~~Land Use and Economic Development Committee considered various amendments to the legislation.~~  
9 ~~The Committee found, among other things, that it was in the public interest to increase the percentage~~  
10 ~~requirements of the ordinance, but not by as much as originally proposed; to modify the application~~  
11 ~~dates of the ordinance to grandfather more existing projects from the increased percentage~~  
12 ~~requirements, but to make most projects subject to the other requirements of the ordinance; and to~~  
13 ~~require further study on some issues by the Planning Department and MOH.~~

14 ~~—12. The City of San Francisco, under the direction of the Office of the Controller, has undertaken~~  
15 ~~a comprehensive program of analyses to update its programs and supporting documentation for many~~  
16 ~~types of fees, including updating nexus analyses in support of development impact fees. At the direction~~  
17 ~~of the Board of Supervisors and as part of this larger analysis, the City contracted with Keyser Marston~~  
18 ~~Associates to prepare a nexus analysis in support of the Inclusionary Affordable Housing Program, or~~  
19 ~~an analysis of the impact of development of market rate housing on affordable housing supply and~~  
20 ~~demand. The Planning Department and MOH worked closely with the consultant and also consulted~~  
21 ~~with the Technical Advisory Committee, noted above, comprised of a variety of experts from the San~~  
22 ~~Francisco housing development and affordable housing advocacy communities.~~

23 ~~—The City's current position is that the City's Inclusionary Housing Program is not subject to the~~  
24 ~~requirements of the Mitigation Fee Act, Government Code Sections 66000 et seq. While the City does~~  
25 ~~not expect to alter its position on this matter, due to past legislative actions supporting such a study, the~~

1 ~~Citywide study being undertaken to conduct nexus studies in other areas, and a general interest in~~  
2 ~~determining whether the Inclusionary Housing Program can be supported by a nexus type analysis as~~  
3 ~~an additional support measure, the City contracted to undertake the preparation of a nexus analysis at~~  
4 ~~this time.~~

5 ~~— The final study can be found in the Board of Supervisors File and is incorporated by reference~~  
6 ~~herein. The Board of Supervisors has reviewed the study and staff analysis and report of the study and,~~  
7 ~~on that basis finds that the study supports the current requirements of the Inclusionary Housing~~  
8 ~~Program including, but not limited to, the primary requirement that project applicants pay the~~  
9 ~~Affordable Housing Fee. Specifically, the Board finds that this study: identifies the purpose of the fee to~~  
10 ~~mitigate impacts on the demand for affordable housing in the City; identifies the use to which the fee is~~  
11 ~~to be put as being to increase the City's affordable housing supply; and establishes a reasonable~~  
12 ~~relationship between the use of the fee for affordable housing and the need for affordable housing and~~  
13 ~~the construction of new market rate housing. Moreover, the Board finds that the current inclusionary~~  
14 ~~requirements are less than the cost of mitigation and do not include the costs of remedying any existing~~  
15 ~~deficiencies. The Board also finds that the study establishes that the current inclusionary requirements~~  
16 ~~do not duplicate other city requirements or fees.~~

17 ~~— 13. The Board of Supervisors recognizes that this Inclusionary Housing Program is only one part~~  
18 ~~of the City's overall strategy for providing affordable housing. The Mayor's Office of Housing~~  
19 ~~committed over \$54 million in capital funds to affordable housing development in 2009-10. Only \$5~~  
20 ~~million of those monies came from contributions from private developers through this Program or~~  
21 ~~other similar programs. The MOH has budgeted approximately \$64 million for affordable housing~~  
22 ~~development in 2010-11 and the current expectation is that about \$14 million of those monies will come~~  
23 ~~from contributions from private developers through this Program or other similar programs.~~

24 ~~— 14. While the Board of Supervisors has amended the Inclusionary Affordable Housing Program to~~  
25 ~~have the primary requirement of the Program be the Affordable Housing Fee, for continuity and ease of~~

1 ~~reference the Board finds that the Program should, in name, remain the Inclusionary Affordable~~  
2 ~~Housing Program ("Program" or "Inclusionary Housing Program").~~

3  
4 **SEC. 415.2. DEFINITIONS.**

5 See Section 401 of this Article. For purposes of Sections 415.3 et seq., "low income" households  
6 shall be defined as households whose total household income does not exceed 55% of Area Median  
7 Income for purposes of renting an affordable unit, or 80% of Area Median Income for purposes of  
8 purchasing an affordable unit, and "moderate income" and "middle income" households shall mean  
9 households whose total household income does not exceed 100% of Area Median Income for purposes  
10 of renting an affordable unit, or 120% of Area Median Income for purposes of purchasing an  
11 affordable unit. The Small Sites Fund, defined in Section 415.5(f)(2), and the Small Sites  
12 Program may use Affordable Housing Fees to acquire sites and buildings consistent with the  
13 parameters of the Programs, as periodically updated and administered by MOHCD.

14 **SEC. 415.3. APPLICATION.**

15 (a) Notwithstanding any other provision to the contrary in this Code, Section 415.1 et  
16 seq. shall apply to any housing project that consists of ~~ten~~ 10 or more units where an individual  
17 project or a phased project is to be undertaken and where the total undertaking comprises a  
18 project with ~~ten~~ 10 or more units, even if the development is on separate but adjacent lots.  
19 This provision also applies to housing projects that requires Commission approval of  
20 replacement housing destroyed by earthquake, fire, or natural disaster only where the  
21 destroyed housing included units restricted under the Inclusionary Affordable Housing  
22 Program or the City's predecessor inclusionary housing policy, condominium conversion  
23 requirements, or other affordable housing program.

24 (b) ~~The effective date of these requirements shall be either April 5, 2002, which is the date that~~  
25 ~~the requirements originally became effective, or the date a subsequent modification, if any, became~~

1 *operative. The following table is designed to summarize the most significant subsequent modifications*  
2 *to this Program and the dates those modifications went into effect. The Planning Department and the*  
3 *Mayor's Office of Housing shall maintain a record for the public summarizing various amendments to*  
4 *this Program and their effective or operative dates. To the extent there is a conflict between the*  
5 *following table or any summary produced by the Department or MOH and the provisions of the*  
6 *original implementing ordinances, the implementing ordinances shall prevail. Any development*  
7 *project that has submitted a complete Environmental Evaluation application prior to January 1,*  
8 *2013 shall comply with the Affordable Housing Fee requirements, the on-site affordable*  
9 *housing requirements or the off-site affordable housing requirements, as applicable, in effect*  
10 *on January 12, 2016. For development projects that have submitted a complete*  
11 *Environmental Evaluation application on or after January 1, 2013, theThe requirements set forth*  
12 *in Planning Code Sections 415.5, 415.6, and 415.7 shall apply to certain development projects*  
13 *consisting of 25 dwelling units or more during a limited period of time as follows.*

14 *(1) If a development project is eligible and elects to provide on-site affordable housing,*  
15 *the development project shall provide the following amounts of on-site affordable housing. All other*  
16 *requirements of Planning Code Sections 415.1 et seq. shall apply.*

17 *(A) Any development project that has submitted a complete Environmental*  
18 *Evaluation application prior to January 1, 2014 shall provide affordable units in the amount of 13% of*  
19 *the number of units constructed on-site.*

20 *(B) Any development project that has submitted a complete Environmental*  
21 *Evaluation application prior to January 1, 2015 shall provide affordable units in the amount of 13.5%*  
22 *of the number of units constructed on-site.*

23 *(C) Any development project that has submitted a complete Environmental*  
24 *Evaluation application on or prior to January 12, 2016 shall provide affordable units in the amount of*  
25 *14.5% of the number of units constructed on-site.*



1                   (D) Any residential or predominantly residential mixed-use development  
2 project that has submitted a complete Environmental Evaluation application after January 12,  
3 2016 but on or before June 6, 2016, and that replaces a pre-existing non-conforming  
4 commercial use on a property in excess of 10 acres shall provide affordable units in the  
5 amount of 15.5% of the number of units constructed on-site.

6                   ~~(DE)~~ Any development project that submits an Environmental Evaluation  
7 application after January 12, 2016, shall comply with the requirements set forth in Planning Code  
8 Sections 415.5, 415.6 and 415.7, as applicable.

9                   ~~(E)~~ ~~Notwithstanding the provisions set forth in subsections (b)(1)(A), (B)~~  
10 ~~and (C) of this section 415.3, if a development project is located in the Mission NCT Zoning~~  
11 ~~District, and is eligible and elects to provide on-site units pursuant to Section 415.5(g), such~~  
12 ~~development project shall comply with the on-site requirements set forth in Section 415.6 and~~  
13 ~~shall not be eligible to use the lower inclusionary housing requirements set forth in this~~  
14 ~~subsection (b) of this Section 415.3.~~

15                   (F) Notwithstanding the provisions set forth in subsections (b)(1)(A), (B) and  
16 (C) of this section 415.3, if a development project is located in a UMU Zoning District or in the South  
17 of Market Youth and Family Zoning District, and is eligible and elects to provide on-site units pursuant  
18 to Section 415.5(g), such development project shall comply with the on-site requirements applicable  
19 within such Zoning Districts, plus the following additional amounts of on-site affordable units: (i) if the  
20 development project has submitted a complete Environmental Evaluation application prior to January  
21 1, 2014, the Project Sponsor shall provide additional affordable units in the amount of 1% of the  
22 number of units constructed on-site; (ii) if the development project has submitted a complete  
23 Environmental Evaluation application prior to January 1, 2015, the Project Sponsor shall provide  
24 additional affordable units in the amount of 1.5% of the number of units constructed on-site; or (iii) if  
25 the development project has submitted a complete Environmental Evaluation application on or prior to

1 January 12, 2016, the Project Sponsor shall provide additional affordable units in the amount of 2% of  
2 the number of units constructed on-site.

3 (G) Any development project that has submitted a complete Environmental  
4 Evaluation application on or before January 12, 2016 and seeks to utilize a density bonus under State  
5 Law shall use its best efforts to provide on-site affordable units in the amount of 25% of the number of  
6 units constructed on-site and shall consult with the Planning Department about how to achieve this  
7 amount of inclusionary affordable housing. Any project seeking a density bonus under the provisions  
8 of State Law shall prepare a report analyzing how the concessions and incentives requested are  
9 necessary in order to provide the required on-site affordable housing.

10 (2) If a development project pays the Affordable Housing Fee or is eligible and elects to  
11 provide off-site affordable housing, the development project shall provide the following fee amount or  
12 amounts of off-site affordable housing during the limited periods of time set forth below. All other  
13 requirements of Planning Code Sections 415.1 et seq. shall apply.

14 (A) Any development project that has submitted a complete Environmental  
15 Evaluation application prior to January 1, 2014, shall pay a fee or provide off-site housing in an  
16 amount equivalent to 25% of the number of units constructed on-site.

17 (B) Any development project that has submitted a complete Environmental  
18 Evaluation application prior to January 1, 2015, shall pay a fee or provide off-site housing in an  
19 amount equivalent to 27.5% of the number of units constructed on-site.

20 (C) Any development project that has submitted a complete Environmental  
21 Evaluation application on or prior to January 12, 2016 shall pay a fee or provide off-site housing in an  
22 amount equivalent to 30% of the number of units constructed on-site.

23 (D) Any development project that submits an Environmental Evaluation  
24 application after January 12, 2016 shall comply with the requirements set forth in Sections 415.5,  
25 415.6, and 415.7, as applicable.



1 January 12, 2016, the Project Sponsor shall pay an additional fee, or provide additional land  
2 dedication or off-site affordable units, in an amount equivalent to 10% of the number of units  
3 constructed on-site.

4 (HG) Any development project consisting of 25 dwelling units or more that has  
5 submitted a complete Environmental Evaluation application on or prior to January 12, 2016, and is  
6 eligible and elects to provide off-site affordable housing, may provide off-site affordable housing by  
7 acquiring an existing building to fulfill all or part of the requirements set forth in this Section 415.3 and  
8 in Section 415.7 with an equivalent amount of units as specified in this Section 415.3(b)(2), as reviewed  
9 and approved by the Mayor's Office of Housing and Community Development and consistent with the  
10 parameters of its Small Sites Acquisition and Rehabilitation Program.

11 (3) During the limited period of time in which the provisions of Section 415.3(b)  
12 apply, for any housing development that is located in an area with a specific affordable  
13 housing requirement set forth in an Area Plan or a Special Use District, or in any other section  
14 of the Code such as Section 419, with the exception of the UMU Zoning District or in the  
15 South of Market Youth and Family Zoning District, the higher of the affordable housing  
16 requirement set forth in such Area Plan or Special Use District or in Section 415.3(b) shall  
17 apply. Any affordable housing impact fee paid pursuant to an Area Plan or Special Use  
18 District shall be counted as part of the calculation of the inclusionary housing requirements  
19 contained in Planning Code Sections 415.1 et seq.

20 (4) Any development project that constructs on-site or off-site affordable housing units  
21 as set forth in subsection (b) of this Section 415.3 shall diligently pursue completion of such units. In  
22 the event the project sponsor does not procure a building permit or site permit for construction of the  
23 affordable housing units by December 7, 2018, the development project shall comply with the  
24 inclusionary affordable housing requirements set forth in Sections 415.5, 415.6, and 415.7, as  
25 applicable.

1           (c) The new inclusionary affordable housing requirements contained in Sections 415.5, 415.6,  
2 and 415.7, as well as the provisions contained in Section 415.3(b), shall not apply to (1) any mixed use  
3 project that is located in a special use district for which a height limit increase has been approved by  
4 the voters prior to January 12, 2016 to satisfy the requirements of Administrative Code Section 61.5.1,  
5 or (2) any mixed use project that has entered into a development agreement or other similar binding  
6 agreement with the City on or before January 12, 2016, or (3) any housing development project that  
7 has procured a final first discretionary development entitlement approval, which shall mean approval  
8 following any administrative appeal to the relevant City board, on or before January 12, 2016; or (4)  
9 any housing development project that, on or before June 7, 2016, has entered into a final,  
10 approved and executed agreement between the Project Sponsor and the City, demonstrating  
11 that the housing units are not subject to the Costa Hawkins Rental Housing Act.

12           (d) The City may continue to enter into development agreements or other similar binding  
13 agreements for projects that provide inclusionary affordable housing at levels that may be different  
14 from the levels set forth in Sections 415.1 et seq.

15           ~~(e) For any housing development that is located in an area with a specific affordable~~  
16 ~~housing requirement set forth in an Area Plan or a Special Use District, or in any other section~~  
17 ~~of the Code such as Section 419, the higher affordable housing requirement shall apply. Any~~  
18 ~~affordable housing impact fee paid pursuant to an Area Plan or Special Use District shall be~~  
19 ~~counted as part of the calculation of the inclusionary housing requirements contained in~~  
20 ~~Planning Code Sections 415.1 et seq.~~

21 ~~Table 415.3~~

<i>Program Modification</i>	<i>Effective or Operative Date</i>
-----------------------------	------------------------------------

<p>1 <del>All projects with 5 or more units must participate</del>  2 <del>in the Inclusionary Housing Program Section</del>  3 <del>415 (changed from a threshold of 10 units).</del></p> <p>4 <del>Threshold changed back to 10 units or more such</del>  5 <del>that the Section 415 et seq. no longer applies to</del>  6 <del>buildings of 5-9 units.</del></p>	<p><del>All projects that submitted a first application on or</del>  <del>after July 18, 2006.</del></p> <p><del>Any 5-9 unit project, regardless of when it</del>  <del>submitted a first application, that has not received</del>  <del>a first construction document as of January 15,</del>  <del>2013.</del></p>
<p>8 <del>Affordable Housing Percentages:</del></p> <ul style="list-style-type: none"> <li>9 <del>• 20% Fee</del></li> <li>10 <del>• 12% on-site*</del></li> <li>11 <del>• 20% off-site*</del></li> </ul> <p>12 <del>*Of total number of units</del>  13 <del>(Percentages may vary in specific Area Plans or</del>  14 <del>Special Use Districts. Please refer to those</del>  15 <del>applicable Code Sections.)</del></p>	<p><del>All projects that submitted a first application on or</del>  <del>after July 18, 2006</del></p> <p><del>(For off-site and fee: except buildings of over 120</del>  <del>feet in height that meet the requirements of Section</del>  <del>415.7(a)(1)(C))</del></p>
<p>16 <del>On-Site units must be priced and sold at 90% of</del>  17 <del>AMI and rented at 55% of AMI</del></p>	<p><del>All projects that receive a first site or building</del>  <del>permit on or after September 9, 2006</del></p>
<p>18 <del>Project sponsor must select Program compliance</del>  19 <del>option upon project approval and cannot alter</del>  20 <del>their compliance option</del></p>	<p><del>All projects that received Planning Commission or</del>  <del>Planning Department approval on or after</del>  <del>September 9, 2006</del></p>

<p>1 <i>All off-site units must be located within 1 mile of</i>  2 <i>the principal project and Off-site units must be</i>  3 <i>priced and sold at 70% of AMI</i></p>	<p><i>All Projects that receive Planning Commission or</i>  <i>Planning Department approval after September 9,</i>  <i>2006</i></p>
<p>4 <i>Lottery preference for applicants living or</i>  5 <i>working in San Francisco</i></p>	<p><i>All projects that are marketed on or after June 4,</i>  <i>2007</i></p>
<p>6 <i>Lottery preference for applicants holding a</i>  7 <i>Certificate of Preference from the Redevelopment</i>  8 <i>Agency</i></p>	<p><i>All projects that are marketed on or after December</i>  <i>30, 2008</i></p>
<p>9  10 <i>Lottery required for all new and resale units</i></p>	<p><i>All projects that are marketed on or after September</i>  <i>9, 2006</i></p>
<p>11  12 <i>Must provide on-site units as owner-occupied</i>  13 <i>only unless specifically exempted pursuant to</i>  14 <i>Section 415</i></p>	<p><i>All projects beginning February 11, 2010</i></p>
<p>15 <i>All off-site units must follow standards set out in</i>  16 <i>Procedures Manual</i></p>	<p><i>Projects that receive Planning Commission or</i>  <i>Planning Department approval on or after June 4,</i>  <i>2007</i></p>

18  
19 (e f) Section 415.1 et seq., the Inclusionary Housing Program, shall not apply to:

20 (1) That portion of a housing project located on property owned by the United  
21 States or any of its agencies, or leased by the United States or any of its agencies for a period  
22 in excess of 50 years, with the exception of such property not used exclusively for a  
23 governmental purpose;

1 (2) That portion of a housing project located on property owned by the State of  
2 California or any of its agencies, with the exception of such property not used exclusively for a  
3 governmental or educational purpose; or

4 (3) That portion of a housing project located on property under the jurisdiction  
5 of the San Francisco *Redevelopment Agency Office of Community Investment and Infrastructure* or  
6 the Port of San Francisco where the application of Section 415.1 *et seq.* is prohibited by  
7 California or local law.

