

BOARD of SUPERVISORS



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April 14, 2016

File No. 160255-3

Sarah Jones
Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Jones

On April 12, 2016, Supervisor Kim introduced the following proposed substitute legislation:

File No. 160255-3

Ordinance amending the Planning and Administrative Codes to increase the Inclusionary Affordable Housing fee and other requirements; require the Controller to prepare an economic feasibility report regarding the City's inclusionary housing requirements and make recommendations by July 31, 2016, and every three years thereafter; and establish the Inclusionary Housing Technical Advisory Committee to provide advice about the economic feasibility of proposals to set maximum economically viable inclusionary housing requirements, and set forth the membership and duties of the Advisory Committee; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of public convenience, necessity, and welfare under Planning Code, Section 302; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "A Ausberry".

By: Andrea Ausberry, Assistant Clerk
Land Use and Transportation Committee

Attachment

- c: Joy Navarrete, Environmental Planning
- Jeanie Poling, Environmental Planning

1 [Planning, Administrative Codes - Inclusionary Affordable Housing Fee and Requirements;
2 Preparation of Economic Feasibility Report; Establishing Inclusionary Housing Technical
3 Advisory Committee]

4 **Ordinance amending the Planning and Administrative Codes to increase the**
5 **Inclusionary Affordable Housing fee and other requirements; require the Controller to**
6 **prepare an economic feasibility report regarding the City's inclusionary housing**
7 **requirements and make recommendations by July 31, 2016, and every three years**
8 **thereafter; and establish the Inclusionary Housing Technical Advisory Committee to**
9 **provide advice about the economic feasibility of proposals to set maximum**
10 **economically viable inclusionary housing requirements, and set forth the membership**
11 **and duties of the Advisory Committee; affirming the Planning Department's**
12 **determination under the California Environmental Quality Act; making findings of**
13 **public convenience, necessity, and welfare under Planning Code, Section 302; and**
14 **making findings of consistency with the General Plan, and the eight priority policies of**
15 **Planning Code, Section 101.1.**

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

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

24 Section 1. Findings.

25 (a) The Planning Department has determined that the actions contemplated in this
ordinance comply with the California Environmental Quality Act (California Public Resources

1 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
2 Supervisors in File No. ____ and is incorporated herein by reference.

3 (b) On _____, the Planning Commission, in Resolution No. _____, adopted
4 findings that the actions contemplated in this ordinance are consistent, on balance, with the
5 City's General Plan and the eight priority policies of Planning Code Section 101.1. The Board
6 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
7 Board of Supervisors in File No. _____, and is incorporated herein by reference.

8 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code
9 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth
10 in Planning Commission Resolution No. _____ and the Board incorporates such reasons
11 herein by reference.

12
13 Section 2. Findings Regarding Inclusionary Affordable Housing Requirements.

14 (a) The amendments to Planning Code Sections 415.1, 415.3, 415.5, 415.6 and 415.7
15 set forth in Section 3 of this ordinance will become effective only on the effective date of the
16 Charter amendment revising Section 16.110 at the June 7, 2016 election, permitting the City
17 to change the inclusionary affordable housing requirements. In the event the voters do not
18 adopt such Charter amendment, the amendments to Planning Code Sections 415.1, 415.3,
19 415.5, 415.6 and 415.7 set forth in Section 3 of this ordinance shall have no effect, and the
20 City Attorney shall not cause them to be published in the Municipal Code.

21 (b) The purpose of this ordinance is to adopt new inclusionary or affordable housing
22 obligations following the process set forth in Section 16.110(g) of the proposed Charter
23 amendment on the ballot at the June 7, 2016 election to revise the City's inclusionary
24 affordable housing requirements. The inclusionary affordable housing obligations set forth in
25 this ordinance will supersede and replace the interim requirements set forth in Section

1 16.110(g) of the Charter amendment, so that the interim requirements will be removed from
2 the Charter pursuant to the requirements set forth in the Charter amendment.

