

[Planning Code – Affordable Housing Program Exemption For Qualified Student Housing]

**Ordinance amending the Residential Inclusionary Affordable Housing Program,
Planning Code Sections 415 et seq. to exempt certain Qualified Student Housing
Projects, as defined, if the project meets certain requirements; adding corresponding
definitions to Section 401; and making findings including environmental findings.**

NOTE: Additions are *single-underline italics Times New Roman*;
deletions are ~~*strike-through italics Times New Roman*~~.
Board amendment additions are double-underlined;
Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. Findings. The Board of Supervisors hereby finds and declares as follows:

(a) The Planning Department has determined that the actions contemplated in this Ordinance are in compliance 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.

(b) On _____, 2009, the Planning Commission, in Resolution No. _____ approved and recommended for adoption by the Board this legislation and adopted findings that it is consistent, on balance, with the City's General Plan and eight priority policies of Planning Code Section 101.1. The Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No. _____, and is incorporated by reference herein.

(c) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this legislation will serve the public necessity, convenience, and welfare for the reasons

1 set forth in Planning Commission Resolution No. _____, and incorporates such
2 reasons by reference herein.

3 Section 2. The San Francisco Planning Code is hereby amended by amending Section
4 401 and 415.3, to read as follows:

5 **SEC. 401. DEFINITIONS.**

6 (a) In addition to the specific definitions set forth elsewhere in this Article, the
7 following definitions shall govern interpretation of this Article:

8 ~~(1)~~—"Affordable housing project." A housing project containing units constructed to
9 satisfy the requirements of Sections 413.5, 413.8, 415.4, or 4.5.5 of this Article, or receiving
10 funds from the Citywide Affordable Housing Fund.

11 ~~(2)~~—"Affordable to a household." A purchase price that a household can afford to pay
12 based on an annual payment for all housing costs of 33 percent of the combined household
13 annual net income, a 10 percent down payment, and available financing, or a rent that a
14 household can afford to pay based on an annual payment for all housing costs of 30 percent
15 of the combined annual net income.

16 ~~(3)~~—"Affordable to qualifying households":

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

20 (i) Only to households with an annual net income equal to or less than that of a
21 household of moderate income; and

22 (ii) At or below the maximum purchase price.

23 (B) With respect to rental units in an affordable housing project, the average annual
24 rent shall not exceed the allowable average annual rent. Each unit shall be rented:

1 (i) Only to households with an annual net income equal to or less than that of a
2 household of lower income;

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

4 ~~(4)~~—"Allowable average purchase price":

5 (A) For all affordable one-bedroom units in a housing project, a price affordable to a
6 two-person household of median income as set forth in Title 25 of the California Code of
7 Regulations Section 6932 ("Section 6932") on January 1st of that year;

8 (B) For all affordable two-bedroom units in a housing project, a price affordable to a
9 three-person household of median income as set forth in Section 6932 on January 1st of that
10 year;

11 (C) For all affordable three-bedroom units in a housing project, a price affordable to
12 a four-person household of median income as set forth in Section 6932 on January 1st of that
13 year;

14 (D) For all affordable four-bedroom units in a housing project, a price affordable to a
15 five-person household of median income as set forth in Section 6932 on January 1st of that
16 year.

17 (1) "Affordable to qualifying middle income households":

18 (A) With respect to owned units, the average purchase price on the initial sale of all
19 qualifying middle income units shall not exceed the allowable average purchase price deemed
20 acceptable for households with an annual gross income equal to or less than the qualifying
21 limits for a household of middle income, adjusted for household size. This purchase price shall
22 be based on household spending of 35% of income for housing, and shall only apply to initial
23 sale, and not for the life of the unit.

24 (B) With respect to rental units, the average annual rent--including the cost of
25 utilities paid by the tenant according to the HUD utility allowance established by the San

1 Francisco Housing Authority -- for qualifying middle income units shall not exceed the
2 allowable average purchase price deemed acceptable for households with an annual gross
3 income equal to or less than the qualifying limits for a household of middle income, adjusted
4 for household size. This price restriction shall exist for the life of the unit.

5 ~~(5)~~—"Allowable average annual rent":

6 (A) For all affordable one-bedroom units in a housing project, 18 percent of the
7 median income for a household of two persons as set forth in Section 6932 on January 1st of
8 that year;

9 (B) For all affordable two-bedroom units in a housing project, 18 percent of the
10 median income for a household of three persons as set forth in Section 6932 on January 1st
11 of that year;

12 (C) For all affordable three-bedroom units in a housing project, 18 percent of the
13 median income for a household of four persons as set forth in Section 6932 on January 1st of
14 that year;

15 (D) For all affordable four-bedroom units in a housing project, 18 percent of the
16 median income for a household of five persons as set forth in Section 6932 on January 1st of
17 that year.

18 ~~(6)~~—"Annual gross income." Gross income as defined in CCR Title 25, Section 6914,
19 as amended from time to time, except that MOH may, in order to promote consistency with
20 the procedures of the San Francisco Redevelopment Agency, develop an asset test that
21 differs from the State definition if it publishes that test in the Procedures Manual.

22 ~~(7)~~—"Annual net income." Net income as defined in Title 25 of the California Code of
23 Regulations Section 6916.
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25

1 (8)—"Average annual rent." The total annual rent for the calendar year charged by a
2 housing project for all affordable rental units in the project of an equal number of bedrooms
3 divided by the total number of affordable units in the project with that number of bedrooms.

