

BOARD of SUPERVISORS



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MEMORANDUM

TO: Olson Lee, Director, Mayor's Office of Housing and Community Development

FROM: Linda Wong, Assistant Clerk, Budget and Finance Committee

DATE: January 31, 2017

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Budget and Finance Committee has received the following proposed legislation:

File No. 170093

Ordinance amending the Planning Code to establish a fee for the Mayor's Office of Housing and Community Development to monitor Student Housing, affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of public convenience, necessity, and welfare under Planning Code, Section 302.

If you have any 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.

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

[Planning Code - Establish Fee for Monitoring of Student Housing - Mayor's Office of Housing and Community Development]

Ordinance amending the Planning Code to establish a fee for the Mayor's Office of Housing and Community Development to monitor Student Housing, affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of public convenience, necessity, and welfare under Planning Code, Section 302.

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

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

Section 1. Findings.

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

(b) On _____, the Planning Commission, in Resolution No. _____, adopted findings that the actions contemplated in this ordinance will serve the public necessity, convenience, and welfare as required by Planning Code Section 302, for the reasons set forth in Resolution No. _____. The Board adopts these findings as its own. A

1 copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No.
2 _____, and is incorporated herein by reference.

3
4 Section 2. The Planning Code is hereby amended by revising Section 415.3, to read
5 as follows:

6 **SEC. 415.3. APPLICATION.**

7 * * * *

8 ~~(e)~~ Section 415.1 et seq., the Inclusionary Housing Program, shall not apply to:

9 * * * *

10 (5) A Student Housing project that meets all of the following criteria:

11 (A) The building or space conversion does not result in loss or
12 conversion of existing housing, including but not limited to rental housing and dwelling units;

13 (B) An institutional master plan (IMP) pursuant to Section 304.5 is on file
14 with the Planning Department prior to the issuance of any building permit or alteration permit
15 in connection with the creation of the Student Housing project, and, in addition to the
16 requirements of Section 304.5, such IMP shall describe:

17 (i) to the extent such information is available, the type and
18 location of housing used by its students;

19 (ii) any plans for the provision of Student Housing; *and*

20 (iii) the Educational Institution's need for student housing to
21 support its program; and

22 (iv) the percentage of its students, on an average annual basis,
23 that receive some form of need-based assistance.

24 (C) The Mayor's Office of Housing and Community Development
25 (MOHCD) is authorized to monitor ~~this~~ the Student Housing program described in this subsection

1 (e)(5)- and MOHCD shall develop a monitoring form, and An annual monitoring fee of \$792 to
2 shall be paid to MOHCD by the owner of the real property or the Post-Secondary Educational
3 Institution or Religious Institutions, as defined in Section 102 of this Code. Beginning with the
4 setting of fees for fiscal year 2018-2019, the Controller shall annually adjust the base monitoring fee
5 amount referenced in this subsection (e)(5)(C) without further action by the Board of Supervisors, to
6 reflect changes in the two-year average Consumer Price Index (CPI) change for the San Francisco/San
7 Jose Primary Metropolitan Area (PMSA). This process shall occur as follows:

8 (i) No later than April 15 of each year, MOHCD shall submit the
9 current monitoring fee to the Controller, who shall apply the CPI adjustment to produce a new
10 monitoring fee for the fiscal year beginning July 1. No later than May 15 of each year, the Controller
11 shall file a report with the Board of Supervisors reporting the new monitoring fee and certifying that
12 the fees to be collected will produce sufficient revenue to support the costs of providing the services for
13 which the fee is charged and will not produce revenue that exceeds the costs of providing the services
14 for which the fee is paid.

15 (ii) No later than September 30 of each year, MOHCD will publish on
16 its website the current monitoring fee amount inclusive of the annual adjustment, and also make the fee
17 amount available upon request at MOHCD's main office.

18 (D) The owner of the real property and each Post-Secondary
19 Educational Institution or Institutions shall agree to submit annual documentation to MOHCD
20 and the Planning Department, on or before December 31 of each year, that addresses the
21 following:

22 (i) Evidence that the Post-Secondary Educational Institution
23 continues to own or otherwise control the Student Housing project under a master lease or
24 other contractual agreement with at least a two-year term, including a certificate from the
25 owner of the real property and the Post-Secondary Educational Institution attaching a true and

1 complete copy of the master lease or other contractual agreement (financial information may
2 be redacted to the extent permitted by law) and certifying that the lease or contract has not
3 otherwise been amended or terminated; and

4 (ii) Evidence, on an average annualized basis, of the percentage
5 of students in good standing enrolled at least ~~half-time~~ half-time or more in the Post-Secondary
6 Educational Institution or Institutions who are occupying the beds or accessory living space in
7 the Student Housing project; and