3 (c) In the event the City's updated Nexus Study in support of the Inclusionary
4 Affordable Housing Program demonstrates that a lower affordable housing fee is lawfully
5 applicable based on an analysis of all relevant impacts, the City may utilize the method of fee
6 calculation supported by the Nexus Analysis in lieu of the fee requirements set forth herein.
7

8 Section 3. Findings About the Need for an Inclusionary Affordable Housing Program.

9 (a) San Francisco faces a continuing shortage of affordable housing for very low and
10 low-income residents. The San Francisco Planning Department reported that for the five-year
11 period between 2005 and 2009, 14,397, total new housing units were built in San Francisco.
12 This number includes 3,707 units for low and very low-income households out of a total need
13 of 6,815 low and very low-income housing units for the same period. According to the state
14 Department of Housing and Community Development, there will be a regional need for
15 214,500 new housing units in the nine Bay Area counties from 2007 to 2014. Of that amount,
16 over 58%, or 125,258 units, are needed for moderate/middle, low and very low-income
17 households. The Association of Bay Area Governments (ABAG) is responsible for allocating
18 the total regional need numbers among its member governments which includes both
19 counties and cities. ABAG estimated that San Francisco's low and very low-income housing
20 production need from 2007 through 2014 is 12,124 units out of a total new housing need of
21 31,193 units, or 39 percent of all units built. The production of low and moderate/middle
22 income units fell short of the ABAG goals.

23 (b) In response to the direction from the California Legislature and the projections of
24 housing needs for San Francisco, San Francisco has instituted several strategies for
25 producing new affordable housing units. The Housing Element of the General Plan recognizes

1 the need to support affordable housing production by increasing site availability by identifying
2 and securing opportunity sites for permanently affordable housing, by enhancing and
3 expanding financial resources for permanent affordable housing through coordination at the
4 regional, state, and Federal levels, and by supporting efforts to produce and manage
5 permanently affordable housing. Further, the City, as established in the General Plan, seeks
6 to encourage the distribution of affordable housing throughout all neighborhoods and, thereby,
7 offer diverse housing choices to promote economic and social integration. The Housing
8 Element calls for an increase in the production of new affordable housing for greater
9 economic integration and for a range of housing options and opportunities Section 415.1 *et*
10 *seq.* furthers the goals of the State directives and the General Plan.

11 (c) The 2015 Consolidated Plan for July 1, 2015 to June 30, 2020, issued by the Mayor's
12 Office of Housing, establishes that extreme housing pressures face San Francisco,
13 particularly in regard to low- and moderate/middle-income residents. Many elements constrain
14 housing production in the City. This is especially true of affordable housing. San Francisco is
15 largely built out, with very few large open tracts of land to develop. There is no available
16 adjacent land to be annexed, as the cities located on San Francisco's southern border are
17 also dense urban areas. Thus new construction of housing is limited to areas of the City not
18 previously designated as residential areas, infill sites, or to areas with increased density. New
19 market-rate housing absorbs a significant amount of the remaining supply of land and other
20 resources available for development and thus limits the supply of affordable housing.

21 There is a great need for affordable rental and owner-occupied housing in the City.
22 Housing cost burden is one of the major standards for determining whether a locality is
23 experiencing inadequate housing conditions, defined as households that expend 30 percent
24 or more of gross income for rent or 35% or more of household income for owner costs.
25 According to more recent data from the Comprehensive Housing Affordability Study (CHAS)

1 67,015 total renter households, or 34%, were cost burdened in 2005-07. A significant number
2 of owners are also cost burdened. The 2005-07 CHAS indicates that 46,985 owner
3 households are cost burdened, or 38%.

4 The San Francisco residential real estate market is one of the most expensive in the
5 United States. In February 2016, the California Association of Realtors reported that the
6 median priced home in San Francisco was \$1,437,500. This price is 222% higher than the
7 State of California median (\$446,460), and 312% higher than the national average
8 (\$348,900). While the national homeownership rate is approximately 63.8%, only
9 approximately 37% of San Franciscans own their own home. The majority of market-rate
10 homes for sale in San Francisco are priced out of the reach of low and moderate income
11 households. In 2015, the average rent was \$3,524, which is affordable to households earning
12 over \$126,864.

