

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

MEMORANDUM

TO: Kate Hartley, Acting Director, Mayor's Office of Housing and Community Development
Robert Collins, Executive Director, Rent Board

FROM:  Alisa Somera, Legislative Deputy Director
Land Use and Transportation Committee

DATE: November 22, 2017

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Peskin on November 14, 2017:

File No. 171193

Ordinance amending the Planning Code to amend the Inclusionary Housing Ordinance to remove the requirement that on-site and off-site inclusionary units within a new development be ownership units rather than rental units, or alternatively, that the project sponsor submit a contract demonstrating the proposed on-site or off-site units are exempt from the Costa-Hawkins Rental Housing Act; affirming the Planning Department's determination under the California Environmental Quality Act; 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: alisa.somera@sfgov.org.

c: Eugene Flannery, Mayor's Office of Housing and Community Development
Amy Chan, Mayor's Office of Housing and Community Development

1 [Planning Code - Inclusionary Affordable Housing Program]

2
3 **Ordinance amending the Planning Code to amend the Inclusionary Housing Ordinance**
4 **to remove the requirement that on-site and off-site inclusionary units within a new**
5 **development be ownership units rather than rental units, or alternatively, that the**
6 **project sponsor submit a contract demonstrating the proposed on-site or off-site units**
7 **are exempt from the Costa-Hawkins Rental Housing Act; affirming the Planning**
8 **Department's determination under the California Environmental Quality Act; and**
9 **making findings of consistency with the General Plan, and the eight priority policies of**
10 **Planning Code, Section 101.1.**

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

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

19 Section 1.

20 (a) The Planning Department has determined that the actions contemplated in this
21 ordinance comply with the California Environmental Quality Act (California Public Resources
22 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
23 Supervisors in File No. ____ and is incorporated herein by reference. The Board affirms this
24 determination.

25 (b) On _____, the Planning Commission, in Resolution No. _____,
Planning Department found that the actions contemplated in this ordinance are consistent, on

1 balance, with the City's General Plan and eight priority policies of Planning Code Section
2 101.1. The Board adopts these findings as its own. A copy of said Resolution is on file with
3 the Clerk of the Board of Supervisors in File No. _____, and is incorporated herein by
4 reference.

5
6 Section 2. The Planning Code is hereby amended by revising Sections 415.3, 415.4,
7 415.5, 415.6, and 415.7, to read as follows:

8 **SEC. 415.3. APPLICATION.**

9 * * * *

10 (b) Any development project that has submitted a complete Environmental Evaluation
11 application prior to January 12, 2016 shall comply with the Affordable Housing Fee
12 requirements, the on-site affordable housing requirements or the off-site affordable housing
13 requirements, and all other provisions of Section 415.1 *et seq.*, as applicable, in effect on
14 January 12, 2016. For development projects that have submitted a complete Environmental
15 Evaluation application on or after January 1, 2013, the requirements set forth in Planning
16 Code Sections 415.5, 415.6, and 415.7 shall apply to certain development projects consisting
17 of 25 dwelling units or more during a limited period of time as follows:

18 * * * *

19 (2) If a development project pays the Affordable Housing Fee or *is eligible and*
20 elects to provide off-site affordable housing, the development project shall provide the
21 following fee amount or amounts of off-site affordable housing during the limited periods of
22 time set forth below.

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

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

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

8 (D) Any development project that submits an Environmental Evaluation
9 application after January 12, 2016 shall comply with the requirements set forth in Sections
10 415.5, 415.6, and 415.7, as applicable.

11 (E) Notwithstanding the provisions set forth in subsections (b)(2)(A), (B)
12 and (C) of this Section 415.3, for development projects proposing buildings over 120 feet in
13 height, as measured under the requirements set forth in the Planning Code, except for
14 buildings up to 130 feet in height located both within a special use district and within a height
15 and bulk district that allows a maximum building height of 130 feet, such development projects
16 shall pay a fee or provide off-site housing in an amount equivalent to 30% of the number of
17 units constructed on-site. Any buildings up to 130 feet in height located both within a special
18 use district and within a height and bulk district that allows a maximum building height of 130
19 feet shall comply with the provisions of subsections (b)(2)(A), (B) and (C) of this Section 415.3
20 during the limited periods of time set forth therein.

