

**REVISED LEGISLATIVE DIGEST**

(7/25/2017, Amended in Board)

[Planning Code - Inclusionary Affordable Housing Fee and Dwelling Unit Mix 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 to require minimum dwelling unit mix in most residential districts; to clarify Inclusionary Housing requirements in the Transbay C-3 Special Use District; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of public necessity, convenience, and welfare 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 City has not applied its inclusionary requirements to any density bonus units.

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.

The Planning Code includes some dwelling unit mix requirements, but there is no requirement applicable City-wide in most residential districts.

The Transbay C-3 Special Use District is within the Transbay Redevelopment Project Area, within the Redevelopment Area but outside of the Transbay Downtown Residential District. State law requires that 35% of all dwelling units developed in the Transbay Redevelopment Project Area must be permanently affordable to low- and moderate-income households, as defined in State law. The inclusionary affordable housing requirements of Section 415 apply except that: (A) A minimum of 15% of all units constructed on the site shall be affordable to, and occupied by, qualifying persons and families as defined by the Transbay Redevelopment Plan; (B) All inclusionary units must be built on-site; and (C) Off-site construction or in-lieu fee payment are not permitted to satisfy this requirement.

#### 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 based on the City's cost of constructing affordable housing. No later than January 31, 2018, the Controller, with the support of consultants as necessary, and in consultation with the Inclusionary Housing Technical Advisory Committee (TAC) established in Planning Code Section 415.10, shall conduct a study to develop an appropriate methodology for calculating, indexing, and applying the appropriate amount of the Inclusionary Affordable Housing Fee. To support the Controller's study, and annually thereafter, MOHCD shall provide the following documentation: (1) schedules of sources and uses of funds and independent auditor's reports ("Cost Certifications") for all MOHCD-funded developments completed within three years of the date of reporting to the Controller; and, (2) for any MOHCD-funded development that commenced construction within three years of the reporting date to the Controller but for which no Cost Certification is yet complete, the sources and uses of funds approved by MOHCD and the construction lender as of the date of the development's construction loan closing. Cost Certifications completed in years prior to the year of reporting to the Controller may be increased or decreased by the applicable annual Construction Cost Index percentage(s) for residential construction for San Francisco reported in the Engineering News Record. MOHCD, together with the Controller and TAC, shall evaluate the cost-to-construct data, including actual and appraised land costs, state and/or federal public subsidies available to MOHCD-funded projects, and determine MOHCD's average costs. Following completion of this study, the Board of Supervisors will review the analyses, methodology, fee application, and the proposed fee schedule; and may consider adopting legislation to revise the

Inclusionary Affordable Housing fees. The method of calculating, indexing, and applying the fee shall be published in the Procedures Manual.

The fee shall be imposed on any additional units or square footage authorized and developed under California Government Code Sections 65915 et seq. This requirement would not apply to development projects that have submitted a complete Environmental Evaluation application on or before January 1, 2016.

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 0.5% annually for housing projects consisting of 10 – 24 units, beginning on January 1, 2018, until the requirement reaches 15%. Owned Units shall be affordable to households earning up to 100% of Area Median Income, with an affordable sales price set at 80% of Area Median Income or less. Rental Units shall be affordable to households earning up to 65% of Area Median Income, with an affordable rent set at 55% of Area Median Income or less.

For any housing development project consisting of 25 or more Owned Units, the number of affordable units constructed on-site shall generally be 20% of all units constructed on the project site. A minimum of 10% of the units shall be affordable to low-income households, 5% of the units shall be affordable to moderate-income households, and 5% of the units shall be affordable to middle-income households.

- Owned Units for low-income households shall have an affordable purchase price set at 80% of Area Median Income or less, with households earning up to 100% of Area Median Income eligible to apply for low-income units. Owned Units for moderate-income households shall have an affordable purchase price set at 105% of Area Median Income or less, with households earning from 95% to 120% of Area Median Income eligible to apply for moderate-income units. Owned Units for middle-income households shall have an affordable purchase price set at 130% of Area Median Income or less, with households earning from 120% to 150% of Area Median Income eligible to apply for middle-income units.
- For any affordable units with purchase prices set at 130% of Area Median Income, the units shall have a minimum occupancy of two persons.

For any Rental Housing Project consisting of 25 or more Rental Units, the number of affordable units constructed on-site shall generally be 18% of all units constructed on the project site, with a minimum of 10% of the units affordable to low-income households, 4% of the units affordable to moderate-income households, and 4% of the units affordable to middle-income households.