8 (4) A 100% *percent* affordable housing project in which rents are controlled or  
9 regulated by any government unit, agency or authority, excepting those unsubsidized and/or  
10 unassisted units which are insured by the United States Department of Housing and Urban  
11 Development. The Mayor's Office of Housing *and Community Development* must represent to  
12 the Planning Commission or Planning Department that the project meets this requirement.

13 \* \* \* \*

14 ~~(d) For projects that have received a first site or building permit prior to the effective date of~~  
15 ~~Section 415.1 et seq., the requirements in effect prior to the effective date of Section 415.1 et seq. shall~~  
16 ~~apply.~~

17 ~~(e) In November 2012 the voters amended the Charter by adopting Proposition C "The~~  
18 ~~Affordable Housing Trust Fund and Housing Production Incentives" which is, in part, codified as~~  
19 ~~Charter Section 16.110 ("Proposition C"). To the extent that there is any inconsistency between the~~  
20 ~~provisions of Proposition C and Sections 415 et seq. or any other Planning Code provisions,~~  
21 ~~the provisions of Proposition C shall control.~~

22 **SEC. 415.5. AFFORDABLE HOUSING FEE.**

23 The fees set forth in this Section 415.5 will be reviewed when the City completes an Economic  
24 Feasibility Study. Except as provided in Section 415.5(g), all development projects subject to  
25



1 this Program shall be required to pay an Affordable Housing Fee subject to the following  
2 requirements:

3 (a) **Payment of a Fee.** The fee is due and payable to the Development Fee Collection  
4 Unit at DBI for deposit into the Citywide Affordable Housing Fund at the time of and in no  
5 event later than issuance of the first construction document, with an option for the project  
6 sponsor to defer payment to prior to issuance of the first certificate of occupancy upon  
7 agreeing to pay a deferral surcharge that would be deposited into the *Downtown Park Citywide*  
8 *Affordable Housing* Fund, in accordance with Section 107A.13.15 of the San Francisco Building  
9 Code.

10 (b) **Amount of Fee.** The amount of the fee which may be paid by the project sponsor  
11 subject to this Program shall be determined by MOHCD utilizing the following factors:

12 (1) The number of units equivalent to the applicable off-site percentage of the  
13 number of units in the principal project. The applicable percentage shall be 20% percent for  
14 housing development projects consisting of 10 dwelling units or more, but less than 25 dwelling units.  
15 The applicable percentage for development projects consisting of 25 dwelling units or more shall be  
16 33% or the percentage that applied to the project if the project is subject to the requirements of an  
17 earlier version of this Program due to the date it submitted its application or that percentage required  
18 in certain Special Use Districts or Area Plans. For the purposes of this Section 415.5, the City  
19 shall calculate the fee using the direct fractional result of the total number of units multiplied  
20 by the applicable percentage, rather than rounding up the resulting figure as required by  
21 Section 415.6(a).

22 (2) The affordability gap using data on the cost of construction of residential  
23 housing and the Maximum Purchase Price for the equivalent unit size. *As of the effective date of*  
24 *this Ordinance No. 62-13,1 MOH shall use construction cost data from the "San Francisco*  
25 *Inclusionary Housing Program Financial Analysis 2012" prepared by Seifel Consulting.* The

1 Department and MOHCD shall update the technical report from time to time as they deem  
2 appropriate in order to ensure that the affordability gap remains current.

3 (3) No later than January 1 of each year *following the effective date of this*  
4 *Ordinance No. 62-13*, MOHCD shall adjust the fee. *No later than December 1 following the effective*  
5 *date of this Ordinance No. 62-131 of each year*, MOHCD shall provide the Planning Department,  
6 DBI, and the Controller with information on the adjustment to the fee so that it can be included  
7 in the Planning Department's and DBI's website notice of the fee adjustments and the  
8 Controller's Citywide Development Fee and Development Impact Requirements Report  
9 described in Section 409(a). MOHCD is authorized to develop an appropriate methodology for  
10 indexing the fee, based on adjustments in the cost of constructing housing and the Maximum  
11 Purchase Price for the equivalent unit size. The method of indexing shall be published in the  
12 Procedures Manual.

13 (4) For any housing development that is located in an area with a specific affordable  
14 housing requirement set forth in a Special Use District, or in any other section of the Code such as  
15 Section 419, the higher affordable housing requirement shall apply.

16 \* \* \* \*

17 (f) **Use of Fees.** All monies contributed pursuant to the Inclusionary Affordable  
18 Housing Program shall be deposited in the Citywide Affordable Housing Fund ("the Fund"),  
19 established in Administrative Code Section 10.100-49. The Mayor's Office of Housing and  
20 Community Development ("MOHCD") shall use the funds collected under this Section in the  
21 following manner:

22 (1) Except as provided in subsection (2) below, the funds collected under this  
23 Section shall be used to:

24 (A) increase the supply of housing affordable to qualifying households  
25 subject to the conditions of this Section; and

1 (B) provide assistance to low and moderate/middle income homebuyers;  
2 and

3 (C) pay the expenses of MOHCD in connection with monitoring and  
4 administering compliance with the requirements of the Program. MOHCD is authorized to use  
5 funds in an amount not to exceed \$200,000 every 5 years to conduct follow-up studies under  
6 Section 415.9(e) and to update the affordable housing fee amounts as described above in  
7 Section 415.5(b). All other monitoring and administrative expenses shall be appropriated  
8 through the annual budget process or supplemental appropriation for MOHCD.

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

10 (A) **Designation of Funds.** MOHCD shall designate and separately  
11 account for 10% percent of all fees that it receives under Section 415.1*et seq.* that are  
12 deposited into the Citywide Affordable Housing Fund, established in Administrative Code  
13 Section 10.100-49, excluding fees that are geographically targeted such as those referred to  
14 in Sections 415.5(b)(1) and 827(b)(1), to support acquisition and rehabilitation of Small Sites  
15 ("Small Sites Funds"). MOHCD shall continue to divert 10 percent of all fees for this purpose  
16 until the Small Sites Funds reach a total of \$15 million at which point, MOHCD will stop  
17 designating funds for this purpose. At such time as designated Small Sites Funds are  
18 expended and dip below \$15 million, MOHCD shall start designating funds again for this  
19 purpose, such that at no time the Small Sites Funds shall exceed \$15 million. When the total  
20 amount of fees paid to the City under Section 415.1*et seq.* totals less than \$10 million over  
21 the preceding 12 month period, MOHCD is authorized to temporarily divert funds from the  
22 Small Sites Fund for other purposes. MOHCD must keep track of the diverted funds, however,  
23 such that when the amount of fees paid to the City under Section 415.1*et seq.* meets or  
24 exceeds \$10 million over the preceding 12 month period, MOHCD shall commit all of the  
25

1 previously diverted funds and 10 percent of any new funds, subject to the cap above, to the  
2 Small Sites Fund.

3 (B) **Use of Small Sites Funds.** The funds shall be used exclusively to  
4 acquire or rehabilitate "Small Sites" defined as properties consisting of *less than 2 -* 25 units.  
5 Units supported by monies from the fund shall be designated as housing affordable to  
6 *qualifying low-income to Moderate/Middle-income* households as defined in Section 415.12 for no  
7 less than 55 years. Properties supported by the Small Sites Funds must be *either*:

8 (i) rental properties that will be maintained as rental properties;  
9 (ii) vacant properties that were formerly rental properties as long  
10 as those properties have been vacant for a minimum of two years prior to the effective date of  
11 this legislation;

12 (iii) properties that have been the subject of foreclosure; or  
13 (iv) a Limited Equity Housing Cooperative as defined in  
14 Subdivision Code Sections 1399.1 *et seq.* or a property owned or leased by a non-profit entity  
15 modeled as a Community Land Trust.

16 (C) **Initial Funds.** If, within 18 months from April 23, 2009, MOHCD  
17 dedicates an initial one-time contribution of other eligible funds to be used initially as Small  
18 Sites Funds, MOHCD may use the equivalent amount of Small Sites Funds received from  
19 fees for other purposes permitted by the Citywide Affordable Housing Fund until the amount of  
20 the initial one-time contribution is reached.

21 (D) **Annual Report.** At the end of each fiscal year, MOHCD shall issue  
22 a report to the Board of Supervisors regarding the amount of Small Sites Funds received from  
23 fees under this legislation, and a report of how those funds were used.

24 (E) **Intent.** In *adopting this ordinance regarding establishing guidelines for*  
25 Small Sites Funds, the Board of Supervisors does not intend to preclude MOHCD from

1 expending other eligible sources of funding on Small Sites as described in this Section, or  
2 from allocating or expending more than \$15 million of other eligible funds on Small Sites.

3 (3) For all projects funded by the Citywide Affordable Housing Fund, MOHCD  
4 requires the project sponsor or its successor in interest to give preference as provided ~~for~~ in  
5 Administrative Code Chapter 47.

6  
7 **SEC. 415.6. ON-SITE AFFORDABLE HOUSING ALTERNATIVE.**

8 The requirements set forth in this Section 415.6 will be reviewed when the City completes an  
9 Economic Feasibility Study. If a project sponsor is eligible and elects to provide on-site units  
10 pursuant to Section 415.5(g), the development project shall meet the following requirements:

11 (a) **Number of Units.** The number of units constructed on-site shall be as follows:

12 (1) The number of units constructed on-site shall generally be 12% of all units  
13 constructed on the project site for housing development projects consisting of 10 dwelling units or  
14 more, but less than 25 dwelling units. The affordable units shall be affordable to low-income  
15 households. The number of units constructed on-site shall generally be 25% of all units constructed on  
16 the project site for housing development projects consisting of 25 dwelling units or more, with a  
17 minimum of 15% of the units affordable to low- income households and 10% of the units affordable to  
18 low- or moderate/middle-income households. The Department shall require ~~for housing projects~~  
19 ~~covered by Section 415.3(a)(1),~~ as a condition of Department approval of a project's building  
20 permit, or ~~by Section 415.3(a)(2), (3) and (4),~~ as a condition of approval of a Conditional Use  
21 Authorization or Planned Unit Development or as a condition of Department approval of a  
22 live/work project, that 12% or 25% percent, as applicable, of all units constructed on the project  
23 site shall be affordable to qualifying households so that a project sponsor must construct .12  
24 or .25 times, as applicable, the total number of units produced in the principal project. If the total  
25

1 number of units is not a whole number, the project sponsor shall round up to the nearest  
2 whole number for any portion of .5 or above.

3 (2) **Specific Geographic Areas.** For any housing development that is located  
4 in an area with a specific affordable housing requirement set forth in a Special Use District or  
5 in any other section of the Code such as Section 419, the *more specific higher* housing  
6 requirement shall apply *as long as it is consistent with Charter Section 16.110*.

7 (3) If the principal project has resulted in demolition, conversion, or removal of  
8 affordable housing units renting or selling to households at income levels and/or for a rental  
9 rate or sales price below corresponding income thresholds for units affordable to qualifying  
10 households, the Commission or the Department shall require that the project sponsor replace  
11 the number of affordable units removed with units of a comparable number of bedrooms or  
12 provide that ~~12~~ *25 percent* of all units constructed as part of the new project shall be  
13 affordable to qualifying households, whichever is greater.

14 ~~(4) *Already Approved Projects. Charter Section 16.110(g)(3) contains procedures for*~~  
15 ~~*certain projects that have been approved but that have not received their first construction document as*~~  
16 ~~*defined in Section 107A.13.1 of the San Francisco Building Code by January 1, 2013 to modify their*~~  
17 ~~*conditions of approval under limited circumstances.*~~

18 (b) **Timing of Construction.** On-site affordable housing required by this Section  
19 415.6 ~~must~~ *shall* be constructed, completed, ready for occupancy, and marketed no later than  
20 the market rate units in the principal project.

21 (c) **Type of Housing.** All on-site units constructed under this Section ~~415.6 shall~~ *must*  
22 be provided as ownership units unless the project sponsor meets the eligibility requirement of  
23 Section 415.5(g). All on-site units must be Affordable to Qualifying Households. In general,  
24 affordable units constructed under this Section 415.6 shall be comparable in number of  
25 bedrooms, exterior appearance and overall quality of construction to market rate units in the

1 principal project. A Notice of Special Restrictions shall be recorded prior to issuance of the  
2 first construction document and shall specify the number, location and sizes for all affordable  
3 units required under this subsection (c). The affordable units shall be evenly distributed  
4 throughout the building. For buildings over 120 feet in height, as measured under the requirements set  
5 forth in the Planning Code, the affordable units may be distributed throughout the lower 2/3 of the  
6 building, as measured by the number of floors. The interior features in affordable units should be  
7 generally the same as those of the market rate units in the principal project, but need not be  
8 the same make, model or type of such item as long as they are of good and new quality and  
9 are consistent with then-current standards for new housing. The square footage of affordable  
10 units does not need to be the same as or equivalent to those that in market rate units in the  
11 principal project, so long as it is consistent with then-current standards for new housing. The  
12 affordable units are not required to be the same size as the market rate units, and may be 90% of the  
13 average size of the specified unit type. For buildings over 120 feet in height, as measured under the  
14 requirements set forth in the Planning Code, the average size of the unit type may be calculated for the  
15 lower 2/3 of the building, as measured by the number of floors. Where applicable, parking shall be  
16 offered to the affordable units subject to the terms and conditions of the Department's policy  
17 on unbundled parking for affordable housing units as specified in the Procedures Manual and  
18 amended from time to time. On-site affordable units shall be ownership units unless the  
19 project applicant meets the eligibility requirement of Section 415.5(9).

20 \* \* \* \*

21 **SEC. 415.7. OFF-SITE AFFORDABLE HOUSING ALTERNATIVE.**

22 The requirements set forth in this Section 415.7 will be reviewed when the City completes an  
23 Economic Feasibility Study. If the project sponsor is eligible and selects pursuant to Section  
24 415.5(g) to provide off-site units to satisfy the requirements of Section 415.1 *et seq.*, the  
25 project sponsor shall notify the Planning Department and the Mayor's Office of Housing and

1 Community Development ("MOHCD") of its intent as early as possible. The Planning  
2 Department and MOHCD shall provide an evaluation of the project's compliance with this  
3 Section 415.7 prior to approval by the Planning Commission or Planning Department. The  
4 development project shall meet the following requirements:

5 (a) **Number of Units:** The number of units constructed off-site shall be as follows:

6 (1) ~~(A)~~ For any housing development *of any height* that is located in an area  
7 with a specific affordable housing requirement, set forth in Section 419, or elsewhere in this  
8 Code, the ~~more specific~~ higher off-site housing requirement shall apply.

9 (B2) For housing development projects consisting of 10 dwelling units or more but less  
10 than 25 units, the number of units constructed off-site shall be 20%, so that a project applicant shall  
11 construct .20 times the total number of units produced in the principal project. If the total number of  
12 units is not a whole number, the project applicant shall round up to the nearest whole number for any  
13 portion of .5 or above. The off-site affordable units shall be affordable to low-income households

14 (C3) For housing development projects consisting of 25 dwelling units or more, the  
15 number of units constructed off-site shall be 33%, with 20% of the units affordable to low-income  
16 households and 13% of the units affordable to low- or moderate/middle-income households, so that a  
17 project applicant shall construct .33 times 20 percent so that a project applicant must construct .20  
18 times Buildings of 120 feet and under in height or buildings of over 120 feet in height that do not meet  
19 the criteria in Subsection (C) below: Except as provided in Subsection (A), the Department shall  
20 require for housing projects described in Section 415.3(a)(1), (2), (3), and (4) the total number of  
21 units produced in the principal project. If the total number of units is not a whole number, the  
22 project applicant shall round up to the nearest whole number for any portion of .5 or above.

23 (4) For any housing development that is located in an area with a specific affordable  
24 housing requirement set forth in a Special Use District, or in any other section of the Code such as  
25 Section 419, the higher affordable housing requirement shall apply.



1  
2                   (C) — *Buildings of over 120 feet in height. Except as provided in subsection (A)*  
3 *above, the requirements of this Subsection shall apply to any project that is over 120 feet in height and*  
4 *does not require a Zoning Map amendment or Planning Code text amendment related to its project*  
5 *approvals which (i) results in a net increase in the number of permissible residential units, or (ii)*  
6 *results in a material increase in the net permissible residential square footage as defined in Section*  
7 *415.3(b)(2); or has not received or will not receive a Zoning Map amendment or Planning Code text*  
8 *amendment as part of an Area Plan adopted after January 1, 2006 which (i) results in a net increase in*  
9 *the number of permissible residential units, or (ii) results in a material increase in the net permissible*  
10 *residential square footage as defined in Section 415.3(b)(2). The Department shall require for housing*  
11 *projects covered by this Subsection and Section 415.3(a)(1), as a condition of Planning Department*  
12 *approval of a project's building permit, or by this Subsection and by Section 415.3(a)(2), (3) and (4), as*  
13 *a condition of approval of a Conditional Use Authorization or Planned Unit Development or as a*  
14 *condition of Department approval of a live/work project, that 17 percent of all units constructed on the*  
15 *project site shall be affordable to qualifying households so that a project sponsor must construct 17*  
16 *times the total number of units produced in the principal project. If the total number of units is not a*  
17 *whole number, the project sponsor shall round up to the nearest whole number for any portion of .5 or*  
18 *above. Consistent with the conclusions of the MOH study authorized in Section 415.9(e), MOH shall*  
19 *recommend and the Board of Supervisors shall consider whether the requirements of this Subsection*  
20 *for buildings of over 120 feet in height shall continue or expire after approximately five years from*  
21 *April 24, 2007.*

22           (b) **Timing of Construction:** The project sponsor shall ~~insure~~ ensure that the off-site  
23 units are constructed, completed, ready for occupancy, and marketed no later than the market  
24 rate units in the principal project. In no case shall the Principal Project receive its first  
25 certificate of occupancy until the off-site project has received its first certificate of occupancy.

