

1 [Extend Inclusionary Housing Requirements to Buildings of Three Units or More and Set  
2 Percentage Requirement for Three and Four Unit Projects.]

3 **Ordinance approving amendments to Planning Code Sections 315.3 and 315.4 of the**  
4 **Residential Inclusionary Affordable Housing Program to extend the requirements of the**  
5 **Program from all housing projects of five (5) units or more to all housing projects of**  
6 **three (3) units or more, and establishing the percentage of affordable housing required**  
7 **for residential developments of three or four units.**

8 Note: Additions are *single-underline italics Times New Roman*;  
9 deletions are ~~*strikethrough italics Times New Roman*~~.  
10 Board amendment additions are double underlined.  
11 Board amendment deletions are ~~strikethrough normal~~.

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

13 Section 1. The San Francisco Planning Code is hereby amended by amending Section  
14 Sections 315.3 and 315.4, to read as follows:

15 Sec. 315.3 APPLICATION

16 (a) This Ordinance shall apply to any housing project that consists of ~~five~~ three or  
17 more units where an individual project or a phased project is to be undertaken and where the  
18 total undertaking comprises a project with ~~five~~ three or more units, even if the development is  
19 on separate but adjacent lots; and

20 (1) Does not require Planning Commission approval as a conditional use or planned  
21 unit development;

22 (2) Requires Planning Commission approval as a conditional use or planned unit  
23 development;

24 (3) Consists of live/work units as defined by Planning Code Section 102.13; or  
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1           (4)     Requires Planning Commission approval of replacement housing destroyed by  
2 earthquake, fire or natural disaster only where the destroyed housing included units restricted  
3 under the Residential Inclusionary Housing Program or the City's predecessor inclusionary  
4 housing policy, condominium conversion requirements, or other affordable housing program.

5           (b)     This Ordinance shall apply to all housing projects that have not received a first  
6 site or building permit on or before the effective date of this ordinance with the following  
7 exceptions. Until these application dates take effect as described below, the provisions of the  
8 Ordinance as it exists on July 18, 2006 shall govern.

9           (1)     The amendments to the off-site requirements in Section 315.5(c) and (d) relating  
10 to location and type of off-site housing, and Section 315.4(e) relating to when a developer  
11 shall declare whether it will choose an alternative to the on-site requirement shall apply only to  
12 projects that receive their Planning Commission or Department approval on or after the  
13 effective date of this legislation.

14          (2)     The amendments to the percentage-requirements of this Ordinance that govern  
15 the number of affordable units a housing project is required to provide in Section 315.4(a) and  
16 315.5(a) apply only to housing projects that submit their first application, including an  
17 environmental evaluation application or any other Planning Department or Building  
18 Department application, on or after July 18, 2006. Notwithstanding the foregoing, the  
19 amendments to the percentage-requirements of this Ordinance also apply to any project that  
20 has not received its final Planning Commission or Department approvals before July 18, 2006  
21 for housing projects that receive a Zoning Map amendment or Planning Code text amendment  
22 related to their project approvals that (A) results in a net increase in the number of permissible  
23 residential units, or (B) results in a material increase in the net permissible residential square  
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1 footage. For purposes of subsection B above a material increase shall mean an increase of 5  
2 percent or more, or an increase in 10,000 square feet or more, whichever is less.

3 (3) The amendments in Section 315.1 to the way median income is calculated apply  
4 to any housing project that has not received a first site or building permit by the effective date  
5 of this Ordinance.

6 (4) This Ordinance shall apply to all housing projects of 5 to 9 units that filed their  
7 first application, including an environmental evaluation application or any other Planning  
8 Department application on or after July 18, 2006.

9 (5) This Ordinance shall apply to all housing projects of 3 or 4 units that filed their first  
10 application, including an environmental evaluation application or any other Planning Department  
11 application on or after November 1, 2007

12 (c) This Ordinance shall not apply to:

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

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

20 (3) That portion of a housing project located on property under the jurisdiction of the  
21 San Francisco Redevelopment Agency or the Port of San Francisco where the application of  
22 this Ordinance is prohibited by California or local law;

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1           (4)     That portion of a housing project for which a project applicant can demonstrate  
2     that an impact fee under the Jobs-Housing Linkage Program, commencing with Planning  
3     Code Section 313, has been paid.