21 (F) Notwithstanding the provisions set forth in subsections (b)(2)(A), (B)
22 and (C) of this Section 415.3, if a development project is located in a UMU Zoning District or
23 in the South of Market Youth and Family Zoning District, and pays the Affordable Housing Fee
24 or ~~is eligible and~~ elects to provide off-site affordable housing pursuant to Section 415.5(g), or
25 elects to comply with a land dedication alternative, such development project shall comply

1 with the fee, off-site or land dedication requirements applicable within such Zoning Districts,
2 as they existed on January 12, 2016, plus the following additional amounts for the Affordable
3 Housing Fee or for land dedication or off-site affordable units: (i) if the development project
4 has submitted a complete Environmental Evaluation application prior to January 1, 2014, the
5 Project Sponsor shall pay an additional fee, or provide additional land dedication or off-site
6 affordable units, in an amount equivalent to 5% of the number of units constructed on-site; (ii)
7 if the development project has submitted a complete Environmental Evaluation application
8 prior to January 1, 2015, the Project Sponsor shall pay an additional fee, or provide additional
9 land dedication or off-site affordable units, in an amount equivalent to 7.5% of the number of
10 units constructed on-site; or (iii) if the development project has submitted a complete
11 Environmental Evaluation application on or prior to January 12, 2016, the Project Sponsor
12 shall pay an additional fee, or provide additional land dedication or off-site affordable units, in
13 an amount equivalent to 10% of the number of units constructed on-site. Notwithstanding the
14 foregoing, a development project shall not pay a fee or provide off-site units in a total amount
15 greater than the equivalent of 30% of the number of units constructed on-site.

16 (G) Any development project consisting of 25 dwelling units or more that
17 has submitted a complete Environmental Evaluation application on or prior to January 12,
18 2016, and ~~is eligible and~~ elects to provide off-site affordable housing, may provide off-site
19 affordable housing by acquiring an existing building to fulfill all or part of the requirements set
20 forth in this Section 415.3 and in Section 415.7 with an equivalent amount of units as specified
21 in this Section 415.3(b)(2), as reviewed and approved by the Mayor's Office of Housing and
22 Community Development and consistent with the parameters of its Small Sites Acquisition
23 and Rehabilitation Program, in conformance with the income limits for the Small Sites
24 Program.

25 * * * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SEC. 415.4. IMPOSITION OF REQUIREMENTS.

* * * *

(c) **Payment of Affordable Housing Fee or Project Sponsor's *Eligibility for and Selection of Alternative.*** Prior to issuance of first construction document for a development project subject to the requirements of Section 415.1 *et seq.*, the sponsor of the development project shall pay the Affordable Housing Fee set forth in Section 415.5 or, *if eligible to meet the requirements through an Alternative,* shall select one of the options listed in Section 415.5(f).

* * * *

SEC. 415.5. AFFORDABLE HOUSING FEE.

* * * *

(g) **Alternatives to Payment of Affordable Housing Fee.**

(1) **Eligibility:** A project sponsor must pay the Affordable Housing Fee unless it *qualifies for and* chooses to meet the requirements of the Program through an Alternative provided in this subsection (g). The project sponsor may choose one of the following Alternatives:

(A) **Alternative #1: On-Site Units.** Project sponsors may elect to construct units affordable to qualifying households on-site of the principal project pursuant to the requirements of Section 415.6.

(B) **Alternative #2: Off-Site Units.** Project sponsors may elect to construct units affordable to qualifying households at an alternative site within the City and County of San Francisco pursuant to the requirements of Section 415.7.

(C) **Alternative #3: Small Sites.** Qualifying project sponsors may elect to fund buildings as set forth in Section 415.7-1.

1 (D) Alternative #4: Combination. Project sponsors may elect any
2 combination of payment of the Affordable Housing Fee as provided in Section 415.5,
3 construction of on-site units as provided in Section 415.6, or construction of off-site units as
4 provided in Section 415.7, provided that the project applicant constructs or pays the fee at the
5 appropriate percentage or fee level required for that option. Development Projects that have
6 submitted a complete Environmental Evaluation application after January 12, 2016 that are
7 providing on-site units under Section 415.6 and that qualify for and receive additional density
8 under California Government Code Section 65915 et seq. shall use Alternative #4 to pay the
9 Affordable Housing Fee on any additional units or square footage authorized under Section
10 65915.