13 These factors contribute to a heavy demand for affordable housing in the City that the
14 private market cannot meet. For many years, the number of market rate units that are
15 affordable to low income households has been reduced by rising market rate rents and sales
16 prices. The number of households benefiting from rental assistance programs is far below the
17 need established by the 2000 Census. Because the shortage of affordable housing in the City
18 can be expected to continue for many years, it is necessary to maintain the affordability of the
19 housing units constructed by housing developers under this Program. The Housing Element
20 of the General Plan recognizes this need, and one of its primary objectives is to protect the
21 affordability of the existing housing stock. The Housing Element also sets the goal of securing
22 funding and permanent resources for permanently affordable housing, including innovative
23 programs that are not solely reliant on traditional mechanisms or capital, including the
24 production of affordable housing through process and zoning accommodations and support
25 for moderate/middle income housing.

1 In 2004 the National Housing Conference issued a survey entitled "Inclusionary Zoning:
2 The California Experience." The survey found that as of March 2003, there were 107 cities
3 and counties using inclusionary housing in California, one-fifth of all localities in the State.
4 Overall, the inclusionary requirements were generating large numbers of affordable units.
5 Only six percent of jurisdictions reported voluntary programs, and the voluntary nature
6 appears to compromise the local ability to guarantee affordable housing production. While
7 there was a wide range in the affordability percentage-requirements for inclusionary housing,
8 approximately half of all jurisdictions require at least 15% to be affordable, and one-quarter
9 require 20% or more to be affordable.

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

20 (e) The payment of an Affordable Housing Fee by developers of market rate housing is
21 justified for the reasons stated herein and has identifiable benefits to the City. Because it is
22 not financially feasible in most circumstances to develop new housing affordable to very-low,
23 low, median and moderate/middle-income households, the City and County provide direct
24 housing investments to developers to enable the creation of affordable housing. The
25 Affordable Housing Fee will be used to help subsidize these development costs and provide

1 administrative support for these programs and other affordable housing development activities
2 administered by the City and County. Without these funds, the City and County would be less
3 able to meet its affordable housing needs and the Regional Housing Needs goals established
4 by ABAG and the State of California for the City and County for 2007-2014.

5 The Affordable Housing Fee also enables affordable housing developments to leverage
6 outside development funding from the private sector, and the State and Federal Government.
7 This development work also creates economic activity, particularly construction work, which
8 provides high-paying jobs to residents and workers in the City and County.

9 In addition, it is not financially feasible for the typical moderate/middle income household
10 to purchase a home in San Francisco. For these reasons, the Affordable Housing Fee may
11 also be used to provide down payment assistance to low and moderate/middle income
12 homebuyers and provide administrative support for these programs and other first-time
13 homebuyer assistance administered by the City and County.

14 However, the development of affordable housing on the same site as market-rate
15 housing also increases social and economic integration vis-a-vis housing in the City and has
16 corresponding social and economic benefits to the City. Inclusionary housing provides a
17 healthy job and housing balance. Inclusionary housing provides more affordable housing
18 close to employment centers which in turn may have a positive economic impact by reducing
19 such costs as commuting and labor costs.

20 (f) Provided project applicants can take these requirements into consideration when
21 negotiating to purchase land for a housing project, the requirements of Section 415.1 *et seq.*
22 are generally financially feasible for project applicants to meet, particularly because of the
23 benefits being conferred by the City to housing projects under Section 415.1 *et seq.*

24 Section 406 provides a means by which a project applicant may seek a reduction or
25 waiver of the Affordable Housing Fee or a reduction or waiver of the alternative requirements

1 of this Program if the project applicant can show that imposition of these requirements would
2 create an unlawful financial burden.