- Rental Units for low-income households shall have an affordable rent set at 55% of Area Median Income or less, with households earning up to 65% of Area Median Income eligible to apply for low-income units. Rental Units for moderate-income households shall have an affordable rent set at 80% of Area Median Income or less, with households earning from 65% to 90% of Area Median Income eligible to apply for moderate-income units. Rental Units for middle-income households shall have an affordable rent set at 110% of Area Median Income or less, with households earning from 90% to 130% of Area Median Income eligible to apply for middle-income units.
- For any affordable units with rents set at 110% of Area Median Income, the units shall have a minimum occupancy of two persons.

Notwithstanding the foregoing, Area Median Income limits for Rental Units and Owned Units, the maximum affordable rents or sales price shall be no higher than 20% below median rents or sales prices for the neighborhood within which the project is located, which shall be defined in accordance with the Planning Department's American Community Survey Neighborhood Profile Boundaries Map. MOHCD shall adjust the allowable rents and sales prices, and the eligible households for such units, accordingly, and such potential readjustment shall be a condition of approval upon project entitlement. The City must review the updated data on neighborhood rents and sales prices on an annual basis.

Starting on January 1, 2018, and each year thereafter, MOHCD shall increase the percentage of units required on-site for projects consisting of 10 – 24 units, as set forth in Section 415.6(a)(1), by increments of 0.5% each year, until such requirement is 15%. For all development projects with 25 or more Owned or Rental Units, the required on-site affordable ownership housing to satisfy this section 415.6 shall increase by 1.0% annually for two consecutive years starting January 1, 2018. The increase shall be apportioned to units affordable to low-income households, as defined above in Subsection 415.6(a)(3). Starting January 1, 2020, the increase to on-site rental and ownership developments with 25 or more units shall increase by 0.5% annually, with such increases allocated equally for rental and ownership units to moderate and middle income households, as defined above in Subsection 415.6(a)(3). The total on-site inclusionary affordable housing requirement shall not exceed 26% for development projects consisting of Owned Units or 24% for development projects consisting of Rental Units, and the increases shall cease at such time as these limits are reached. MOHCD shall provide the Planning Department, DBI, and the Controller with information on the adjustment to the on-site percentage so that it can be included in the Planning Department's and DBI's website notice of the fee adjustments and the Controller's Citywide Development Fee and Development Impact Requirements Report described in Section 409(a).

Minimum Size of Affordable Units. All units shall be no smaller than the minimum unit sizes set forth by the California Tax Credit Allocation Committee as of May 16, 2017, and no smaller than 300 square feet for studios.

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.

MOHCD may reduce Area Median Income pricing and the minimum income required for eligibility in each rental category.

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

- For housing development projects consisting of 10 dwelling units or more but less than 25 units, Owned Units shall be affordable to households earning up to 100% of Area Median Income, with an affordable sales price set at 80% of Area Median Income or less. Rental Units shall be affordable to households earning up to 65% of Area Median Income, with an average affordable rent set at 55% of Area Median Income or less.
- 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 low-income households, 8% of the units affordable to moderate-income households, and 7% of the units affordable to middle income households. Owned Units for low-income households shall have an affordable purchase price set at 80% of Area Median Income or less, with households earning up to 100% of Area Median Income eligible to apply for low-income units. Owned Units for moderate-income households shall have an affordable purchase price set at 105% of Area Median Income or less, with households earning from 95% to 120% of Area Median Income eligible to apply for moderate-income units. Owned Units for middle-income households shall have an affordable purchase price set at 130% of Area Median Income or less, with households earning from 120% to 150% of Area Median Income eligible to apply for middle-income units. For any affordable units with purchase prices set at 100% of Area Median Income or above, the units shall have a minimum occupancy of two persons.
- 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 18% of the units affordable to low income households, 6% of the units affordable to moderate-income households, and 6% of the units affordable to middle-income households. Rental Units for low-income households shall have an affordable rent set at 55% of Area Median Income or less, with households earning up to 65% of Area Median Income eligible to apply for low-income units. Rental Units for moderate-income households shall have an affordable rent set

at 80% of Area Median Income or less, with households earning from 65% to 90% of Area Median Income eligible to apply for moderate-income units. Rental Units for middle-income households shall have an affordable rent set at 110% of Area Median Income or less, with households earning from 90% to 130% of Area Median Income eligible to apply for middle-income units. For any affordable units with rental rates set at 100% of Area Median Income or above, the units shall have a minimum occupancy of two persons.

