

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Olson Lee, Director, Mayor's Office of Housing and Community Development  
Nadia Sesay, Interim Executive Director, Office of Community Investment and Infrastructure  
Robert Collins, Executive Director, Rent Board

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

DATE: April 21, 2017

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Land Use and Transportation Committee has received the following substitute legislation, introduced by Supervisor Kim on April 18, 2017:

**File No. 161351**

**Ordinance amending the Planning Code to revise the amount of the Inclusionary Affordable Housing Fee and the On-Site and Off-Site Affordable Housing Alternatives and other Inclusionary Housing requirements; adding reporting requirements for density bonus projects; affirming the Planning Department's determination under the California Environmental Quality Act; making findings under Planning Code, Section 302; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

If 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](mailto:alisa.somera@sfgov.org).

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

1 [Planning Code – Inclusionary Affordable Housing Fee and Requirements]

2  
3 **Ordinance amending the Planning Code to revise the amount of the Inclusionary**  
4 **Affordable Housing Fee and the On-Site and Off-Site Affordable Housing Alternatives**  
5 **and other Inclusionary Housing requirements; adding reporting requirements for**  
6 **density bonus projects; affirming the Planning Department’s determination under the**  
7 **California Environmental Quality Act; making findings under Planning Code, Section**  
8 **302; and making findings of consistency with the General Plan, and the eight priority**  
9 **policies of Planning Code, Section 101.1.**

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

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

18 Section 1. General Findings.

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

24 (b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_, adopted  
25 findings that the actions contemplated in this ordinance are consistent, on balance, with the  
City’s General Plan and eight priority policies of Planning Code Section 101.1. The Board



1 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the  
2 Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.

3 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code  
4 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth  
5 in Planning Commission Resolution No. \_\_\_\_\_ and the Board incorporates such reasons  
6 herein by reference. A copy of Planning Commission Resolution No. \_\_\_\_\_ is on file with the  
7 Board of Supervisors in File No. \_\_\_\_\_.

8  
9 Section 2. Findings About Inclusionary Affordable Housing Requirements.

10 (a) The purpose of this ordinance is to adopt inclusionary or affordable housing  
11 obligations following voter approval of Proposition C at the June 7, 2016 election to revise the  
12 City Charter's inclusionary affordable housing requirements, which won overwhelming support  
13 with 67.9% of the vote, and to update the provisions of the Planning Code that became  
14 effective after the Charter Amendment passed.

15 (b) The San Francisco residential real estate market is one of the most expensive in  
16 the United States. In February 2016, the California Association of Realtors reported that the  
17 median priced home in San Francisco was \$1,437,500. This price is 222% higher than the  
18 State of California median (\$446,460), and 312% higher than the national average  
19 (\$348,900). While the national homeownership rate is approximately 63.8%, only  
20 approximately 37% of San Franciscans own their own home. The majority of market-rate  
21 homes for sale in San Francisco are priced out of the reach of low and moderate income  
22 households. In 2015, the average rent was \$3,524, which is affordable to households earning  
23 over \$126,864.

24 (c) The Board of Supervisors adopted San Francisco's General Plan Housing Element  
25 in March 2015, and the California Housing and Community Development Department certified

1 it on May 29, 2015. The Housing Element states that San Francisco's share of the regional  
2 housing need for years 2015 through 2022 includes 10,873 housing units for very-low and  
3 low-income households and 5,460 units for moderate/middle-income households, and a total  
4 production of 28,870 net new units, with almost 60% to be affordable for very-low, low- and  
5 moderate/middle-income San Franciscans.

6 (d) In November 2016, the City provided the updated Residential Affordable Housing  
7 Nexus Analysis that confirms and quantifies the impact of new market rate housing  
8 development on the demand for affordable housing for households earning up to 120% of  
9 area median income. The study demonstrates a need of 31.8% affordable housing for rental  
10 housing, and 37.6% affordable housing for ownership housing, and a need of 24.1% onsite  
11 affordable housing for rental housing, and 27.3% onsite affordable housing for ownership  
12 housing for households with incomes up to 120% of Area Median Income.

13 (e) In February 2017, the Office of the Controller presented a study of the economic  
14 feasibility of increased inclusionary housing requirements, entitled "Inclusionary Housing  
15 Working Group: Final Report." The Controller's Office, supported by a contracted consulting  
16 team of three firms and advised by a Technical Advisory Committee (TAC) with  
17 representatives appointed by the Mayor and Board of Supervisors, developed several policy  
18 recommendations, including: (1) that the City should impose different inclusionary housing  
19 requirements on rental and for-sale (condominium) properties; (2) that the City could set the  
20 initial onsite requirements at a maximum feasible amount of 18% for rental projects and 20%  
21 for ownership projects; (3) that the City may adopt a 15-year schedule of increases to the  
22 inclusionary housing rate, at a rate of 0.5% increase each year; and (4) that the City should  
23 revise the schedule of Inclusionary housing fees to provide a more equivalent cost for  
24 developers as the on-site requirements. The Controller's Office recommended updating the  
25



1 fee percentage to 23% and 28% to create an equivalency to the recommended 18% and 20%  
2 on-site requirements, with the City conducting the specific calculation of the fee itself.