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

20 (h) The City wants to balance the burden on private property owners with the
21 demonstrated need for affordable housing in the City. The Housing Element calls for the City
22 to review its affordable Inclusionary Housing Program regularly to ensure a fair burden without
23 constraining new housing production. The Board of Supervisors has reviewed the Inclusionary
24 Housing Program and finds that, for purposes of the Housing Element of the General Plan,
25 the current Affordable Housing Fee – ensures a more fair burden on all housing development

1 and that it will not constrain new housing production. The Board of Supervisors has reviewed
2 the Inclusionary Housing Program and finds that, for purposes of the Housing Element of the
3 General Plan, a housing project of 10 units or more is a larger housing project. Applying the
4 Inclusionary Housing Program requirements to buildings of 10 units or more ensures a more
5 fair burden on all housing development and will not constrain new housing production.

6 (i) The findings of former Planning Code Section 313.2 for the Jobs-Housing Linkage
7 Program, now found in Planning Code Sections 413 *et seq.*, relating to the shortage of
8 affordable housing, the low vacancy rate of housing affordable to persons of lower and
9 moderate/middle income, and the decrease in construction of affordable housing in the City
10 are hereby readopted.

11 (j) The Land Use and Economic Development Committee of the Board of Supervisors
12 held hearings on its earlier adoption of inclusionary housing legislation on July 12 and 19,
13 2006. At those hearings, the Committee heard testimony from Planning Department staff and
14 consultant Kate Funk of Keyser Marston and Associates regarding a study undertaken at the
15 direction of the Planning Department by the consultant Keyser Marston Associates. The study
16 was entitled Inclusionary Housing Program Sensitivity Analysis, dated July 7, 2006, and was
17 undertaken to examine the economic impacts of adjusted inclusionary requirements on
18 market-rate housing projects ("Sensitivity Analysis"). The study can be found in Board File No.
19 051685 and is incorporated herein by reference. The study was guided by the Planning
20 Department and MOHCD and informed by a Technical Advisory Committee comprised of a
21 variety of experts from the San Francisco housing development and affordable housing
22 advocacy communities. Planning Department staff presented a report summarizing the
23 findings of the Sensitivity Analysis and the recommendations of the Technical Advisory
24 Committee. That report, dated July 10, 2006, is found in Board File No. 051685 and is
25 incorporated herein by reference. After considering the Sensitivity Analysis and staff report

1 and hearing the recommendations and testimony of the Planning Department, MOHCD,
2 members of the Technical Advisory Committee, and members of the public including
3 representatives of housing developers, community members, and affordable housing
4 advocates, the Land Use and Economic Development Committee considered various
5 amendments to the legislation. The Committee found, among other things, that it was in the
6 public interest to increase the percentage requirements of the ordinance, but not by as much
7 as originally proposed; to modify the application dates of the ordinance to grandfather more
8 existing projects from the increased percentage requirements, but to make most projects
9 subject to the other requirements of the ordinance; and to require further study on some
10 issues by the Planning Department and MOHCD.

11 (k) The City and County of San Francisco, under the direction of the Office of the
12 Controller, has undertaken a comprehensive program of analyses to update its programs and
13 supporting documentation for many types of fees, including updating nexus analyses in
14 support of development impact fees. At the direction of the Board of Supervisors and as part
15 of this larger analysis, the City contracted with Keyser Marston Associates to prepare a nexus
16 analysis in support of the Inclusionary Affordable Housing Program, or an analysis of the
17 impact of development of market rate housing on affordable housing supply and demand. The
18 Planning Department and MOHCD worked closely with the consultant and also consulted with
19 the Technical Advisory Committee, noted above, comprised of a variety of experts from the
20 San Francisco housing development and affordable housing advocacy communities.

21 The City's current position is that the City's Inclusionary Housing Program is not subject
22 to the requirements of the Mitigation Fee Act, Government Code Sections 66000 *et seq.* While
23 the City does not expect to alter its position on this matter, due to past legislative actions
24 supporting such a study, the Citywide study being undertaken to conduct nexus studies in
25 other areas, and a general interest in determining whether the Inclusionary Housing Program

1 can be supported by a nexus type analysis as an additional support measure, the City
2 contracted to undertake the preparation of a nexus analysis.