1 (c) **Location of off-site housing:** The ~~project sponsor must insure that~~ off-site units are  
2 shall be located within one mile of the principal project.

3 (d) **Type of Housing:** All off-site units constructed under this Section 415.7 shall must  
4 be provided as ownership housing for the life of the project unless the project applicant meets  
5 the eligibility requirement of Section 415.5(g). ~~If offered for ownership, all off-site units must be~~  
6 ~~affordable to households earning no more than 70% percent of the AMI, or if offered for rent,~~  
7 ~~Affordable to Qualifying Households at the rental level.~~ Nothing in this Section shall limit a project  
8 sponsor from meeting the requirements of this Section through the construction of units in a  
9 limited equity or land trust form of ownership if such units otherwise meet all of the  
10 requirements for off-site housing. In general, affordable units constructed or otherwise provided  
11 under this Section 415.7 shall be comparable in number of bedrooms, exterior appearance and  
12 overall quality of construction to market rate units in the principal project. The total square  
13 footage of the off-site affordable units constructed or otherwise provided under this Section  
14 415.7 shall be no less than the calculation of the total square footage of the on-site market-  
15 rate units in the principal project multiplied by the relevant on-site percentage requirement for  
16 the project specified in this Section 415.7. The Notice of Special Restrictions or conditions of  
17 approval shall include a specific number of units at specified unit sizes - including number of  
18 bedrooms and minimum square footage - for affordable units. The interior features in  
19 affordable units should generally be the same as those of the market rate units in the principal  
20 project but need not be the same make, model, or type of such item as long as they are of  
21 new and good quality and are consistent with then-current standards for new housing and so  
22 long as they are consistent with the "Quality Standards for Off-Site Affordable Housing Units"  
23 found in the Procedures Manual. Where applicable, parking shall be offered to the affordable  
24 units subject to the terms and conditions of the Department's policy on unbundled parking for  
25 affordable housing units as specified in the Procedures Manual and amended from time to

1 time. If the residential units in the principal project are live/work units which do not contain  
 2 bedrooms or are other types of units which do not contain bedrooms separated from the living  
 3 space, the off-site units shall be comparable in size according to the following equivalency  
 4 calculation between live/work and units with bedrooms:

Number of Bedrooms (or, for live/work units, square foot equivalency)	Number of Persons in Household
0 (Less than 600 square feet)	1
1 (601 to 850 square feet)	2
2 (851 to 1,100 square feet)	3
3 (1,101 to 1,300 square feet)	4
4 (More than 1,300 square feet)	5

11 \* \* \* \*

12  
 13 Section 4. The Planning Code is hereby amended by adding Section 415.10, to read  
 14 as follows:

15 **SEC. 415.10. ECONOMIC FEASIBILITY STUDY TO MAXIMIZE HOUSING**

16 **AFFORDABILITY.**

17 **(a) Findings.**

18 *San Francisco continues to experience a housing crisis that requires a broad spectrum*  
 19 *of land use and financing tools to address. The Housing Element of the City's General Plan calls for*  
 20 *38% of all new housing production to be affordable for lower income households below 80% of area*  
 21 *median income and 19% of new housing affordable to be built for moderate/middle income households*  
 22 *up to 120% of area median income. San Francisco's inclusionary housing program, which requires*  
 23 *housing developers to provide affordable units as part of their projects, is a critical component of the*  
 24 *City's programs to expand affordable housing options. The Inclusionary Housing program is one of the*  
 25

1 City's tools for increasing affordable housing dedicated to lower income San Franciscans without  
2 using public subsidies, and in particular it is a useful tool for creating any affordable housing to meet  
3 the growing need of moderate/middle income households.

4 The City adopted an Inclusionary Housing ordinance in 2002 that set requirements on market  
5 rate development to include affordable units at 12% of the total for the first time. The inclusionary  
6 program has successfully resulted in more than 2,000 units of below-market, permanently affordable  
7 housing since its adoption. The City prepared a Nexus Study in 2007 in support of the program. The  
8 report demonstrated the necessary affordable housing in order to mitigate the impacts of market rate  
9 housing, and the inclusionary requirements were increased to 15% of total units. The City's  
10 inclusionary housing requirements are codified in Section 415 of the Planning Code. The City is now  
11 in the process of updating that nexus analysis.

12 In 2011, Governor Jerry Brown dissolved the State Redevelopment Agency, which was the  
13 City's primary permanent funding stream for affordable housing. In 2012, in response to this loss, the  
14 voters amended the San Francisco Charter to create the Affordable Housing Trust Fund, which  
15 included a provision to lower the on-site inclusionary requirement to 12%. In November 2014, in  
16 response to an escalating affordable housing crisis, the voters passed Proposition K, which set forth a  
17 policy directive to the City to ensure that additional affordable housing is a minimum of 33% of its  
18 overall housing production to low- and moderate/middle-income households up to 120% of the Area  
19 Median Income and at least another 17% affordable to households from 120% to 150% of the Area  
20 Median Income.

21 The Board of Supervisors has proposed to the voters a Charter amendment that will appear on  
22 the June 7, 2016 ballot. The Charter amendment would authorize the City to enact by ordinance  
23 subsequent changes to the inclusionary housing requirements, including changes to the minimum or  
24 maximum inclusionary or affordable housing obligations applicable to market rate housing projects.  
25

1           On March 1, 2016, the Board of Supervisors unanimously adopted Resolution No. 79-16  
2 declaring that (1) it shall be City policy to maximize the economically feasible percentage of affordable  
3 inclusionary housing in market rate housing development to create housing for lower and  
4 moderate/middle income households; (2) if the voters adopt the proposed Charter amendment on June  
5 7, the Board intends to adopt a future ordinance requiring the Controller and other City departments to  
6 conduct a periodic economic study to maximize affordability in the City's inclusionary housing  
7 requirements; and (3) the future ordinance would create an advisory committee to ensure that the  
8 economic study is the result of a transparent and inclusive public process.

9           The purpose of this Section 415.10 is to study how to set inclusionary housing obligations in  
10 San Francisco at the maximum economically feasible amount in market rate housing development to  
11 create housing for low and moderate / middle income households, at the income levels set forth in  
12 Section 415.10(d), and with guidance from the City's Nexus Study, which should be periodically  
13 updated.

14           (b) **Triennial Economic Feasibility Analysis.** With the support of independent consultants as  
15 deemed appropriate by the Controller and with advice on setting qualifications and criteria for  
16 consultant selection from the Inclusionary Housing Technical Advisory Committee established in  
17 Administrative Code Chapter 5, Article XXIX, the Controller, in consultation with relevant City  
18 Departments and the Inclusionary Housing Technical Advisory Committee, shall conduct a feasibility  
19 study of the City's inclusionary affordable housing obligations set forth in Planning Code Section 415  
20 et seq., including but not limited to the affordable housing fee and on-site and off-site alternatives, and  
21 shall submit a report to the Board of Supervisors by July 31, 2016 and by October 31 for subsequent  
22 years. Thereafter, the Controller, in consultation with the Department and the Inclusionary Housing  
23 Technical Advisory Committee, shall repeat this process at least every 36 months, or more frequently  
24 as deemed necessary by the Controller in response to a significant shift in economic or market  
25 conditions.

1           (c) Elements of the Economic Feasibility Analysis. The economic feasibility analysis required  
2 by subsection (b) of this Section 415.10 shall include sensitivity analyses of key economic parameters  
3 that can vary significantly over time, such as, but not limited to: interest rates; capitalization rates;  
4 equity return rates; land prices; construction costs; project scale, available state and federal housing  
5 finance programs including Low Income Housing Tax Credits readily available for market rate  
6 housing; tax-exempt bond financing; Federal Housing Administration and U.S. Department of Housing  
7 and Urban Development mortgage insurance; available City or local housing finance programs, such  
8 as Enhanced Infrastructure District (EIFD) and tax increments; zoning changes that increase or  
9 decrease development potential; variable City exactions, including community benefit fees, capacity  
10 charges, community facilities districts; the value of state density bonus, concessions and incentives  
11 under California Government Code Section 65915 and any other state law that confers value to  
12 development and which project sponsors may attempt to avail themselves of; and public-private  
13 partnership development agreements where applicable and other factors as deemed reasonably  
14 relevant.

15           (d) Report to Board of Supervisors. The Board of Supervisors may review the feasibility  
16 analyses, as well as the periodic updates to the City's Nexus Study evaluating the necessary affordable  
17 housing in order to mitigate the impacts of market rate housing. The Board of Supervisors, in its sole  
18 and absolute discretion, will review the feasibility analyses within three months of completion and will  
19 consider legislative amendments to the City's Inclusionary Housing in-lieu fees, on-site, off-site or  
20 other alternatives, and in so doing will seek consultation from the Planning Commission, adjusting  
21 levels of inclusionary or affordable housing obligations and income levels up to maximums as defined  
22 in Section 415.2, based on the feasibility analyses, with the objective of maximizing affordable  
23 Inclusionary Housing in market rate housing production, and with guidance from the City's Nexus  
24 Study. The Board of Supervisors may also utilize the Nexus Study in considering legislative  
25 amendments to the Inclusionary Housing requirements. Updates to the City's Inclusionary Housing

1 requirements shall address affordable housing fees, on-site affordable housing and off-site affordable  
2 housing, as well as the provision of affordable housing available to low-income households at or below  
3 55% of Area Median Income for rental units and up to 80% of Area Median Income for ownership  
4 units, and moderate/middle-income households from 80% to 120% of Area Median Income.

5  
6 Section 5. The Administrative Code is hereby amended by adding Article XXIX,  
7 Sections 5.29-1 through 5.29-7, to Chapter 5, to read as follows:

8 **ARTICLE XXIX:**

9 **INCLUSIONARY HOUSING TECHNICAL ADVISORY COMMITTEE**

10 **Sec. 5.29-1. Creation of Advisory Committee.**

11 **Sec. 5.29-2. Findings.**

12 **Sec. 5.29-3. Membership.**

13 **Sec. 5.29-4. Organization and Terms of Office.**

14 **Sec. 5.29-5. Duties.**

15 **Sec. 5.29-6. Meetings and Procedures.**

16 **Sec. 5.29-7. Sunset.**

17 **SEC. 5.29-1. CREATION OF ADVISORY COMMITTEE.**

18 The Board of Supervisors hereby establishes the Inclusionary Housing Technical Advisory  
19 Committee (the "Advisory Committee") of the City and County of San Francisco.

20 **SEC. 5.29-2. FINDINGS.**

21 The Board of Supervisors intends that the economic feasibility analysis required by Planning  
22 Code Section 415.10 shall be prepared through a transparent and inclusive public process that will  
23 include the Advisory Committee. The feasibility study inputs and assumptions should be based on  
24 documented and verifiable costs of housing development over the full course of a business cycle.

25 **SEC. 5.29-3. MEMBERSHIP.**

1 The Advisory Committee shall consist of eight members. All members shall have experience  
2 and expertise in development finance. The Board of Supervisors shall appoint members to Seats 1  
3 through 4, and the Mayor shall appoint members to Seats 5 through 8.

4 **SEC. 5.29-4. ORGANIZATION AND TERMS OF OFFICE.**

5 (a) Each member shall serve at the pleasure of the member's appointing authority. Each  
6 member appointed to the Advisory Committee in 2016 shall serve until three months after the date the  
7 Controller produces the first economic feasibility analysis required by Planning Code Section 415.10,  
8 at which point the member's term shall expire. The Board of Supervisors and the Mayor shall appoint  
9 new members to the Advisory Committee in anticipation of each subsequent economic feasibility  
10 analysis by the Controller, and those members' terms shall similarly expire three months after the date  
11 the Controller produces the economic feasibility analysis required by Planning Code Section 415.10.  
12 Members shall not hold over after the expiration of their terms.

13 (b) If a vacancy occurs in any seat on the Advisory Committee, the appointing authority for  
14 the vacated seat shall appoint a successor to that seat.

15 (c) Members of the Advisory Committee shall receive no compensation from the City for  
16 serving on the Advisory Committee.

17 (d) Any member who misses three regular meetings of the Advisory Committee without the  
18 express approval of the Advisory Committee at or before each missed meeting shall be deemed by  
19 operation of law to have resigned from the Advisory Committee ten days after the third unapproved  
20 absence. The Advisory Committee shall inform the appointing authority of the resignation.

21 (e) The Controller's Office shall provide clerical and administrative support and staffing  
22 for the Advisory Committee.

23 **SEC. 5.29-5. DUTIES.**

24 (a) The Advisory Committee shall provide input and advice to the Controller, the Mayor, the  
25 Planning Department and the Board of Supervisors regarding the content of the economic feasibility



1 analysis required by Planning Code Section 415.10. The Advisory Committee shall hold technical  
2 workshops to evaluate the fiscal feasibility of various inclusionary housing fees and on-site and off-site  
3 alternatives, including evaluating a range of project types, inclusionary percentages, and resident  
4 income levels, and assessing whether fiscal feasibility varies within the City across different  
5 neighborhoods. The Advisory Committee may, but is not required to, prepare written reports.

6 (b) All City departments, commissions, boards, and agencies shall cooperate with the  
7 Advisory Committee in conducting its business.

8 **SEC. 5.29-6. MEETINGS AND PROCEDURES.**

9 The Advisory Committee shall hold a regular meeting not less than once every four months until  
10 the sunset date set forth in Section 5.29-7.

11 **SEC. 5.29-7. SUNSET.**

12 The Board of Supervisors and Mayor intend the Advisory Committee to last until the enactment  
13 of an ordinance removing this Article XXIX from the Administrative Code. Notwithstanding Rule 2.21  
14 of the Board of Supervisors Rules of Order, which provides that advisory bodies created by the Board  
15 should sunset within three years, the Board intends the Advisory Committee to exist for longer than  
16 three years.

17  
18 Section 6. Severability. Clauses of this ordinance are declared to be severable, and if  
19 any provision or clause of this ordinance or the application thereof is held to be  
20 unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such  
21 invalidity shall not affect other provisions of this ordinance.

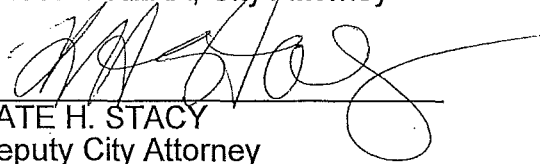
22  
23 Section 7. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
24 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
25 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal

1 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
2 additions, and Board amendment deletions in accordance with the "Note" that appears under  
3 the official title of the ordinance.

4  
5 Section 8. Effective Date. This ordinance shall become effective 30 days after  
6 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
7 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
8 of Supervisors overrides the Mayor's veto of the ordinance.

9  
10 APPROVED AS TO FORM:  
11 DENNIS J. HERRERA, City Attorney

12 By:

  
13 KATE H. STACY  
14 Deputy City Attorney

15 n:\egana\as2016\1600550\01099366.docx

**REVISED LEGISLATIVE DIGEST**

Amended in Committee, 4/18/16,

[Planning, Administrative Codes - Inclusionary Affordable Housing Fee and Requirements; Preparation of Economic Feasibility Report; Establishing Inclusionary Housing Technical Advisory Committee]

**Ordinance amending the Planning and Administrative Codes to increase the Inclusionary Affordable Housing fee and other requirements; require the Controller to prepare an economic feasibility report regarding the City's inclusionary housing requirements and make recommendations by July 31, 2016 and every three years thereafter; and establish the Inclusionary Housing Technical Advisory Committee to provide advice about the economic feasibility of proposals to set maximum economically viable inclusionary housing requirements, and set forth the membership and duties of the Advisory Committee; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of public convenience, necessity, and welfare 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 Charter generally requires private developers of new market-rate housing to provide affordable housing ("Inclusionary Housing") in one of three ways:

- pay a fee equal to 17% to 20% of their project's units to support low-income housing;
- make at least 12% of the on-site housing units affordable; or
- create new affordable units off-site, equal to 17 to 20% of the project's units.

These requirements can be modified if a project meets an exception specified in the Charter (or if the Charter is amended). The Planning Code contains detailed requirements for implementation of these three Inclusionary Housing options, in the Inclusionary Affordable Housing Program set forth in Planning Code Sections 415 *et seq.*

Amendments to Current Law

The ordinance would not take effect unless and until the voters approve amendments to the Charter at the June 7, 2016 election. The ordinance is intended to adopt new Inclusionary Housing obligations following the process set forth in Section 16.110(g) of the proposed Charter amendment. This ordinance would supersede and replace the interim Inclusionary Housing requirements set forth in the proposed Charter amendment.

FILE NO. 160255

The legislation provides that the Board would review and consider any recommended changes to the Inclusionary Affordable Housing Program after the completion of the proposed Economic Feasibility Study and the update of the City's Nexus Analysis.

There are 3 components to this ordinance. It sets forth new Inclusionary Housing requirements, requires preparation of an Inclusionary Housing economic feasibility study, and establishes a technical advisory committee to consult with the Controller on the economic feasibility study.