3 (f) The Controller further acknowledged that application of the state-provided density  
4 bonus could make a difference in the financial feasibility of housing development projects.

5 (g) In an effort to support a mix of both ownership project and rental projects, the City  
6 is providing a direct financial contribution to project sponsors who agree to rent units for a  
7 period of 30 years. The direct financial contribution is in the form of a reduction in the  
8 applicable affordable housing requirement.

9  
10 Section 3. The Planning Code is hereby amended by revising Sections 415.2, 415.3,  
11 415.5, 415.6, and 415.7, and adding a new Section 415.11, to read as follows:

12 **SEC. 415.2 DEFINITIONS.**

13 See Section 401 of this Article. For purposes of Sections 415.3 et seq., "low income"  
14 households shall be defined as households whose total household income ~~does not exceed 55%~~  
15 is 40% to 80% of Area Median Income for purposes of renting an affordable unit, or 80% to  
16 100% of Area Median Income for purposes of purchasing an affordable unit, and "moderate  
17 income" and "middle income" households shall mean households whose total household  
18 income ~~does not exceed 100%~~ is 80% to 120% of Area Median Income for purposes of renting an  
19 affordable unit, or ~~120%~~ 100% to 140% of Area Median Income for purposes of purchasing an  
20 affordable unit. The Small Sites Fund, defined in Section 415.5(f)(2), and the Small Sites  
21 Program may use Affordable Housing Fees to acquire sites and buildings consistent with the  
22 income parameters of the Programs, as periodically updated and administered by MOHCD.

23 "Owned Unit" shall mean a dwelling unit that is a condominium, stock cooperative, community  
24 apartment or detached single family home. The owner or owners of an owned unit must occupy the unit  
25 as their primary residence.

1           “Rental Housing Project” shall mean a housing project consisting solely of Rental Units, as  
2 defined in Section 401, which meets the following requirements:

3           (1) The units shall be rental housing for not less than 30 years from the issuance of the  
4 certificate of occupancy pursuant to an agreement between the developer and the City. This agreement  
5 shall be in accordance with applicable State law governing rental housing. All such agreements  
6 entered into with the City must be reviewed and approved by the Planning Director and the City  
7 Attorney’s Office, and may be executed by the Planning Director;

8           (2) The agreement shall be recorded against the property prior to issuance of the  
9 certificate of occupancy.

10  
11           **SEC. 415.3. APPLICATION.**

12           \* \* \* \*

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

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



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

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

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

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

13 (E) Notwithstanding the provisions set forth in subsections (b)(1)(A), (B)  
14 and (C) of this ~~s~~Section 415.3, if a development project is located in a UMU Zoning District or  
15 in the South of Market Youth and Family Zoning District, and is eligible and elects to provide  
16 on-site units pursuant to Section 415.5(g), such development project shall comply with the on-  
17 site requirements applicable within such Zoning Districts, as they existed on January 12,  
18 2016, plus the following additional amounts of on-site affordable units: (i) if the development  
19 project has submitted a complete Environmental Evaluation application prior to January 1,  
20 2014, the Project Sponsor shall provide additional affordable units in the amount of 1% of the  
21 number of units constructed on-site; (ii) if the development project has submitted a complete  
22 Environmental Evaluation application prior to January 1, 2015, the Project Sponsor shall  
23 provide additional affordable units in the amount of 1.5% of the number of units constructed  
24 on-site; or (iii) if the development project has submitted a complete Environmental Evaluation  
25

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

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

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

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

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

24 (C) Any development project that has submitted a complete  
25 Environmental Evaluation application on or prior to January 12, 2016 shall pay a fee or



1 provide off-site housing in an amount equivalent to 30% of the number of units constructed  
2 on-site.

3 (D) Any development project that submits an Environmental Evaluation  
4 application after January 12, 2016 shall comply with the requirements set forth in Sections  
5 415.5, 415.6, and 415.7, as applicable.

6 (E) Notwithstanding the provisions set forth in subsections (b)(2)(A), (B)  
7 and (C) of this Section 415.3, for development projects proposing buildings over 120 feet in  
8 height, as measured under the requirements set forth in the Planning Code, except for  
9 buildings up to 130 feet in height located both within a special use district and within a height  
10 and bulk district that allows a maximum building height of 130 feet, such development projects  
11 shall pay a fee or provide off-site housing in an amount equivalent to ~~33~~30% of the number of  
12 units constructed on-site. Any buildings up to 130 feet in height located both within a special  
13 use district and within a height and bulk district that allows a maximum building height of 130  
14 feet shall comply with the provisions of subsections (b)(2)(A), (B) and (C) of this Section 415.3  
15 during the limited periods of time set forth therein.