3 The 2007 Nexus Study can be found in the Board of Supervisors File No. 051685 and is
4 incorporated by reference herein. The Board of Supervisors has reviewed the study and staff
5 analysis and report of the study and, on that basis finds that the study supports the current
6 requirements of the Inclusionary Housing Program including, but not limited to, the primary
7 requirement that project applicants pay the Affordable Housing Fee. Specifically, the Board
8 finds that this study: identifies the purpose of the fee to mitigate impacts on the demand for
9 affordable housing in the City; identifies the use to which the fee is to be put as being to
10 increase the City's affordable housing supply; and establishes a reasonable relationship
11 between the use of the fee for affordable housing and the need for affordable housing and the
12 construction of new market rate housing. Moreover, the Board finds that the current
13 inclusionary requirements are less than the cost of mitigation and do not include the costs of
14 remedying any existing deficiencies. The Board also finds that the study establishes that the
15 current inclusionary requirements do not duplicate other city requirements or fees.

16 (l) The Board of Supervisors recognizes that this Inclusionary Housing Program is
17 only one part of the City's overall strategy for providing affordable housing. The Mayor's Office
18 of Housing and Community Development committed over \$54 million in capital funds to
19 affordable housing development in 2009-10. Only \$5 million of those monies came from
20 contributions from private developers through this Program or other similar programs. The
21 MOHCD has budgeted approximately \$64 million for affordable housing development in 2010-
22 11 and the expectation is that about \$14 million of those monies will come from contributions
23 from private developers through this Program or other similar programs.

24 (m) While the Board of Supervisors in 2010 amended the Inclusionary Affordable
25 Housing Program to provide that the primary requirement of the Program is the Affordable

1 Housing Fee, with on-site and off-site alternatives, for continuity and ease of reference the
2 Board found that the Program should, in name, remain the Inclusionary Affordable Housing
3 Program ("Program" or "Inclusionary Housing Program"), but the Board does not intend to
4 suggest that paying the affordable housing fee is a policy priority over providing mixed-income
5 housing through on-site inclusionary units or building affordable units in the same immediate
6 neighborhood of the project.

7
8 Section 4. The Planning Code is hereby amended by revising Sections 415.1, 415.3,
9 415.5, 415.6 and 415.7, to read as follows:

10 **SEC. 415.1 FINDINGS.**

11 ~~A. The Board of Supervisors hereby finds and declares as follows:~~

12 ~~1(a)~~ Affordable housing is a paramount statewide concern. In 1980, the California Legislature
13 declared in Government Code Section 65580:

14 ~~(a1)~~ The availability of housing is of vital statewide importance, and the early
15 attainment of decent housing and a suitable living environment for every California family is a
16 priority of the highest order.

17 ~~(b2)~~ The early attainment of this goal requires the cooperative participation of
18 government and the private sector in an effort to expand housing opportunities and
19 accommodate the housing needs of Californians of all economic levels.

20 ~~(e3)~~ The provision of housing affordable to low-and moderate-income households
21 requires the cooperation of all levels of government.

22 ~~(d4)~~ Local and state governments have a responsibility to use the powers vested in
23 them to facilitate the improvement and development of housing to make adequate provision
24 for the housing needs of all economic segments of the community.

25 ~~(b)~~ The Legislature further stated in Government Code Section 65581 that:

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

2 (a1) To assure that counties and cities recognize their responsibilities in contributing
3 to the attainment of the state housing goal.

4 (b2) To assure that counties and cities will prepare and implement housing elements
5 which will move toward attainment of the state housing goal.

6 (c3) To recognize that each locality is best capable of determining what efforts are
7 required ~~by it~~ to contribute to the attainment of the state housing goal.

8 (c) The California Legislature requires each local government agency to develop a
9 comprehensive long-term general plan establishing policies for future development. As
10 specified in the Government Code (at Sections 65300, 65302(c), and 65583(c)), the plan must
11 (1) "encourage the development of a variety of types of housing for all income levels,
12 including multifamily rental housing"; (2) "[a]ssist in the development of adequate housing to
13 meet the needs of low- and moderate/middle-income households"; and (3) "conserve and
14 improve the condition of the existing affordable housing stock, which may include addressing
15 ways to mitigate the loss of dwelling units demolished by public or private action."