4           (d)     Waiver or Reduction:

5           (1)     A project applicant of any project subject to the requirements in this Program  
6     may appeal to the Board of Supervisors for a reduction, adjustment, or waiver of the  
7     requirements based upon the absence of any reasonable relationship or nexus between the  
8     impact of development and either the amount of the fee charged or the inclusionary  
9     requirement.

10          (2)     A project applicant subject to the requirements of this Program who has  
11     received an approved building permit, conditional use permit or similar discretionary approval  
12     and who submits a new or revised building permit, conditional use permit or similar  
13     discretionary approval for the same property may appeal for a reduction, adjustment or waiver  
14     of the requirements with respect to the number of lots or square footage of construction  
15     previously approved.

16          (3)     Any such appeal shall be made in writing and filed with the Clerk of the Board no  
17     later than 15 days after the date the Planning Department sends notice to the project  
18     applicant of the number of affordable units required as provided in Section 315.4(a) and  
19     315.5(a). The appeal shall set forth in detail the factual and legal basis for the claim of waiver,  
20     reduction, or adjustment. The Board of Supervisors shall consider the appeal at the hearing  
21     within 60 days after the filing of the appeal. The appellant shall bear the burden of presenting  
22     substantial evidence to support the appeal, including comparable technical information to  
23     support appellant's position. The decision of the Board shall be by a simple majority vote and  
24     shall be final. If a reduction, adjustment, or waiver is granted, any change in use within the  
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1 project shall invalidate the waiver, adjustment, or reduction of the fee or inclusionary  
2 requirement. If the Board grants a reduction, adjustment or waiver, the Clerk of the Board  
3 shall promptly transmit the nature and extent of the reduction, adjustment or waiver to the  
4 Treasurer.

5 (e) For projects that have received a first site or building permit prior to the effective  
6 date of this legislation, the requirements in effect prior to the effective date of this Ordinance  
7 shall apply.

8 **SECTION 315.4 ON-SITE HOUSING REQUIREMENT AND BENEFITS**

9 Except as provided in Section 315.4(e), all housing projects subject to this Program  
10 through the application of Section 315.3 shall be required to construct on-site units subject to  
11 the following requirements:

12 (a) Number of Units:

13 (1)

14 (A) For any housing development of any height that is located in an area with a  
15 specific inclusionary housing requirement, the more specific inclusionary housing requirement  
16 shall apply.

17 (B) Buildings 120 feet in height and under or buildings of over 120 feet in height that  
18 do not meet the criteria in subsection (C) below: Except as provided in Subsection (C) below,  
19 the Planning Department shall require for housing projects of five units or more covered by  
20 Section 315.3(a)(1), as a condition of Planning Department approval of a project's building  
21 permit, and by Section 315.3(a)(2), (3) and (4), as a Condition of Approval of a conditional use  
22 or planned unit development permit or as a condition of Planning Department approval of a  
23 live/work project, that 15% of all units constructed on the project site shall be affordable to  
24 qualifying households so that a project applicant must construct .15 times the total number of  
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1 units produced in the principal project beginning with the construction of the fifth unit. For  
2 housing projects of three or four units covered by Section 315.3(a)(1), as a condition of Planning  
3 Department approval of a project's building permit, and by Section 315.3(a)(2), (3) and (4), as a  
4 Condition of Approval of a conditional use or planned unit development permit or as a condition of  
5 Planning Department approval of a live/work project, that 10% of all units constructed on the project  
6 site shall be affordable to qualifying households so that a project applicant must construct .1 times the  
7 total number of units produced in the principal project beginning with the construction of the third unit.

8 If the total number of units is not a whole number, the project applicant shall round up to the  
9 nearest whole number for any portion of .5 or above.

10 The Planning Department shall provide written notice by mail to the project applicant of  
11 the number of affordable units which shall be required within 30 days of approval by the  
12 Planning Department or Planning Commission.