4 (9)—"Average purchase price." The purchase price for all affordable owned units in
5 an affordable housing project of an equal number of bedrooms divided by the total number of
6 affordable units in the project with that number of bedrooms.

7 (10)—"Balboa Park Community Improvements Fund." The fund into which all fee
8 revenue the City collects from the Balboa Park Impact Fee is deposited.

9 (11)—"Balboa Park Community Improvements Program." The program intended to
10 implement the community improvements identified in the Balboa Park Area Plan, as
11 articulated in the Balboa Park Community Improvements Program Document on file with the
12 Clerk of the Board in File No. 090179.

13 (12)—"Balboa Park Impact Fee." The fee collected by the City to mitigate impacts of
14 new development in the Balboa Park Program Area, as described in the findings in Section
15 422.1.

16 (13)—"Balboa Park Program Area." The Balboa Park Plan Area in Figure 1 of the
17 Balboa Park Station Area Plan of the San Francisco General Plan.

18 (14)—"Base service standard." The relationship between revenue service hours
19 offered by the Municipal Railway and the number of automobile and transit trips estimated to
20 be generated by certain non-residential uses, expressed as a ratio where the numerator
21 equals the average daily revenue service hours offered by MUNI and the denominator equals
22 the daily automobile and transit trips generated by non-residential land uses as estimated by
23 the TIDF Study or updated under Section 411.5 of this Article.

24 (15)—"Base service standard fee rate." The TIDF that would allow the City to recover
25 the estimated costs incurred by the Municipal Railway to meet the demand for public transit

1 resulting from new development in the economic activity categories for which the fee is
2 charged, after deducting government grants, fare revenue, and costs for non-vehicle
3 maintenance and general administration.

4 ~~(16)~~—"Board" or "Board of Supervisors." The Board of Supervisors of the City and
5 County of San Francisco.

6 "Change of Use." A change of gross floor area from one category of use to another
7 category of use listed in the use table for the zoning district of the subject lot.

8 ~~(17)~~—"Child-care facility." A child-care facility as defined in California Health and
9 Safety Code Section 1596.750.

10 ~~(18)~~—"Child-care provider." A provider as defined in California Health and Safety Code
11 Section 1596.791.

12 ~~(19)~~—"City" or "San Francisco." The City and County of San Francisco.

13 ~~(23)~~—"Commission" or "Planning Commission." The San Francisco Planning
14 Commission.

15 ~~(24)~~—"Community apartment." As defined in San Francisco Subdivision Code Section
16 1308(b).

17 ~~(25)~~—"Community facilities." All uses as defined under Section 209.4(a) and 209.3(d)
18 of this Code.

19 ~~(26)~~—"Condition of approval" or "Conditions of approval." A condition or set of written
20 conditions imposed by the Planning Commission or another permit-approving or issuing City
21 agency or appellate body to which a project applicant agrees to adhere and fulfill when it
22 receives approval for the construction of a development project subject to this Article .

23 ~~(27)~~—"Condominium." As defined in California Civil Code Section 783.

24 ~~(28)~~—"Cultural/Institution/Education (CIE)." An economic activity category subject to
25 the TIDF that includes, but is not limited to, schools, as defined in Sections 209.3(g), (h), and

1 (i) and 217(f)-(i) of this Code; child care facilities; museums and zoos; and community
2 facilities, as defined in Sections 209.4 and 221(a)-(c) of this Code.

3 ~~(29)~~—"DBI." The San Francisco Department of Building Inspection, or its successor.

4 ~~(30)~~—"Dedicated." Legally transferred to the City and County of San Francisco,
5 including all relevant legal documentation, at no cost to the City.

6 ~~(31)~~—"Dedicated site." The portion of site proposed to be legally transferred at no cost
7 to the City and County of San Francisco under the requirements of this section.

8 ~~(32)~~—"Department" or "Planning Department." The San Francisco Planning
9 Department or the Planning Department's designee, including the Mayor's Office of Housing
10 and other City agencies or departments.

11 ~~(33)~~—"Designated affordable housing zones." For the purposes of implementing the
12 Eastern Neighborhoods Public Benefits Fund, shall mean the Mission NCT defined in Section
13 736 and the Mixed Use Residential District defined in Section 841.

14 ~~(34)~~—"Development fee." Either a development impact fee or an in-lieu fee. It shall not
15 include a fee for service or any time and material charges charged for reviewing or processing
16 permit applications.

17 ~~(35)~~—"Development Fee Collection Unit" or "Unit." The Development Fee Collection
18 Unit at DBI.

19 ~~(36)~~—"Development impact fee." A fee imposed on a development project as a
20 condition of approval to mitigate the impacts of increased demand for public services, facilities
21 or housing caused by the development project that may or may not be an impact fee
22 governed by the California Mitigation Fee Act (California Government Code Section 66000 et
23 seq.).

24 ~~(37)~~—"Development impact requirement." A requirement to provide physical
25 improvements, facilities or below market rate housing units imposed on a development project

1 as a condition of approval to mitigate the impacts of increased demand for public services,
2 facilities or housing caused by the development project that may or may not be governed by
3 the California Mitigation Fee Act (California Government Code Section 66000 et seq.).

4 (38)—"Development project." Any change of use within an existing structure, addition
5 to an existing structure, or new construction, which includes any occupied floor area.

