

1 [Inclusionary Affordable Housing Program]

2

3 **Ordinance amending the San Francisco Planning Code to add sections 315 to 315.9 to**
4 **establish requirements for all residential developments of 10 units or more to provide**
5 **inclusionary housing units.**

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

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

10 Section 1. The San Francisco Planning Code is hereby amended by adding Sections 315 to
11 315.8: Sections 315 to 315.8 to read as follows:

12 Sec. 315: HOUSING REQUIREMENTS FOR RESIDENTIAL AND LIVE/WORK DEVELOPMENT
13 PROJECTS

14 Sections 315.1- 315.8 set forth the requirements and procedures for the Residential
15 Inclusionary Affordable Housing Program ("Program"). The Department of City Planning and the
16 Mayor's Office of Housing shall periodically publish a Procedures Manual containing procedures for
17 monitoring and enforcement of the policies and procedures for implementation of this Program. The
18 Procedures Manual must be made available at the Zoning Counter of the Planning Department. The
19 Procedures Manual shall not be amended, except for an annual update of the affordability housing
20 guidelines, which reflect updated income limits, prices, and rents, without approval of the Planning
21 Commission.

22 Section 315.1: DEFINITIONS

23 The following definitions shall govern interpretation of this ordinance:

24 (1) "Affordable housing project" shall mean a housing project containing units constructed
25 to satisfy the requirements of Sections 315.4 or 315.5.

1 (2) "Affordable to a household" shall mean a purchase price that a household can afford to
2 pay based on an annual payment for all housing costs, as defined in California Code of Regulations
3 ("CCR") title 25 Section 6920, of 33 percent of the combined household annual net income, assuming a
4 10 percent down payment, and available financing, or a rent that does not exceed 30 percent of a
5 household's combined annual net income.

6 (3) "Affordable to qualifying households" shall mean:

7 (A) With respect to owned units, the average purchase price on the initial sale of all
8 affordable owned units in an affordable housing project shall not exceed the allowable average
9 purchase price. Each unit shall be sold:

10 (i) Only to households with an annual net income equal to or less than the qualifying limits
11 for a household of median income, adjusted for household size as set forth in CCR title 25 Section
12 6932;

13 (ii) On the initial sale, at or below the maximum purchase price; and

14 (iii) On subsequent sales, at or below the prices to be determined by the Director in the
15 Conditions of Approval or Notice of Special Restrictions according to the formula specified in the
16 Procedures Manual such that the units remain affordable to qualifying households.

17 (B) With respect to rental units in an affordable housing project, the average annual rent,
18 including the cost of utilities paid by the tenant according to HUD utility allowance established by the
19 San Francisco Housing Authority, shall not exceed the allowable average annual rent. Each unit shall
20 be rented:

21 (i) Only to households with an annual net income equal to or less than the qualifying limits
22 for a household of low income as defined in this Section;

23 (ii) At or less than the maximum annual rent.

24 (4) "Allowable average purchase price" shall mean a price for an affordable owned unit of
25 the size indicated below that is affordable to a household of median income as defined in this Section,

1 adjusted for the household size indicated below as set forth in CCR title 25, section 6932 as of the date
 2 of the close of escrow:

<u>Number of Bedrooms (or, for live/work units square foot equivalency)</u>	<u>Number of Persons in Household</u>
<u>0 (Less than 600 square feet)</u>	<u>1</u>
<u>1 (601 to 850 square feet)</u>	<u>2</u>
<u>2 (851 to 1100 square feet)</u>	<u>3</u>
<u>3 (1101 to 1300 square feet)</u>	<u>4</u>
<u>4 (More than 1300 square feet)</u>	<u>5</u>

10 (5) “Allowable average annual rent” shall mean annual rent for an affordable rental unit of
 11 the size indicated below that is 18 percent of the annual net income of a household of median income as
 12 defined in this Section, adjusted for the household size indicated below as set forth in CCR title 25,
 13 section 6932:

<u>Number of Bedrooms (or, for live/work units square foot equivalency)</u>	<u>Number of Persons in Household</u>
<u>0 (Less than 600 square feet)</u>	<u>1</u>
<u>1 (601 to 850 square feet)</u>	<u>2</u>
<u>2 (851 to 1100 square feet)</u>	<u>3</u>
<u>3 (1101 to 1300 square feet)</u>	<u>4</u>
<u>4 (More than 1300 square feet)</u>	<u>5</u>

21 (6) “Annual net income” shall mean net income as defined in CCR title 25 Section 6916.

22 (7) “Average annual rent” shall mean the total annual rent for the calendar year charged
 23 by a housing project for all affordable rental units in the project of an equal number of bedrooms
 24 divided by the total number of affordable units in the project with that number of bedrooms.

- 1 (8) “Average purchase price” shall mean the purchase price for all affordable owned units
2 in an affordable housing project of an equal number of bedrooms divided by the total number of
3 affordable units in the project with that number of bedrooms.
- 4 (9) “Community apartment” shall be as defined in San Francisco Subdivision Code Section
5 1308(b).
- 6 (10) “Conditions of Approval” shall be a set of written conditions imposed by the Planning
7 Commission or another permit-issuing City agency or appellate body to which a project applicant
8 agrees to adhere and fulfill when it receives a conditional use or planned unit development permit for
9 the construction of a principal project subject to this Program.
- 10 (11) “Condominium” shall be as defined in California Civil Code Section 783.
- 11 (12) “Director” shall mean the Director of City Planning or his or her designee, including
12 other City agencies or departments.
- 13 (13) “First certificate of occupancy” shall mean either a temporary certificate of occupancy
14 or a Certificate of Final Completion and Occupancy as defined in San Francisco Building Code
15 Section 109, whichever is issued first.
- 16 (14) “High need area” will mean an area identified by the Mayor's Office of Housing, or its
17 successor, as having a large percentage of low income households.
- 18 (15) “Household” shall mean any person or persons who reside or intend to reside in the
19 same housing unit.
- 20 (16) “Household of low income” shall mean a household whose combined annual gross
21 income for all members does not exceed sixty (60) percent of the median income for the San Francisco
22 Metropolitan Statistical Area, as calculated by the United States Department of Housing and Urban
23 Development (HUD) and adjusted for household size.
- 24 (17) “Household of median income” shall mean a household whose combined annual gross
25 income for all members does not exceed one hundred (100) percent of the median income for the San

1 Francisco Metropolitan Statistical Area, as calculated by the United States Department of Housing and
2 Urban Development (HUD) and adjusted for household size.