For all projects, 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, the applicable amount of the inclusionary housing fee or percentage required for the on-site or off-site alternatives will be determined based on the date that the project sponsor submitted a complete Environmental Evaluation application. If a project sponsor does not procure a building permit within 30 months of project approval, the project sponsor must comply with the inclusionary housing requirements at the time of building permit procurement.

For all projects, if the principal project has resulted in demolition, conversion, or removal of affordable housing units that are subject to rental restrictions for persons and families of moderate-, low- or very low-income, or housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power and determined to be affordable housing, the project sponsor would pay the Inclusionary Affordable Housing Fee equivalent for the number of affordable units removed, or replace the units on-site, in addition to compliance with the inclusionary requirements.

All projects must notify the Planning Department which alternative for inclusionary affordable housing they are selecting 30 days prior to approval. Any subsequent change by a project sponsor that results in the removal of on-site units would require public notice for a hearing and approval from the Planning Commission.

The new inclusionary affordable housing requirements shall not apply to any project that has not submitted a complete Environmental Evaluation Application on or before January 12, 2016, if the project is located within the Eastern Neighborhoods Mission Planning Area, the North of Market Residential Special Use District Subarea 1 or Subarea 2, or the SOMA Neighborhood Commercial Transit District. Until such planning processes are complete and new inclusionary housing requirements for projects in those areas are adopted, projects shall (1) pay a fee or provide off-site housing in an amount equivalent to 30% or (2) provide affordable units in the amount of 25% of the number of Rental Units constructed on-site or 27% of the number of Owned Units constructed on-site. For Rental Units, 15% of the on-site affordable units shall be affordable to low-income households, 5% shall be affordable to moderate-income households and 5% shall be affordable to middle-income households. For

Owned Units, 15% of the on-site affordable units shall be affordable to low-income households, 6% shall be affordable to moderate-income households and 6% shall be affordable to middle-income households.

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 greater than 5 acres in size where an Area Plan, Special Use District, or other re-zoning is being considered for adoption, or 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 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.

#### Dwelling Unit Mix Requirements.

The Ordinance establishes a minimum unit dwelling mix, for all applications that propose the creation of 10 or more Dwelling Units in all districts that allow residential uses, unless the project is located in the RTO, RCD, NCT, DTR, and Eastern Neighborhoods Mixed Use Districts, or in an area or Special Use District with higher specific bedroom mix requirements, or is a HOME SF project subject to the requirements of Planning Code Section 206.3. No less than 25% of the total number of proposed dwelling units must contain at least two bedrooms and 10% of the total number of proposed dwelling units must contain at least three bedrooms. These requirements may be waived or modified with Conditional Use Authorization and the Planning Commission must consider whether the project demonstrates a need or mission to serve unique populations, or the site or existing building features physical constraints that make it unreasonable to fulfill the dwelling unit mix requirements.

The dwelling unit mix requirements do not apply to buildings for which 100% of the residential uses are: Group Housing, Dwelling Units that are provided at below market rates pursuant to Section 406(b)(1) of this Code, Single Room Occupancy (SRO) Units, Student Housing (which has an Institutional Master Plan that the City has accepted), or housing specifically and permanently designated for seniors or persons with physical disabilities, including units to be occupied by staff serving any of the foregoing residential uses. If a project filed a complete Environmental Evaluation Application on or prior to January 12, 2016,



or received an approval, including approval by the Planning Commission, as of June 15, 2017, these requirements also do not apply.

The Ordinance clarifies its application to the Transbay C-3 Special Use District. The requirements of Planning Code Section 415.1 *et seq.* apply to this area, subject to the following exceptions: (A) The inclusionary affordable housing provided on-site shall be the higher amount determined under the Transbay Redevelopment Plan or Section 415.6(a) of the Planning Code, as it may be amended from time to time; and the inclusionary affordable housing constructed on the site shall be affordable to, and occupied by, “qualifying persons and families,” as defined by the Transbay Redevelopment Plan; (B) All required inclusionary affordable housing units must be built on-site; and (C) Payment of the Affordable Housing Fee or compliance with the Off-Site Affordable Housing Alternative shall not be permitted to satisfy the inclusionary affordable housing requirement.

### 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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