### *New Inclusionary Housing Requirements*

The new Inclusionary Housing requirements will apply to any development project that submits a complete Environmental Evaluation application on or after January 1, 2013. The requirements could be satisfied by payment of a fee, or provision of on-site or off-site Inclusionary Housing:

1. Affordable Housing Fee: The development project would pay a fee equivalent to the applicable off-site percentage of the number of units in the principal project:
  - For development projects consisting of 10 dwelling units or more, but less than 25 dwelling units, the percentage would be 20%.
  - For development projects consisting of 25 dwelling units or more, the percentage would be 33%.
2. On-site Affordable Housing:
  - The number of affordable units constructed on-site would generally be 12% of all units constructed on the project site for housing development projects consisting of 10 dwelling units or more, but less than 25 dwelling units. The units must be affordable to low-income households.
  - The number of affordable units constructed on-site would generally be 25% of all units constructed on the project site for housing development projects consisting of 25 dwelling units or more, with a minimum of 15% of the units affordable to low-income households and 10% of the units affordable to low- or middle- income households.
3. Off-site Affordable Housing:
  - For housing development projects consisting of 10 dwelling units or more but less than 25 units, the number of affordable units constructed off-site would be 20% of the number of units in the principal project.

- For housing development projects consisting of 25 dwelling units or more, the number of affordable units required to be constructed off-site would be 33% of the number of units in the principal project, with 20% of the units affordable to low-income households and 13% of the units affordable to low- or middle-income households.

4. Definitions of low income and middle income households. Low income households shall be defined as households whose total household income does not exceed 55% of Area Median Income for purposes of renting an affordable unit, or 80% of Area Median Income for purposes of purchasing an affordable unit. "Moderate income" and "middle income" households shall mean households whose total household income does not exceed 100% of Area Median Income for purposes of renting an affordable unit, or 120% of Area Median Income for purposes of purchasing an affordable unit.

5. Temporary Requirements. The ordinance would provide different temporary requirements for certain projects that contain 25 or more dwelling units, and have submitted complete environmental evaluation applications as follows.

On-site Temporary Requirements.

- Submittal of an application prior to January 1, 2014: 13% of the number of units constructed on-site.
- Submittal of an application prior to January 1, 2015: 13.5% of the number of units constructed on-site.
- Submittal of an application on or prior to January 12, 2016: 14.5% of the number of units constructed on-site.

Fee or Off-site Temporary Requirements.

- Submittal of an application prior to January 1, 2014: 25% of the number of units constructed on-site.
- Submittal of an application prior to January 1, 2015: 27.5% of the number of units constructed on-site.
- Submittal of an application on or prior to January 12, 2016: 30% of the number of units constructed on-site.

Exceptions to Temporary Requirements for Payment of a Fee or Provision of Off-Site Affordable Housing. The temporary requirements for payment of the Inclusionary Housing Fee or provision of off-site affordable housing would not apply to buildings over 120 feet in height.

6. Temporary Requirements for UMU and SOMA Youth & Families Zoning Districts.

On-site Temporary Requirements. Development projects shall comply with the on-site requirements applicable within such Zoning Districts, plus the following additional amounts of on-site affordable units:

- if the development project has submitted a complete Environmental Evaluation application prior to January 1, 2014, the Project Sponsor shall provide additional affordable units in the amount of 1% of the number of units constructed on-site.
- if the development project has submitted a complete Environmental Evaluation application prior to January 1, 2015, the Project Sponsor shall provide additional affordable units in the amount of 1.5% of the number of units constructed on-site.
- if the development project has submitted a complete Environmental Evaluation application on or prior to January 12, 2016, the Project Sponsor shall provide additional affordable units in the amount of 2% of the number of units constructed on-site.

Fee, Land Dedication or Off-site Temporary Requirements. Any development project that pays the Affordable Housing Fee or is eligible and elects to provide off-site affordable housing pursuant to Section 415.5(g), or elects to comply with a land dedication alternative, such development project shall comply with the fee, off-site or land dedication requirements applicable within the 2 zoning districts, plus the following additional amounts for the Affordable Housing Fee or for land dedication or off-site affordable units:

- if the development project has submitted a complete Environmental Evaluation application prior to January 1, 2014, the Project Sponsor shall pay an additional fee, or provide additional land dedication or off-site affordable units, in an amount equivalent to 5% of the number of units constructed on-site.
- if the development project has submitted a complete Environmental Evaluation application prior to January 1, 2015, the Project Sponsor shall pay an additional fee, or provide additional land dedication or off-site affordable units, in an amount equivalent to 7.5% of the number of units constructed on-site.
- if the development project has submitted a complete Environmental Evaluation application on or prior to January 12, 2016, the Project Sponsor shall pay an additional fee, or provide additional land dedication or off-site affordable units, in an amount equivalent to 10% of the number of units constructed on-site.

7. General Exceptions. The new Inclusionary Housing requirements contained in Sections 415.5, 415.6, and 415.7, as well as the temporary requirements contained in Section 415.3(b), would not apply to (1) any mixed use project that is located in a special use district for which a height limit increase has been approved by the voters prior to January 12, 2016 to satisfy the requirements of Administrative Code Section 61.5.1, or (2) any mixed use project that has entered into a development agreement or other similar binding agreement with the City as of January 12, 2016; or (3) any housing development project that has procured a final first

discretionary development entitlement approval, which shall mean approval following any administrative appeal to the relevant City board, on or before January 12, 2016; or (4) any housing development project that, on or before June 7, 2016, has entered into a final, approved and executed agreement between the Project Sponsor and the City, demonstrating that the housing units are not subject to the Costa Hawkins Rental Housing Act. In addition, any residential or predominantly residential mixed-use development project that has submitted a complete Environmental Evaluation application after January 12, 2016 but on or before June 6, 2016, which replaces a pre-existing non-conforming commercial use on a property in excess of 10 acres shall provide affordable units in the amount of 15.5% of the number of units constructed on-site.

8. Higher Fee Applies. During the limited period of time in which the provisions of Section 415.3(b) apply, for any housing development that is located in an area with a specific affordable housing requirement set forth in an Area Plan or a Special Use District, or in any other section of the Code such as Section 419, with the exception of the UMU Zoning District or in the South of Market Youth and Family Zoning District, the higher of the affordable housing requirement set forth in such Area Plan or Special Use District or in Section 415.3(b) shall apply. Any affordable housing impact fee paid pursuant to an Area Plan or Special Use District shall be counted as part of the calculation of the inclusionary housing requirements contained in Planning Code Sections 415.1 et seq.

#### *Economic Feasibility Study*

The ordinance would require the Controller to study the economic feasibility of the City's inclusionary housing requirements and produce a report by July 31, 2016, and by October 31 every three years thereafter. The Board must consider the report within three months and consider legislative amendments to the City's Inclusionary Housing in-lieu fees, on-site, off-site, or other alternatives recommended by the Controller and/or the Planning Commission adjusting levels of inclusionary or affordable housing obligations and income levels based on the feasibility analyses and with guidance from the City's Nexus Study, with the objective of maximizing affordable Inclusionary Housing in market rate housing production.

#### *Technical Advisory Committee*

The ordinance would require the creation of a Technical Advisory Committee, consisting of eight members. The Mayor and the Board of Supervisors would each appoint four members. The Advisory Committee would provide input to the Controller, the Mayor, the Planning Department, and the Board of Supervisors regarding the content of the economic feasibility analysis. The Advisory Committee would hold technical workshops to evaluate the fiscal feasibility of various inclusionary housing fees and on-site and off-site alternatives.

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# SAN FRANCISCO PLANNING DEPARTMENT

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April 5, 2016

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

**Re: Transmittal of Planning Department Case Number 2016-003040PCA:  
Inclusionary Affordable Housing Fee and Requirements  
Board File No. 160255  
Planning Commission Recommendation: Approval with Modification**

Dear Ms. Calvillo and Supervisors Kim and Peskin,

On March 31, 2016, the Planning Commission conducted duly noticed public hearings at regularly scheduled meetings to consider the proposed Ordinance would amend the Planning and Administrative Codes to increase the Inclusionary Affordable Housing fee and other requirements; require the Controller to prepare an economic feasibility report regarding the City's inclusionary housing requirements and make recommendations by July 31, 2016 and every three years thereafter; and establish the Inclusionary Housing Technical Advisory Committee to provide advice about the economic feasibility of proposals to set maximum economically viable inclusionary housing requirements, and set forth the membership and duties of the Advisory Committee. At the hearing the Planning Commission recommended approval with modification.

The Commission's proposed modifications are included in the attached resolution, Planning Commission Resolution #19603.

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

Supervisors, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission.

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information please do not hesitate to contact me.

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

Reception:  
**415.558.6378**

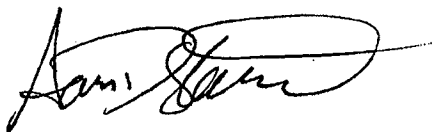
Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

**Transmittal Materials**

**CASE NO.2016-003040PCA  
Inclusionary Affordable Housing**

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron D. Starr". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Aaron D. Starr  
Manager of Legislative Affairs

cc:

Kate Stacy, Deputy City Attorney  
April Ang, Aide to Supervisor Kim  
Sunny Angulo, Aide to Supervisor Peskin  
Alisa Somera, Office of the Clerk of the Board

Attachments :

Planning Commission Resolution  
Planning Department Executive Summary



# SAN FRANCISCO PLANNING DEPARTMENT

## Planning Commission Resolution No. 19603 HEARING DATE MARCH 31, 2016

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

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*Project Name:* Inclusionary Affordable Housing Fee and Requirements;  
Preparation of Economic Feasibility Report; Establishing Inclusionary  
Housing Technical Advisory Committee  
*Case Number:* 2016-003040PCA [Board File No. 160255]  
*Initiated by:* Supervisor Kim and Supervisor Peskin / Introduced March 22, 2016  
*Staff Contact:* Aaron D Starr, Manager of Legislative Affairs  
aaron.starr@sfgov.org, 415-558-6362  
*Reviewed by:* AnMarie Rodgers, Senior Policy Advisor  
anmarie.rodgers@sfgov.org, 415-558-6395  
*Recommendation:* Recommend Approval with Modifications

**RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT WITH MODIFICATIONS A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING AND ADMINISTRATIVE CODES TO INCREASE THE INCLUSIONARY AFFORDABLE HOUSING FEE AND OTHER REQUIREMENTS; REQUIRE THE CONTROLLER TO PREPARE AN ECONOMIC FEASIBILITY REPORT REGARDING THE CITY'S INCLUSIONARY HOUSING REQUIREMENTS AND MAKE RECOMMENDATIONS BY JULY 31, 2016 AND EVERY THREE YEARS THEREAFTER; AND ESTABLISH THE INCLUSIONARY HOUSING TECHNICAL ADVISORY COMMITTEE TO PROVIDE ADVICE ABOUT THE ECONOMIC FEASIBILITY OF PROPOSALS TO SET MAXIMUM ECONOMICALLY VIABLE INCLUSIONARY HOUSING REQUIREMENTS, AND SET FORTH THE MEMBERSHIP AND DUTIES OF THE ADVISORY COMMITTEE; AFFIRMING THE PLANNING DEPARTMENT'S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; MAKING FINDINGS OF PUBLIC CONVENIENCE, NECESSITY, AND WELFARE 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.**

WHEREAS, on March 22, 2016 Supervisors Kim and Peskin introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 160255, which would amend the Planning and Administrative Codes to increase the Inclusionary Affordable Housing fee and other requirements; require the Controller to prepare an economic feasibility report regarding the City's inclusionary housing requirements and make recommendations by July 31, 2016 and every three years thereafter; and establish the Inclusionary Housing Technical Advisory Committee to provide advice about the economic feasibility of proposals to set maximum economically viable inclusionary housing requirements, and set forth the membership and duties of the Advisory Committee

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on March 31, 2016; and,

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

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

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

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

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve with modifications** the proposed ordinance. The Commission's proposed modifications are as follows:

1. **Support the production of housing, especially affordable housing.** This long-standing policy of the City seeks equity in housing for future residents. Given the current housing crisis, this goal is all the more important. This ordinance seeks to establish a regular feasibility study to ensure the requirements are neither lower nor higher than the market will support. The ordinance also seeks to raise the Inclusionary Housing requirement, the City's most expensive impact fee. Increases to this exaction in the short-term may chill the production of housing. Some projects will buckle under new onsite requirements or fees, particularly when land has already been purchased at high prices based upon an anticipated revenue. The resulting slowdown of housing production can cause harm to residents needing housing in the short-term. It is probable that over the longer term higher on-site requirements or fees set through a rigorous feasibility study could be absorbed into the costs of the land value. However, even over the long-term, the amount of additional on-site requirements or fees that can be absorbed is still limited. This is because in order for development to occur, it must offer a greater return to the landowner than the existing use. For example a parcel containing a retail/commercial use will only be developed into housing if the proposed residential project offers a greater return to the landowner than the retail/commercial rent it is already earning. By establishing a process for regular feasibility analysis, the City can continually adapt to changes in the real estate market and ensure the highest production of BMR housing in conjunction with new market-rate housing.
  - a. **Ensure no reduction would occur to existing Inclusionary Requirements.** Some districts such as UMU, Mission Street NCT, and SoMa Youth and Family Zone and have higher requirements under existing controls than would be required under the proposal. The Commission recommends keeping any existing requirements that are higher than the amounts proposed in the draft ordinance. Sections 415.6 On-site Alternative and 415.7 Off-Site Alternative include language enabling the higher requirement. Similar language should be added to 415.3 Application, Section 415.7 Off-Site Application, 415.5 Fee, and within the geographically specific Code Sections that have higher requirements such as

Section 419 UMU. Within Section 419 UMU district, the proposed grandfathering provisions do not take into account the Tiers. For instance, the existing Code requirements are varied by tiers Tier A (on-site: 14.4%, off-site: 23%); Tier B (on-site: 16%, off-site: 25%); and Tier C (on-site: 17.6%, off-site: 27%). With the proposed grandfathering provision a 30 unit project in Tier B would be required to provide 25% because it is higher, but it would be 16% if using grandfathering. The "higher percentage" language needs to be added to the grandfathering section or separate percentages should be established for each UMU Tier.

- b. **Support the production of additional affordable housing through the use of density bonuses.** The proposed Ordinance encourages project sponsors to achieve 25% affordable housing on-site in association with the use of the existing State Density Bonus Law. Generally, the Planning Code should establish standards and requirements and should not have vague language. Encouragement language is better placed in policy documents. Further, by codifying language of encouragement such as "use best efforts" and "consult with the Planning Department about achieving [higher levels of affordability than required by the State] may set unrealistic community expectations that are unachievable under State Law. Such language of encouragement provides no real benefit as it does not prohibit a project sponsor from providing less than 25% and the City may not circumvent the State Law in this way. The Commission agrees that a higher provision of affordable housing with density bonuses would better align the State Law with City policy, but State Law circumscribes the City's ability in denying a density bonus to projects providing of less than 25% affordable housing or in imposing a higher inclusionary requirement on a density bonus project. If the City adopts the local Affordable Housing Bonus Program (AHBP), the Local Program could incentivize an even higher level of affordability while shaping the built form of projects to be more compatible with San Francisco's neighborhoods. At this time, the Commission recommends removing the undefined term of "use best efforts" and an undefined process of "consultation" with the Department and instead encourages the Board to consider incentives such as the AHBP as the best vehicle for achieving higher affordability in light of the State Law.
- c. **Allow some flexibility in the AMI requirements to encourage variety of levels of affordability.** The on-site requirement for projects with 25 units or more has a degree of flexibility written into the new requirements. It mandates 25% Inclusionary of on-site units provide 15% of the units are affordable to low, and very low-income and allows the remaining 10% of the requirement to be provided with housing serving either very low, low- or middle-income households. This flexibility in the final 10% allows for some projects to qualify for tax credits while other projects may serve middle-income households. This same flexibility should be added to the off-site requirement on page 17, line 8: 415.7 (a)(1) (B) The number of units constructed off-site shall be 33 percent, with a minimum of 20% of the units affordable to low- and very low-income households and another 13% of the units affordable to low-, very low-income and middle- income households, so that a project applicant shall construct .33 times the total number of units produced in the principal project.

2. **Create fair, uniform grandfathering provisions for pipeline projects.** Because projects that are further along in the entitlement process are less able to adapt to new fees, the proposal makes accommodations by stepping the rate upwards incrementally. However, as proposed, the grandfathering currently is unnecessarily complicated. Lastly the timeline for securing a site permit may not be feasible for certain projects.

- a. **Ensure uniform treatment of pipeline projects across zoning districts and project building types until further analysis can support the rationale.** Remove the provision that exempts from the grandfathering provisions projects in the UMU zoning that propose the demolition of PDR, projects located within the Mission Street NCT, projects in the SOMA Youth and Family Zone, and project building types that exceed 120 feet in height. All projects that have been planned consistent with existing zoning controls should be treated equally under the proposed grandfathering provision and new, permanent controls. If the feasibility study or changes in City policy demonstrate a rationale for differentiating certain projects within the Inclusionary requirements, then more specific requirements should be applied to future projects not those in the pipeline.
- b. **Ensure grandfathered projects have a reasonable, but not excessive amount of time to complete project.** Make the following modifications to the timeline restriction for grandfathering on page 10, Line 1:

Any development project that constructs on-site or off-site affordable housing units as set forth in this Section 415.3(b) shall diligently pursue completion of such units. In the event ~~that the project sponsor does not procure~~ a building permit is not issued for construction of the affordable housing units by within 36 months from the entitlement date in order to remain subject to grandfathering provisions. If the building permit is not issued within 36 months of entitlement December 7, 2018, the development project shall comply with the inclusionary affordable housing requirements set forth in Planning Code Sections 415.5, 415.6 and/or 415.7, as applicable.

3. **Make a commitment to ensure that the City gets the most affordable housing even as the real estate market will vary over time.** The Board of Supervisors would need to hold a hearing within three months of the completion of the feasibility study to consider increasing, decreasing or keeping the fees in light of the results. The Planning Commission should also consider initiating legislative amendments to the Inclusionary Requirement for the Board's consideration as described in the proposed edits to the "Modifications to the Feasibility Report" language on Page 24, Lines 3-14 as follows:

(d) Planning Commission Hearing. The Planning Commission shall hold a hearing within one to two months after publication of each Triennial Economic Feasibility study to consider initiating an ordinance that would update the inclusionary requirement based upon the Triennial Economic Feasibility Analysis.