3 (18) "Housing project" shall mean any development which has residential units as defined in
4 the Planning Code, including but not limited to dwellings, group housing, assisted living developments,
5 and other forms of development which are intended to provide long-term housing to individuals and
6 households. "Housing project" for purposes of this Program shall also include the development of
7 live/work units as defined by Planning Code Section 102.13 and/or the development of loft units as
8 defined in this Section.

9 (19) "Housing unit" or "unit" shall mean a dwelling unit as defined in San Francisco
10 Housing Code Section 401.

11 (20) "Live/work unit" shall be as defined in San Francisco Planning Code Section 102.13.

12 (21) "Live/work project" shall mean a housing project containing more than one live/work
13 unit.

14 (22) "Long term housing" shall mean housing intended for occupancy by a person or persons
15 for 32 consecutive days or longer.

16 (23) "Market rate housing" shall mean housing constructed in the principal project that is
17 not subject to sales or rental restrictions.

18 (24) "Maximum annual rent" shall mean the maximum rent that a housing developer may
19 charge any tenant occupying an affordable unit for the calendar year. The maximum annual rent for an
20 affordable rental unit of the size indicated below shall be no more than 30 percent of the annual net
21 income for a household of low income as defined in this Section, as adjusted for the household size
22 indicated below as set forth in CCR title 25 Section 6932 as of the first date of the tenancy:

<u>Number of Bedrooms (or, for live/work units</u> <u>square foot equivalency)</u>	<u>Number of Persons in Household</u>
<u>0 (Less than 600 square feet)</u>	<u>1</u>

1	<u>1 (601 to 850 square feet)</u>	<u>2</u>
2	<u>2 (851 to 1100 square feet)</u>	<u>3</u>
3	<u>3 (1101 to 1300 square feet)</u>	<u>4</u>
4	<u>4 (More than 1300 square feet)</u>	<u>5</u>

5 (25) "Maximum purchase price" shall mean the maximum purchase price for an affordable
6 owned unit of the size indicated below that is affordable to a household of median income, adjusted for
7 the household size indicated below as set forth in CCR title 25 Section 6932 as of the date of the close
8 of escrow, assuming an annual payment for all housing costs of 33 percent of the combined household
9 annual net income, a 10 percent down payment, and available financing:

10	<u>Number of Bedrooms (or, for live/work units</u>	<u>Number of Persons in Household</u>
11	<u>square foot equivalency)</u>	
12	<u>0 (Less than 600 square feet)</u>	<u>1</u>
13	<u>1 (601 to 850 square feet)</u>	<u>2</u>
14	<u>2 (851 to 1100 square feet)</u>	<u>3</u>
15	<u>3 (1101 to 1300 square feet)</u>	<u>4</u>
16	<u>4 (More than 1300 square feet)</u>	<u>5</u>

17 (26) "Notice of Special Restrictions" shall mean a document recorded with the San Francisco
18 Recorder's Office for any unit subject to this Program detailing the sale and resale or rental
19 restrictions and any restrictions on purchaser or tenant income levels included as a Condition of
20 Approval of the principal project relating to the unit.

21 (27) "Off-site unit" shall mean a unit affordable to qualifying households constructed
22 pursuant to this Ordinance on a site other than the site of the principal project.

23 (28) "On-site unit" shall mean a unit affordable to qualifying households constructed
24 pursuant to this Ordinance on the site of the principal project.

1 (29) "Ordinance" shall mean Planning Code Sections 315.1 through 315.8.

2 (30) "Owned unit" shall mean a unit affordable to qualifying households which is a
3 condominium, stock cooperative, community apartment, or detached single-family home. The owner or
4 owners of an owned unit must occupy the unit as their primary residence.

5 (31) "Owner" shall mean the record owner of the fee or a vendee in possession.

6 (32) "Principal project" shall mean a housing development on which a requirement to
7 provide affordable housing units is imposed.

8 (33) "Procedures Manual" shall mean the City and County of San Francisco Affordable
9 Housing Monitoring Procedures Manual issued by the San Francisco Department of City Planning, as
10 amended.

11 (34) "Program" shall mean the Residential Inclusionary Affordable Housing Program.

12 (35) "Project applicant" shall mean an applicant for a building permit or a site permit or an
13 applicant for a conditional use permit or planned unit development permit, seeking approval from the
14 Planning Commission or Planning Department for construction of a housing project subject to this
15 Section, such applicant's successors and assigns, and/or any entity which controls or is under common
16 control with such applicant.

17 (36) "Rent" or "rental" shall mean the total charges for rent, utilities, and related housing
18 services to each household occupying an affordable unit.

19 (37) "Rental unit" shall mean a unit affordable to qualifying households which is not a
20 condominium, stock cooperative, or community apartment.

21 (38) "Section 6932" shall mean Section 6932 of Title 25 of the California Code of
22 Regulations as such section applies to the County of San Francisco.

23 Section 315.2: FINDINGS

24 The Board of Supervisors hereby finds and declares as follows:

25

1 A. Affordable housing is a paramount statewide concern. In 1980, the Legislature declared
2 in Government Code Section 65580:

3 (a) The availability of housing is of vital statewide importance, and the early attainment of
4 decent housing and a suitable living environment for every California family is a priority of the highest
5 order.

6 (b) The early attainment of this goal requires the cooperative participation of government and
7 the private sector in an effort to expand housing opportunities and accommodate the housing needs of
8 Californians of all economic levels.

9 (c) The provision of housing affordable to low-and moderate- income households requires the
10 cooperation of all levels of government.