13 (C) Buildings of over 120 feet in height. Except as provided in subsection (A) above,  
14 the requirements of this Subsection shall apply to any project that is over 120 feet in height  
15 and does not require a Zoning Map amendment or Planning Code text amendment related to  
16 its project approvals which (i) results in a net increase in the number of permissible residential  
17 units, or (ii) results in a material increase in the net permissible residential square footage as  
18 defined in Section 315.3(b)(2) or has not received or will not receive a zoning map  
19 amendment or Planning Code text amendment as part of an Area Plan adopted after January  
20 1, 2006 which (i) results in a net increase in the number of permissible residential units, or (ii)  
21 results in a material increase in the net permissible residential square footage as defined in  
22 Section 315.3(b)(2). The Planning Department shall require for housing projects covered by  
23 this Subsection and Section 315.3(a)(1), as a condition of Planning Department approval of a  
24 project's building permit, or by this Subsection and by Section 315.3(a)(2), (3) and (4), as a

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1 Condition of Approval of a conditional use or planned unit development permit or as a  
2 condition of Planning Department approval of a live/work project, that 12% of all units  
3 constructed on the project site shall be affordable to qualifying households so that a project  
4 applicant must construct .12 times the total number of units produced in the principal project  
5 beginning with the construction of the fifth unit. If the total number of units is not a whole  
6 number, the project applicant shall round up to the nearest whole number for any portion of .5  
7 or above. Consistent with the conclusions of the Mayor's Office of Housing study authorized in  
8 Section 315.8(e), the Mayor's Office of Housing shall recommend and the Board of  
9 Supervisors shall consider whether the requirements of this Subsection for buildings of over  
10 120 feet in height shall continue or expire after approximately 5 years. The Planning  
11 Department shall provide written notice by mail to the project applicant of the number of  
12 affordable units which shall be required within 30 days of approval by the Planning  
13 Department or Planning Commission. This notice shall also be sent to project applicants who  
14 elect to pay an in-lieu fee.

15 (2) If the principal project has resulted in demolition, conversion, or removal of  
16 affordable housing units renting or selling to households at income levels and/or for a rental  
17 rate or sales price below corresponding income thresholds for units affordable to qualifying  
18 households, the Planning Commission shall require that the project applicant replace the  
19 number of affordable units removed with units of a comparable number of bedrooms or  
20 provide that 15% of all units constructed as part of the new project shall be affordable to  
21 qualifying households, whichever is greater.

22 (b) Timing of Construction: On-site inclusionary housing required by this Section  
23 315.4 must be constructed, completed, and ready for occupancy no later than the market rate  
24 units in the principal project.

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1 (c) Type of Housing: The type of affordable housing needed in San Francisco is  
2 documented in the City's Consolidated Plan and the Residence Element of the General Plan.  
3 In general, affordable units constructed under this Section 315.4 shall be comparable in  
4 number of bedrooms, exterior appearance and overall quality of construction to market rate  
5 units in the principal project. The Notice of Special Restrictions or Conditions of Approval shall  
6 include a specific number of units at specified unit sizes for affordable units. The square  
7 footage of affordable units and interior features in affordable units do not need to be same as  
8 or equivalent to those in market rate units in the principal project, so long as they are of good  
9 quality and are consistent with then-current standards for new housing. Where applicable,  
10 parking shall be offered to the affordable units subject to the terms and conditions of the  
11 Department's policy on unbundled parking for affordable housing units as specified in the  
12 Procedures Manual and amended from time to time. Unless provided otherwise by the  
13 Mayor's Office of Housing in writing, if the units in the market rate portion of the development  
14 are ownership units, then the affordable units shall be ownership units and if the market rate  
15 units are rental units, then the affordable units shall be rental units.