~~(d)~~ **(e) Report to Board of Supervisors.** The Board of Supervisors will review the feasibility analyses, as well as the commensurate updates to the City's Nexus Study evaluating the necessary affordable housing in order to mitigate the impacts of market rate housing. The Board of Supervisors, in its sole and absolute discretion, will review the feasibility analyses within three to four months of completion and will consider legislative amendments to the City's Inclusionary Housing in-lieu fees, on-site, off-site or other

alternatives recommended by the Controller and/or the Planning Commission adjusting levels of inclusionary or affordable housing obligations and income levels based on the feasibility analyses, with the objective of maximizing affordable Inclusionary Housing in market rate housing production, with guidance from the City's Nexus Study.

**(b) Triennial Economic Feasibility Analysis.** With the support of independent consultants as deemed appropriate by the Controller and with advice on setting qualifications and criteria for consultant selection from the *Inclusionary Inclusionary* Housing Technical Advisory Committee established in Administrative Code Chapter 5, Article XXIX, the Controller, in consultation with relevant City Departments and the Inclusionary Housing Technical Advisory Committee, shall conduct a feasibility study of the City's inclusionary affordable housing obligations set forth in Planning Code Section 415 et seq., including but not limited to the affordable housing fee and on-site and off-site alternatives, and shall submit a report to the Board of Supervisors by July 31, 2016 and by October 31 for subsequent years. The Planning Commission shall hold a hearing within one to two months after publication of each Triennial Economic Feasibility to consider initiating an ordinance that would update the inclusionary requirement based upon the Triennial Economic Feasibility Analysis. The Board of Supervisors shall hold a hearing three to four months after the publication of each Triennial Economic Feasibility. At the hearing, the BOS shall consider increasing, decreasing or retaining the established inclusionary rate. Thereafter, the Controller, in consultation with the Department and the Inclusionary Housing Technical Advisory Committee, shall repeat this process at least every 36 months, or more frequently as deemed necessary by the Controller in response to a significant shift in economic or market conditions.

4. **For projects pursuing a State Density Bonus, individual project sponsors are required to do a project-specific feasibility study, this should only be tied to requested concessions.** The proposed Ordinance requires a feasibility study if the project sponsor is not providing on-site affordable units in the amount of 25% of the number of units constructed. The Commission recommends that such analysis be linked to a relevant decision, such as approval of a requested concession or incentive. Per State law, approvals of increased density are not reliant on feasibility; however, concessions do have feasibility thresholds. The feasibility of the density bonus itself, rather than the separate category of concessions, cannot factor into the City's decision as to whether or not to approve the density bonus when a proposed project does not meet the stated goal of 25% affordable units. The State has already determined that the added density is permitted. However, a feasibility study can help inform the City as to whether or not concessions should be granted.
5. **Small Sites Acquisition.** Ensure that this new option allowing pipeline projects to satisfy Inclusionary requirements through the acquisition of existing buildings is crafted to mirror applicable elements of the Small Sites Acquisition Program administered by MOHCD. Applicable elements would include income eligibility and requirements, financial underwriting guidelines, and use restrictions. Notably, the Ordinance creates new options that

are specifically intended to differ from the existing Small Sites Acquisition program. As currently drafted, it appears that the explicit requirement is that buildings acquired for this purpose would be converted from a non-residential use to a residential use. This creates new policy implications to be weighed such as would the City encourage the conversion from a PDR use, for example, to housing. Further, policymakers should note that the inclusion of commercial property acquisition by private parties represents a change in policy as the small sites program currently is only a vehicle for MOHCD to implement by the purchase existing residential projects. Additional clarity should be added about what existing buildings would be appropriate and what is intended with the phrase "an existing building that is *not currently and primarily* in residential use" (emphasis added). Lastly, there is no mention of income eligibility in the current proposal.

6. **Evaluate whether or not the UMU inclusionary percentages should be tiered in the proposed Inclusionary requirements.** Currently UMU districts have higher inclusionary rates based on the increased development potential obtained from the Eastern Neighborhood rezoning. The proposed ordinance does not account for this. The Commission recommends looking into whether or not the proposed UMU rates should also be tiered based on increased development potential.
7. **Reconcile the definitions for affordability levels in the proposed ordinance with those already in the Planning Code.** The proposed ordinance amends sections of the Planning Code to define new affordability levels for on- and off-site inclusionary units; however, the draft does not remove or alter the existing definitions, which define the affordability levels differently. If the draft Ordinance is adopted as-is, the result will be that the Planning Code includes two different and conflicting affordability levels for on- and off-site inclusionary units.
8. **Establish June 7, 2016 as the exemption date for projects that have received an entitlement from Planning.** Under the proposed ordinance projects that have already received their entitlements from the Planning Department or the Planning Commission would still be required to increase their inclusionary rate based on when their environmental evaluation application was filed. The Commission recommends that projects that have already received their entitlements from the Planning Department or the Planning Department should be allowed to maintain the inclusionary requirement percentage that was part of their entitlement approval.
9. **Consider the earliest environmental application date as the date to grandfather projects.** A revised project may require an amended environmental evaluation. The Commission recommends that the original filing date be used to determine grandfathering, not the filing date for the amended environmental review.
10. **Consider special circumstances for the grandfathering clause, by looking at other application filing dates.** Some project sponsors have held off on filing their environmental evaluation application as a good faith effort to the community while they seek more community engagement. The Commission recommends taking this into consideration when considering whether or not a project is eligible for grandfathering.



11. **Various technical amendments including:**

- a. Organizing the grandfathering dates and percentages into charts would make these sections easier to use and implement.
- b. Section 415.6(a)(1) On-Site Alternative should be clarified to ensure that the 12% requirement is dedicated to low-income AMIs. Currently the ordinance is silent, but it is assumed that the 12% for buildings with 10-25 units serve to low-income AMIs.
- c. If the Board retains the exemptions for certain projects within the UMU district, the proposed Ordinance should be amended to clarify whether or not a project in the UMU District is grandfathered if it demolishing PDR but would also replace the PDR use. Currently the proposed Ordinance is silent on projects that demolish and replace PDR in the UMU District.
- d. The proposed provision for the state density bonus in Section 415.3(b)(1)(F) follows other grandfathering provisions and it would appear because of its location that this is also a grandfathering provision; however there is not acknowledgement in the specific section that this provision only applies to projects already in the pipeline. This section should be amended to clarify that it applies only to projects submitted prior to January 12, 2016 if that is the intention of the sponsor.
- e. In order to preserve the higher inclusionary rate in certain districts, the following language should be added to Section 415.3(b)(1) which starts on page 6, line 19 of the ordinance: "Specific Geographic Areas. For any housing development that is located in an area with a specific affordable housing requirement set forth in a Special Use District or in any other section of the Code such as Section 419, the higher housing requirement shall apply."
- f. The findings in Section 415.1 should be updated to reflect current available information. It should also be removed from the Planning Code and added to the proposed Ordinance as part of the findings. These findings are not legally required to be in the Planning Code and removing them will help simplify Section 415.
- g. Page 9, Line 13, and everywhere else in the ordinance that this type of provision occurs, the following amendments should be made: "Notwithstanding the provisions set forth in subsections (b)(2)(A), (B) and (C) of this Section 415.3, if a development project proposes a building whose height is measured per the Planning Code to be over 120 feet or greater, such development project shall pay a fee or provide off-site housing in an amount equivalent to 33% of the number of units constructed on-site.

## FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The Planning Commission supports the Ordinance on balance because it establishes a process for regular feasibility analysis so that the City can continually adapt to changes in the real estate market and ensure the highest production of BMR housing in conjunction with new market-rate housing.

2. The current economic cycle has created an unprecedented affordability crisis in the City. It is in the City's interest to ensure that we are maximizing the number of inclusionary units we get from private developers through the Inclusionary Program. By increasing the inclusionary rate based on feasibility, the City will be able to maximize the potential of its inclusionary program, ensuring more permanently affordable housing units without using tax payer funds.
3. This proposed technical review and evaluation of the City's Inclusionary program by professionals is good public policy. Emphasizing the committee members' technical expertise will help ensure that this report is given thorough and detailed oversight.
4. The proposed amendments allow for some flexibility in the AMI requirements to encourage variety of levels of affordability. The Commission finds that this same flexibility should be allowed for the off-site requirement.
5. The Commission finds that in order to provide certainty for projects, the proposed ordinance should create a fair and uniform grandfathering provision for pipeline projects.
6. The Commission finds that in addition to the Board considering increasing, decreasing or keeping the fees in light of the results of the feasibility study, it should also consider initiating legislative amendments to the Inclusionary Requirement for the Board's consideration.
7. In general, the Commission finds that the Planning Code should establish standards and requirements and should not have vague language. Encouragement language is better placed in policy documents.
8. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

## HOUSING ELEMENT

### OBJECTIVE 4

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

#### Policy 4.4

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

*The proposed ordinance will require more inclusionary units than is currently required in the Planning Code. Inclusionary units can be rental and are permanently affordable housing.*

**Policy 4.5**

Ensure that new permanently affordable housing is located in all of the city's neighborhoods, and encourage integrated neighborhoods, with a diversity of unit types provided at a range of income levels.

*On-site inclusionary housing units integrate permanently affordable housing into all of the city's neighborhoods, helping to establish a range of income levels across the city. This ordinance will increase the number of inclusionary units required for project of 25 units or more, further achieving this policy goal.*

**OBJECTIVE 7**

SECURE FUNDING AND RESOURCES FOR PERMANENTLY AFFORDABLE HOUSING, INCLUDING INNOVATIVE PROGRAMS THAT ARE NOT SOLELY RELIANT ON TRADITIONAL MECHANISMS OR CAPITAL .

**Policy 7.1**

Expand the financial resources available for permanently affordable housing, especially permanent sources.

*The proposed ordinance will increase the amount of money that individual developers would have to pay into the City's Housing Trust Fund. This money would then be used to pay for permanently affordable housing.*

**Policy 7.7**

Support housing for middle income households, especially through programs that do not require a direct public subsidy.

*The proposed inclusionary program does not require public subsidies and a portion of the units or fees collect would be dedicated to middle income households.*

**OBJECTIVE 8**

BUILD PUBLIC AND PRIVATE SECTOR CAPACITY TO SUPPORT, FACILITATE, PROVIDE AND MAINTAIN AFFORDABLE HOUSING.

**Policy 8.1**

Support the production and management of permanently affordable housing.

*This ordinance supports the production of permanently affordable housing by increasing the inclusionary housing requirement for individual projects.*

9. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:
  1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The proposed Ordinance will not have a negative effect on existing neighborhood serving retail uses as it only addresses the City's inclusionary housing program.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

*The proposed Ordinance will help maintain a diversity of housing types and income types in the City's various neighborhoods; helping to preserving the cultural and economic diversity of the City's neighborhoods.*

3. That the City's supply of affordable housing be preserved and enhanced;

*The proposed Ordinance will have a positive effect on the City's supply of affordable housing by increasing the inclusionary requirement for individual projects with 25 units or more.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

*The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking as it only addresses the City's inclusionary housing program.*

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

*The proposed Ordinance will not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.*

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

*The proposed Ordinance will not have an adverse effect on City's preparedness against injury and loss of life in an earthquake because the Ordinance modifies the City's inclusionary housing requirements.*

7. That the landmarks and historic buildings be preserved;

*The proposed Ordinance will not have an adverse effect on the City's Landmarks and historic buildings because the Ordinance only addresses the City's inclusionary housing requirements.*

8. That our parks and open space and their access to sunlight and vistas be protected from development;

*The proposed Ordinance will not have an adverse effect on the City's parks and open space and their access to sunlight and vistas because it only addresses the City's inclusionary housing requirements.*

Resolution No. 19603  
March 31, 2016

CASE NO. 2016-003040PCA  
Inclusionary Affordable Housing Fee and Requirements

9. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on March 31, 2016.



Jonas P. Ionin  
Commission Secretary

AYES: Commissioners Antonini, Fong, Hillis, and Johnson

NOES: Commissioners Moore, Richards and Wu

ABSENT: None

ADOPTED: March 31, 2016



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Planning Code Text Amendment

HEARING DATE: MARCH 31, 2016

EXPIRATION DATE: JUNE 22, 2016

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*Project Name:* Inclusionary Affordable Housing Fee and Requirements;  
Preparation of Economic Feasibility Report; Establishing Inclusionary  
Housing Technical Advisory Committee

*Case Number:* 2016-003040PCA [Board File No. 160255]

*Initiated by:* Supervisor Kim and Supervisor Peskin / Introduced March 22, 2016

*Staff Contact:* Aaron D Starr, Manager of Legislative Affairs  
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*Reviewed by:* AnMarie Rodgers, Senior Policy Advisor  
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*Recommendation:* **Recommend Approval with Modifications**

### PLANNING CODE AMENDMENT

The proposed ordinance amends the Planning and Administrative Codes to:

1. Increase the Inclusionary Affordable Housing fee, establish grandfathering provisions for existing pipeline projects, and establish other requirements;
2. Require the Controller to prepare an economic feasibility report regarding the City's inclusionary housing requirements and make recommendations by July 31, 2016 and every three years thereafter; and
3. Establish the Inclusionary Housing Technical Advisory Committee to provide advice about the economic feasibility of proposals to set maximum economically viable inclusionary housing requirements, and set forth the membership and duties of the Advisory Committee.

The ordinance would not take effect unless and until the voters approve amendments to the Charter at the June 7, 2016 election. This ordinance would supersede and replace the interim Inclusionary Housing requirements set forth in the proposed Charter amendment.

### The Way It Is Now:

1. Qualifying Projects: Projects with 10 or more units are subject to the Planning Code's Inclusionary Housing Requirements.
2. On-Site Alternative: Planning Code Section 415.7 typically requires Project Sponsors electing the On-Site alternative to designate 12% of the total number of units constructed as inclusionary units. These units are dedicated to low and very low-income households

3. In-Lieu Fee Alternative: Planning Code Section 415.7 typically requires Project Sponsors electing the In-Lieu Fee to pay a fee equivalent to 17-20% of the total number of units produced in the principal project. The fee is deposited into the Housing Trust Fund and is generally required to be used to increase the supply of housing affordable to qualifying households.
4. Off-Site Alternative: Code Section 415.7 typically requires Project Sponsors electing the Off-Site alternative to construct off-site units equivalent to 17-20% of the total number of units produced in the principal project. These units are dedicated to low and very low-income households.
5. Existing Building Alternative: Currently, projects sponsors are not able to acquire an existing building that is *not* currently and primarily in residential use to fulfill all or part of their Off-Site requirement.
6. Economic Feasibility Analysis: The City commissioned an economic feasibility analysis in July of 2006 to examine the economic impacts of adjusted inclusionary requirements on market-rate housing projects. There is no need and no requirement for the City to conduct periodic economic feasibility analysis since the current rate is dictated by the City's Charter.
7. Inclusionary Housing Technical Advisory Committee: The 2006 Economic Feasibility Analysis was guided by the Planning Department and Mayor's Office of Housing and Community Development, and informed by a Technical Advisory Committee that was comprised of a variety of experts from the San Francisco Housing Development and Affordable Housing Advocacy Communities. There is no formal requirement that future economic feasibility analysis be informed by a Technical Advisory Committee, nor are there requirements on who must be on such a committee.
8. Permanent Changes & Non-grandfathered project applications: The City's current Inclusionary Housing rate is fixed within the City's Charter, and cannot be amended unless by a vote of the people. Should they be changed by voter initiative, there is no language that grandfather's existing projects from having to pay the new rates.
9. Expiration of Grandfathering Clauses: in general, the City does not place an expiration date on grandfathering clauses.
10. Small Sites Acquisition. The Small Sites Acquisition Program is a vehicle that MOHCD can use to purchase existing residential buildings in order to provide permanently affordable housing. This program is funded through a combination of Housing Trust Fund revenues and affordable housing fees paid by housing developers in San Francisco. MOHCD is required to designate 10% of Inclusionary Housing Fees, up to \$15 million, received to support acquisition and rehabilitation of properties consisting of less than 25 units. Program funding may be used to support a variety of housing development activities, including property acquisition and minor rehabilitation. The use of these "Small Sites Funds" are limited to the acquisition and rehabilitation of residential rental properties with fewer than 25 units that are designated as affordable for a minimum of 55 years. The sites may be rental properties, vacant properties that were formerly rental properties as long as they have been vacant for a minimum of two years, foreclosed upon properties, or buildings structured as Limited Equity Housing Coops or Community Land Trusts.
11. State Density Law: The State Density law allows project sponsors to get a "bonus" in exchange for the provision of affordable housing. A State Density Bonus project could provide less on-site affordable housing than the City's Inclusionary Requirements, given how the State law is written.

In San Francisco the on-site Inclusionary Requirement for affordable units is calculated as the percentage of the total units provided. Under the State law, the percentage of affordable units is determined by a "base case" project and then adding the "bonus" units to the final project. For example, under existing City law a project that proposes to build 100 units would provide 12 Inclusionary Units and 88 market-rate units. If a project sponsor used the State Density law with a rental project, the proposal could show a base project with 100 units (12 Inclusionary and 88 market-rate) and then use of the State Law could add 23 market-rate units (a 23% density bonus) to the final project. The resulting final project would have an overall percentage of affordable units of 9.7%.

### The Way It Would Be:

1. Qualifying Projects: Projects with 10 or more units would be subject to the current Inclusionary Housing Requirements; however additional requirements will be placed on housing projects with 25 units or more.
2. Inclusionary Housing On-Site Alternative Grandfathering Provision: For qualifying projects consisting of ten to 24 dwelling units, 12% of the total units constructed on-site would be required to be dedicated to affordable to low and very low-income households. For qualifying projects with 25 dwelling units or more, 25 percent of all units constructed would be dedicated to the inclusionary program, with a minimum of 15 percent of the units affordable to low and very low-income households and another ten percent of the units affordable to very low, low- or middle income households.