16 (F) Notwithstanding the provisions set forth in subsections (b)(2)(A), (B)  
17 and (C) of this ~~s~~Section 415.3, if a development project is located in a UMU Zoning District or  
18 in the South of Market Youth and Family Zoning District, and pays the Affordable Housing Fee  
19 or is eligible and elects to provide off-site affordable housing pursuant to Section 415.5(g), or  
20 elects to comply with a land dedication alternative, such development project shall comply  
21 with the fee, off-site or land dedication requirements applicable within such Zoning Districts,  
22 as they existed on January 12, 2016, plus the following additional amounts for the Affordable  
23 Housing Fee or for land dedication or off-site affordable units: (i) if the development project  
24 has submitted a complete Environmental Evaluation application prior to January 1, 2014, the  
25 Project Sponsor shall pay an additional fee, or provide additional land dedication or off-site

1 affordable units, in an amount equivalent to 5% of the number of units constructed on-site; (ii)  
2 if the development project has submitted a complete Environmental Evaluation application  
3 prior to January 1, 2015, the Project Sponsor shall pay an additional fee, or provide additional  
4 land dedication or off-site affordable units, in an amount equivalent to 7.5% of the number of  
5 units constructed on-site; or (iii) if the development project has submitted a complete  
6 Environmental Evaluation application on or prior to January 12, 2016, the Project Sponsor  
7 shall pay an additional fee, or provide additional land dedication or off-site affordable units, in  
8 an amount equivalent to 10% of the number of units constructed on-site. Notwithstanding the  
9 foregoing, a development project shall not pay a fee or provide off-site units in a total amount  
10 greater than the equivalent of ~~33~~30% of the number of units constructed on-site.

11 (G) Any development project consisting of 25 dwelling units or more that  
12 has submitted a complete Environmental Evaluation application on or prior to January 12,  
13 2016, and is eligible and elects to provide off-site affordable housing, may provide off-site  
14 affordable housing by acquiring an existing building to fulfill all or part of the requirements set  
15 forth in this Section 415.3 and in Section 415.7 with an equivalent amount of units as specified  
16 in this Section 415.3(b)(2), as reviewed and approved by the Mayor's Office of Housing and  
17 Community Development and consistent with the parameters of its Small Sites Acquisition  
18 and Rehabilitation Program, in conformance with the income limits for the Small Sites  
19 Program.

20 **SEC. 415.5. AFFORDABLE HOUSING FEE.**

21 \* \* \* \*

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

24 (1) The number of units equivalent to the applicable off-site percentage of the  
25 number of units in the principal project.



1                   (A) For housing development projects consisting of 10 dwelling units or more,  
2 but less than 25 dwelling units, ~~The applicable percentage shall be 20% for housing development~~  
3 ~~projects consisting of 10 dwelling units or more, but less than 25 dwelling units.~~

4                   (B) ~~The applicable percentage for~~ For development projects consisting of  
5 25 dwelling units or more, the applicable percentage shall be 33% if such units are Owned Units.

6                   (C) For development projects consisting of 25 dwelling units or more, the  
7 applicable percentage shall be 30% if such units are Rental Units in a Rental Housing Project. In the  
8 event one or more of the Rental Units in the principal Rental Housing Project become ownership units,  
9 each Rental Unit or the principal Rental Housing Project in its entirety, as applicable, shall pay to the  
10 City the difference in the amount of the applicable inclusionary affordable housing fee so that the total  
11 fee would be equivalent to the requirement for Owned Units, which is 33% of the number of total units  
12 in the principal project, or such current percentage that has been adjusted annually by MOHCD.

13                   ~~For the purposes of this Section 415.5, the City shall calculate the fee using the~~  
14 ~~direct fractional result of the total number of units multiplied by the applicable percentage, rather than~~  
15 ~~rounding up the resulting figure as required by Section 415.6(a).~~

16                   (2) The affordability gap shall be calculated using data on ~~the~~ MOHCD's cost of  
17 ~~construction of to construct affordable residential housing for three different building heights, as~~  
18 ~~applicable: (A) up to 55 feet; (B) above 55 feet up to 85 feet; and (C) above 85 feet and the Maximum~~  
19 ~~Purchase Price for the equivalent unit size. The fee shall be calculated individually for these three~~  
20 ~~different building types and two types of tenure, ownership and rental, rather than a single fee~~  
21 ~~calculation uniformly applied to all types of projects.~~ The Department and MOHCD shall calculate  
22 the affordability gap within 6 months of the effective date of this ordinance and shall update the  
23 technical report from time to time as they deem appropriate in order to ensure that the  
24 affordability gap remains current and to reflect current costs of construction.

1                   (3) For all housing developments, no later than January 1 of each year,  
2 MOHCD shall adjust the fee based on adjustments in the City's cost of constructing affordable  
3 housing. MOHCD shall provide the Planning Department, DBI, and the Controller with  
4 information on the adjustment to the fee so that it can be included in the Planning  
5 Department's and DBI's website notice of the fee adjustments and the Controller's Citywide  
6 Development Fee and Development Impact Requirements Report described in Section  
7 409(a). MOHCD ~~is authorized to~~ shall develop an appropriate methodology for indexing the fee,  
8 ~~based on adjustments in the cost of constructing housing and the Maximum Purchase Price for the~~  
9 ~~equivalent unit size.~~ The method of indexing shall be published in the Procedures Manual and  
10 shall be provided to the Board of Supervisors when it is updated.