11 (d) Local and state governments have a responsibility to use the powers vested in them to
12 facilitate the improvement and development of housing to make adequate provision for the housing
13 needs of all economic segments of the community

14 The Legislature further stated in Government Code Section 65581 that:

15 It is the intent of the Legislature in enacting this article:

16 (a) To assure that counties and cities recognize their responsibilities in contributing to the
17 attainment of the state housing goal.

18 (b) To assure that counties and cities will prepare and implement housing elements which . . .
19 will move toward attainment of the state housing goal.

20 (c) To recognize that each locality is best capable of determining what efforts are required by it
21 to contribute to the attainment of the state housing goal. . . .

22 The California Legislature requires each local government agency to develop a comprehensive,
23 long-term general plan establishing policies for future development. As specified in the Government
24 Code (at Sections 65300, 65302(c), and 65583(c)), the plan must: (1) "encourage the development of
25 a variety of types of housing for all income levels, including multifamily rental housing;" (2) "[a]ssist

1 in the development of adequate housing to meet the needs of low- and moderate-income households;"
2 and (3) "conserve and improve the condition of the existing affordable housing stock, which may
3 include addressing ways to mitigate the loss of dwelling units demolished by public or private action."

4 B. San Francisco faces a continuing shortage of affordable housing for very low and low-
5 income residents. The San Francisco Planning Department reported that for the past ten years, 3,199
6 units of low and very low-income housing were built in SF out of a total need of 15,103 units for the
7 same period. According to the state Department of Housing and Community Development, there will
8 be a regional need for 230,743 new housing units in the nine Bay Area counties from 1999-2006. Of
9 that amount, at least 58 percent, or 133,164 units, are needed for moderate, low and very low-income
10 households. The Association of Bay Area Governments (ABAG) is responsible for dividing the total
11 regional need numbers among its member governments which includes both counties and cities. ABAG
12 estimates that San Francisco's low and very low-income housing production need through 2006 is
13 7,370 units out of a total new housing need of 20,372 units. Within the past ten years, less than 25% of
14 the previously projected housing need was produced in San Francisco. The new ABAG housing goals
15 will require that San Francisco produce more than twice the amount of low and very low-income
16 housing within half the time.

17 C. In response to the above mandate from the California Legislature and the projections of
18 housing needs for San Francisco, San Francisco has instituted several strategies for producing new
19 affordable housing units. The General Plan Residential Element recognizes the need to increase the
20 amount of land available and improve building resources for permanently affordable housing through
21 the inclusion of affordable units in larger market-rate housing projects. Further, the City, as
22 established in the General Plan, seeks to encourage the distribution of affordable housing throughout
23 all neighborhoods and, thereby, offer diverse housing choices and promote economic and social
24 integration. The General Plan calls for an increase in the production of new affordable housing and
25 for the development of mixed income housing to achieve social and cultural diversity. As one strategy

1 to achieve these goals, the General Plan states that "[i]nclusion of affordable housing should be
2 required as a condition of approval of housing projects containing 10 or more units which seek
3 Planning Commission approval as conditional uses or planned unit developments." To further the
4 goals of the State Legislature and the General Plan, this legislation is intended to replace the current
5 Planning Commission Guidelines for Application of San Francisco's Inclusionary Affordable Housing
6 Policy to insure greater consistency and certainty in the application of affordable housing requirements
7 on housing projects.

8 D. The 2000 Consolidated Plan for July 1, 2000 – June 30, 2005, issued by the Mayor's
9 Office of Community Development and the Mayor's Office of Housing establishes that extreme housing
10 pressures face San Francisco, particularly in regard to low- and moderate-income residents. Many
11 elements constrain housing production in the City. This is especially true of affordable housing. San
12 Francisco is largely built out, and its geographical location at the northern end of a peninsula
13 inherently prevents substantial new development. There is no available adjacent land to be annexed, as
14 the cities located on San Francisco's southern border are also dense urban areas. Thus new
15 construction of housing is limited to areas of the City not previously designated as residential areas,
16 infill sites, or to areas with increased density. New market-rate housing absorbs a significant amount
17 of the remaining supply of land and other resources available for development and thus limits the
18 supply of affordable housing.

19 There is a great need for affordable rental and owner-occupied housing in the City. The
20 vacancy rate for residential rental property has dropped significantly since 1989-90 when the
21 Residence Element 1992 Annual Evaluation Report reported a 4.2 percent citywide vacancy rate (for
22 1989), and the U.S. Census showed a 6.9 percent vacancy rate (as of 1990). Data from the San
23 Francisco rental market from RealFacts for 2000 indicates a vacancy rate of 1.9 percent. Rents on
24 newly occupied residential units have risen dramatically. Housing cost burden is one of the major
25 standards for determining whether a locality is experiencing inadequate housing conditions; the

1 Consolidated Plan defines a household expending 30 percent or more of its gross income for housing
2 costs as experiencing a cost burden. According to the 1990 Census, 38.1 percent of San Franciscans
3 experienced a cost burden in 1990 and, according to more recent data from the American Housing
4 Survey, this level had risen to 45 percent in 1993.

5 The San Francisco residential real estate market is one of the most expensive in the United
6 States. A February 1999 report from the National Association of Realtors found that San Francisco
7 had the highest median price of existing homes in the United States. In the 1980's average home prices
8 in San Francisco rose nearly three times as fast as the overall cost of living in San Francisco according
9 to data from the Bay Area Council and 1990 Census. An analysis of sales data from a three-month
10 period in 1999 gathered by American Real Estate Solutions showed that of 1,420 full, confirmed, and
11 verified sales, the median sales price was \$390,000. This study, among others, demonstrates that the
12 majority of market-rate homes for sale in San Francisco are priced out of the reach of low and
13 moderate income households.