6 (39)—"Development under the TIDF." Any new construction, or addition to or
7 conversion of an existing structure under a building or site permit issued on or after
8 September 4, 2004, that results in 3,000 gross square feet or more of a covered use. In the
9 case of mixed use development that includes residential development, the term "new
10 development" shall refer to only the non-residential portion of such development. "Existing
11 structure" shall include a structure for which a sponsor already paid a fee under the prior TIDF
12 ordinance, as well as a structure for which no TIDF was paid.

13 (40)—"Director." The Director of Planning or his or her designee.

14 (41)—"DPW." The Department of Public Works, or its successor.

15 (42)—"Eastern Neighborhoods Infrastructure Impact Fee." The fee collected by the
16 City to mitigate impacts of new development in the Eastern Neighborhoods Program Area, as
17 described in the Findings in Section 423.1

18 (43)—"Eastern Neighborhoods Public Benefits Fund." The fund into which all fee
19 revenue collected by the City from the Eastern Neighborhoods Impact Fee is deposited.

20 (44)—"Eastern Neighborhoods Public Benefits Program." The program intended to
21 implement the community improvements identified in the four Area Plans affiliated with the
22 Eastern Neighborhoods (Central Waterfront, East SoMa, Mission, and Showplace
23 Square/Potrero Hill), as articulated in the Eastern Neighborhoods Public Benefits Program
24 Document, on file with the Clerk of the Board in File No. 081155.)
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1 (45)—"Eastern Neighborhoods Program Area." The Eastern Neighborhoods Plan Area
2 in Map 1 (Land Use Plan) of the Eastern Neighborhoods Area Plan of the San Francisco
3 General Plan.

4 (46)—"Economic activity category." Under the TIDF, one of the following six categories
5 of non-residential uses: Cultural/Institution/Education (CIE), Management, Information and
6 Professional Services (MIPS), Medical and Health Services, Production/Distribution/Repair
7 (PDR), Retail/Entertainment, and Visitor Services.

8 (48)—"Entertainment use." Space within a structure or portion thereof intended or
9 primarily suitable for or accessory to the operation of uses defined in San Francisco Planning
10 Code Sections 102.17 (Nighttime Entertainment), 790.38 and 890.37 (Other Entertainment),
11 790.36 and 890.36 (Adult Entertainment), 790.64 and 890.64 (Movie Theater), and 790.4 and
12 890.4 (Amusement Arcade), regardless of the zoning district that the use is located in.

13 (49)—"First certificate of occupancy." Either a temporary certificate of occupancy or a
14 Certificate of Final Completion and Occupancy as defined in San Francisco Building Code
15 Section 109A, whichever is issued first.

16 (50)—"First construction document." As defined in Section 107A.13.1 of the San
17 Francisco Building Code.

18 (51)—"Gross floor area." The total area of each floor within the building's exterior
19 walls, as defined in Section 102.9(b)(12) of this Code.

20 (52)—"Gross square feet of use." The meaning set forth in Section 102.9 of this Code,
21 with the exception of the TIDF. With respect to the TIDF, the total square feet of gross floor
22 area in a building and/or space within or adjacent to a structure devoted to all uses covered by
23 the TIDF, including any common areas exclusively serving such uses and not serving
24 residential uses. Where a structure contains more than one use, areas common to two or
25 more uses, such as lobbies, stairs, elevators, restrooms, and other ancillary spaces included

1 in gross floor area that are not exclusively assigned to one uses shall be apportioned among
2 the two or more uses in accordance with the relative amounts of gross floor area, excluding
3 such space, in the structure or on any floor thereof directly assignable to each use.

4 ~~(55)~~—"Hotel" or "Hotel use." Space within a structure or portion thereof intended or
5 primarily suitable for or accessory to the operation of uses defined in San Francisco Planning
6 Code Sections 790.46 and 890.46, regardless of the zoning district that the use is located in.

7 ~~(56)~~—"Household." Any person or persons who reside or intend to reside in the same
8 housing unit.

9 ~~(57)~~—"Household of lower income." A household composed of one or more persons
10 with a combined annual net income for all adult members which does not exceed the
11 qualifying limit for a lower-income family of a size equivalent to the number of persons
12 residing in such household, as set forth for the County of San Francisco in Title 25 of the
13 California Code of Regulations Section 6932.

14 ~~(58)~~—"Household of median income." A household composed of one or more persons
15 with a combined annual net income for all adult members which does not exceed the
16 qualifying limit for a median-income family of a size equivalent to the number of persons
17 residing in such household, as set forth for the County of San Francisco in Title 25 of the
18 California Code of Regulations Section 6932.

19 ~~(59)~~—"Household of moderate income." A household composed of one or more
20 persons with a combined annual net income for all adult members which does not exceed the
21 qualifying limit for a moderate-income family of a size equivalent to the number of persons
22 residing in such household, as set forth for the County of San Francisco in Title 25 of the
23 California Code of Regulations Section 6932.

24 ~~(60)~~—"Housing developer." Any business entity building housing units which receives
25 a payment from a sponsor for use in the construction of the housing units. A housing

1 developer may be (a) the same business entity as the sponsor, (b) an entity in which the
2 sponsor is a partner, joint venturor, or stockholder, or (c) an entity in which the sponsor has no
3 control or ownership.

4 (61)—"Housing project." Any development which has residential units as defined in the
5 Planning Code, including but not limited to dwellings, group housing, independent living units,
6 and other forms of development which are intended to provide long-term housing to
7 individuals and households. "Housing project" shall not include that portion of a development
8 that qualifies as an Institutional Use under the Planning Code. "Housing project" for purposes
9 of this Program shall also include the development of live/work units as defined by Section
10 102.13 of this Code. Housing project for purposes of this Program shall mean all phases or
11 elements of a multi-phase or multiple lot residential development.

