

1 [Extend Inclusionary Housing Requirements to Buildings of Two Units or More.]

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3 **Ordinance approving amendments to Planning Code Sections 315.3 and 315.6 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 **two (2) units or more.**

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

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

11 Section 1. The San Francisco Planning Code is hereby amended by amending  
12 Sections 315.3 and 315.6, to read as follows:

13 SEC. 315.3. APPLICATION.

14 (a) This Ordinance shall apply to any housing project that consists of ~~five~~two or more units  
15 where an individual project or a phased project is to be undertaken and where the total  
16 undertaking comprises a project with ~~10~~ two or more units, even if the development is on  
17 separate but adjacent lots; and

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

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

22 (3) Consists of live/work units as defined by Planning Code Section 102.13; or

23 (4) Requires Planning Commission approval of replacement housing destroyed by  
24 earthquake, fire or natural disaster only where the destroyed housing included units restricted  
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1 under the Residential Inclusionary Housing Program or the City's predecessor inclusionary  
2 housing policy, condominium conversion requirements, or other affordable housing program.

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

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

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

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1 (3) The amendments in Section 315.1 to the way median income is calculated apply to any  
2 housing project that has not received a first site or building permit by the effective date of this  
3 Ordinance.(4) This Ordinance shall apply to all housing projects of 5 to 9 units that filed their  
4 first application, including an environmental evaluation application or any other Planning  
5 Department application on or after July 18, 2006.

6 (c) This Ordinance shall not apply to:

7 (1) That portion of a housing project located on property owned by the United States or any  
8 of its agencies or leased by the United States or any of its agencies for a period in excess of  
9 50 years, with the exception of such property not used exclusively for a governmental  
10 purpose;

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

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

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

20 (d) Waiver or Reduction:

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

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

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

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

22 **SEC. 315.6. COMPLIANCE THROUGH IN-LIEU FEE.**  
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1 If the project applicant elects, pursuant to Section 315.4(e)(2) that the project applicant will  
2 pay an in lieu fee to satisfy the requirements of this Program, the project applicant shall meet  
3 the following requirements:

4 (a) By paying an in-lieu fee to the Treasurer for use by the Mayor's Office of  
5 Housing for the purpose of constructing at an alternate site the type of housing  
6 required by Section 315.5 within the City and County of San Francisco.

7 (b) The amount of the fee which may be paid by the project applicant subject to  
8 this Ordinance in-lieu of developing and providing housing required by Section  
9 315.4 shall be determined by Mayor's Office of Housing ("MOH") utilizing the  
10 following factors:

11 (1) The number of units required by Section 315.5 if the project applicant  
12 were to elect to meet the requirements of this section by off-site housing  
13 development. For the purposes of this section, developers of ~~5~~ 2 - 9 units  
14 may elect to calculate the unit requirement using the direct fractional  
15 result of the total number of units multiplied by the percentage of off-site  
16 housing required, rather than rounding up the resulting figure as required  
17 by Section 315.5(a).

18 (2) The affordability gap as identified in the "Jobs Housing Nexus  
19 Analysis" prepared by Keyser Marston Associates, Inc. in June 1997 for  
20 the Maximum Annual Rent or Maximum Purchase Price for the equivalent  
21 unit sizes.

22 (3) Annual adjustments to the affordability gap based upon the  
23 percentage increase or decrease in the Average Area Purchase Price  
24 Safe Harbor Limitations for New Single Family Residences for the San  
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1                   Francisco Primary Metropolitan Statistical ("PMSA") established by the  
2                   Internal Revenue Service ("IRS") since January 1st of the previous year;  
3                   provided however, that in the event that said percentage increase  
4                   exceeds 20 percent, the in-lieu fee shall be increased by 20 percent, and  
5                   the difference between the percentage increase in the Average Area  
6                   Purchase Price and 20 percent shall be carried over and added to the in-  
7                   lieu fee adjustment for the following calendar year. In the event that the  
8                   IRS does not adjust the above figure within 14 months, the Mayor's Office  
9                   of Housing shall authorize and certify a study for adjusting the last  
10                  published IRS figure to be effective until IRS revises the figure.

11                  (4) No later than July 1 of each year, the Mayor's Office of Housing shall  
12                  adjust the in lieu fee payment option and provide a report on its  
13                  adjustment to the Board of Supervisors.

14                  (c) Within 30 days of determining the amount of the fee to be paid by the  
15                  applicant, MOH shall transmit the amount of the fee to the Treasurer. Prior to the  
16                  issuance by DBI of the first site or building permit for the project applicant, the  
17                  project applicant must notify the Planning Department and MOH in writing that it  
18                  has paid in full the sum required to the Treasurer. If the project applicant fails by  
19                  the applicable date to demonstrate to the Planning Department that the project  
20                  applicant has paid the applicable sum in full to the Treasurer, DBI shall deny any  
21                  and all site or building permits or certificates of occupancy for the development  
22                  project until the Planning Department notifies DBI and MOH that such payment  
23                  has been made.