14 These factors contribute to a heavy demand for affordable housing in the City that the private
15 market cannot meet. Each year the number of market rate units that are affordable to low income
16 households is reduced by rising market rate rents and sales prices. The number of households
17 benefiting from rental assistance programs is far below the need established by the 1990 Census.
18 Because the shortage of affordable housing in the City can be expected to continue for many years, it is
19 necessary to maintain the affordability of the housing units constructed by housing developers under
20 this Program. The Residential Element of the General Plan (Objective 9, Policy 2) recognizes this
21 need and provides that affordable units should be required to remain affordable for at least 50 years
22 and, where possible, for longer.

23 In 1994 the California Coalition for Rural Housing Project issued a study entitled "Creating
24 Affordable Communities: Inclusionary Housing Programs in California." The study found that at least
25 64 jurisdictions in California had inclusionary housing programs and that, overall, the inclusionary

1 requirements were generating large numbers of affordable units. Sixty-six percent of the inclusionary
2 programs studied were mandatory programs and the mandatory programs were proven to be more
3 effective by a number of measures than the voluntary programs. While there was a wide range in the
4 percentage-requirements for inclusionary housing, a 10% requirement is the most common, occurring in
5 39% of the jurisdictions studied, followed by a 15% requirement that was the second-most common.

6 E. Development of new market-rate housing makes it possible for new residents to move to
7 the city. These new residents place demands on services provided by both public and private sectors.
8 Some of the public and private sector employees needed to meet the needs of the new residents earn
9 incomes only adequate to pay for affordable housing. Because affordable housing is in short supply
10 within the City, such employees may be forced to live in less than adequate housing within the City, pay
11 a disproportionate share of their incomes to live in adequate housing within the City, or commute ever-
12 increasing distances to their jobs from housing located outside the City. These circumstances harm the
13 City's ability to attain goals articulated in the City's General Plan and place strains on the City's ability
14 to accept and service new market-rate housing development.

15 F. The development of affordable housing on the same site as market-rate housing
16 increases social and economic integration vis-à-vis housing in the City and has corresponding social
17 and economic benefits to the City. Inclusionary housing provides a healthy job and housing balance.
18 Inclusionary housing provides more affordable housing close to employment centers which in turn may
19 have a positive economic impact by reducing such costs as commuting and labor costs. However, there
20 may also be trade-offs where constructing affordable units at a different site than the site of the
21 principle project may produce a greater number of affordable units without additional costs to the
22 project applicant. If a project applicant may produce a significantly greater number of affordable units
23 off-site then it is in the best interest of the City to permit the development of affordable units at a
24 different location than that of the principle project.

1 G. Provided project applicants can take these requirements into consideration when
2 negotiating to purchase land for a housing project, the requirements of this Section are generally
3 financially feasible for project applicants to meet, particularly because of the benefits being offered by
4 the City to housing projects that comply with this Section. Some of the requirements of this Section are
5 being phased in over a period of one year, so that project applicants will have adequate notice of these
6 requirements and can take them into consideration when negotiating to purchase land for a project.
7 This Section provides a means by which a project applicant may seek a reduction or waiver of the
8 requirements of this Section if the project applicant can show that imposition of these requirements
9 would create an unlawful financial burden.

10 H. Conditional Use and Planned Unit Development Permits permit the development of
11 certain uses not permitted as of right in specific districts or greater density of permitted residential
12 uses. As the General Plan recognizes, through the conditional use and planned unit development
13 process, applicants for housing projects generally receive material economic benefits. Such applicants
14 are generally permitted to build in excess of the generally applicable black letter requirements of the
15 Planning Code for housing projects resulting in increased density, bulk, or lot coverage or a reduction
16 in parking or other requirements or an approval of a more intensive use over that permitted without the
17 conditional use permit or planned unit development permit. Through the conditional use and planned
18 unit development process, building standards can be relaxed in order to promote lower cost home
19 construction. An additional portion of San Francisco's affordable housing needs can be supplied (with
20 no public subsidies or financing) by private sector housing developers developing additional
21 inclusionary affordable units in their large market-rate projects in exchange for the density and other
22 bonuses conferred by conditional use or planned unit development approvals, provided it is financially
23 attractive for private sector housing developers to seek such conditional use and/or planned unit
24 development approvals.

1 I. The Residential Element of the General Plan (Objective 7, Policy 1) provides that as
2 land not previously used for residential space is developed for residential use, such development should
3 also provide for a minimum of 10% permanently affordable units for all residential development
4 containing more than 10 units. Live/work as defined in the Planning Code recognizes that "residential
5 living space" is an integral part of a live/work unit. A substantial portion of new housing development
6 in San Francisco has been live/work units in Mixed Use Districts South of Market and in industrially
7 zoned areas of San Francisco where residential development has not traditionally been permitted as of
8 right. Live/work development projects are subject to less stringent development standards than other
9 types of housing projects in certain Mixed Use Districts and industrially zoned areas. Live/work
10 developments are conferred an equivalent benefit as projects going through the conditional use or
11 planned unit development permit process by virtue of the fact that (1) live/work developments are not
12 required to get a conditional use permit for housing development in some Mixed Use Districts and in
13 all industrially zoned districts where other residential uses are required to get a conditional use permit;
14 (2) live/work developments receive a five foot height bonus above prevailing height limits for specific
15 neighborhoods; (3) live/work units are permitted to cover 100% of a lot rather than the stricter lot
16 coverage requirements that apply to other residential development, typically requiring rear yards equal
17 to 15 feet in length or 25% of the lot, whichever is greater. Given these benefits conferred by statute
18 which allow live/work developments to exceed the limitations on other housing development in the City,
19 the Board of Supervisors finds that, for purposes of this Program, live/work developments are
20 conferred a private benefit equal to or in excess of housing projects which require a conditional use or
21 planned unit development permit. The relaxed building standards applied to live/work projects
22 promote the ability to include lower cost home production in live/work projects. A live/work unit meets
23 the definition of California Civil Code Section 1940(c) as a "dwelling unit" because it "is used as a
24 home, residence or sleeping place by one person who maintains a household or by two or more persons
25

1 who maintain a common household." Live/work units shall not be considered "commercial real
2 property" for purposes of Civil Code Section 1954.25 et seq.