16 (d) The Board of Supervisors adopted San Francisco's General Plan Housing Element in March
17 2015, and the California Housing and Community Development Department certified it on May 29,
18 2015. The Housing Element states that San Francisco's share of the regional housing need for years
19 2015 through 2022 includes 10,873 housing units for very-low and low-income households and 5,460
20 units for moderate/middle-income households, and a total production of 28,870 net new units, with
21 almost 60% to be affordable for very-low, low- and moderate/middle-income San Franciscans.

22 ~~— 2. San Francisco faces a continuing shortage of affordable housing for very low and low-income~~
23 ~~residents. The San Francisco Planning Department reported that for the five-year period between 2005~~
24 ~~and 2009, 14,397, total new housing units were built in San Francisco. This number includes 3,707~~
25 ~~units for low and very low income households out of a total need of 6,815 low and very low income~~

1 *housing units for the same period. According to the state Department of Housing and Community*
2 *Development, there will be a regional need for 214,500 new housing units in the nine Bay Area*
3 *counties from 2007 to 2014. Of that amount, over 58 percent, or 125,258 units, are needed for*
4 *moderate, low and very low-income households. The Association of Bay Area Governments (ABAG) is*
5 *responsible for allocating the total regional need numbers among its member governments which*
6 *includes both counties and cities. ABAG estimates that San Francisco's low and very low-income*
7 *housing production need from 2007 through 2014 is 12,124 units out of a total new housing need of*
8 *31,193 units, or 39 percent of all units built. Within the past five years, only 25 percent of all housing*
9 *built, or 54 percent of the previously projected housing need for low and very low-income housing for*
10 *the same period, was produced in San Francisco. The production of moderate income units also fell*
11 *short of the ABAG goal. Only 1,093 moderate income units were produced over the previous five years,*
12 *or almost 8 percent of all units built, compared to ABAG's call for 26 percent of all units to be*
13 *affordable to households of moderate income.*

14 *— 3. In response to the above mandate from the California Legislature and the projections of*
15 *housing needs for San Francisco, San Francisco has instituted several strategies for producing new*
16 *affordable housing units. The Housing Element of the General Plan recognizes the need to support*
17 *affordable housing production by increasing site availability by identifying and securing opportunity*
18 *sites for permanently affordable housing, by enhancing and expanding financial resources for*
19 *permanent affordable housing through coordination at the regional, state, and Federal levels, and by*
20 *supporting efforts to produce and manage permanently affordable housing. Further, the City, as*
21 *established in the General Plan, seeks to encourage the distribution of affordable housing throughout*
22 *all neighborhoods and, thereby, offer diverse housing choices and promote economic and social*
23 *integration. The Housing Element calls for an increase in the production of new affordable housing for*
24 *greater economic integration and for a range of housing options and opportunities Section 415.1 et seq.*
25 *further the goals of the State Legislature and the General Plan.*

1 — 4. ~~The 2010 Consolidated Plan for July 1, 2005 to June 30, 2010, issued by the Mayor's Office of~~
2 ~~Housing, establishes that extreme housing pressures face San Francisco, particularly in regard to low-~~
3 ~~and moderate income residents. Many elements constrain housing production in the City. This is~~
4 ~~especially true of affordable housing. San Francisco is largely built out, with very few large open tracts~~
5 ~~of land to develop. There is no available adjacent land to be annexed, as the cities located on San~~
6 ~~Francisco's southern border are also dense urban areas. Thus new construction of housing is limited to~~
7 ~~areas of the City not previously designated as residential areas, infill sites, or to areas with increased~~
8 ~~density. New market rate housing absorbs a significant amount of the remaining supply of land and~~
9 ~~other resources available for development and thus limits the supply of affordable housing.~~