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

15                   (5) In the event the project sponsor does not procure a building permit or site permit for  
16 construction of the principal project within two years (24 months) of the project's approval, the  
17 development project shall comply with the inclusionary affordable housing requirements applicable  
18 thereafter at the time when the project sponsor does proceed with pursuing a building permit. Such  
19 time period shall be extended in the event of any litigation seeking to invalidate the City's approval of  
20 such project, for the duration of the litigation.

21                   \* \* \* \*

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

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



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

2 (1) For housing development projects consisting of 10 dwelling units or more, but less  
3 than 25 dwelling units, the number of affordable units constructed on-site shall generally be  
4 12% of all units constructed on the project site for housing development projects consisting of 10  
5 dwelling units or more, but less than 25 dwelling units. The affordable units shall all be affordable  
6 to low- and lower- income households. Owned Units shall be affordable to households earning 80%  
7 to 100% of Area Median Income, with an average affordable sales price set at 90% of Area Median  
8 Income or less. Rental Units shall be affordable to households earning 40% to 80% of Area Median  
9 Income, with an average affordable rent set at 60% of Area Median Income or less. The number of  
10 units constructed on-site shall generally be 25% of all units constructed on the project site for housing  
11 development projects consisting of 25 dwelling units or more, with a minimum of 15% of the units  
12 affordable to low-income households and 10% of the units affordable to low- or moderate/middle-  
13 income households.

14 (2) For any housing development project consisting of 25 or more Owned Units, the  
15 number of affordable units constructed on-site shall be 27% of all units constructed on the project site,  
16 with a minimum of 15% of the units affordable to low- or lower-income households and 12% of the units  
17 affordable to moderate/middle-income households. Owned Units for low- and lower-income  
18 households shall be affordable to a range of households from 80% to 100% of Area Median Income,  
19 with an average affordable sales price set at 90% of Area Median Income or less. Owned Units for  
20 middle/moderate income households shall be affordable to a range of households from 100% to 140%  
21 of Area Median Income, with an average affordable sales price set at 120% of Area Median Income or  
22 less; provided that a middle/moderate income unit shall have a maximum sales price set at 100% of  
23 Area Median Income for a single income household. MOHCD may reduce the average Area Median  
24 Income upon request by the project sponsor.

1                   (3) For any Rental Housing Project consisting of 25 or more Rental Units, the number  
2 of affordable units constructed on-site shall generally be 24% of all units constructed on the project  
3 site, with a minimum of 15% of the units affordable to low- or lower-income households and 9% of the  
4 units affordable to moderate/middle-income households. Rental Units for low- and lower-income  
5 households shall be affordable to a range of households earning from 40% to 80% of Area Median  
6 Income, with an average affordable rent set at 60% of Area Median Income or less. Rental Units for  
7 middle/moderate income households shall be affordable to a range of households earning from 80% to  
8 120% of Area Median Income, with an average affordable rent set at 100% of Area Median Income or  
9 less; provided that a middle/moderate income unit shall have a maximum rent set at 100% of Area  
10 Median Income for a single income household. MOHCD may reduce the average Area Median Income  
11 upon request by the project sponsor. MOHCD shall set forth in the Procedures Manual the  
12 administration of rental units within this range.

13                   (4) A minimum of 40% of the on-site affordable units shall consist of two bedroom units  
14 and a minimum of 20% of the on-site affordable units shall consist of three bedrooms or larger. Units  
15 shall have minimum floor areas that conform to the standards developed by the California Tax Credit  
16 Allocation Committee (CTCAC) for affordable units. The total residential floor area devoted to the  
17 affordable units shall not be less than the applicable percentage applied to the total residential floor  
18 area of the principal project, provided that a 10% variation in floor area is permitted.

19                   (5) In the event one or more of the Rental Units in the principal Rental Housing Project  
20 become ownership units, each converted Rental Unit shall reimburse the City the proportional  
21 difference between the amount of the then-current inclusionary affordable housing requirement for  
22 Rental Units and Owned Units. If a Rental Housing Project is converted to an ownership housing  
23 project in its entirety, an additional 3% of the units shall be designated as affordable to qualifying  
24 households, apportioned between the required number of low- and lower-income and moderate/middle-  
25 income on-site units in compliance with the requirements currently in effect at the time of conversion.



1           (6) The Department shall require as a condition of Department approval of a  
2 project's building permit, or as a condition of approval of a Conditional Use Authorization or  
3 Planned Unit Development or as a condition of Department approval of a live/work project,  
4 that 12%, ~~24%~~ or ~~27%~~ ~~25%~~, as applicable, of all units constructed on the project site shall be  
5 affordable to qualifying households so that a project sponsor must construct ~~.12~~, ~~.24~~ or ~~.27~~ ~~or~~  
6 ~~.25~~ times, as applicable, the total number of units produced in the principal project. If the total  
7 number of units is not a whole number, the project sponsor shall round up to the nearest  
8 whole number for any portion of .5 or above.