12 (62)—"Housing unit" or "unit." A dwelling unit as defined in San Francisco Housing
13 Code Section 401.

14 (63)—"Improvements Fund." The fund into which all revenues collected by the City for
15 each Program Area's impact fees are deposited.

16 (64)—"In-Kind Agreement." An agreement acceptable in form and substance to the
17 City Attorney and the Director of Planning, under which the project sponsor agrees to provide
18 a specific set of community improvements, at a specific phase of construction, in lieu of
19 contribution to the relevant Fund.

20 (65)—"Infrastructure." Open space and recreational facilities; public realms
21 improvements such as pedestrian improvements and streetscape improvements; public transit
22 facilities; and community facilities such as libraries, child care facilities, and community
23 centers.

1 ~~(66)~~—"In lieu fee." A fee paid by a project sponsor in lieu of complying with a
2 requirement of this Code and that is not a development impact fee governed by the Mitigation
3 Fee Act.

4 "Institutional use" shall mean space within a structure or portion thereof intended or
5 primarily suitable for or accessory to the operation of uses contained in San Francisco
6 Planning Code Section 217 and 890.50, regardless of the zoning district that the use is
7 located in.

8 "Integrated PDR use" shall mean space within a structure or portion thereof intended or
9 primarily suitable for or accessory to the operation of uses defined in San Francisco Planning
10 Code Section 890.49, regardless of the zoning district that the use is located in.

11 ~~(67)~~—"Interim Guidelines" shall mean the Office Housing Production Program Interim
12 Guidelines adopted by the City Planning Commission on January 26, 1982, as amended.

13 ~~(68)~~—"Licensed Child-care facility." A child-care facility which has been issued a valid
14 license by the California Department of Social Services pursuant to California Health and
15 Safety Code Sections 1596.80-1596.875, 1596.95-1597.09, or 1597.30-1597.61.

16 ~~(69)~~—"Live/work project." A housing project containing more than one live/work unit.

17 ~~(70)~~—"Live/work unit" shall be as defined in Section 102.13 of this Code.

18 ~~(71)~~—"Long term housing." Housing intended for occupancy by a person or persons
19 for 32 consecutive days or longer.

20 ~~(72)~~—"Low income." For purposes of this Article, up to 80% of median family income
21 for the San Francisco PMSA, as calculated and adjusted by the United States Department of
22 Housing and Urban Development (HUD) on an annual basis, except that as applied to
23 housing-related purposes such as the construction of affordable housing and the provision of
24 rental subsidies with funds from the SOMA Stabilization Fund established in Section 418.7, it
25

1 shall mean up to 60% of median family income for the San Francisco PMSA, as calculated
2 and adjusted by HUD on an annual basis.

3 (73)—"Management, Information and Professional Services (MIPS). An economic
4 activity category under the TIDF that includes, but is not limited to, office use; medical offices
5 and clinics, as defined in Section 890.114 of this Code; business services, as defined in
6 Section 890.111 of this Code; Integrated PDR, as defined in Section 890.49 of this Code, and
7 Small Enterprise Workspaces, as defined in Section 227(t) of this Code.

8 (74)—"Market and Octavia Community Improvements Fund" The fund into which all
9 fee revenue collected by the City from the Market and Octavia Community Improvements
10 Impact Fee is deposited.

11 (75)—"Market and Octavia Community Improvements Impact Fee." The fee collected
12 by the City to mitigate impacts of new development in the Market and Octavia Program Area,
13 as described in the findings in Section 421.1.

14 (76)—"Market and Octavia Community Improvements Program." The program
15 intended to implement the community improvements identified in the Market and Octavia Area
16 Plan, as articulated in the Market and Octavia Community Improvements Program Document
17 on file with the Clerk of the Board in File No. 071157.)

18 (77)—"Market and Octavia Program Area." The Market and Octavia Plan Area in Map
19 1 (Land Use Plan) of the Market and Octavia Area Plan of the San Francisco General Plan,
20 which includes those districts zoned RTO, NCT, or any neighborhood specific NCT, a few
21 parcels zoned RH-1 or RH-2, and those parcels within the Van Ness and Market Downtown
22 Residential Special Use District (VMDRSUD).

23 (78)—"Market rate housing." Housing constructed in the principal project that is not
24 subject to sales or rental restrictions.

1 ~~(79)~~—"Maximum annual rent." The maximum rent that a housing developer may
2 charge any tenant occupying an affordable unit for the calendar year. The maximum annual
3 rent shall be 30 percent of the annual income for a lower-income household as set forth in
4 Section 6932 on January 1st of each year for the following household sizes:

- 5 (A) For all one-bedroom units, for a household of two persons;
- 6 (B) For all two-bedroom units, for a household of three persons;
- 7 (C) For all three-bedroom units, for a household of four persons;
- 8 (D) For all four-bedroom units, for a household of five persons.

9 ~~(19)~~—"Maximum purchase price." The maximum purchase price that a household of
10 moderate income can afford to pay for an owned unit based on an annual payment for all
11 housing costs of 33 percent of the combined household annual net income, a 10 percent
12 down payment, and available financing, for the following household sizes:

- 13 (A) For all one-bedroom units, for a household of two persons;
- 14 (B) For all two-bedroom units, for a household of three persons;
- 15 (C) For all three-bedroom units, for a household of four persons;
- 16 (D) For all four-bedroom units, for a household of five persons.