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1 (d) Upon payment of the fee in full to the Treasurer and upon request of the  
2 project applicant, the Treasurer shall issue a certification that the fee has been  
3 paid. The project applicant shall present such certification to the Planning  
4 Department, DBI and MOH prior to the issuance by DBI of the first site or  
5 building permit or certificate of occupancy for any development subject to this  
6 Section. Any failure of the Treasurer, DBI, or Planning Department to give any  
7 notice under this Section shall not relieve a project applicant from compliance  
8 with this Section. Where DBI inadvertently issues a site or building permit  
9 without payment of the fee, DBI shall not issue any certificate of occupancy for  
10 the project without notification from the Treasurer that the fee required by this  
11 Section has been paid. The procedure set forth in this subsection is not intended  
12 to preclude enforcement of the provisions of this section pursuant to any other  
13 section of this Code, or other authority under the laws of the State of California.

14 (e) All monies contributed pursuant to this section shall be deposited in the  
15 special fund maintained by the Controller called the Citywide Affordable Housing  
16 Fund. The receipts in the Fund are hereby appropriated in accordance with law  
17 to be used to (1) increase the supply of housing affordable to qualifying  
18 households subject to the conditions of this Section, and (2) pay the expenses of  
19 MOH in connection with monitoring and administering compliance with the  
20 requirements of the Program. Monitoring and administrative expenses shall be  
21 appropriated through the annual budget process or supplemental appropriation  
22 for MOH. The fund shall be administered and expended by MOH, which shall  
23 have the authority to prescribe rules and regulations governing the Fund which  
24 are consistent with this Section.  
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1 (f) Lien Proceedings.

2 (1) A project applicant's failure to comply with the requirements of this  
3 Section shall constitute cause for the City to record a lien against the  
4 development project in the sum of the in-lieu fee required under this  
5 Ordinance, as adjusted under this Section.

6 (2) If, for any reason, the fee imposed pursuant to this Ordinance  
7 remains unpaid following issuance of the permit, the Treasurer shall  
8 initiate proceedings to impose the lien in accordance with the procedures  
9 set forth in Chapter 10, Article XX of the San Francisco Administrative  
10 Code to make the entire unpaid balance of the fee, including interest, a  
11 lien against all parcels used for the development project. The Treasurer  
12 shall send all notices required by that Article to the owner of the property  
13 as well as the sponsor. The Treasurer shall also prepare a preliminary  
14 report notifying the sponsor of a hearing to confirm such report by the  
15 Board of Supervisors at least 10 days before the date of the hearing. The  
16 report to the sponsor shall contain the sponsor's name, a description of  
17 the sponsor's development project, a description of the parcels of real  
18 property to be encumbered as set forth in the Assessor's Map Books for  
19 the current year, a description of the alleged violation of this Ordinance,  
20 and shall fix a time date and place for hearing. The Treasurer shall cause  
21 this report to be mailed to the sponsor and each owner of record of the  
22 parcels of real property subject to lien. Except for the release of lien  
23 recording fee authorized by Administrative Code Section 10.237, all sums  
24 collected by the Tax Collector pursuant to this Ordinance shall be held in  
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1 trust by the Treasurer and deposited in the Citywide Affordable Housing  
2 Fund established in Section 313.12.

3 (3) Any notice required to be given to a sponsor or owner shall be  
4 sufficiently given or served upon the sponsor or owner or all purposes  
5 hereunder if personally served upon the sponsor or owner or if deposited,  
6 postage prepaid, in a post office letterbox addressed in the name of the  
7 sponsor or owner at the official address of the sponsor or owner  
8 maintained by the Tax Collector for the mailing of tax bills or, if no such  
9 address is available, to the sponsor at the address of the development  
10 project, and to the applicant for the site or building permit at the address  
11 on the permit application.

12 (g) In the event a building permit expires prior to completion of the work on and  
13 commencement of occupancy of a housing project so that it will be necessary to  
14 obtain a new permit to carry out any development, the obligation to comply with  
15 this Program shall be cancelled, and any in-lieu fee previously paid to the  
16 Treasurer shall be refunded. If and when the sponsor applies for a new permit,  
17 the procedures set forth in this Ordinance regarding construction of housing or  
18 payment of the in-lieu fee shall be followed.

19 (h) In the event that a development project for which an in-lieu fee imposed  
20 under this Section has been fully paid is demolished or converted to a use or  
21 uses not subject to this ordinance prior to the expiration of its estimated useful  
22 life, the City shall refund to the sponsor a portion of the amount of an in-lieu fee  
23 paid. The portion of the fee refunded shall be determined on a pro rata basis  
24 according to the ratio of the remaining useful life of the project at the time of  
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1 demolition or conversion in relation to its total useful life. For purposes of this  
2 Ordinance, the useful life of a development project shall be 50 years.

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

6 By: SUSAN CLEVELAND-KNOWLES  
7 Deputy City Attorney

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