Projects that are currently in the pipeline may be subject to a lower inclusionary rate, depending on when their Environmental Evaluation Application was submitted and where they are located. Application dates for the grandfathering of existing projects would be established by the dates of a completed EE application that was submitted as follows:

- prior to 1/1/2014, the inclusionary rate would be 13%
- prior to 1/1/2015, the inclusionary rate would be 13.5%
- on or prior to 1/12/2016, the inclusionary rate would be 14.5%

Projects in UMU zoning that propose the demolition of PDR, projects located within the Mission Street NCT, and projects in the SOMA Youth and Family Zone are not eligible for grandfathering and would be subject to the new inclusionary rates.

3. Inclusionary In-Lieu Fee Grandfathering Provision: Qualifying projects consisting of ten to 24 dwelling units would be required to pay an in-lieu fee equivalent 20 percent of the total number of units produced in the principal project. Qualifying projects that have 25 or more units AND under 120 feet in height would be required to pay 30 percent of the total number of units produced in the principal project. Qualifying projects that have 25 units or more AND over 120' in height would be required to pay 33 percent of the total number of units produced in the principal project.

Projects that are currently in the pipeline may be subject to a lower inclusionary rate, depending on when their Environmental Evaluation Application was submitted and where they are located.



Application dates for the grandfathering of existing projects would be established by the dates of a completed EE application that was submitted as follows:

- prior to 1/1/2014, the inclusionary rate would be 25%
- prior to 1/1/2015, the inclusionary rate would be 27.5%
- on or prior to 1/12/2016, the inclusionary rate would be 30%

Buildings with a height measured at 120 or greater are not grandfathered and have to pay a fee equal to 33% of the units constructed. Projects in UMU zoning that propose the demolition of PDR, projects located within the Mission Street NCT, and projects in the SOMA Youth and Family Zone are not eligible for grandfathering and would be subject to the new Inclusionary Rates.

4. Off-Site Alternative Grandfathering Provision: Qualifying projects consisting of ten to 24 dwelling units would be required to construct the equivalent of 20 percent of the total number of units produced in the principal project, which would be affordable to low and very low-income households. Qualifying projects that have 25 units or more would be required to construct the equivalent of 33 percent of the total number of units produced in the principal project with 20 percent of the units affordable to low and very low-income households and 13 percent affordable to middle income households.

Projects that are currently in the pipeline may be subject to a lower inclusionary rate, depending on when their Environmental Evaluation Application was submitted and where they are located. Application dates for the grandfathering of existing projects would be established by the dates of a completed EE application that was submitted as follows:

- prior to 1/1/2014, the inclusionary rate would be 25%
- prior to 1/1/2015, the inclusionary rate would be 27.5%
- on or prior to 1/12/2016, the inclusionary rate would be 30%

Buildings with a height measured at 120 or greater are not grandfathered and have to build off-site units equal to 33 percent of the units constructed. Projects in UMU zoning that propose the demolition of PDR, projects located within the Mission Street NCT, and projects in the SOMA Youth and Family Zone and that seek to build off-site units are not eligible for grandfathering and would be subject to the new Inclusionary Rates.

5. Existing Building Alternative for Off-site Alternative Grandfathering Provision: Projects sponsors would be able to acquire an existing building that is not currently and primarily in residential use to fulfill all or part of their Off-Site inclusionary requirements.
6. Economic Feasibility Analysis: The proposed Ordinance establishes an Economic Feasibility Study. The purpose of this study is to study how to set the inclusionary housing obligations in San Francisco at the maximum economically feasible amount in market rate housing development to create housing for lower-, moderate- and middle-income households, with guidance from the City's Nexus Study. The Controller, in consultation with relevant City Departments and the Inclusionary Housing Technical Advisory Committee, is responsible for conducting the study every three years. The first report is due on to the Board of Supervisors by July 31, 2016 and every other subsequent report is due by October 31.

7. Inclusionary Housing Technical Advisory Committee: The proposed ordinance establishes an Inclusionary Technical Advisory Committee that is intended to provide input and advice to the Controller, the Mayor, the Planning Department and the Board of Supervisors regarding the content of the Economic Feasibility Analysis report. The Advisory Committee would consist of eight members, four appointed by the Board of Supervisors and four appointed by the Mayor. All members must have experience and expertise in development finance. Each member would serve until three months after the date the Controller produces the first Economic Feasibility Analysis, and new members would be appointed in anticipate of each new report.
8. Permanent Changes & Non-grandfathered project applications: The text as drafted in the associated Charter Amendment necessitates that the proposed Ordinance now being considered by the Planning Commission *must* create a permanent change to the Inclusionary Requirements, in order to make grandfathering possible. Therefore, all of the projects not grandfathered by this Ordinance are subject to new higher requirements, which effectively are permanently changed. The combined effect of the passage of the proposed Charter Amendment (to be considered by the voters) and this proposed Ordinance (under consideration today), would create new, permanent and higher Inclusionary Requirements that could be altered through future action of the Board of Supervisors.
  - 20% for projects with 10-24 dwelling units
  - 30% for projects with 25+ dwelling units contained within buildings whose height is less than 120 feet, and
  - 33% for projects with 25+ dwelling units contained within buildings whose height is 120 feet or higher.
9. If the project sponsor does not procure a building permit or site permit for construction of the affordable housing units by December 7, 2018, the development project is no longer grandfathered.
10. Small Sites Acquisition. The proposed Ordinance would create a new option to satisfy of the requirements for pipeline projects subject to the grandfathering provisions that choose to pursue the off-site Inclusionary Option. In these cases, a project sponsor may provide "off-site affordable housing by acquiring an existing building that is not currently and primarily in residential use".
11. State Density Law: The proposed Ordinance would ask that any proposed project [sponsor] seeking to use this state law, shall use "its best efforts to provide on-site affordable units in the amount of 25% of the units constructed on-site". The project [sponsor] shall prepare a feasibility report of the on-site affordable housing and the effect of the density bonus on such feasibility.

## BACKGROUND

### Pending Charter Amendment

On March 1, 2016, the Board of supervisors unanimously adopted a Resolution (Board File Number 151274) that placed a proposed Charter Amendment on the June 7, 2016 ballot. The Charter Amendment would remove the existing inclusionary rates enshrined in the City's Charter in 2012 by San Francisco voters under proposition and authorize the City to enact by ordinance subsequent changes to the inclusionary housing requirements, including changes to the minimum or maximum inclusionary or

affordable housing obligations applicable to market rate housing projects. The Charter Amendment would also set temporary Inclusionary Housing Requirements until the Board had adopted replacement rates. Those rates are as follows:

1. For housing development projects consisting of ten dwelling units or more, but less than twenty-five dwelling units, the existing requirements in effect on the date the charter amendment came into effect would still apply.
2. For housing development projects consisting of twenty-five dwelling units or more, the following would apply:
  - Fee: 33% of the total number of units in the principle project.
  - On-Site Housing: 25% of units in the principle projects, with 15% of the units affordable to low and very low income households and 10% affordable to middle income households.
  - Off-Site: to 33% of all units constructed on the principal project site as affordable housing, with 20% of the units affordable to low- and very low-income households and 13% of the units affordable to middle-income households

The charter amendment also adds interim definitions of "Lower Income" and "Middle Income" households. "Lower income" households would be defined as households whose total household income does not exceed 55 percent of Area Median Income for purposes of renting an affordable unit, or 80 percent of Area Median Income for purposes of purchasing an affordable unit. Currently those percentages are set at 55 percent and 90 percent respectively. "Middle income" households would be defined as households whose total household income does not exceed 100 percent of Area Median Income for purposes of renting an affordable unit, or 120 percent of Area Median Income for purposes of purchasing an affordable unit. Currently "middle Income" is defined as households whose combined annual gross income for all members is between 120 percent and 150 percent of the local median income for the City and County of San Francisco.

### **Origins of the Ordinance**

Prior to the introduction of this ordinance, the Mayor put forward a ballot initiative that would have required periodic feasibility studies of the Inclusionary housing program. Based Supervisors' feedback that a legislative ordinance would be a preferable mechanism for instituting a feasibility requirement, the Mayor withdrew his ballot initiative and Supervisor Yee introduced a resolution (Enactment #079-16) laying out the general terms that formed the basis of this proposed ordinance. In addition to creating a clear process to conduct a feasibility analysis which would guide regular adjustments to the Inclusionary rate, this ordinance would also establish grandfathering provisions for pipeline projects, and an interim Inclusionary rate. The legislative sponsors' goal is to secure an adopted ordinance with these features by the time the charter amendment passes. This ordinance, if enacted in time, will supersede and replace the interim requirements set forth in the charter amendment. Effectively this means the only change that the Charter would effectuate would be the removal of the Inclusionary requirements from the Charter so that the Inclusionary rate may be regularly adjusted through Board of Supervisor action. The timely adoption of this ordinance will ensure that the rates and definitions promulgated in the charter amendment would not take effect. Towards that end, the Planning Department has brought the Ordinance to the Planning Commission for review and recommendation at the earliest possible date.

### **Grandfathering Background**

A Resolution (Enactment #079-16) sponsored by Supervisor Yee laid out the terms of the proposed ordinance currently before the Commission, and also specified the intent behind the grandfathering

clause in the ordinance. The Resolution specified that any grandfathering clause “shall be constructed so as to allow continued economic feasibility for projects already in the pipeline” and that the grandfathering clause “may adjust the inclusionary or affordable housing obligations applicable to pipeline projects... such that the adjusted obligations generate ... approximately 200 (additional) units.” In other words the intention behind increasing the inclusionary rate on pipeline projects and not grandfathering them to the current inclusionary rate is to make up for units that could have been created if the Inclusionary rate had not been locked in by the voters in 2012 by Proposition C. It is worth noting that while the 2012 Proposition C did reduce the Inclusionary requirement, it also created the Housing Trust Fund which raised \$ 107,290,154, and to date has effectively subsidized the creation of 230 units.

Projects in three areas of the city were specifically not grandfathered in the proposed Ordinance, which include projects in UMU zoning that propose the demolition of PDR, projects located within the Mission Street NCT, and projects in the SOMA Youth and Family Zone. All three of these districts were chosen because they currently have a higher inclusionary rate than other districts. The legislative sponsors described their intent to narrow the impact from the whole of the UMU District to just parcels in this district that would see a loss of PDR space. Therefore, the proposed Ordinance excludes these projects in the UMU districts that would removing PDR space from the grandfathering provision, requiring more Inclusionary housing for these pipeline projects.

The date at which projects are no longer eligible for grandfathering is January 16, 2016, which is the day the Charter amendment was introduced. The basis for this provision is that project sponsors would be aware of a possible change to the Inclusionary Housing requirement of the time their application was submitted.

#### **Loss of PDR**

The loss of PDR to date has not been an amount beyond what was anticipated in the Eastern Neighborhoods EIR. The EN EIR anticipated the loss of 4.933 million sf of PDR space between 2009 and 2025. To date, the City has approved the loss of 1.494 million sf of PDR space. If all of the projects which would remove PDR were to be approved, the City would have approved a total of 2.042 million sf of PDR. This is in line with the expectations of the EN rezoning.

## **ISSUES AND CONSIDERATIONS**

### **San Francisco Precedent Pairs Two Studies: Nexus and Feasibility.**

San Francisco has one of the nation’s most comprehensive Inclusionary Housing programs, producing thousands of units and hundreds of millions of dollars for affordable housing development since its inception in 1992. The Program demonstrates that market rate residential developers can – and do – serve as critical partners in providing much-need housing in high cost urban areas. Our program is effective in large part because the base requirement is framed by two critical studies. The first, a *nexus study*, provides quantitative analysis of the affordable housing need generated by the creation of market rate housing. The second, a *financial feasibility analysis*, takes into account the cost of residential development and the ability of market rate residential development to provide certain levels of inclusionary housing.

Changes to the Inclusionary Program must be transparent and reflect economic realities in order to survive scrutiny and potential legal challenges. Of course, the program must also deliver affordable

housing—if the requirement is set too high, then the City will provide little or no Inclusionary Housing as residential market rate development will be financially unable to meet the requirements. Therefore, to ensure that San Francisco's Inclusionary Housing stock increases, decision-makers should consider both the nexus and financial feasibility in order to provide assurance to the public that the requirements are fair.

### **Immediate Housing Crisis & Need to Update Inclusionary Fee**

While above average housing costs in San Francisco are nothing new, the current economic cycle has created an unprecedented affordability crisis in the City. About 63% of the homes in San Francisco are worth more than a million dollars. The average rent for a one bedroom apartment is \$3,500, making the City the most expensive place in the country to rent an apartment<sup>1</sup>. In fact, over the past 4 years, the median rent of a one bedroom has increased by 59% from \$2,195 to in 2011, to \$3,500 as of December 2015. Over just the last year, the median rent of a one bedroom has increased 11%, from \$3,120 in 2014 to \$3,452 as of June 2015.<sup>2</sup>

Mayor Edwin Lee recognized the crisis in 2013 when he issued Directive 13-01, which among other things called on all City Departments with legal authority over the permitting and mapping of new or existing housing to prioritize their work plans on the construction and development of all net new housing, including permanently affordable housing. In 2014, the Mayor also made a pledge to construct 30,000 new and rehabilitated homes throughout the City by 2020, with at least one-third of those permanently affordable to low and moderate income families, and the majority of those within financial reach of working, middle income San Franciscans. Other initiatives have also attempted to address this crisis such as allowing Accessory Dwelling Units in certain areas of the City, higher scrutiny on the removal of unwarranted units, allowing 100% affordable housing projects as of right, and the Affordable Housing Bonus Program. The Department has also stepped up its efforts, but giving priority processing to affordable housing projects, and improving the time it takes to review smaller projects.

To date, the City's efforts are showing results. According to the Department's current pipeline report 34,000 units have been entitled by Planning and another 27,760 are currently under review. However, the City has established through its nexus study that building market-rate units creates a need for more below market rate units. These units help offset the demand for the existing housing stock, which tends to be older more affordable. Inclusionary units also provide security from no fault evictions and steep rent increases, and importantly, they are built without tax payer subsidies. Therefore it is in the City's interest to ensure that we are maximizing the number of inclusionary units we get from private developers through the Inclusionary Program. By increasing the inclusionary rate based on feasibility, the City will be able to maximize the potential of its inclusionary program, ensuring more permanently affordable housing units without using tax payer funds.

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<sup>1</sup> Anderson, Tomikka. "Cost of average San Francisco rent actually fell (a little) last month. <http://www.sfgate.com/bayarea/article/San-Francisco-rent-cost-drop-rental-6690357.php>. Published: 12/11/2015, Accessed 3/23/2016

<sup>2</sup> Editor. "The San Francisco Rent Explosion Part III. <http://priceconomics.com/the-san-francisco-rent-explosion-part-iii/> Published 8/12/2015, Accessed 3/23/2016

### **Pipeline Projects Which May be Subject to Grandfathering Provisions & New Inclusionary Rates**

Planning Department staff are refining the pipeline database so that the most accurate data may be brought to the Commission on the date that this proposed Ordinance is considered, currently scheduled to be 3/31/16.

### **Triennial Economic Feasibility Analysis & Technical Advisory Committee for Study.**

The proposed Ordinance establishes a triennial report requirement to analyze how to establish inclusionary housing requirements to produce the most Inclusionary housing. The report is to be compiled by the Controller, in consultation with relevant City departments and the Inclusionary Housing Technical Advisory Committee. Technical Advisory Committee will be staffed by people who have experience and expertise in development finance, with four members appointed by the Mayor and four by the Board. This technical review and evaluation of the City's Inclusionary program by professionals is good public policy. Emphasizing the committee members' technical expertise will help ensure that this report is given thorough and detailed oversight.

## **IMPLEMENTATION**

This proposal will 1) increase the complexity of implementing the inclusionary requirement for projects subject to the grandfathering provision and 2) increase the frequency of feasibility studies; however the Department will be in a supporting role for these reoccurring studies.

## **REQUIRED COMMISSION ACTION**

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

## **RECOMMENDATION**

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance and adopt the attached Draft Resolution to that effect.

## **BASIS FOR RECOMMENDATION**

The Department supports the Ordinance on balance because it establishes a process for regular feasibility analysis so that the City can continually adapt to changes in the real estate market and ensure the highest production of BMR housing in conjunction with new market-rate housing. The department recommends the modifications below to best reach this broad goal.

1. **Support the production of housing, especially affordable housing.** This long-standing policy of the City seeks equity in housing for future residents. Given the current housing crisis, this goal is all the more important. This ordinance seeks to establish a regular feasibility study to ensure the requirements are neither lower nor higher than the market will support. The ordinance also seeks to raise the Inclusionary Housing requirement, the City's most expensive impact fee. Increases to this exaction in the short-term may chill the production of housing. Some projects

will buckle under new onsite requirements or fees, particularly when land has already been purchased at high prices based upon an anticipated revenue. The resulting slowdown of housing production can cause harm to residents needing housing in the short-term. It is probable that over the longer term higher on-site requirements or fees set through a rigorous feasibility study could be absorbed into the costs of the land value. However, even over the long-term, the amount of additional on-site requirements or fees that can be absorbed is still limited. This is because in order for development to occur, it must offer a greater return to the landowner than the existing use. For example a parcel containing a retail/commercial use will only be developed into housing if the proposed residential project offers a greater return to the landowner than the retail/commercial rent it is already earning. By establishing a process for regular feasibility analysis, the City can continually adapt to changes in the real estate market and ensure the highest production of BMR housing in conjunction with new market-rate housing.