11 ~~(2) Qualifications: If a project sponsor wishes to comply with the Program through one~~
12 ~~of the Alternatives described in subsection(g)(1) rather than pay the Affordable Housing Fee, they must~~
13 ~~demonstrate that they qualify for the Alternative to the satisfaction of the Department and MOHCD. A~~
14 ~~project sponsor may qualify for an Alternative by the following methods:~~

15 ~~(i) Method #1—Ownership Units. All affordable units provided under~~
16 ~~this Program shall be sold as ownership units and will remain ownership units for the life of the~~
17 ~~project. Project sponsors must submit the 'Affidavit of Compliance with the Inclusionary Affordable~~
18 ~~Housing Program' to the Planning Department prior to project approval by the Department or the~~
19 ~~Commission; or~~

20 ~~(ii) Method #2—Government Financial Contribution. Submit to the~~
21 ~~Department a contract demonstrating that the project's on- or off-site units are not subject to the Costa~~
22 ~~Hawkins Rental Housing Act, California Civil Code Section 1954.50 because, under Section~~
23 ~~1954.52(b), it has entered into an agreement with a public entity in consideration for a direct financial~~
24 ~~contribution or any other form of assistance specified in California Government Code Sections 65915~~
25 ~~et seq. and it submits an Affidavit of such to the Department. All such contracts entered into with the~~

1 *City and County of San Francisco must be reviewed and approved by MOHCD and the City Attorney's*
2 *Office. All contracts that involve 100% affordable housing projects in the residential portion may be*
3 *executed by the Mayor or the Director of MOHCD. Any contract that involves less than 100%*
4 *affordable housing in the residential portion, may be executed by either the Mayor, the Director of*
5 *MOHCD or, after review and comment by MOHCD, the Planning Director. A Development Agreement*
6 *under California Government Code Sections 65864 et seq. and Chapter 56 of the Administrative Code*
7 *entered into between a project sponsor and the City and County of San Francisco may, but does not*
8 *necessarily, qualify as such a contract.*

9 (3)(2) The Planning Commission or the Department may not require a project
10 sponsor to select a specific Alternative. If a project sponsor elects to meet the Program
11 requirements through one of the Alternatives described in subsection(g)(1), they must choose
12 it *and demonstrate that they qualify* 30 days prior to any project approvals from the Planning
13 Commission or Department. The Alternative will be a condition of project approval and
14 recorded against the property in an NSR. Any subsequent change by a project sponsor that
15 results in the reduction in the number of on-site units shall require public notice for a hearing
16 and approval from the Planning Commission. *Notwithstanding the foregoing, if a project sponsor*
17 *qualifies for an Alternative described in subsection (g)(1) and elects to construct the affordable units*
18 *on- or off-site, the project sponsor must submit the Affidavit of Compliance with the Inclusionary*
19 *Housing Program based on the fact that the units will be sold as ownership units. A project sponsor*
20 *who has elected to construct affordable ownership units on- or off-site may only elect to pay the*
21 *Affordable Housing Fee up to the issuance of the first construction document if the project sponsor*
22 *submits a new Affidavit establishing that the units will not be sold as ownership units. If a project*
23 *sponsor fails to choose an Alternative before project approval by the Planning Commission or*
24 *Planning Department or if a project becomes ineligible for an Alternative, the provisions of Section*
25 *415.5 shall apply.*

1 ~~(4)(3)~~ If at any time, the project sponsor eliminates the on-site or off-site
2 affordable ~~ownership-only~~ units, then the project sponsor must immediately inform the
3 Department and MOHCD and pay the applicable Affordable Housing Fee plus interest and
4 any applicable penalties provided for under this Code. If a project sponsor requests a
5 modification to its conditions of approval for the sole purpose of complying with this Section,
6 the Planning Commission shall be limited to considering issues related to Section 415 *et seq.*
7 in considering the request for modification.