3 J. The City wants to balance the burden on private property owners with the demonstrated
4 need for affordable housing in the City. For the reasons stated above, the Board of Supervisors thus
5 intends to apply an inclusionary housing requirement to all residential projects of 10 units or more. In
6 order to balance the burden on property owners, the Board intends to limit the application of an
7 inclusionary housing requirement to 10% for housing projects that do not receive any of the benefits
8 described above through the conditional use or planned unit development process, or in live/work
9 projects. A slightly higher percentage will be applied to projects which generally receive benefits
10 through the conditional use or planned unit development process, or in live/work projects.

11 K. The findings of Planning Code Section 313.2 for the Jobs-Housing Linkage Program,
12 Planning Code Sections 313 et seq., relating to the shortage of affordable housing, the low vacancy
13 rate of housing affordable to persons of lower and moderate income, and the decrease in construction
14 of affordable housing in the City are hereby readopted.

15 Section 315.3: APPLICATION

16 (a) This Ordinance shall apply to

17 (1) all applications for a building permit or a site permit filed with the Department of
18 Building Inspection or the Planning Department on or after June 18, 2001 for housing projects which:

19 (A) consist of ten or more units

20 (B) do not require Planning Commission approval as a conditional use or planned unit
21 development;

22 (C) have a project site which was optioned or acquired or an environmental evaluation
23 application that was filed after June 18, 2001.

24 (2) all applications for a conditional use or planned unit development permit filed with the
25 Planning Department on or after June 18, 2001 for housing projects which:

1 (A) consist of ten or more units;

2 (B) require Planning Commission approval as a conditional use or planned unit
3 development.

4 (3) all applications for a building permit or a site permit filed with the Planning
5 Department or the Building Department on or after June 18, 2001 for housing projects which:

6 (A) consist of ten or more units;

7 (B) consist of live/work units as defined by Planning Code Section 102.13.

8 (4) housing projects which require Planning Commission approval of replacement housing
9 destroyed by earthquake, fire or natural disaster only where the destroyed housing included units
10 restricted under the Residential Inclusionary Housing Program or the City's predecessor inclusionary
11 housing policy, condominium conversion requirements, or other affordable housing program.

12 (b) This Ordinance shall not apply to:

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

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

19 (3) that portion of a housing project located on property under the jurisdiction of the San
20 Francisco Redevelopment Agency or the Port of San Francisco where the application of this Ordinance
21 is prohibited by California or local law;

22 (c) Waiver or Reduction:

23 (1) A project applicant of any project subject to the requirements in this Program may
24 appeal to the Board of Supervisors for a reduction, adjustment, or waiver of the requirements based
25

1 upon the absence of any reasonable relationship or nexus between the impact of development and
2 either the amount of the fee charged or the inclusionary requirement.

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

8 (3) Any such appeal shall be made in writing and filed with the Clerk of the Board no later
9 than ten (10) days before the first public hearing on any discretionary approval or permit for the
10 development, or if no such discretionary approval or permit is required, or if the action complained of
11 occurs after the first public hearing on such permit or approval, then the appeal shall be filed within
12 ten (10) days after issuance of the permit. The appeal shall set forth in detail the factual and legal
13 basis for the claim of waiver, reduction, or adjustment. The Board of Supervisors shall consider the
14 appeal at the hearing within sixty (60) days after the filing of the appeal. The appellant shall bear the
15 burden of presenting substantial evidence to support the appeal including comparable technical
16 information to support appellant's position. No waiver shall be approved by the Board of Supervisors
17 for a new building permit, conditional use permit or similar discretionary approval on property with an
18 approved building permit, conditional use permit or similar discretionary permit unless the Board of
19 Supervisors finds that the new building permit, conditional use permit or similar discretionary
20 approval is superior to the approved project in its design. The decision of the Board shall be by a
21 simple majority vote and shall be final. If a reduction, adjustment, or waiver is granted, any change in
22 use within the project shall invalidate the waiver, adjustment, or reduction of the fee or inclusionary
23 requirement.

24 Section 315.4: ON-SITE HOUSING REQUIREMENT AND BENEFITS

Except as provided in Section 315.4(e), all housing projects subject to this Program through the application of Section 315.3 shall be required to construct on-site units subject to the following requirements:

(a) Number of Units:

(1) The Planning Department shall require for housing projects covered by Section 315.3(a)(1), as a condition of Planning Department approval of a project's building permit, that 10% of all units constructed on the project site shall be affordable to qualifying households so that the following number of units affordable to qualifying households shall be required:

<u>Number of Units in Principal Project</u>	<u>Required Number of Affordable Units</u>
<u>0 – 9</u>	<u>0</u>
<u>10 – 15</u>	<u>1</u>
<u>16 – 25</u>	<u>2</u>
<u>26 – 35</u>	<u>3</u>
<u>36 – 45</u>	<u>4</u>
<u>46 +</u>	<u>1 additional unit for each additional 10 dwelling units</u>

Notwithstanding any other provision of this section, any inclusionary affordable requirement imposed on housing projects covered by Section 315.3(a)(1) in connection with an application filed with the Department of Building Inspection from the effective date of this legislation and 180 days thereafter shall be 5% as follows:

<u>Number of Units</u>	<u>Required Number of Affordable</u>
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<u>in Principal Project</u>	<u>Units</u>
<u>0 – 9</u>	<u>0</u>
<u>10 – 29</u>	<u>1</u>
<u>30 – 49</u>	<u>2</u>
<u>50 – 69</u>	<u>3</u>
<u>70 – 89</u>	<u>4</u>
<u>90 +</u>	<u>1 additional unit for each additional 20 dwelling units</u>

The Planning Department shall provide written notice by mail to the project applicant of the number of affordable units which shall be required within 30 days of approval by the Planning Department or Planning Commission.