9           (7) Specific Geographic Areas. For any housing development that is located in  
10 an area with a specific affordable housing requirement set forth in a Special Use District or in  
11 any other section of the Code such as Section 419, the higher housing requirement shall  
12 apply. The Planning Department, in consultation with the Controller, shall undertake a study of areas  
13 where an Area Plan, Special Use District, or other re-zoning has been adopted after January 1, 2015,  
14 to determine whether a higher on-site inclusionary affordable housing requirement is feasible on sites  
15 that have received a 20% or greater increase in developable residential gross floor area or a 35% or  
16 greater increase in residential density over prior zoning, and shall submit such information to the  
17 Planning Commission and Board of Supervisors.

18           (8) If the principal project has resulted in demolition, conversion, or removal of  
19 affordable housing units renting or selling to households at income levels and/or for a rental  
20 rate or sales price below corresponding income thresholds for units affordable to low income  
21 households, the Commission or the Department shall require that the project sponsor replace  
22 the number of affordable units removed with units of a comparable number of bedrooms in  
23 addition to compliance with the inclusionary requirements set forth in this Section 415.6 ~~or provide~~  
24 ~~that 25% of all units constructed as part of the new project shall be affordable to low income or~~  
25 ~~moderate/middle income households, whichever is greater.~~

1                   (9) Annual indexing. The required on-site affordable housing to satisfy this section 415.6  
2 shall increase by 0.75% annually for all development projects with 10-24 units of housing, beginning  
3 on January 1, 2018.

4                   (10) Any development project that constructs on-site affordable housing units as set  
5 forth in this Section 415.6 shall diligently pursue completion of such units. In the event the project  
6 sponsor does not procure a building permit or site permit for construction of the principal project  
7 within two years (24 months) of the project's approval, the development project shall comply with the  
8 inclusionary affordable housing requirements applicable thereafter at the time when the project  
9 sponsor procures a building permit. Such deadline shall be extended in the event of any litigation  
10 seeking to invalidate the City's approval of such project, for the duration of the litigation.

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

14                   (c) Type of Housing.

15                   (1) Equivalency of Units. All on-site units constructed under this Section 415.6  
16 shall be provided as ownership units unless the project sponsor meets the eligibility  
17 requirement of Section 415.5(g). ~~All on-site units must be affordable to low income households.~~ In  
18 general, affordable units constructed under this Section 415.6 shall be comparable in number  
19 of bedrooms, exterior appearance and overall quality of construction to market rate units in  
20 the principal project. A Notice of Special Restrictions shall be recorded prior to issuance of the  
21 first construction document and shall specify the number, location and sizes for all affordable  
22 units required under this subsection (c). The affordable units shall be evenly distributed  
23 throughout the building. For buildings over 120 feet in height, as measured under the  
24 requirements set forth in the Planning Code, the affordable units may be distributed  
25 throughout the lower 2/3 of the building, as measured by the number of floors. The interior



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

15 (2) Density Bonus Projects. An applicant seeking a density bonus under the provisions  
16 of State Law shall provide reasonable documentation to establish eligibility for a requested density  
17 bonus, incentives or concessions, and waivers or reductions of development standards. The Planning  
18 Department shall provide information about the value of the density bonus, concessions and incentives  
19 for each density bonus project and include it in the Department's case report or decision on the  
20 application. In addition, beginning in January 2018, the Planning Department shall prepare an annual  
21 report to the Planning Commission about the number of density bonus projects, density bonus units and  
22 the kinds of density bonuses, concessions and incentives provided to each density bonus project, which  
23 should be presented at the same time as the Housing Balance Report.

24 \* \* \* \*

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

2           ~~The requirements set forth in this Section 415.7 will be reviewed when the City completes an~~  
3 ~~Economic Feasibility Study.~~ If the project sponsor is eligible and elects pursuant to Section  
4 415.5(g) to provide off-site units to satisfy the requirements of Section 415.1 *et seq.*, the  
5 project sponsor shall notify the Planning Department and the Mayor's Office of Housing and  
6 Community Development ("MOHCD") of its intent as early as possible. The Planning  
7 Department and MOHCD shall provide an evaluation of the project's compliance with this  
8 Section 415.7 prior to approval by the Planning Commission or Planning Department. The  
9 development project shall meet the following requirements:

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

11                   (1) For any housing development that is located in an area or Special Use District  
12 with a specific affordable housing requirement, set forth in Section 419 or elsewhere in this  
13 Code, the higher off-site housing requirement shall apply.

14                   (2) For housing development projects consisting of 10 dwelling units or more  
15 but less than 25 units, the number of affordable units constructed off-site shall be 20%, so that  
16 a project applicant shall construct .20 times the total number of units produced in the principal  
17 project. If the total number of units is not a whole number, the project applicant shall round up  
18 to the nearest whole number for any portion of .5 or above. The off-site affordable units shall  
19 be affordable to low- and lower-income households. Owned Units shall be affordable to  
20 households earning 80% to 100% of Area Median Income, with an average affordable sales price set at  
21 90% of Area Median Income or less. Rental Units shall be affordable to households earning 40% to  
22 80% of Area Median Income, with an average affordable rent set at 60% of Area Median Income or  
23 less.

24                   (3) For any housing development project consisting of 25 or more Owned Units, the  
25 number of affordable units constructed off-site shall be 33% of all units constructed on the project site.