- a. **Ensure no reduction would occur to existing Inclusionary Requirements.** Some districts such as UMU, Mission Street NCT, and SoMa Youth and Family Zone and have higher requirements under existing controls than would be required under the proposal. The Department recommends keeping any existing requirements that are higher than the amounts proposed in the draft ordinance. Sections 415.6 On-site Alternative and 415.7 Off-Site Alternative include language enabling the higher requirement. Similar language should be added to 415.3 Application, Section 415.7 Off-Site Application, 415.5 Fee, and within the geographically specific Code Sections that have higher requirements such as Section 419 UMU. Within Section 419 UMU district, the proposed grandfathering provisions do not take into account the Tiers. For instance, the existing Code requirements are varied by tiers Tier A (on-site: 14.4%, off-site: 23%); Tier B (on-site: 16%, off-site: 25%); and Tier C (on-site: 17.6%, off-site: 27%). With the proposed grandfathering provision a 30 unit project in Tier B would be required to provide 25% because it is higher, but it would be 16% if using grandfathering. The “higher percentage” language needs to be added to the grandfathering section or separate percentages should be established for each UMU Tier.
- b. **Support the production of additional affordable housing through the use of density bonuses.** The proposed Ordinance encourages project sponsors to achieve 25% affordable housing on-site in association with the use of the existing State Density Bonus Law. Generally, the Planning Code should establish standards and requirements and should not have vague language. Encouragement language is better placed in policy documents. Further, by codifying language of encouragement such as “use best efforts” and “consult with the Planning Department about achieving [higher levels of affordability than required by the State] may set unrealistic community expectations that are unachievable under State Law. Such language of encouragement provides no real benefit as it does not prohibit a project sponsor from providing less than 25% and the City may not circumvent the State Law in this way. The Department agrees that a higher provision of affordable housing with density bonuses would better align the State Law with City policy, but State Law circumscribes the City's ability in denying a density bonus to projects providing of less than 25% affordable housing or in imposing a higher inclusionary requirement on a density bonus project. If the City adopts the local Affordable Housing Bonus Program (AHBP), the Local Program could incentivize an

even higher level of affordability while shaping the built form of projects to be more compatible with San Francisco's neighborhoods. At this time, the Department recommends removing the undefined term of "use best efforts" and an undefined process of "consultation" with the Department and instead encourages the Board to consider incentives such as the AHBP as the best vehicle for achieving higher affordability in light of the State Law.

- c. **Allow some flexibility in the AMI requirements to encourage variety of levels of affordability.** The on-site requirement for projects with 25 units or more has a degree of flexibility written into the new requirements. It mandates 25% Inclusionary of on-site units provide 15% of the units are affordable to low, and very low-income and allows the remaining 10% of the requirement to be provided with housing serving either very low, low- or middle-income households. This flexibility in the final 10% allows for some projects to qualify for tax credits while other projects may serve middle-income households. This same flexibility should be added to the off-site requirement on page 17, line 8: 415.7 (a)(1) (B) The number of units constructed off-site shall be 33 percent, with a minimum of 20% of the units affordable to low- and very low-income households and another 13% of the units affordable to low-, very low-income and middle-income households, so that a project applicant shall construct .33 times the total number of units produced in the principal project.
2. **Create fair, uniform grandfathering provisions for pipeline projects.** Because projects that are further along in the entitlement process are less able to adapt to new fees, the proposal makes accommodations by stepping the rate upwards incrementally. However, as proposed, the grandfathering currently is unnecessarily complicated. Lastly the timeline for securing a site permit may not be feasible for certain projects.
    - a. **Ensure uniform treatment of pipeline projects across zoning districts and project building types until further analysis can support the rationale.** Remove the provision that exempts from the grandfathering provisions projects in the UMU zoning that propose the demolition of PDR, projects located within the Mission Street NCT, projects in the SOMA Youth and Family Zone, and project building types that exceed 120 feet in height. All projects that have been planned consistent with existing zoning controls should be treated equally under the proposed grandfathering provision and new, permanent controls. If the feasibility study or changes in City policy demonstrate a rationale for differentiating certain projects within the Inclusionary requirements, then more specific requirements should be applied to future projects not those in the pipeline.
    - b. **Ensure grandfathered projects have a reasonable, but not excessive amount of time to complete project.** Make the following modifications to the timeline restriction for grandfathering on page 10, Line 1:  
Any development project that constructs on-site or off-site affordable housing units as set forth in this Section 415.3(b) shall diligently pursue completion of such units. In the event ~~that the project sponsor does not procure~~ a building permit is not issued for construction of the affordable housing units by within 36 months from the entitlement date in order to remain subject to grandfathering provisions. If the building permit is not issued within 36 months of entitlement December 7, 2018, the development project shall comply with the inclusionary



affordable housing requirements set forth in Planning Code Sections 415.5, 415.6 and/or 415.7, as applicable.

3. **Make a commitment to ensure that the City gets the most affordable housing even as the real estate market will vary over time.** The Board of Supervisors would need to hold a hearing within three months of the completion of the feasibility study to consider increasing, decreasing or keeping the fees in light of the results. The Planning Commission should also consider initiating legislative amendments to the Inclusionary Requirement for the Board's consideration as described in the proposed edits to the "Modifications to the Feasibility Report" language on Page 24, Lines 3-14 as follows:

**(d) Planning Commission Hearing.** *The Planning Commission shall hold a hearing within one to two months after publication of each Triennial Economic Feasibility study to consider initiating an ordinance that would update the inclusionary requirement based upon the Triennial Economic Feasibility Analysis.*

**(d)-(e) Report to Board of Supervisors.** The Board of Supervisors will review the feasibility analyses, as well as the commensurate updates to the City's Nexus Study evaluating the necessary affordable housing in order to mitigate the impacts of market rate housing. The Board of Supervisors, in its sole and absolute discretion, will review the feasibility analyses within three *to four* months of completion and will consider legislative amendments to the City's Inclusionary Housing in-lieu fees, on-site, off-site or other alternatives recommended by the Controller and/or the Planning Commission adjusting levels of inclusionary or affordable housing obligations and income levels based on the feasibility analyses, with the objective of maximizing affordable Inclusionary Housing in market rate housing production, with guidance from the City's Nexus Study.

**(b) Triennial Economic Feasibility Analysis.** With the support of independent consultants as deemed appropriate by the Controller and with advice on setting qualifications and criteria for consultant selection from the ~~Inclusionary~~ *Inclusionary* Housing Technical Advisory Committee established in Administrative Code Chapter 5, Article XXIX, the Controller, in consultation with relevant City Departments and the Inclusionary Housing Technical Advisory Committee, shall conduct a feasibility study of the City's inclusionary affordable housing obligations set forth in Planning Code Section 415 et seq., including but not limited to the affordable housing fee and on-site and off-site alternatives, and shall submit a report to the Board of Supervisors by July 31, 2016 and by October 31 for subsequent years. *The Planning Commission shall hold a hearing within one to two months after publication of each Triennial Economic Feasibility to consider initiating an ordinance that would update the inclusionary requirement based upon the Triennial Economic Feasibility Analysis. The Board of Supervisors shall hold a hearing three to four months after the publication of each Triennial Economic Feasibility. At the hearing, the BOS shall consider increasing, decreasing or retaining the established inclusionary rate.* Thereafter, the Controller, in consultation with the Department and the Inclusionary Housing Technical Advisory Committee, shall repeat this process at least every 36 months, or more frequently as deemed necessary by the Controller in response to a significant shift in economic or market conditions.

4. For projects pursuing a State Density Bonus, individual project sponsors are required to do a project-specific feasibility study, this should only be tied to requested concessions. The proposed Ordinance requires a feasibility study if the project sponsor is not providing on-site affordable units in the amount of 25% of the number of units constructed. The Department recommends that such analysis be linked to a relevant decision, such as approval of a requested concession or incentive. Per State law, approvals of increased density are not reliant on feasibility; however, concessions do have feasibility thresholds. The feasibility of the density bonus itself, rather than the separate category of concessions, cannot factor into the City's decision as to whether or not to approve the density bonus when a proposed project does not meet the stated goal of 25% affordable units. The State has already determined that the added density is permitted. However, a feasibility study can help inform the City as to whether or not concessions should be granted.
5. **Small Sites Acquisition.** Ensure that this new option allowing pipeline projects to satisfy Inclusionary requirements through the acquisition of existing buildings is crafted to mirror applicable elements of the Small Sites Acquisition Program administered by MOHCD. Applicable elements would include income eligibility and requirements, financial underwriting guidelines, and use restrictions. Notably, the Ordinance creates new options that are specifically intended to differ from the existing Small Sites Acquisition program. As currently drafted, it appears that the explicit requirement is that buildings acquired for this purpose would be converted from a non-residential use to a residential use. This creates new policy implications to be weighed such as would the City encourage the conversion from a PDR use, for example, to housing. Further, policymakers should note that the inclusion of commercial property acquisition by private parties represents a change in policy as the small sites program currently is only a vehicle for MOHCD to implement by the purchase existing residential projects. Additional clarity should be added about what existing buildings would be appropriate and what is intended with the phrase "an existing building that is *not currently and primarily* in residential use" (emphasis added). Lastly, there is no mention of income eligibility in the current proposal.
6. **Various technical amendments** including:
  - a. Organizing the grandfathering dates and percentages into charts would make these sections easier to use and implement.
  - b. Section 415.6(a)(1) On-Site Alternative should be clarified to ensure that the 12% requirement is dedicated to low-income AMIs. Currently the ordinance is silent, but it is assumed that the 12% for buildings with 10-25 units serve to low-income AMIs.
  - c. If the Board retains the exemptions for certain projects within the UMU district, the proposed Ordinance should be amended to clarify whether or not a project in the UMU District is grandfathered if it demolishing PDR but would also replace the PDR use. Currently the proposed Ordinance is silent on projects that demolish and replace PDR in the UMU District.
  - d. The proposed provision for the state density bonus in Section 415.3(b)(1)(F) follows other grandfathering provisions and it would appear because of its location that this is also a grandfathering provision; however there is not acknowledgement in the specific section

that this provision only applies to projects already in the pipeline. This section should be amended to clarify that it applies only to projects submitted prior to January 12, 2016 if that is the intention of the sponsor.

- e. In order to preserve the higher inclusionary rate in certain districts, the following language should be added to Section 415.3(b)(1) which starts on page 6, line 19 of the ordinance: "Specific Geographic Areas. For any housing development that is located in an area with a specific affordable housing requirement set forth in a Special Use District or in any other section of the Code such as Section 419, the higher housing requirement shall apply."
- f. The findings in Section 415.1 should be updated to reflect current available information. It should also be removed from the Planning Code and added to the proposed Ordinance as part of the findings. These findings are not legally required to be in the Planning Code and removing them will help simplify Section 415.
- g. Page 9, Line 13, and everywhere else in the ordinance that this type of provision occurs, the following amendments should be made: "Notwithstanding the provisions set forth in subsections (b)(2)(A), (B) and (C) of this Section 415.3, if a development project proposes a building whose height is measured per the Planning Code to be over 120 feet ~~or greater~~, such development project shall pay a fee or provide off-site housing in an amount equivalent to 33% of the number of units constructed on-site.

## ENVIRONMENTAL REVIEW

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c)(2) and 15378 because they do not result in a physical change in the environment.

## PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance. At the 3/23/16 meeting of the Building Department's Public Advisory Committee, the group requested that the grandfathering provisions within this draft Ordinance apply to all projects which have submitted PPAs prior to effective date of the Charter Amendment.

<b>RECOMMENDATION:</b>	<b>Recommendation of Approval with Modification</b>
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### Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Draft Ordinance BF 160255 Inclusionary Affordable Housing Fee and Requirements; Preparation of Economic Feasibility Report; Establishing Inclusionary Housing Technical Advisory Committee

BOARD of SUPERVISORS



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March 29, 2016

File No. 160255

Sarah Jones  
Environmental Review Officer  
Planning Department  
1650 Mission Street, Ste. 400  
San Francisco, CA 94103

Dear Ms. Jones

On March 22, 2016, Supervisor Kim introduced the following proposed legislation:

**File No. 160255**

**Ordinance amending the Planning and Administrative Codes to increase the Inclusionary Affordable Housing fee and other requirements; require the Controller to prepare an economic feasibility report regarding the City's inclusionary housing requirements and make recommendations by July 31, 2016, and every three years thereafter; and establish the Inclusionary Housing Technical Advisory Committee to provide advice about the economic feasibility of proposals to set maximum economically viable inclusionary housing requirements, and set forth the membership and duties of the Advisory Committee; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of public convenience, necessity, and welfare 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.**

This legislation is being transmitted to you for environmental review.

Not defined as a project under CEQA Sections 15378 and 15060(c)(2) because it does not result in a physical change in the environment.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "A. Ausberry".

Joy Navarrete

Digitally signed by Joy Navarrete  
DN: cn=Joy Navarrete, o=Planning,  
ou=Environmental Planning,  
email=joy.navarrete@sfgov.org, c=US  
Date: 2016.04.04 17:17:10 -0700'

By: Andrea Ausberry, Assistant Clerk  
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning  
Jeanie Poling, Environmental Planning

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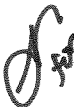
## MEMORANDUM

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Date: April 21, 2016

To: The Honorable Members, Board of Supervisors

From:  Angela Calvillo, Clerk of the Board

Subject: Establishing Inclusionary Housing Technical Advisory Committee  
(File No. 160255)

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Board of Supervisors Rules of Order 2.21 establishes certain criteria that shall be included in legislation creating and establishing, or reauthorizing, new subordinate bodies (boards/commissions/task forces/advisory bodies) and requires the Clerk of the Board to report to the Board on how the proposed subordinate body meets that criteria.

**File No. 160255** Planning, Administrative Codes - Inclusionary Affordable Housing Fee and Requirements; Preparation of Economic Feasibility Report; Establishing Inclusionary Housing Technical Advisory Committee

### Executive Summary

The subject subordinate body meets the criteria specified in Board Rule 2.21 in every aspect, except that a sunset date is not included in the proposed legislation. The Sponsor, Supervisor Kim, has indicated that the Advisory Committee exist until the enactment of an ordinance effectively removes the Article from the Administrative Code.

### Specific Criteria and Information

- **Does a current body exist that addresses the same or similar subject matter?**

*No. No current body provides input to the Controller, Mayor, Planning Department and Board of Supervisors on the economic feasibility of the City's inclusionary housing requirements.*



- **Is language included that requires the body to meet at least once every four months**

*Yes. Section 5.29-6 states "The Advisory Committee shall hold a regular meeting not less than once every four months until the sunset date set forth in Section 5.29-7."*

- **Does the legislation provide a 1) description of the qualifications, 2) the number of seats, and 3) the date of commencement?**

*There are a total of eight seats:*

- *The Board of Supervisors shall appoint members to Seats 1 through 4; and*
- *The Mayor shall appoint members to Seats 5 through 8.*

*All members shall have experience and expertise in development finance. A commencement date is not specified in the proposed Ordinance, so the establishing date of this body shall be the effective date of the Ordinance.*

- **Is language included that provides term limits (i.e., commencement date? staggered terms?)**

*Yes. Section 5.29-4 states "Each member appointed to the Advisory Committee in 2016 shall serve **until three months after the date the Controller produces the first economic feasibility analysis** required by Planning Code Section 415.10, at which point the member's term shall expire. The Board of Supervisors and the Mayor shall appoint new members to the Advisory Committee in anticipation of each subsequent economic feasibility analysis by the Controller, and those members' terms shall similarly expire three months after the date the Controller produces the economic feasibility analysis required by Planning Code Section 415.10. Members shall not hold over after the expiration of their terms.*

- **Is an Administering department included?**

*Yes. Section 5.29-4(e) states "The Controller's Office shall provide clerical and administrative support and staffing for the Advisory Committee."*

- **Does the language establish attendance requirements?**

*Yes. Section 5.29-4(d) states "Any member who misses three regular meetings of the Advisory Committee without the express approval of the Advisory Committee at or before each missed meeting shall be deemed by operation of law to have resigned from the Advisory*



*Committee ten days after the third unapproved absence. The Advisory Committee shall inform the appointing authority of the resignation."*

▪ **Does language encompass reporting requirements?**

*Yes. The body will provide input and advice to the Controller, the Mayor, the Planning Department and the Board of Supervisors regarding the content of the economic feasibility analysis required by Planning Code, Section 415.10. The Advisory Committee shall hold technical workshops to evaluate the fiscal feasibility of various inclusionary housing fees and on-site and off-site alternatives, including evaluating a range of project types, inclusionary percentages, and resident income levels, and assessing whether fiscal feasibility varies within the City across different neighborhoods. The Advisory Committee may, but is not required to, prepare written reports.*

▪ **Does the legislation contain a Sunset date?**

*No. Notwithstanding Rule 2.21 of the Board of Supervisors Rules of Order, which provides that advisory bodies created by the Board should sunset within three years, the author, Supervisor Kim intends the Advisory Committee to exist for longer than three years and has included the following language in the legislation.*

*Section 5.29-7 states "The Board of Supervisors and Mayor intend the Advisory Committee to last until the enactment of an ordinance removing this Article XXIX from the Administrative Code.*

▪ **Is language included that indicates that members serve at the pleasure of the appointing authority**

*Yes. Section 5.29-4(a) states "Each member shall serve at the pleasure of the member's appointing authority."*

*Section 5.29-4(b) states "If a vacancy occurs in any seat on the Advisory Committee, the appointing authority for the vacated seat shall appoint a successor to that seat."*



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April 14, 2016

Planning Commission  
Attn: Jonas Ionin  
1650 Mission Street, Ste. 400  
San Francisco, CA 94103

Dear Commissioners:

On April 12, 2016, Supervisor Kim introduced the following substituted legislation:

**File No. 160255-3**

**Ordinance amending the Planning and Administrative Codes to increase the Inclusionary Affordable Housing fee and other requirements; require the Controller to prepare an economic feasibility report regarding the City's inclusionary housing requirements and make recommendations by July 31, 2016, and every three years thereafter; and establish the Inclusionary Housing Technical Advisory Committee to provide advice about the economic feasibility of proposals to set maximum economically viable inclusionary housing requirements, and set forth the membership and duties of the Advisory Committee; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of public convenience, necessity, and welfare 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.**

The proposed ordinance is being transmitted pursuant to Planning Code, Section 302(b), for public hearing and recommendation. The ordinance is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "A. Ausberry".