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

9 If a project sponsor ~~is eligible and~~ elects to provide on-site units pursuant to Section
10 415.5(g), the development project shall meet the following requirements:

11 * * * *

12 (b) Any On-site units provided through this Section 415.6 may be used to qualify for a
13 density bonus under California Government Code Section 65915, any ordinance
14 implementing Government Code Section 65915, or one of the Affordable Housing Bonus
15 Programs contained ~~in Planning Code Section 206 et seq in the ordinance in Board of Supervisors~~
16 ~~File No. 150969~~. An applicant seeking a density bonus under State Law shall provide
17 reasonable documentation to establish eligibility for a requested density bonus, incentive or
18 concession, and waiver or reduction of development standards, as provided for under State
19 Law and as consistent with the process and procedures detailed in a locally adopted
20 ordinance implementing the State Law.

21 * * * *

22 (f) Type of Housing.

23 (1) Equivalency of Units. ~~All on-site units constructed under this Section 415.6 shall~~
24 ~~be provided as ownership units unless the project sponsor meets the eligibility requirement of Section~~
25 ~~415.5(g)~~. In general, affordable units constructed under this Section 415.6 shall be comparable

1 in number of bedrooms, exterior appearance and overall quality of construction to market rate
2 units in the principal project. A Notice of Special Restrictions shall be recorded prior to
3 issuance of the first construction document and shall specify the number, location and sizes
4 for all affordable units required under this subsection (f). The affordable units shall be evenly
5 distributed throughout the building. For buildings over 120 feet in height, as measured under
6 the requirements set forth in the Planning Code, the affordable units may be distributed
7 throughout the lower 2/3 of the building, as measured by the number of floors. The interior
8 features in affordable units should be generally the same as those of the market rate units in
9 the principal project, but need not be the same make, model or type of such item as long as
10 they are of good and new quality and are consistent with then-current standards for new
11 housing. Where applicable, parking shall be offered to the affordable units subject to the terms
12 and conditions of the Department's policy on unbundled parking for affordable housing units
13 as specified in the Procedures Manual and amended from time to time.

14 (2) Minimum Size of Affordable Units. The affordable units are not required to
15 be the same size as the market rate units. For buildings over 120 feet in height, as measured
16 under the requirements set forth in the Planning Code, the average size of the unit type may
17 be calculated for the lower 2/3 of the building, as measured by the number of floors. All units
18 shall be no smaller than the minimum unit sizes set forth by the California Tax Credit
19 Allocation Committee as of May 16, 2017, and no smaller than 300 square feet for studios.
20 The total residential floor area devoted to the affordable units shall not be less than the
21 applicable percentage applied to the total residential floor area of the principal project,
22 provided that a 10% variation in floor area is permitted.

23 * * * *

24 (j) Benefits. If the project sponsor ~~is eligible for and~~ elects to satisfy the affordable
25 housing requirements through the production of on-site affordable housing in this Section

1 415.6 , the project sponsor shall be eligible to receive a refund for only that portion of the
2 housing project which is affordable for the following fees: a Conditional Use authorization or
3 other fee required by Section 352 of this Code, if applicable; an environmental review fee
4 required by Administrative Code Section 31.22, if applicable; a building permit fee required by
5 Section 355 of this Code for the portion of the housing project that is affordable. The project
6 sponsor shall pay the building fee for the portion of the project that is market-rate. An
7 application for a refund must be made within six months from the issuance of the first
8 certificate of occupancy.

9 The Controller shall refund fees from any appropriated funds to the project sponsor on
10 application by the project sponsor. The application must include a copy of the Certificate of
11 Occupancy for all units affordable to a qualifying household required by the Inclusionary
12 Housing Program. It is the policy of the Board of Supervisors to appropriate money for this
13 purpose from the General Fund.