(2) The Planning Department or the Planning Commission shall require for housing projects covered by Section 315.3(a)(2), (3) and (4), as a Condition of Approval of a conditional use or planned unit development permit or as a condition of Planning Department approval of a live/work project that 15% of all units constructed on the project site shall be affordable to qualifying households so that the following number of units affordable to qualifying households shall be required:

<u>Number of Units in Principal Project</u>	<u>Required Number of Affordable Units</u>
<u>0 -9</u>	<u>0</u>
<u>10 -16</u>	<u>2</u>
<u>17 - 23</u>	<u>3</u>
<u>24 - 29</u>	<u>4</u>

<u>30 36</u>	<u>5</u>
<u>37 - 43</u>	<u>6</u>
<u>44 +</u>	<u>1 additional unit for each additional 6 dwelling units</u>

The Planning Commission or Planning Department shall provide written notice by mail to the project applicant of the number of affordable units which shall be required within 30 days of approval by the Planning Commission or Planning Department.

(2) If the principal project has resulted in demolition, conversion, or removal of affordable housing units renting or selling to households at income levels and/or for a rental rate or sales price below corresponding income thresholds for units affordable to qualifying households, the Planning Commission shall require that the project applicant replace the number of affordable units removed with units of a comparable number of bedrooms or provide that 15% of all units constructed as part of the new project shall be affordable to qualifying households, whichever is greater.

(b) Timing of Construction: On-site inclusionary housing required by this Section 315.4 must be constructed, completed, and ready for occupancy no later than the market rate units in the principal project.

(c) Type of Housing: The type of affordable housing needed in San Francisco is documented in the City's Consolidated Plan and the Residence Element of the General Plan. In general, affordable units constructed under this Section 315.4 shall be comparable in number of bedrooms, exterior appearance and overall quality of construction to market rate units in the principal project. The Notice of Special Restrictions or Conditions of Approval shall include a specific number of units at specified unit sizes for affordable units. The square footage of affordable units and interior features in affordable units do not need to be same as or equivalent to those in market rate units in the principal project, so long as they are of good quality and are consistent with then-current standards for new housing.

1 (d) Marketing the Units: The Notice of Special Restrictions or Conditions of Approval shall
2 specify that the marketing requirements and procedures contained in the Procedures Manual shall
3 apply to the affordable units in the project.

4 (e) Alternatives: At the project applicant's election, the project applicant may satisfy the
5 requirement of Section 315.4 by:

6 (1) constructing units affordable to qualifying households at an alternative site within the
7 City and County of San Francisco pursuant to the requirements of Section 315.5.

8 (2) paying an in lieu fee to the Mayor's Office of Housing pursuant to the requirements of
9 315.6.

10 (f) If the project applicant elects to satisfy the inclusionary housing requirements through
11 the production of on-site inclusionary housing in this Section 315.4, the project applicant shall receive
12 the following benefits:

13 (1) The project applicant shall not be required to pay a conditional use fee pursuant to
14 Planning Code Section 352, if required;

15 (2) The project applicant shall not be required to pay the environmental review fees
16 required by Administrative Code Section 31.46B;

17 (3) The project applicant shall not be required to pay the building permit fee required by the
18 Building Code and by Planning Code Section 355 for the portion of the housing project that is
19 affordable. The project applicant shall pay the building fee for the portion of the project that is market-
20 rate.

21 Section 315.5: COMPLIANCE THROUGH OFF-SITE HOUSING DEVELOPMENT

22 If the project applicant elects, pursuant to Section 315.4(e), that the project applicant will build off-site
23 units to satisfy the requirements of this Program, the project applicant shall meet the following
24 requirements:

1 (a) Number of Units: The number of units constructed off-site shall be an additional 5% of
 2 the number of units constructed in the principal project so that the following number of units affordable
 3 to qualifying households shall be required:

4 For projects described in 315.3(a)(1), 15% as follows:

<u>Number of Units</u> <u>in Principal Project</u>	<u>Required Number of Affordable</u> <u>Units</u>
<u>0 - 9</u>	<u>0</u>
<u>10 - 16</u>	<u>2</u>
<u>17 - 23</u>	<u>3</u>
<u>24 - 29</u>	<u>4</u>
<u>30 - 36</u>	<u>5</u>
<u>37 - 43</u>	<u>6</u>
<u>44 +</u>	<u>1 additional unit for each</u> <u>additional 6 dwelling units</u>

17 For projects described in 315.3(a)(2),(3), and (4), 20% as follows:

<u>Number of Units</u> <u>in Principal Project</u>	<u>Required Number of Affordable</u> <u>Units</u>
<u>0 - 9</u>	<u>0</u>
<u>10 - 12</u>	<u>2</u>
<u>13 - 17</u>	<u>3</u>
<u>18 - 22</u>	<u>4</u>
<u>23 - 27</u>	<u>5</u>

<u>28 - 32</u>	<u>6</u>
<u>33 - 37</u>	<u>7</u>
<u>38+</u>	<u>1 additional unit for each additional 4 dwelling units</u>

(b) Timing of Construction: The project applicant shall insure that the off-site units are constructed, completed, and ready for occupancy no later than the market rate units in the principal project.

(c) Location of off-site housing: The project applicant must insure that off-site units are located in either (i) close proximity to the principal project, or (ii) a high need area or a project type identified as a high priority in the Residence Element of the General Plan or the Consolidated Plan published by the Mayor's Office of Housing and the Mayor's Office of Community Development or their successors.

(d) Type of Housing: The type of affordable housing needed in San Francisco is documented in the City's Consolidated Plan and the Residence Element of the General Plan. In general, affordable units constructed under this Section 315.5 shall be comparable in number of bedrooms, exterior appearance and overall quality of construction to market rate units in the principal project. The Notice of Special Restrictions or Conditions of Approval shall include a specific number of units at specified unit sizes for affordable units. The square footage of affordable units and interior features in affordable units need not be the same as or equivalent to those in market rate units in the principal project, so long as they are of good quality and are consistent with then-current standards for new housing. If the residential units in the principal project are live/work units which do not contain bedrooms or are other types of units which do not contain bedrooms separated from the living space, the off site units shall be comparable in size according to the following equivalency calculation between live/work or loft units and units with bedrooms:

<u>Less than 600 Square Feet</u>	<u>Studio Unit</u>
<u>601 to 850 Square Feet</u>	<u>One bedroom unit</u>
<u>851 to 1100 Square Feet</u>	<u>Two bedroom unit</u>
<u>1101 to 1300 Square Feet</u>	<u>Three bedroom unit</u>
<u>More than 1300 Square Feet</u>	<u>Four bedroom unit</u>

(5) Marketing the Units: Notice of Special Restrictions or Conditions of Approval shall specify that the marketing requirements and procedures contained in the Procedures Manual shall apply to the marketing of off-site units.