16 (d) Marketing the Units: The Mayor's Office of Housing shall be responsible for  
17 overseeing and monitoring the marketing of affordable units under this Section. In general, the  
18 marketing requirements and procedures shall be contained in the Procedures Manual as  
19 amended from time to time and shall apply to the affordable units in the project. The Mayor's  
20 Office of Housing may develop occupancy standards for units of different bedroom sizes in  
21 the Procedures Manual in order to promote an efficient allocation of affordable units. The  
22 Mayor's Office of Housing may require in the Procedures Manual that prospective purchasers  
23 complete homebuyer education training or fulfill other requirements. The Notice of Special  
24 Restrictions or Conditions of Approval shall specify that the marketing requirements and  
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1 procedures contained in the Procedures Manual as amended from time to time, shall apply to  
2 the affordable units in the project.

3 (1) Lottery: At the initial offering of affordable units in a housing project, the Mayor's  
4 Office of Housing must require the use of a public lottery approved by the Mayor's Office of  
5 Housing to select purchasers or tenants. The Mayor's Office of Housing shall also hold a  
6 general public lottery and maintain and utilize a list generated from this lottery or utilize a list  
7 generated from a recent lottery at another similar housing project to fill spaces in units that  
8 become available for re-sale or occupancy in any housing project subject to this ordinance  
9 after the initial offering. The list shall be updated from time to time but in no event less than  
10 annually to ensure that it remains current.

11 (2) Preferences: The Mayor's Office of Housing shall create a lottery system that  
12 gives preference to people who live or work in San Francisco. MOH shall propose policies and  
13 procedures for implementing this preference to the Planning Commission for inclusion in the  
14 Procedures Manual. Otherwise, it is the policy of the Board of Supervisors to treat all  
15 households equally in allocating affordable units under this Program.

16 (e) Alternatives: The project sponsor may elect to satisfy the requirements of  
17 Section 315.4 by one of the alternatives specified in this Section. The project sponsor has the  
18 choice between the alternatives and the Planning Commission may not require a specific  
19 alternative. The project sponsor must elect an alternative before it receives project approvals  
20 from the Planning Commission or Planning Department and that alternative will be a condition  
21 of project approval. Notwithstanding the foregoing, if a project sponsor elects an alternative  
22 other than the on-site alternative, the project sponsor still has the option to choose the on-site  
23 alternative up to the issuance of the first site or building permit. If a project sponsor fails to  
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1 elect an alternative before project approval by the Planning Commission or Planning  
2 Department, the provisions of Section 315.4 shall apply. The alternatives are as follows:

3 (1) Constructing units affordable to qualifying households at an alternative site  
4 within the City and County of San Francisco pursuant to the requirements of Section 315.5.

5 (2) Paying an in lieu fee to the Mayor's Office of Housing pursuant to the  
6 requirements of Section 315.6.

7 (3) Any combination of construction of on-site units as provided in Section 315.4,  
8 off-site units as provided in Section 315.5, or payment of an in lieu fee as provided in Section  
9 315.6, provided that the project applicant constructs or pays the fee at the appropriate  
10 percentage or fee level required for that option.

11 (4) Using California Debt Limit Allocation Committee (CDLAC) tax-exempt bonds  
12 under the requirements of Section 315.5(g).

13 (f) Benefits: If the project applicant elects to satisfy the inclusionary housing  
14 requirements through the production of on-site inclusionary housing in this Section 315.4, the  
15 project applicant shall at his or her option, be eligible to receive a refund of the following fees:  
16 a conditional use or other fee required by Planning Code Section 352, if applicable; an  
17 environmental review fee required by Administrative Code Section 31.46B, if applicable; a  
18 building permit fee required by the Building Code and by Planning Code Section 355 for the  
19 portion of the housing project that is affordable. The project applicant shall pay the building  
20 fee for the portion of the project that is market-rate.

21 The Controller shall refund fees from any appropriated funds to the project applicant on  
22 application by the project applicant. The application must include a copy of the certificate of  
23 occupancy for all units affordable to a qualifying household required by the Inclusionary  
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1 Affordable Housing Program. It is the policy of the Board of Supervisors to appropriate money  
2 for this purpose from the General Fund.

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5 APPROVED AS TO FORM:  
6 DENNIS J. HERRERA, City Attorney

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By: \_\_\_\_\_  
AUDREY PEARSON  
Deputy City Attorney

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