10 — ~~There is a great need for affordable rental and owner-occupied housing in the City. Housing cost~~
11 ~~burden is one of the major standards for determining whether a locality is experiencing inadequate~~
12 ~~housing conditions, defined as households that expend 30 percent or more of gross income for rent or~~
13 ~~35 percent or more of household income for owner costs. According to more recent data from the~~
14 ~~Comprehensive Housing Affordability Study (CHAS) 67,015 total renter households, or 34 percent,~~
15 ~~were cost burdened in 2005-07. A significant number of owners are also cost burdened. The 2005-07~~
16 ~~CHAS indicates that 46,985 owner households are cost burdened, or 38 percent.~~

17 — ~~The San Francisco residential real estate market is one of the most expensive in the United States.~~
18 ~~In June 2010, the California Association of Realtors reported that the median priced home in San~~
19 ~~Francisco was \$670,000. This price is 115 percent higher than the State of California median~~
20 ~~(\$311,950), and 266 percent higher than the national average (\$183,000). While the national~~
21 ~~homeownership rate is approximately 67.2 percent, only approximately 39 percent of San Franciscans~~
22 ~~own their own home. The majority of market rate homes for sale in San Francisco are priced out of the~~
23 ~~reach of low and moderate income households. In June 2010, the average rent was \$2,230, which is~~
24 ~~affordable to households earning over \$89,200.~~

1 — ~~These factors contribute to a heavy demand for affordable housing in the City that the private~~
2 ~~market cannot meet. For many years, the number of market rate units that are affordable to low income~~
3 ~~households has been reduced by rising market rate rents and sales prices. Although housing prices and~~
4 ~~rent levels have dropped in recent years, lower income households still struggle to pay for housing in~~
5 ~~San Francisco. The number of households benefiting from rental assistance programs is far below the~~
6 ~~need established by the 2000 Census. Because the shortage of affordable housing in the City can be~~
7 ~~expected to continue for many years, it is necessary to maintain the affordability of the housing units~~
8 ~~constructed by housing developers under this Program. The Housing Element of the General Plan~~
9 ~~recognizes this need, and one of its primary objectives is to protect the affordability of the existing~~
10 ~~housing stock. The Housing Element also sets the goal of securing funding and permanent resources~~
11 ~~for permanently affordable housing, including innovative programs that are not solely reliant on~~
12 ~~traditional mechanisms or capital, including the production of affordable housing through process and~~
13 ~~zoning accommodations and support for middle income housing.~~

14 — ~~In 2004 the National Housing Conference issued a survey entitled "Inclusionary Zoning: The~~
15 ~~California Experience." The survey found that as of March 2003, there were 107 cities and counties~~
16 ~~using inclusionary housing in California, one-fifth of all localities in the State. Overall, the~~
17 ~~inclusionary requirements were generating large numbers of affordable units. Only six percent of~~
18 ~~jurisdictions reported voluntary programs, and the voluntary nature appears to compromise the local~~
19 ~~ability to guarantee affordable housing production. While there was a wide range in the affordability~~
20 ~~percentage requirements for inclusionary housing, approximately half of all jurisdictions require at~~
21 ~~least 15 percent to be affordable, and one-quarter require 20 percent or more to be affordable.~~

22 — ~~5. Development of new market rate housing makes it possible for new residents to move to the~~
23 ~~City. These new residents place demands on services provided by both public and private sectors. Some~~
24 ~~of the public and private sector employees needed to meet the needs of the new residents earn incomes~~
25 ~~only adequate to pay for affordable housing. Because affordable housing is in short supply within the~~

1 ~~City, such employees may be forced to live in less than adequate housing within the City, pay a~~
2 ~~disproportionate share of their incomes to live in adequate housing within the City, or commute ever-~~
3 ~~increasing distances to their jobs from housing located outside the City. These circumstances harm the~~
4 ~~City's ability to attain goals articulated in the City's General Plan and place strains on the City's ability~~
5 ~~to accept and service new market-rate housing development.~~