Section 315.6: COMPLIANCE THROUGH IN LIEU FEE

If the project applicant elects, pursuant to Section 315.4(e) 2 that the project applicant will pay an in-lieu fee to satisfy the requirements of this Program, the project applicant shall meet the following requirements:

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

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

(1) The number of units required by Section 315.5 if the project applicant were to elect to meet the requirements of this section by off-site housing development.

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

(3) Annual adjustments to the affordability gap based upon the percentage increase or decrease in the Average Area Purchase Price Safe Harbor Limitations for New Single Family

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

9 (c) Prior to the issuance by the Director of Building Inspection of the first site or building
10 permit for the project applicant, the project applicant must notify the Director of Planning and the
11 Director of the Mayor’s Office of Housing in writing that it has either (i) satisfied the conditions of
12 Section 315.4 or Section 315.5 or (ii) paid in full the sum required to the Controller. If the project
13 applicant fails by the applicable date to demonstrate to the Director of Planning that the project
14 applicant has satisfied the condition of Section 315.4 or Section 315.5 or paid the applicable sum in full
15 to the Controller, the Director of Building Inspection shall deny any and all site or building permits or
16 certificates of occupancy for the development project until the Director of Planning notifies the
17 Director of Building Inspection and the Director of the Mayor’s Office of Housing that such payment
18 has been made, and the Director of Planning shall immediately initiate lien proceedings against the
19 project applicant’s property pursuant to Section 315.6(f) to recover the fee.

20 (d) Upon payment of the fee in full to the Controller and upon request of the project
21 applicant, the Controller shall issue a certification that the fee has been paid. The project applicant
22 shall present such certification to the Director of Planning and the Director of the Mayor’s Office of
23 Housing prior to the issuance by the Director of Building Inspection of the first site or building permit
24 or certificate of occupancy for any development subject to this Section. If the Director of Planning
25 notices the Director of Building Inspection and the Director of the Mayor’s Office of Housing that the

1 sponsor has complied with this Section, or fails to respond within five business days, a site or building
2 permit or certificate of occupancy shall not be disapproved pursuant to this Section. Any failure of the
3 Director of Building Inspection or the Director of Planning to give any notice under this Section shall
4 not relieve a project applicant from compliance with this Section. Where the Director of Building
5 Inspection issues any site of building permit or certificate of occupancy for the development project in
6 error, or where a sponsor fails for any reason to pay the in-lieu fee to the Controller in compliance
7 with this Section prior to the Director of Building Inspection's issuance of the first site or building
8 permit or certificate of occupancy for the development project, the Director of Planning shall
9 immediately initiate lien proceedings against the development project under Section 315.6(f) to recover
10 the fee, and the Director of Building Inspection shall revoke any permit or certificate issued in error
11 and refuse any site or building permit or certificate of occupancy until the project applicant has
12 complied with this Section.

13 (e) All monies contributed pursuant to this Section shall be deposited in the special fund
14 maintained by the Controller called the Citywide Affordable Housing Fund. The receipts in the Fund
15 are hereby appropriated in accordance with law to be used solely to increase the supply of housing
16 affordable to qualifying households subject to the conditions of this Section. The Fund shall be
17 administered and expended by the Director of the Mayor's Office of Housing, who shall have the
18 authority to prescribe rules and regulations governing the Fund which are consistent with this Section.

19
20 (f) Lien Proceedings

21 (1) A sponsor's failure to comply with the requirements of this Section and shall constitute
22 cause for the City to record a lien against the development project in the sum of the in-lieu fee required
23 under this ordinance, as adjusted under this Section.

24 (2) The Director of Planning shall initiate proceedings to impose the lien in accordance
25 with the procedures set forth in Chapter 10, Article XX, of the San Francisco Administrative Code, and

1 shall send all notices required by that Article to the owner of the property as well as the sponsor. The
2 Director shall also prepare a preliminary report notifying the sponsor of a hearing to confirm such
3 report by the Board of Supervisors at least 10 days before the date of the hearing. The report to the
4 sponsor shall contain the sponsor's name, a description of the sponsor's development project, a
5 description of the parcels of real property to be encumbered as set forth in the Assessor's Map Books
6 for the current year, a description of the alleged violation of this ordinance, and shall fix a time, date,
7 and place for hearing. The Director of Planning shall cause this report to be mailed to each owner of
8 record of the parcels of real property subject to lien. Except for the release of lien recording fee
9 authorize by Administrative Code Section 10.237, all sums collected by the Tax Collector pursuant to
10 this ordinance shall be held in trust by the Treasurer and deposited in the Citywide Affordable Housing
11 Fund established in Section 313.12.

12 (3) Any notice required to be given to a sponsor or owner shall be sufficiently given or
13 served upon the sponsor or owner for all purposes hereunder if personally served upon the sponsor or
14 owner or if deposited, postage prepaid, in a post office letterbox addressed in the name of the sponsor
15 or owner at the official address of the sponsor or owner maintained by the Tax Collector for the
16 mailing of tax bills or, if no such address is available, to the sponsor at the address of the development
17 project.

18 Section 315.7. DURATION AND MONITORING OF AFFORDABILITY

19 (a) All units constructed pursuant to Sections 315.4 and 315.5 must remain affordable to
20 qualifying households for the life of the project, to be defined as 50 years from the date of issuance of
21 the first certificate of temporary occupancy. The income levels specified in the Notice of Special
22 Restrictions and/or Conditions of Approval for the project shall be required income percentages for the
23 50-year life of the project.