17 ~~(80)~~—"Medical and Health Services." An economic activity category under the TIDF
18 that includes, but is not limited to, those non-residential uses defined in Sections 209.3(a) and
19 217(a) of this Code; animal services, as defined in Section 224(a) and (b) of this Code; and
20 social and charitable services, as defined in Sections 209.3(d) and 217(d) of this Code.

21 ~~(81)~~—"Middle Income Household." A household whose combined annual gross
22 income for all members is between 120 percent and 150 percent of the local median income
23 for the City and County of San Francisco, as calculated by the Mayor's Office of Housing
24 using data from the United States Department of Housing and Urban Development (HUD) and
25 adjusted for household size or, if data from HUD is unavailable, as calculated by the Mayor's

1 Office of Housing using other publicly available and credible data and adjusted for household
2 size.

3 ~~(83)~~—"MOH." The Mayor's Office of Housing, or its successor.

4 ~~(84)~~—"MTA." The Municipal Transportation Agency, or its successor.

5 ~~(85)~~—"MTA Director." The Director of MTA or his or her designee.

6 ~~(86)~~—"Municipal Railway; MUNI." The public transit system owned by the City and
7 under the jurisdiction of the MTA.

8 ~~(87)~~—"Net addition." The total amount of gross floor area defined in Planning Code
9 Section 102.9 contained in a development project, less the gross floor area contained in any
10 structure demolished or retained as part of the proposed development project.

11 "New development." Under the TIDF, any new construction, or addition to or
12 conversion of an existing structure under a building or site permit issued on or after
13 September 4, 2004 that results in 3,000 gross square feet or more of a use covered by the
14 TIDF. In the case of mixed use development that includes residential development, the term
15 "new development" shall refer to only the non-residential portion of such development.

16 "Existing structure" shall include a structure for which a sponsor already paid a fee under the
17 prior TIDF ordinance, as well as a structure for which no TIDF was paid.

18 ~~(97)~~—"Nonprofit child-care provider." A child-care provider that is an organization
19 organized and operated for nonprofit purposes within the provisions of California Revenue
20 and Taxation Code Sections 23701--23710, inclusive, as demonstrated by a written
21 determination from the California Franchise Tax Board exempting the organization from taxes
22 under Revenue and Taxation Code Section 23701.

23 ~~(98)~~—"Nonprofit organization." An organization organized and operated for nonprofit
24 purposes within the provisions of California Revenue and Taxation Code Sections 23701--
25 23710, inclusive, as demonstrated by a written determination from the California Franchise

1 Tax Board exempting the organization from taxes under Revenue and Taxation Code Section
2 23701.

3 ~~(102)~~—"Non-residential use." Space within any structure or portion thereof intended or
4 primarily suitable for or accessory to occupancy by retail, office, commercial, or other non-
5 residential uses defined in Section 209.3, 209.8, 217, 218, 219 of this Code, and 221,
6 regardless of the zoning district that the use is located in; except that residential components
7 of uses defined in Section 209.3(a)-(c) and (g)-(i) shall be defined as a "residential use" for
8 purposes of this Article. For the purposes of this Article, non-residential use shall not include
9 PDR and publicly owned and operated community facilities.

10 ~~(103)~~—"Notice of Special Restrictions." A document recorded with the San Francisco
11 Recorder's Office for any unit subject to this Program detailing the sale and resale or rental
12 restrictions and any restrictions on purchaser or tenant income levels included as a Condition
13 of Approval of the principal project relating to the unit.

14 ~~(105)~~—"Office use." Space within a structure or portion thereof intended or primarily
15 suitable for or accessory to the operation of uses defined in San Francisco Planning Code
16 Section 890.70, regardless of the zoning district that the use is located in.

17 ~~(106)~~—"Off-site unit." A unit affordable to qualifying households constructed pursuant to
18 this Ordinance on a site other than the site of the principal project.

19 ~~(107)~~—"On-site unit." A unit affordable to qualifying households constructed pursuant to
20 this Article on the site of the principal project.

21 ~~(108)~~—"Owned unit." A unit affordable to qualifying households which is a
22 condominium, stock cooperative, community apartment, or detached single-family home. The
23 owner or owners of an owned unit must occupy the unit as their primary residence.

24 ~~(109)~~—"Owner." The record owner of the fee or a vendee in possession.
25

1 (110)—"PDR use." Space within any structure or portion thereof intended or primarily
2 suitable for or accessory to the operation of uses defined in San Francisco Planning Code
3 Sections 220, 222, 223, 224, 225, 226, 227(a), 227(b), and 227(p), regardless of the zoning
4 district that the use is located in.

5 (111)—"Principal project." A housing development on which a requirement to provide
6 affordable housing units is imposed.

7 (112)—"Principal site." The total site proposed for development, including the portion of
8 site proposed to be legally transferred to the City and County of San Francisco.

9 (113)—"Procedures Manual." The City and County of San Francisco Affordable Housing
10 Monitoring Procedures Manual issued by the San Francisco Department of City Planning, as
11 amended.

12 (113A) "Qualified Educational Institution" for purposes of Section 415 shall mean an
13 accredited post secondary Educational Institution which has Qualified Students.