8 (iii) The owner of the real property records a Notice of Special
9 Restrictions (NSR) against fee title to the real property on which the Student Housing is
10 located that states the following:

11 a. The Post-Secondary Educational Institution, or the owner
12 of the real property on its behalf, must file a statement with the Department if it intends to
13 terminate the Student Housing project at least 60 days before it terminates such use
14 ("statement of termination");

15 b. The Student Housing project becomes subject to the
16 Inclusionary Housing Ordinance requirements applicable to Housing Projects other than
17 Qualified Housing Projects if (1) a Post-Secondary Educational Institution files a statement of
18 termination with the Department and another Post-Secondary Educational Institution or
19 Institutions have not been substituted or obligated to meet the requirements of this subsection
20 (e)(5); or (2) the owner of the real property or the Post-Secondary Educational Institution fails
21 to file a statement of termination and fails to meet the requirements for a Student Housing
22 project, then within not more than one year of a Notice Of Violation issued by the Planning
23 Department;

24 c. If units in a Student Housing project become subject to
25 the Inclusionary Housing Ordinance then the owner of those units shall (1) pay the Affordable

1 Housing Fee plus interest from the date the project received its first construction document for
2 the project if there is no evidence the project ever qualified as Student Housing or, if Student
3 Housing was provided and occupied, then the Affordable Housing Fee with no interest is due
4 on the date the units were no longer occupied by qualifying households and interest would
5 accrue from that date if the fee is not paid; or (2) provide the required number of on-site
6 affordable units required at time of original project approval and that those units shall be
7 subject to all of the requirements of this Program. In this event, the owner of the real property
8 shall record a new NSR providing that the designated units must comply with all of the
9 requirements of this Program.

10 d. The Post-Secondary Educational Institution is required to report
11 annually as required in ~~§~~ subsection ~~(e)~~ (e) (5) ~~(D)~~ (E) above;

12 e. The City may commence legal action against the owner and/or
13 Post-Secondary Educational Institution to enforce the NSR and the terms of Article ~~4~~ 4 of the
14 Planning Code and Planning Code Section 415 et seq. if it determines that the project no
15 longer meets the requirements for a Student Housing project; and

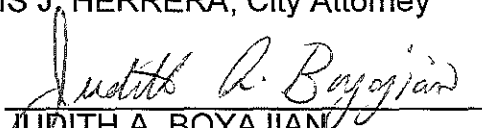
16 f. The Student Housing project may be inspected by any duly
17 authorized City employee to determine its status as a Student Housing project and its
18 compliance with the requirements of this Code at any time upon at least 24 hours' prior notice
19 to the owner of the real property or to the master lessee.

20
21 Section 3. Effective Date. This ordinance shall become effective 30 days after
22 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
23 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
24 of Supervisors overrides the Mayor's veto of the ordinance.
25

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

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

By: 
JUDITH A. BOYAJIAN
Deputy City Attorney
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LEGISLATIVE DIGEST

[Planning Code - Establish a Fee for Monitoring of Student Housing - Mayor's Office of Housing and Community Development]

Ordinance amending the Planning Code to establish a fee for the Mayor's Office of Housing and Community Development to monitor Student Housing; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of public convenience, necessity, and welfare under Planning Code, Section 302.

Existing Law

Planning Code Section 415 through 415.10 set forth the requirements and procedures for San Francisco's Inclusionary Housing Program. Section 415.3 establishes the scope of this Program, and provides, in subsection (c)(5), that the Inclusionary Housing Program does not apply to a Student Housing project that meets the criteria set forth. Subsection (c)(5)(C) authorizes the Mayor's Office of Housing (now called the Mayor's Office of Housing and Community Development) to monitor the program and to develop a monitoring form and an annual monitoring fee. Each property owner and institution under this program is required to file specified information with the Mayor's Office of Housing each year.

Amendments to Current Law

The proposed legislation would establish the annual monitoring fee referenced in Planning Code Section 415.3(c)(5)(C) and provide for annual indexing of the fee by the Controller without further action by the Board of Supervisors.

Background Information

The exclusion of Student Housing that meets specified criteria from the City's Inclusionary Housing Program and providing for monitoring by the Mayor's Office of Housing and Community Development (MOHCD) was added to Section 415.3 in 2010 by Ordinance No. 321-10. MOHCD has developed a monitoring form and, working with the Controller's Office and Mayor's Budget Office, has completed the cost analysis necessary to develop a monitoring fee that provides cost recovery without producing revenue that exceeds the costs of providing the monitoring service. The base monitoring fee established by this ordinance will be part of the Mayor's budget for fiscal year 2017-2018 and will be indexed by the Controller in subsequent years without further action by the Board.

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