By: Andrea Ausberry, Assistant Clerk  
Land Use and Transportation Committee

- c: John Rahaim, Director of Planning
- Aaron Starr, Acting Manager of Legislative Affairs
- Scott Sanchez, Zoning Administrator
- Sarah Jones, Chief, Major Environmental Analysis
- AnMarie Rodgers, Legislative Affairs
- Jeanie Poling, Environmental Planning
- Joy Navarrete, Environmental Planning

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April 14, 2016

File No. 160255-3

Sarah Jones  
Environmental Review Officer  
Planning Department  
1650 Mission Street, Ste. 400  
San Francisco, CA 94103

Dear Ms. Jones

On April 12, 2016, Supervisor Kim introduced the following proposed substitute legislation:

**File No. 160255-3**

**Ordinance amending the Planning and Administrative Codes to increase the Inclusionary Affordable Housing fee and other requirements; require the Controller to prepare an economic feasibility report regarding the City's inclusionary housing requirements and make recommendations by July 31, 2016, and every three years thereafter; and establish the Inclusionary Housing Technical Advisory Committee to provide advice about the economic feasibility of proposals to set maximum economically viable inclusionary housing requirements, and set forth the membership and duties of the Advisory Committee; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of public convenience, necessity, and welfare 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.**

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "A. Ausberry".

By: Andrea Ausberry, Assistant Clerk  
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning  
Jeanie Poling, Environmental Planning

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## MEMORANDUM

TO: Tom Hui, Director, Department of Building Inspection  
Robert Collins, Acting Executive Director, Rent Board  
Olson Lee, Director, Mayor's Office of Housing and Community  
Development  
Tiffany Bohee, Executive Director, Office of Community Investment and  
Infrastructure  
Ben Rosenfield, City Controller, Office of the Controller

FROM: Andrea Ausberry, Assistant Clerk  
Land Use and Transportation Committee

DATE: April 14, 2016

SUBJECT: LEGISLATION INTRODUCED - SUBSTITUTE

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The Board of Supervisors' Land Use and Transportation Committee has received the following proposed substituted legislation, introduced by Supervisor Kim on April 12, 2016.

**File No. 160255 - 3**

**Ordinance amending the Planning and Administrative Codes to increase the Inclusionary Affordable Housing fee and other requirements; require the Controller to prepare an economic feasibility report regarding the City's inclusionary housing requirements and make recommendations by July 31, 2016, and every three years thereafter; and establish the Inclusionary Housing Technical Advisory Committee to provide advice about the economic feasibility of proposals to set maximum economically viable inclusionary housing requirements, and set forth the membership and duties of the Advisory Committee; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of public convenience, necessity, and welfare 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 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: [andrea.ausberry@sfgov.org](mailto:andrea.ausberry@sfgov.org)

- c: Sonya Harris, Building Inspection Commission
- William Strawn, Department of Building Inspection
- Carolyn Jayin, Department of Building Inspection
- Sophie Hayward, Mayor's Office of Housing and Community Development
- Eugene Flannery, Mayor's Office of Housing and Community Development
- Natasha Jones, Commission on Community Investment and Infrastructure
- Claudia Guerra, Commission on Community Investment and Infrastructure
- Todd Rydstrom, Office of the Controller
- Peg Stevenson, Office of the Controller
- Ted Egan, Office of the Controller

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## MEMORANDUM

TO: Tom Hui, Director, Department of Building Inspection  
Robert Collins, Acting Executive Director, Rent Board  
Olson Lee, Director, Mayor's Office of Housing and Community  
Development  
Tiffany Bohee, Executive Director, Office of Community Investment and  
Infrastructure  
Ben Rosenfield, City Controller, Office of the Controller

FROM: Andrea Ausberry, Assistant Clerk  
Land Use and Transportation Committee

DATE: March 29, 2016

SUBJECT: LEGISLATION INTRODUCED

---

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed substituted legislation, introduced by Supervisor Kim on March 22, 2016.

**File No. 160255**

**Ordinance amending the Planning and Administrative Codes to increase the Inclusionary Affordable Housing fee and other requirements; require the Controller to prepare an economic feasibility report regarding the City's inclusionary housing requirements and make recommendations by July 31, 2016, and every three years thereafter; and establish the Inclusionary Housing Technical Advisory Committee to provide advice about the economic feasibility of proposals to set maximum economically viable inclusionary housing requirements, and set forth the membership and duties of the Advisory Committee; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of public convenience, necessity, and welfare 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 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: [andrea.ausberry@sfgov.org](mailto:andrea.ausberry@sfgov.org)

c: Sonya Harris, Building Inspection Commission  
William Strawn, Department of Building Inspection  
Carolyn Jayin, Department of Building Inspection  
Sophie Hayward, Mayor's Office of Housing and Community Development  
Eugene Flannery, Mayor's Office of Housing and Community Development  
Natasha Jones, Commission on Community Investment and Infrastructure  
Claudia Guerra, Commission on Community Investment and Infrastructure  
Todd Rydstrom, Office of the Controller  
Peg Stevenson, Office of the Controller  
Ted Egan, Office of the Controller



BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

March 29, 2016

Planning Commission  
Attn: Jonas Ionin  
1650 Mission Street, Ste. 400  
San Francisco, CA 94103

Dear Commissioners:

On March 22, 2016, Supervisor Kim introduced the following substituted legislation:

**File No. 160255**

**Ordinance amending the Planning and Administrative Codes to increase the Inclusionary Affordable Housing fee and other requirements; require the Controller to prepare an economic feasibility report regarding the City's inclusionary housing requirements and make recommendations by July 31, 2016, and every three years thereafter; and establish the Inclusionary Housing Technical Advisory Committee to provide advice about the economic feasibility of proposals to set maximum economically viable inclusionary housing requirements, and set forth the membership and duties of the Advisory Committee; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of public convenience, necessity, and welfare 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.**

The proposed ordinance is being transmitted pursuant to Planning Code, Section 302(b), for public hearing and recommendation. The ordinance is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

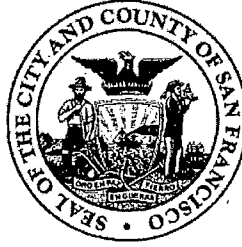
Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "A. Ausberry".

By: Andrea Ausberry, Assistant Clerk  
Land Use and Transportation Committee

c: John Rahaim, Director of Planning  
Aaron Starr, Acting Manager of Legislative Affairs  
Scott Sanchez, Zoning Administrator  
Sarah Jones, Chief, Major Environmental Analysis  
AnMarie Rodgers, Legislative Affairs  
Jeanie Poling, Environmental Planning  
Joy Navarrete, Environmental Planning

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March 29, 2016

**File No. 160255**

Sarah Jones  
Environmental Review Officer  
Planning Department  
1650 Mission Street, Ste. 400  
San Francisco, CA 94103

Dear Ms. Jones

On March 22, 2016, Supervisor Kim introduced the following proposed legislation:

**File No. 160255**

**Ordinance amending the Planning and Administrative Codes to increase the Inclusionary Affordable Housing fee and other requirements; require the Controller to prepare an economic feasibility report regarding the City's inclusionary housing requirements and make recommendations by July 31, 2016, and every three years thereafter; and establish the Inclusionary Housing Technical Advisory Committee to provide advice about the economic feasibility of proposals to set maximum economically viable inclusionary housing requirements, and set forth the membership and duties of the Advisory Committee; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of public convenience, necessity, and welfare 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.**

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

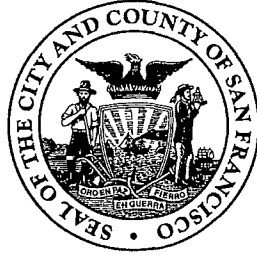
A handwritten signature in cursive script, appearing to read "A. Ausberry".

By: Andrea Ausberry, Assistant Clerk  
Land Use and Transportation Committee

Attachment

- c: Joy Navarrete, Environmental Planning  
Jeanie Poling, Environmental Planning

BOARD of SUPERVISORS



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San Francisco 94102-4689  
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TDD/TTY No. 554-5227

## NOTICE OF PUBLIC HEARING

### BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO LAND USE AND TRANSPORTATION COMMITTEE

NOTICE IS HEREBY GIVEN THAT the Land Use and Transportation Committee will hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard:

- Date:** Monday, April 18, 2016
- Time:** 1:30 p.m.
- Location:** Legislative Chamber, Room 250, located at City Hall  
1 Dr. Carlton B. Goodlett Place, San Francisco, CA
- Subject:** File No. 160255. Ordinance amending the Planning and Administrative Codes to increase the Inclusionary Affordable Housing fee and other requirements; require the Controller to prepare an economic feasibility report regarding the City's inclusionary housing requirements and make recommendations by July 31, 2016, and every three years thereafter; and establish the Inclusionary Housing Technical Advisory Committee to provide advice about the economic feasibility of proposals to set maximum economically viable inclusionary housing requirements, and set forth the membership and duties of the Advisory Committee; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of public convenience, necessity, and welfare 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 legislation passes, the Affordable Housing Fee would be charged to new market-rate housing projects that do not choose to provide on-site affordable housing or create affordable off-site housing, as required by the Inclusionary Housing Program.

Certain development projects that have submitted a complete environmental evaluation application would be required to pay the following fees during the limited periods of time, as follows:

- Projects that submitted an application prior to January 1, 2014: Amount equivalent to 25% of the number of units constructed on-site;
- Projects that submitted an application prior to January 1, 2015: Amount equivalent to 27.5% of the number of units constructed on-site;
- Projects that submitted an application on or prior to January 12, 2016: Amount equivalent to 30% of the number of units constructed on-site;
- Projects that proposes a building height of 120 feet or greater, shall pay a fee amount equivalent to 33% of the number of units constructed on-site;
- Projects located in a Urban Mixed Use (UMU) Zoning District and eliminates a Production, Distribution, and Repair (PDR) use, or located in the Mission Neighborhood Commercial Transit (NCT) Zoning District or South of Mark Youth and Family Zoning District and are eligible to provide off-site units, shall not be eligible to use these temporary lower inclusionary housing requirements; and
- Projects that submitted an application on or prior to January 12, 2016 may provide off-site affordable housing by acquiring an existing building that is not currently and primarily in residential use.

Housing project sponsors, that do not qualify for the temporary fee requirements listed above for those limited periods of time, shall be required to pay a fee calculated based on the equivalent to the applicable off-site percentage of the number of units constructed on-site, as follows:

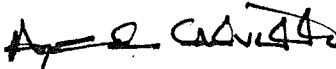
- Projects consisting of ten dwelling units or more, but less than 25 units: 20%; and
- Projects consisting of 25 dwelling units or more: 33%.

The amount of the fee shall be determined by the Mayor's Office of Housing and Community Development (MOHCD) using the above applicable percentages and the affordability gap, using data on the cost of construction of residential housing and the Maximum Purchase Price for the equivalent unit size. These fees shall be adjusted by MOHCD no later than January 1<sup>st</sup> of each year, based on the adjustments in the cost of constructing housing and the Maximum Purchase Price for the equivalent unit size.

The Affordable Housing Fee, either for the Inclusionary Housing requirements or the temporary fee requirements, shall not be charged to any mixed use project for which a height limit increase has been approved by the voters prior to January 12, 2016, or have entered into a development agreement or similar agreement with the City as of January 12, 2016.

In accordance with Administrative Code, Section 67.7-1, persons who are unable to attend the hearing on this matter may submit written comments to the City prior to the time the hearing begins. These comments will be made as part of the official public record in this matter, and shall be brought to the attention of the members of the Committee. Written comments should be addressed to Angela Calvillo, Clerk of the Board, City Hall, 1 Dr. Carlton Goodlett Place, Room 244, San Francisco, CA 94102.

Information relating to this matter is available in the Office of the Clerk of the Board.  
Agenda information relating to this matter will be available for public review on Friday,  
April 15, 2016.

  
Angela Calvillo  
Clerk of the Board

DATED/POSTED: April 6, 2016  
PUBLISHED: April 8 & 14, 2016

BOARD of SUPERVISORS



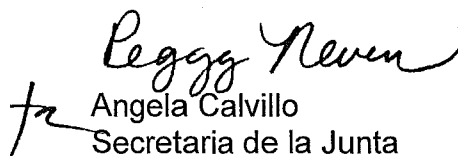
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
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## NOTIFICACIÓN DE AUDIENCIA PÚBLICA

### JUNTA DE SUPERVISORES DE LA CIUDAD Y CONDADO DE SAN FRANCISCO COMITÉ SOBRE USO DE TERRENOS Y TRANSPORTE

SE NOTIFICA POR LA PRESENTE que el Comité Sobre Uso de Terrenos y Transporte celebrará una audiencia pública para considerar la siguiente propuesta y dicha audiencia pública se celebrará de la siguiente manera, en tal momento que todos los interesados podrán asistir y ser escuchados:

- Fecha:** Lunes, 18 de abril de 2016
- Hora:** 1:30 p. m.
- Lugar:** Cámara Legislativa, Alcaldía, Sala 250  
1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102
- Asunto:** Expediente Núm. 160255. Ordenanza que enmienda los códigos de planificación y administración para aumentar la Cuota de Vivienda Inclusiva Asequible y otros requisitos; exige que el contralor prepare un informe de viabilidad económica con respecto a las necesidades de vivienda inclusiva de la ciudad y que haga recomendaciones para el 31 de julio de 2016, y cada tres años posteriormente; y establece el Comité de Asesoramiento Técnico de Vivienda Inclusiva para dar recomendaciones sobre la viabilidad económica de propuestas para establecer requisitos máximos que son económicamente viables para la vivienda inclusiva, y establece la composición y funciones del Comité de Asesoramiento; afirma la determinación del Departamento de Planificación según la Ley de Calidad Medioambiental de California; realiza conclusiones según la Sección 302 del Código de Planificación; y realiza conclusiones coherentes con el Plan General, y las ocho políticas prioritarias de la Sección 101.1 del Código de Planificación.

  
Angela Calvillo  
Secretaria de la Junta



BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No 554-5184  
Fax No. 554-5163  
TDD/TTY No. 5545227

公聽會通知

三藩市市及縣市參事委員會  
土地使用與交通運輸委員會

- 日期: 2016年4月8日星期一
- 時間: 下午1時30分
- 地點: 市政廳，立法會議廳 250 室，1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102
- 議題: 檔案號碼 160255。該項條例修訂規劃及行政法規旨在增加包容性可負擔房屋費用以及增設其它相關規定；要求審計長準備一份關於三藩市包容性房屋規定的經濟可行性報告並須在2016年7月31日前提出建議，以及其後每三年亦須如此；並設立包容性房屋技術諮詢委員會（Inclusionary Housing Technical Advisory Committee）就經濟可行性建議書訂立最大限度經濟（性）兼切實可行的住房規定提議，並訂明諮詢委員會的成員資格與職責；依據「加州環境質量法」（California Environmental Quality Act）明確規劃局的決定；並依據規劃法規第302條作出有關一般性裁斷，有關公共所需、利便設施及福利的裁斷，以及與總體計劃、規劃法規第101.1條的八項優先政策相一致的裁斷。

  
for Angela Calvillo  
市參事委員會書記

日期/張貼: March 31, 2016  
公佈: April 8 & 14, 2016





Member, Board of Supervisors  
District 10



City and County of San Francisco

ORIG: COB  
LA Comm Clerk  
Log Rep

**MALIA COHEN**  
**馬莉亞郭嫻**

---

DATE: April ~~18~~<sup>21</sup>, 2016  
TO: Angela Calvillo  
Clerk of the Board of Supervisors  
FROM: Supervisor Malia Cohen  
RE: Land Use and Transportation Committee  
COMMITTEE REPORT

---

Pursuant to Board Rule 4.20, as Chair of the Land Use and Transportation Committee, I have deemed the following matter is of an urgent nature and request it be considered by the full Board on April 26 2016, as a Committee Report:

**160255 Planning, Administrative Codes – Inclusionary Affordable Housing Fee and Requirements; Preparation of Economic Feasibility Report; Establishing Inclusionary Housing Technical Advisory Committee**

Ordinance amending the Planning and Administrative Codes to increase the Inclusionary Affordable Housing fee and other requirements; require the Controller to prepare an economic feasibility report regarding the City’s inclusionary housing requirements and make recommendations by July 31, 2016 and every three years thereafter; and establish the Inclusionary Housing Technical Advisory Committee to provide advice about the economic feasibility of proposals to set maximum economically viable inclusionary housing requirements, and set forth the membership and duties of the Advisory Committee; affirming the Planning Department’s determination under the California Environmental Quality Act; making findings of public convenience, necessity, and welfare 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.

This matter will be heard in the Land Use and Transportation Committee Regular Meeting on April 25, 2016, at 1:30 p.m.

Sincerely,  
*Malia*  
Malia Cohen  
Member, Board of Supervisors

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2016 APR 21 AM 8:53  
BY: *[Signature]*



Print Form

Received in Board  
4/12/16

# Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [ ] inquires"
- 5. City Attorney request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. [ 160255 ]
- 9. Reactivate File No. [ ]
- 10. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission     Youth Commission     Ethics Commission
- Planning Commission     Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.**

**Sponsor(s):**

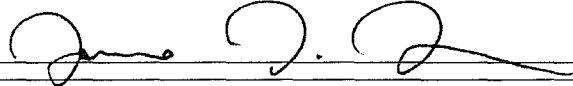
Supervisors Kim and Peskin, *Yee 3/15 Intro*

**Subject:**

Planning, Administrative Codes - Inclusionary Affordable Housing Fee and Requirements; Preparation of Economic Feasibility Report; Establishing Inclusionary Housing Technical Advisory Committee

**The text is listed below or attached:**

See attached.

Signature of Sponsoring Supervisor: 

**For Clerk's Use Only:**