14 (113B) —"Qualified Student" for purposes of Section 415 shall mean a student who
15 receives or is eligible to receive need-based financial aid including, but not limited to, from Pell
16 Grants, Perkins Loans, Stafford Subsidized Loans or other grants or loans made or guaranteed by
17 the United States Government or a state or local government, or by an entity sponsored and
18 regulated by such unit of government and is currently enrolled at a Qualified Educational Institute.

19 (113C) —"Qualified Student Housing Project" for purposes of Section 415 shall mean
20 any housing project that contains housing for Qualified Students and which may also contain housing
21 for persons who are enrolled students but not Qualified Students, created either through new
22 construction or conversion of an existing building or space.

23 (113D) —"Qualified Student Housing" shall mean housing or group housing (measured
24 either by units or beds) or accessory living space within a non-residential space, either owned by a
25 Qualified Educational Institution or controlled by a Qualified Educational Institution through a long-

1 term master lease for a period of at least 20 years in which at least thirty percent (30%) of such units
2 or beds are occupied by Qualified Students. The Qualified Student Housing may be on the site of the
3 Institution or at another location in the City and County of San Francisco.

4 (114)—"Rent" or "rental." The total charges for rent, utilities, and related housing
5 services to each household occupying an affordable unit.

6 (115)—"Rental unit." A unit affordable to qualifying households which is not a
7 condominium, stock cooperative, or community apartment.

8 (116)—"Replacement of use." The total amount of gross floor area, as defined in
9 Section 102.9 of this Code, to be demolished and reconstructed by a development project,.

10 (118)—"Research and development use." Space within any structure or portion thereof
11 intended or primarily suitable for or accessory to the operation of uses defined in San
12 Francisco Planning Code Section 890.52, regardless of the zoning district that the use is
13 located in.

14 (122) "Residential use." Space within any structure or portion thereof intended or
15 primarily suitable for or accessory to occupancy by uses defined in San Francisco Planning
16 Code Sections 209.1, 790.88, and 890.88 of this Code, as relevant for the subject zoning
17 district, or containing group housing as defined in Section 209.2(a)-(c) of this Code and any
18 residential components of institutional uses as defined in Section 209.3(a)-(c) and (g)-(i) of this
19 Code.

20 (124)—"Retail/entertainment." An economic activity category under the TIDF that
21 includes, but is not limited to, a retail use; an entertainment use; massage establishments, as
22 defined in Section 218.1 of this Code; laundering, and cleaning and pressing, as defined in
23 Section 220 of this Code.

1 ~~(125)~~—"Retail use." Space within any structure or portion thereof intended or primarily
2 suitable for or accessory to the operation of uses contained in San Francisco Planning Code
3 Section 218, regardless of the zoning district that the use is located in.

4 ~~(126)~~—"Revenue services hours." The number of hours that the Municipal Railway
5 provides service to the public with its entire fleet of buses, light rail (including streetcars), and
6 cable cars.

7 ~~(127)~~—"Rincon Hill Community Improvements Fund." The fund into which all fee
8 revenue collected by the City from the Rincon Hill Community Infrastructure Impact Fee is
9 deposited.

10 ~~(128)~~—"Rincon Hill Community Infrastructure Impact Fee." The fee collected by the City
11 to mitigate impacts of new development in the Rincon Hill Program Area, as described in the
12 findings in Section 418.1.

13 ~~(129)~~—"Rincon Hill Program Area." Those districts identified as the Rincon Hill
14 Downtown Residential (RH DTR) Districts in the Planning Code and on the Zoning Maps.

15 ~~(130)~~—"Section 6932." Section 6932 of Title 25 of the California Code of Regulations as
16 such section applies to the County of San Francisco.

17 "Small Enterprise Workspace use" shall mean space within a structure or portion
18 thereof intended or primarily suitable for or accessory to the operation of uses as defined in
19 San Francisco Planning Code Section 227(t), regardless of the zoning district that the use is
20 located in.

21 ~~(75)~~—"SOMA." The area bounded by Market Street to the north, Embarcadero to the
22 east, King Street to the south, and South Van Ness and Division to the west.

23 ~~(131)~~—"SOMA Community Stabilization Fee." The fee collected by the City to mitigate
24 impacts on the residents and businesses of SOMA of new development in the Rincon Hill
25 Program Area, as described in the findings in Section 418.1.

1 ~~(132)~~—"SOMA Community Stabilization Fund." The fund into which all fee revenue
2 collected by the City from the SOMA Community Stabilization Fee is deposited.

3 ~~(133)~~—"Sponsor" or "project sponsor." An applicant seeking approval for construction of
4 a development project subject to this Article, such applicant's successor and assigns, and/or
5 any entity which controls or is under common control with such applicant.

6 ~~(134)~~—"Stock cooperative." As defined in California Business and Professions Code
7 Section 11003.2.

8 ~~(135)~~—"Student housing." A building where 100 percent of the residential uses are
9 affiliated with and operated by an accredited post-secondary educational institution. Typically,
10 student housing is for rent, not for sale. This housing shall provide lodging or both meals and
11 lodging, by prearrangement for one week or more at a time. This definition only applies in the
12 Eastern Neighborhoods Mixed Use Districts.

13 ~~(136)~~—"TIDF Study." The study commissioned by the San Francisco Planning
14 Department and performed by Nelson/Nygaard Associates entitled "Transit Impact
15 Development Fee Analysis – Final Report," dated May 2001, including all the Technical
16 Memoranda supporting the Final Report and the Nelson/Nygaard update materials contained
17 in Board of Supervisors File No. 040141.