1 with a minimum of 15% of the units affordable to low- or lower-income households and 18% of the  
2 units affordable to moderate/middle-income households. Owned Units for low- and lower-income  
3 households shall be affordable to a range of households from 80% to 100% of Area Median Income,  
4 with an average affordable sales price set at 90% of Area Median Income or less. Owned Units for  
5 middle/moderate income households shall be affordable to a range of households from 100% to 140%  
6 of Area Median Income, with an average affordable sales price set at 120% of Area Median Income or  
7 less; provided that a middle/moderate income unit shall have a maximum sales price set at 100% of  
8 Area Median Income for a single income household. MOHCD may reduce the average Area Median  
9 Income upon request by the project sponsor.

10 (4) For any Rental Housing Project consisting of 25 or more Rental Units, the number  
11 of affordable units constructed off-site shall generally be 30% of all units constructed on the project  
12 site, with a minimum of 15% of the units affordable to low- or lower-income households and 15% of the  
13 units affordable to moderate/middle-income households. Rental Units for low- and lower-income  
14 households shall be affordable to a range of households earning from 40% to 80% of Area Median  
15 Income, with an average affordable rent set at 60% of Area Median Income or less. Rental Units for  
16 middle/moderate income households shall be affordable to a range of households earning from 80% to  
17 120% of Area Median Income, with an average affordable rent set at 100% of Area Median Income or  
18 less; provided that a middle/moderate income unit shall have a maximum rent set at 100% of Area  
19 Median Income for a single income household. MOHCD may reduce the average Area Median Income  
20 upon request by the project sponsor. MOHCD shall set forth in the Procedures Manual the  
21 administration of rental units within this range.

22 (5) In the event one or more of the Rental Units in the principal Rental Housing Project  
23 become ownership units, each converted Rental Unit, or the principal Rental Housing Project in its  
24 entirety, as applicable, shall either (A) reimburse the City the proportional amount of the inclusionary  
25 affordable housing fee, which would be equivalent to the current inclusionary affordable fee

1 requirement for Owned Units, or(B) provide additional off-site affordable units equivalent to the  
2 current inclusionary requirements for Owned Units.

3 (6) The Department shall require as a condition of Department approval of a project's  
4 building permit, or as a condition of approval of a Conditional Use Authorization or Planned Unit  
5 Development or as a condition of Department approval of a live/work project, that 20%, 30% or 33%,  
6 as applicable, of all units constructed on the project site shall be constructed off-site and affordable to  
7 qualifying households so that a project sponsor must construct .20, .30 or .33 times, as applicable, the  
8 total number of units produced in the principal project.

9 (7) A minimum of 40% of the off-site affordable units shall consist of two bedroom units  
10 and a minimum of 20% of the off-site affordable units shall consist of three bedrooms or larger. Units  
11 shall have minimum floor areas that conform to the standards developed by the California Tax Credit  
12 Allocation Committee (CTCAC) for affordable units. The total residential floor area devoted to the  
13 affordable units shall not be less than the applicable percentage applied to the total residential floor  
14 area of the principal project, provided that a 10% variation in floor area is permitted.

15 (8) Any development project that constructs off-site affordable housing units as set forth  
16 in this Section 415.6 shall diligently pursue completion of such units. In the event the project sponsor  
17 does not procure a building permit or site permit for construction of the principal project or the off-site  
18 affordable housing project within two years (24 months) of the project's approval, the development  
19 project shall comply with the inclusionary affordable housing requirements applicable thereafter at the  
20 time when the project sponsor procures a building permit. Such deadline shall be extended in the event  
21 of any litigation seeking to invalidate the City's approval of the principal project or off-site affordable  
22 housing project for the duration of the litigation.

23 (94) Specific Geographic Areas.  
24  
25



1 For any housing development that is located in an area with a specific  
2 affordable housing requirement set forth in a Special Use District, or in any other section of  
3 the Code such as Section 419, the higher affordable housing requirement shall apply.

4 \* \* \* \*

5  
6 **SEC. 415.11. SEVERABILITY.**

7 If any subsection, sentence, clause, phrase, or word of this Section 415, or any application  
8 thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court  
9 of competent jurisdiction, such decision shall not affect the validity of the remaining portions or  
10 applications of the Section. The Board of Supervisors hereby declares that it would have passed this  
11 ordinance and each and every subsection, sentence, clause, phrase, and word not declared invalid or  
12 unconstitutional without regard to whether any other portion of this Section or application thereof  
13 would be subsequently declared invalid or unconstitutional.

14  
15 Section 4. Effective Date. This ordinance shall become effective 30 days after  
16 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
17 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
18 of Supervisors overrides the Mayor's veto of the ordinance.

19  
20 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
21 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
22 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
23 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment

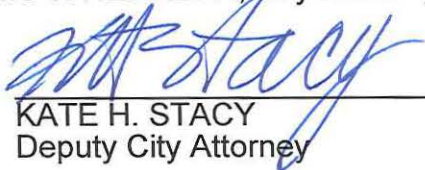
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1 additions, and Board amendment deletions in accordance with the "Note" that appears under  
2 the official title of the ordinance.