14 **SEC. 415.7. OFF-SITE AFFORDABLE HOUSING**

15 If the project sponsor ~~is eligible and~~ elects pursuant to Section 415.5(g) to provide off-
16 site units to satisfy the requirements of Section 415.1 *et seq.*, the project sponsor shall notify
17 the Planning Department and the Mayor's Office of Housing and Community Development
18 ("MOHCD") of its intent as early as possible. The Planning Department and MOHCD shall
19 provide an evaluation of the project's compliance with this Section 415.7 prior to approval by
20 the Planning Commission or Planning Department. The development project shall meet the
21 following requirements:

22 * * * *

23 (d) Type of Housing: ~~All off-site units constructed under this Section 415.7 shall be provided~~
24 ~~as ownership housing for the life of the project unless the project applicant meets the eligibility~~
25 ~~requirement of Section 415.5(g).~~ Nothing in this Section shall limit a project sponsor from

1 meeting the requirements of this Section through the construction of units in a limited equity or
2 land trust form of ownership if such units otherwise meet all of the requirements for off-site
3 housing. In general, affordable units constructed or otherwise provided under this Section
4 shall be comparable in number of bedrooms, exterior appearance and overall quality of
5 construction to market rate units in the principal project. The total square footage of the off-
6 site affordable units constructed or otherwise provided under this Section shall be no less than
7 the calculation of the total square footage of the on-site market-rate units in the principal
8 project multiplied by the relevant on-site percentage requirement for the project specified in
9 this Section. The Notice of Special Restrictions or conditions of approval shall include a
10 specific number of units at specified unit sizes – including number of bedrooms and minimum
11 square footage – for affordable units. The interior features in affordable units should generally
12 be the same as those of the market rate units in the principal project but need not be the
13 same make, model, or type of such item as long as they are of new and good quality and are
14 consistent with then-current standards for new housing and so long as they are consistent
15 with the "Quality Standards for Off-Site Affordable Housing Units" found in the Procedures
16 Manual. Where applicable, parking shall be offered to the affordable units subject to the terms
17 and conditions of the Department's policy on unbundled parking for affordable housing units
18 as specified in the Procedures Manual and amended from time to time. If the residential units
19 in the principal project are live/work units which do not contain bedrooms or are other types of
20 units which do not contain bedrooms separated from the living space, the off-site units shall
21 be comparable in size according to the following equivalency calculation between live/work
22 and units with bedrooms:

23 * * * *

24
25

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

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

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

15 By: Audrey Pearson
16 AUDREY W. PEARSON
Deputy City Attorney

17 n:\legana\as2017\1800215\01233385.docx
18
19
20
21
22
23
24
25

LEGISLATIVE DIGEST

[Planning Code - Inclusionary Affordable Housing Program]

Ordinance amending the Planning Code to amend the Inclusionary Housing Ordinance to remove the requirement that on-site and off-site inclusionary units within a new development be ownership units rather than rental units, or alternatively, that the project sponsor submit a contract demonstrating the proposed on-site or off-site units are exempt from the Costa-Hawkins Rental Housing Act; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

Existing Law

The Inclusionary Affordable Housing Program, set forth in Planning Code section 415 *et seq.* sets forth a development fee to fund inclusionary housing. Project sponsors must pay a fee, but also have the option to provide affordable units on-site or off-site. On-site or off-site units must be ownership units, unless a developer can demonstrate that the development qualifies for an exemption to the Costa-Hawkins Rental Housing Act, Civil Code section 1954.50 ("Costa-Hawkins"). Generally, Costa-Hawkins prohibits rent control on new residential units, unless the development has received density bonuses or other zoning modifications.

Amendments to Current Law

This ordinance would amend Planning Code section 415 to allow inclusionary on-site and off-site rental units without the need to qualify for an exception to Costa-Hawkins.

Background Information

In *Palmer/Sixth Street Properties v. City of Los Angeles* (2009) 175 Cal.App.4th 1396, the Court of Appeal limited a city's ability to require a developer to include below-market on-site or off-site *rental* units, finding that the price restrictions on such units violated Costa-Hawkins. Governor Brown recently signed Assembly Bill 1505, also known as the "*Palmer Fix*." AB 1505 restores the City's ability to require on-site and off-site inclusionary affordable rental housing without the need for the development to fit into an exception to Costa-Hawkins. The bill specifically allows legislative bodies to adopt ordinances that require, as a condition of development, that the development include a certain percentage of below-market rate rental units, as long as the ordinances provide alternative means of compliance, such as payment of in-lieu fees or provision of off-site units. The bill goes into effect on January 1, 2018.

n:\egana\as2017\1800215\01233394.docx