18 ~~(137)~~—"Total developable site area." That part of the site that can be feasibly
19 developed as residential development, excluding land already substantially developed, parks,
20 required open spaces, streets, alleys, walkways or other public infrastructure.

21 ~~(138)~~—"Transit Impact Development Fee; TIDF." The development fee that is the
22 subject of Section 411.1 et seq. of this Article.

23 ~~(139)~~—"Treasurer." The Treasurer for the City and County of San Francisco.

24 ~~(140)~~—"Trip generation rate." The total number of automobile and Municipal Railway
25 trips generated for each 1,000 square feet of development in a particular economic activity

1 category as established in the TIDF Study, or pursuant to the five-year review process
2 established in Section 411.5 of this Article.

3 ~~(141)~~—"Use." The purpose for which land or a structure, or both, are legally designed,
4 constructed, arranged, or intended, or for which they are legally occupied or maintained, let or
5 leased.

6 ~~(142)~~—"Visitacion Valley." The area bounded by Carter Street and McLaren Park to the
7 west, Mansell Street to the north, Route 101 between Mansell Street and Bayshore Boulevard
8 to the northeast, Bayview Park to the north, Candlestick Park and Candlestick Point
9 Recreation Area to the east, the San Francisco Bay to the southeast, and the San Francisco
10 County line to the south.

11 ~~(143)~~—"Visitor services." An economic activity category under the TIDF that includes,
12 but is not limited to, hotel use; motel use, as defined in Section 216(c) and (d); and time-share
13 projects, as defined in Section 11003.5(a) of the California Business and Professions Code.

14 ~~(144)~~—"Waiver Agreement." An agreement acceptable in form and substance to the
15 City Attorney and the Planning Department under which the City agrees to waive all or a
16 portion of the Community Improvements Impact Fee.

17 SEC. 415.3. APPLICATION.

18 (a) Section 415.1 et seq. shall apply to any housing project that consists of five or
19 more units where an individual project or a phased project is to be undertaken and where the
20 total undertaking comprises a project with five or more units, even if the development is on
21 separate but adjacent lots; and

22 (1) Does not require Commission approval as a conditional use or planned unit
23 development;

24 (2) Requires Commission approval as a conditional use or planned unit
25 development;

1 (3) Consists of live/work units as defined by Section 102.13 of this Code; or

2 (4) Requires Commission approval of replacement housing destroyed by
3 earthquake, fire or natural disaster only where the destroyed housing included units restricted
4 under the Residential Inclusionary Housing Program or the City's predecessor inclusionary
5 housing policy, condominium conversion requirements, or other affordable housing program.

6 (b) Section 415.1 et seq. shall apply to all housing projects that have not received a
7 first site or building permit on or before the effective date of Section 415.1 et seq. with the
8 following exceptions. Until these application dates take effect as described below, the
9 provisions of Section 415.1 et seq. as it exists on July 18, 2006 shall govern.

10 (1) The amendments to the off-site requirements in Section 415.6(c) and (d) relating
11 to location and type of off-site housing, and Section 415.4(c) relating to when a developer
12 shall declare whether it will choose an alternative to the on-site requirement shall apply only to
13 projects that receive their Commission or Department approval on or after the effective date of
14 Section 415.1 et seq.

15 (2) The amendments to the percentage-requirements of Section 415.1 et seq. that
16 govern the number of affordable units a housing project is required to provide in Section
17 415.5(a) and 415.6(a) apply only to housing projects that submit their first application,
18 including an environmental evaluation application or any other Planning Department or
19 Building Department application, on or after July 18, 2006. Notwithstanding the foregoing, the
20 amendments to the percentage-requirements of Section 415.1 et seq. also apply to any
21 project that has not received its final Commission or Department approvals before July 18,
22 2006 for housing projects that receive a Zoning Map amendment or Planning Code text
23 amendment related to their project approvals that (A) results in a net increase in the number
24 of permissible residential units, or (B) results in a material increase in the net permissible
25 residential square footage. For purposes of subsection B above a material increase shall

1 mean an increase of 5 percent or more, or an increase in 10,000 square feet or more,
2 whichever is less.

3 (3) The amendments in Section 415.1 to the way median income is calculated apply
4 to any housing project that has not received a first site or building permit by the effective date
5 of Section 415.1 et seq..

6 (4) Section 415.1 et seq. shall apply to all housing projects of 5 to 9 units that filed
7 their first application, including an environmental evaluation application or any other Planning
8 Department application on or after July 18, 2006.

9 (c) Section 415.1 et seq. shall not apply to:

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

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

17 (3) That portion of a housing project located on property under the jurisdiction of the
18 San Francisco Redevelopment Agency or the Port of San Francisco where the application of
19 Section 415.1 et seq. is prohibited by California or local law.

20 (4) A Qualified Student Housing Project that meets all of the following criteria:

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

23 (B) An institutional master plan (IMP) pursuant to Section 304.5 is on file with the Planning
24 Department prior to the issuance of any building permit or alteration permit in connection with the
25 creation of the Qualified Student Housing Project, and, in addition to the requirements of Section

1 304.5, such IMP shall describe: (i) to the extent such information is available, the type and location of
2 housing used by its students; (ii) any plans for the provision of Qualified Student Housing; and (iii) the
3 Educational Institution's need for student housing to support its program; and (iv) the percentage of its
4 students, on an average annual basis, that receive some form of need-based assistance as described in
5 (113B).