3

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

6 By:   
7 KATE H. STACY  
8 Deputy City Attorney

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**REVISED LEGISLATIVE DIGEST**  
(Substituted, 4/18/2017)

[Planning Code – Inclusionary Affordable Housing Fee and Requirements]

**Ordinance amending the Planning Code to revise the amount of the Inclusionary Affordable Housing Fee and the On-Site and Off-Site Affordable Housing Alternatives and other Inclusionary Housing requirements; adding reporting requirements for density bonus projects; affirming the Planning Department’s determination under the California Environmental Quality Act; making findings under Planning Code, Section 302; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

Existing Law

The City generally requires private developers of new market-rate housing to provide affordable housing (“Inclusionary Housing”) by paying a fee to the City. A developer could also opt to provide Inclusionary Housing on- or off-site. The City’s Inclusionary Affordable Housing Fee and other requirements are set forth in Planning Code Sections 415 et seq. and provide 3 methods of complying with the requirements.

1. Affordable Housing Fee: The development project pays a fee equivalent to the applicable off-site percentage of the number of units in the principal project:

- For development projects consisting of 10 – 24 dwelling units, the percentage is 20%.
- For development projects consisting of 25 dwelling units or more, the percentage is 33%.

2. If a developer opts to provide affordable housing on-site, the on-site Affordable Housing would be provided as follows:

- For housing development projects consisting of 10 – 24 dwelling units, the number of affordable units constructed on-site would generally be 12% of all units constructed on the project site. The units must be affordable to low-income households.
- For housing development projects consisting of 25 dwelling units or more, the number of affordable units constructed on-site would generally be 25% of all units constructed on the project site, 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. If a developer opts to provide affordable housing off-site, the off-site Affordable Housing would be provided as follows:

- For housing development projects consisting of 10-24 dwelling 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 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.

If there is a higher Inclusionary Housing requirement in specific zoning districts, the higher requirement would apply. There are specific Inclusionary Housing requirements for the UMU and SOMA Youth & Families Zoning Districts. The Planning Code also contains a number of "grandfathering" provisions, which set the Inclusionary Housing requirements at lower percentages for a limited period of time, depending on when a complete environmental evaluation application was submitted.

The Planning Code directs the Mayor's Office of Housing and Community Development ("MOHCD") to set the amount of the fee to be paid by the project sponsor to calculate the "affordability gap" using data on the cost of construction of providing the residential housing and the Maximum Purchase Price for the equivalent unit size.

Section 401 defines a low-income household as one whose income does not exceed 55% of Area Median Income for purposes of renting an affordable unit, and 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, and 120% of Area Median Income for purposes of purchasing an affordable unit.

The Planning Code also requires an applicant seeking a density bonus under State law to provide analysis to support any requested concessions and incentives under the State law.

The Planning Code requires the Controller to study the economic feasibility of the City's inclusionary housing requirements and produce a report in 2016 and 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 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.

#### Amendments to Current Law

The Proposed Legislation would change the inclusionary affordable housing requirement for 3 kinds of inclusionary affordable housing in the following ways.



1. Inclusionary Affordable Housing Fee: The Amendments would set the Inclusionary Affordable Housing Fee for projects consisting of 25 dwelling units or more to 33% for an ownership housing project and 30% for a rental housing project.

The Amendments would direct MOHCD to calculate the Inclusionary Affordable Housing Fee by using data on the City's cost of construction of providing the residential housing for 3 different building types and 2 types of tenure, ownership and rental, rather than a single fee calculation uniformly applied to all types of projects. The 3 building types would be based on the height of the building: (A) up to 55 feet; (B) above 55 feet up to 85 feet; and (C) above 85 feet. MOHCD must calculate the affordability gap within 6 months of the effective date of the Amendments and update the Fee annually to ensure that the Fee amount remains current and reflects the City's current costs for the different building types and tenures.

2. On-Site Inclusionary Affordable Housing Units: A project sponsor may elect to provide on-site affordable housing in lieu of paying the Inclusionary Fee.

For housing projects consisting of 10 – 24 units, the number of affordable units constructed on-site shall be 12% of all units constructed on the project site. The required on-site affordable housing would increase by 0.75% annually for housing projects consisting of 10 – 24 units, beginning on January 1, 2018. The on-site affordable Owned Units shall be affordable to households earning 80% to 100% of Area Median Income, with an average affordable sales price set at 90% of Area Median Income or less. Affordable Rental Units shall be affordable to households earning 40% to 80% of Area Median Income, with an average affordable rent set at 60% of Area Median Income or less.

For ownership housing projects consisting of 25 or more units, the number of affordable units constructed on-site shall be 27% of all units constructed on the project site, with a minimum of 15% of the units affordable to low-or lower-income households and 12% of the units affordable to moderate/middle-income households.

- Owned Units for low- and lower-income households shall be affordable to a range of households from 80% to 100% of Area Median Income, with an average affordable sales price set at 90% of Area Median Income or less. Owned Units for middle/moderate income households shall be affordable to a range of households from 100% to 140% of Area Median Income, with an average affordable sales price set at 120% of Area Median Income or less; provided that a middle/moderate income unit shall have a maximum sales price set at 100% of Area Median Income for a single income household. MOHCD may reduce the average Area Median Income upon request by the project sponsor.