24 (b) The Planning Commission or the Planning Department shall require all housing
25 projects subject to this ordinance to record a Notice of Special Restrictions with the Recorder of the

1 City and County of San Francisco. The Notice of Special Restrictions must incorporate the
2 affordability restrictions. All projects described in Section 315.3(a)(1) and 315.3(a)(3) must
3 incorporate all of the requirements of this Section 315.7 into the Notice for Special Restrictions,
4 including any provisions required to be in the Conditions of Approval for housing projects described in
5 Section 315.3(a)(2). These Section 315.3(a)(2) projects which are housing projects which go through
6 the conditional use or planned unit development process shall have Conditions of Approval. The
7 Conditions of Approval shall specify that project applicants shall adhere to the marketing, monitoring,
8 and enforcement procedures outlined in the Procedures Manual in effect at the time of project
9 approval. The Planning Commission shall file the Procedures Manual in the case file for each project
10 requiring inclusionary housing pursuant to this Program. The Procedures Manual will be referenced
11 in the Notice of Special Restrictions for each project.

12 (c) Any affordable rental units permitted by the Planning Commission to be converted to
13 ownership units must satisfy the requirements of the Procedures Manual, including that the units shall
14 be sold at restricted sales prices to households meeting the income qualifications specified in the Notice
15 of Special Restrictions or Conditions of Approval, with a right of first refusal for the occupant(s) of
16 such units at the time of conversion.

17 (d) For ownership units, the Notice of Special Restrictions or Conditions of Approval will
18 include provisions restricting resale prices and purchaser income levels according to the formula
19 specified in the Procedures Manual. In the case that subordination of the Affordability Conditions
20 contained in a recorded Notice of Special Restrictions may be necessary to ensure the Project
21 Applicant's receipt of adequate construction and/or permanent financing for the project, or to enable
22 first time homebuyers to qualify for mortgages, the project applicant may follow the procedures for
23 subordination of affordability restrictions as described in the principal project's Conditions of
24 Approval and in the Procedures Manual. A release following foreclosure or other transfer in lieu of
25

1 foreclosure may be authorized if required as a condition to financing pursuant to the procedures set
2 forth in the Procedures Manual.

3 Purchasers of affordable units shall secure the obligations contained in the Notice of Special
4 Restrictions or Conditions of Approval by executing and delivering to the City a promissory note
5 secured by a deed of trust encumbering the applicable affordable unit as described in the Procedures
6 Manual, or by an alternative means if so provided for in the Procedures Manual.

7 Section 315.8: ENFORCEMENT PROVISIONS AND MONITORING OF PROGRAM

8 (a) A first certificate of occupancy shall not be issued by the Director of the Department of
9 Building Inspection to any unit in the principal project until all of the on-site or off-site housing
10 development requirements of Sections 315.4 or 315.5, if applicable, and Section 315.7 are met. A first
11 site permit for the principal project shall not be issued by the Director of the Department of Building
12 Inspection until the requirements of Sections 315.4(e) and 315.6 regarding payment of the in lieu fee, if
13 applicable, have been met.

14 (b) If the Planning Commission determines that a project applicant has failed to comply
15 with Sections 315.4 or 315.5; and the recording or reporting requirements of Section 315.7 as detailed
16 in the Procedures Manual, or has violated the Conditions of Approval, the Planning Commission may,
17 until the violation is cured, (a) revoke the conditional use permit for the principal project or required
18 affordable units, (b) impose a penalty on the project pursuant to Section 176(c) of this Code and/or (c)
19 the Zoning Administrator may enforce the provisions of this Program through any means provided for
20 in Section 176 of this Code.

21 (c) The Planning Commission shall notify the Mayor's Office of Housing of any housing
22 project subject to this Program, including the name of the project applicant and the number and
23 location of the affordable units, within 30 days of the Planning Commission's or the Planning
24 Department 's approval of a conditional use or planned unit development permit or a live/work permit
25 application. The Mayor's Office of Housing shall provide all project applicants with information

1 concerning the City's first time home-buyer assistance programs and any other related programs the
2 Mayor's Office of Housing shall deem relevant to this Program.

3 (d) The Planning Commission shall, as part of the annual Housing Inventory, report to the
4 Board of Supervisors on the results of this Program including, but not limited to, a report on the
5 following items:

6 (1) The number of, location of, and project applicant for housing projects which came
7 before the Planning Commission for a conditional use or planned unit development permit, and the
8 number of, location of, and project applicant for housing projects which were subject to the
9 requirements of this Ordinance;

10 (2) The number of, location of, and project applicant for housing projects which applied for
11 a waiver, adjustment, or reduction from the requirements of this Ordinance pursuant to Section
12 315.3(c), and the number of, location of, and project applicant for housing projects which were granted
13 such a waiver, adjustment, or reduction and, if a reduction, to what percentage;

14 (3) The number of, location of, and project applicant for every housing project to which this
15 Ordinance applied and the number of market rate units and the number of affordable on- and off-site
16 units provided, including the location of all of the affordable units; and

17 (e) A study is authorized to be undertaken under the direction of the Mayor's Office of
18 Housing immediately and to be updated every 5 years thereafter to determine the relationship in nature
19 and amount between the production of market-rate residential housing and the availability and demand
20 for affordable housing in San Francisco. The Mayor's Office of Housing shall make recommendations
21 to the Board of Supervisors regarding any legislative changes to requirements pertaining to housing
22 development, including developments requiring conditional use permits and planned unit development
23 permits and live/work projects.

24 Section 315.9: PARTIAL INVALIDITY AND SEVERABILITY

1 If any provision of this Ordinance, or its application to any housing project or to any
2 geographical area of the City, is held invalid, the remainder of this Ordinance, or the application of
3 such provision to other housing projects or to any other geographical areas of the City, shall not be
4 affected thereby.

5 APPROVED AS TO FORM:
6 LOUISE H. RENNE, City Attorney

7
8 By: _____
9 SUSAN S. CLEVELAND
10 Deputy City Attorney

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