6 (C) The Mayor's Office of Housing (MOH) is authorized to monitor this program.
7 MOH shall develop a monitoring form and annual monitoring fee to be paid by the Qualified
8 Educational Institution. MOH shall submit an annual monitoring report on this exemption to
9 the Planning Department and to the Board for a hearing at a committee of the Board. The
10 Qualified Educational Institution shall agree to submit annual documentation to the Mayor's Office of
11 Housing (MOH) and the Planning Department, on or before December 31 of each year, that addresses
12 the following:

13 (i) Evidence that the Qualified Educational Institution continues to own or otherwise
14 control the Qualified Student Housing Project under a master lease, including a certificate from the
15 owner of the real property and the Qualified Educational Institution attaching a true and complete
16 copy of the master lease (financial information may be redacted) and certifying that the lease has not
17 otherwise been amended or terminated; and

18 (ii) Evidence, on an average annualized basis, of the percentage of Qualified Students in
19 good standing enrolled in the Qualified Educational Institution who are occupying the ~~units or~~ beds or
20 accessory living space in the Qualified Student Housing, including but not limited to the number
21 and percentage of qualifying students; the rent paid by each student; the type of dwelling the
22 rent covers (i.e. single room; double room; etc.); and

23 (iii) The Qualified Educational Institution records a Notice of Special Restrictions (NSR)
24 against fee title to the real property on which the Qualified Student Housing is located that states the
25 following:

1 -- The Qualified Educational Institution must file a statement with the Department if it
2 intends to terminate the Qualified Student Housing Project at least 60 days before it
3 terminates such use ("statement of termination");

4 -- ~~the~~ The Qualified Student Housing Project becomes subject to the Inclusionary Housing
5 Ordinance requirements applicable to Housing Projects other than Qualified Housing Projects if (1)
6 the Qualified Educational Institution files a statement of termination with the Department; or
7 (2) the Qualified Educational Institution fails to file a statement of termination and within one
8 year of a notice of violation issued by the Planning Department, the Student Housing Project
9 fails to meet the requirements for a Qualified Student Housing Project, then within not more than
10 one year of a Notice Of Violation issued by the Planning Department;

11 -- If the Qualified Student Housing Project becomes subject to the Inclusionary
12 Housing Ordinance then it shall (1) pay the Affordable Housing Fee plus interest from the date
13 the project received its first construction document for the project if there is no evidence the
14 Project ever qualified as Qualified Student Housing or, if Qualified Student Housing was
15 provided and occupied, then the Affordable Housing Fee with no interest is due on the date
16 the units were no longer occupied by qualifying households and interest would accrue from
17 that date if the fee is not paid; or (2) provide the required number of on-site affordable units
18 required at time of original project approval and that those units shall be subject to all of the
19 requirements of this Program. In this event, the project sponsor shall record a new NSR
20 providing that the designated units must comply with all of the requirements of this Program.

21 --~~The~~ the Qualified Educational Institution is required to report annually as required in
22 subsection (C) above;

23 -- ~~The~~ the City may commence legal action against the owner and/or Qualified Educational
24 Institution to enforce the NSR and the terms of Article IV of the Planning Code and Planning Code

1 Section 415 et seq. if ~~the~~ it determines that the project no longer meets the requirements for a Qualified
2 Student Housing Project; and

3 -- ~~The~~ the Qualified Student Housing Project may be inspected by any City employee to
4 determine its status as a Qualified Student Housing Project and its compliance with this Section at any
5 time upon at least 24 hours' prior notice to the owner of the real property or to the master lessee.

6 (d) For projects that have received a first site or building permit prior to the effective
7 date of Section 415.1 et seq., the requirements in effect prior to the effective date of Section
8 415.1 et seq. shall apply.

9 Section 2. Operative Date. This provisions of Section 415.3(c)(4) shall apply to
10 exempt any project meeting its criteria approved by the Planning Commission or Department
11 on or after the effective date of this Ordinance.

12 Section 3. This section is uncoded.

13 In enacting this Ordinance, the Board intends to amend only those words, phrases,
14 paragraphs, subsections, sections, articles, numbers, punctuation, charts, diagrams or any
15 other constituent part of the Planning Code that are explicitly shown in this legislation as
16 additions, deletions, Board amendment additions, and Board amendment deletions in
17 accordance with the "Note" that appears under the official title of the legislation. This
18 Ordinance shall not be construed to effectuate any unintended amendments. Any additions or
19 deletions not explicitly shown as described above, omissions, or other technical and non-
20 substantive differences between this Ordinance and the Planning Code that are contained in
21 this legislation are purely accidental and shall not effectuate an amendment to the Planning
22 Code. The Board hereby authorizes the City Attorney, in consultation with the Clerk and other
23 affected City departments, to make those necessary adjustments to the published Planning
24 Code, including non-substantive changes such as renumbering or relettering, to ensure that
25 the published version of the Planning Code is consistent with the laws that this Board enacts.

1 Specifically, the Board of Supervisors recognizes that three pending ordinances in
2 Files Nos. 100046, 101247, and 101095 amend some of the same sections of the Planning
3 Code. The Board intends that, if adopted, the Board amendment additions, and Board
4 amendment deletions shown in all three Ordinances be given effect so that the substance of
5 each ordinance be given full force and effect. To this end, the Board directs the City
6 Attorney's office and the publisher to harmonize the provisions of each ordinance.

7
8 APPROVED AS TO FORM:
9 DENNIS J. HERRERA, City Attorney

10 By: SUSAN CLEVELAND-KNOWLES
11 Deputy City Attorney
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