For any Rental Housing Project consisting of 25 or more Rental Units, the number of affordable units constructed on-site shall generally be 24% of all units constructed on the

project site, with a minimum of 15% of the units affordable to low- or lower-income households and 9% of the units affordable to moderate/middle-income households.

- Rental Units for low- and lower-income households shall be affordable to a range of households earning from 40% to 80% of Area Median Income, with an average affordable rent set at 60% of Area Median Income or less. Rental Units for middle/moderate income households shall be affordable to a range of households earning from 80% to 120% of Area Median Income, with an average affordable rent set at 100% of Area Median Income or less; provided that a middle/moderate income unit shall have a maximum rent set at 100% of Area Median Income for a single income household. MOHCD may reduce the average Area Median Income upon request by the project sponsor. MOHCD shall set forth in the Procedures Manual the administration of rental units within this range.

### 3. Off-Site Inclusionary Affordable Housing.

- For any housing development project consisting of 25 or more Owned Units, the number of affordable units constructed off-site shall be 33% of all units constructed on the project site, with a minimum of 18% of the units affordable to low-or lower-income households and 15% of the units affordable to moderate/middle-income households. Owned Units for low- and lower-income households shall be affordable to a range of households from 80% to 100% of Area Median Income, with an average affordable sales price set at 90% of Area Median Income or less. Owned Units for middle/moderate income households shall be affordable to a range of households from 100% to 140% of Area Median Income, with an average affordable sales price set at 120% of Area Median Income or less; provided that a middle/moderate income unit shall have a maximum sales price set at 100% of Area Median Income for a single income household. MOHCD may reduce the average Area Median Income upon request by the project sponsor.
- For any Rental Housing Project consisting of 25 or more Rental Units, the number of affordable units constructed off-site shall generally be 30% of all units constructed on the project site, with a minimum of 15% of the units affordable to low- or lower-income households and 15% of the units affordable to moderate/middle-income households. Rental Units for low- and lower-income households shall be affordable to a range of households earning from 40% to 80% of Area Median Income, with an average affordable rent set at 60% of Area Median Income or less. Rental Units for middle/moderate income households shall be affordable to a range of households earning from 80% to 120% of Area Median Income, with an average affordable rent set at 100% of Area Median Income or less; provided that a middle/moderate income unit shall have a maximum rent set at 100% of Area Median Income for a single income household. MOHCD may reduce the average Area Median Income upon request by



the project sponsor. MOHCD shall set forth in the Procedures Manual the administration of rental units within this range.

A minimum of 40% of the on-site and off-site affordable units shall consist of two bedroom units and a minimum of 20% of the on-site and off-site affordable units shall consist of three bedrooms or larger. Units shall have minimum floor areas that conform to the standards developed by the California Tax Credit Allocation Committee (CTCAC) for affordable units. The total residential floor area devoted to the affordable units shall not be less than the applicable percentage applied to the total residential floor area of the principal project, provided that a 10% variation in floor area is permitted.

For all projects consisting of 25 or more dwelling units, in the event a rental housing project or unit becomes ownership housing, the owner would reimburse the cost of the fee deduction to the City, or provide additional on-site or off-site affordable units, so that the project would comply with the current inclusionary housing requirements for ownership housing.

For all projects, if a project sponsor does not procure a building permit within 2 years of project approval, the project sponsor must comply with the inclusionary housing requirements at the time of building permit procurement.

For all projects, the Amendments would change the definition of low-income households to include households whose total household income is 40% to 80% of Area Median Income for purposes of renting an affordable unit, or 80% to 100% of Area Median Income for purposes of purchasing an affordable unit, and "moderate income" and "middle income" households shall mean households whose total household income is 80% to 120% of Area Median Income for purposes of renting an affordable unit, or 100% to 140% of Area Median Income for purposes of purchasing an affordable unit.

An applicant seeking a density bonus under the provisions of State Law must provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, and waivers or reductions of development standards, consistent with State law. The Planning Department would provide information about the value of the density bonus, concessions and incentives for each density bonus project and include it in the Department's case report or decision on the application. Beginning in January 2018, the Planning Department shall prepare an annual report to the Planning Commission about the number of density bonus projects, density bonus units and the kinds of density bonuses, concessions and incentives provided to each density bonus project, which should be presented at the same time as the Housing Balance Report.

The Planning Department, in consultation with the Controller, must undertake a study of areas where an Area Plan, Special Use District, or other re-zoning has been adopted after January 1, 2015, to determine whether a higher on-site inclusionary affordable housing requirement is feasible on sites that have received a 20% or greater increase in developable residential

FILE NO. 161351

gross floor area or a 35% or greater increase in residential density over prior zoning, and shall submit such information to the Planning Commission and Board of Supervisors.

Background Information

The City published the Residential Affordable Housing Nexus Analysis in November 2016.

The Controller completed the Feasibility Analysis required by Planning Code Section 415.10 in February 2017.

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