6 ~~—6. The payment of an Affordable Housing Fee by developers of market rate housing is justified for~~
7 ~~the reasons stated herein and has identifiable benefits to the City. Because it is not financially feasible~~
8 ~~in most circumstances to develop new housing affordable to very low, low, median and moderate-~~
9 ~~income households, the City and County provide direct housing investments to developers to enable the~~
10 ~~creation of affordable housing. The Affordable Housing Fee will be used to help subsidize these~~
11 ~~development costs and provide administrative support for these programs and other affordable housing~~
12 ~~development activities administered by the City and County. Without these funds, the City and County~~
13 ~~would be less able to meet its affordable housing needs and the Regional Housing Needs goals~~
14 ~~established by ABAG and the State of California for the City and County for 2007-2014.~~

15 ~~—The Affordable Housing Fee also enables affordable housing developments to leverage outside~~
16 ~~development funding from the private sector, and the State and Federal Government. This development~~
17 ~~work also creates economic activity, particularly construction work, which provides high-paying jobs~~
18 ~~to residents and workers in the City and County.~~

19 ~~—In addition, it is not financially feasible for the typical moderate income household to purchase a~~
20 ~~home in San Francisco. For these reasons, the Affordable Housing Fee may also be used to provide~~
21 ~~down payment assistance to low and moderate income homebuyers and provide administrative support~~
22 ~~for these programs and other first-time homebuyer assistance administered by the City and County.~~

23 ~~—However, the development of affordable housing on the same site as market-rate housing also~~
24 ~~increases social and economic integration vis-a-vis housing in the City and has corresponding social~~
25 ~~and economic benefits to the City. Inclusionary housing provides a healthy job and housing balance.~~

1 ~~Inclusionary housing provides more affordable housing close to employment centers which in turn may~~
2 ~~have a positive economic impact by reducing such costs as commuting and labor costs.~~

3 ~~— 7. Provided project applicants can take these requirements into consideration when negotiating to~~
4 ~~purchase land for a housing project, the requirements of Section 415.1et seq. are generally financially~~
5 ~~feasible for project applicants to meet, particularly because of the benefits being conferred by the City~~
6 ~~to housing projects under Section 415.1et seq.~~

7 ~~— Section 406 provides a means by which a project applicant may seek a reduction or waiver of the~~
8 ~~Affordable Housing Fee or a reduction or waiver of the alternative requirements of this Program if the~~
9 ~~project applicant can show that imposition of these requirements would create an unlawful financial~~
10 ~~burden.~~

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

1 —9. ~~The City wants to balance the burden on private property owners with the demonstrated need~~
2 ~~for affordable housing in the City. The Housing Element calls for the City to review its affordable~~
3 ~~Inclusionary Housing Program regularly to ensure fair burden and not constrain new housing~~
4 ~~production. The Board of Supervisors has reviewed the Inclusionary Housing Program and finds that,~~
5 ~~for purposes of the Housing Element of the General Plan, the current Affordable Housing Fee—set at~~
6 ~~the equivalent to providing 20 percent of the total number of units as affordable units (or less for~~
7 ~~projects approved under prior requirements)—ensures more fair burden on all housing development~~
8 ~~and will not constrain new housing production. The Board of Supervisors has reviewed the~~
9 ~~Inclusionary Housing Program and finds that, for purposes of the Housing Element of the General~~
10 ~~Plan, a housing project of five units or more is a larger housing project. Applying the Inclusionary~~
11 ~~Housing Program requirements to buildings of five units or more ensures more fair burden on all~~
12 ~~housing development and will not constrain new housing production.~~

13 —10. ~~The findings of former Planning Code Section 313.2 for the Jobs-Housing Linkage Program,~~
14 ~~now found in Planning Code Sections 413et seq., relating to the shortage of affordable housing, the low~~
15 ~~vacancy rate of housing affordable to persons of lower and moderate income, and the decrease in~~
16 ~~construction of affordable housing in the City are hereby readopted.~~

17 —11. ~~The Land Use and Economic Development Committee of the Board of Supervisors held~~
18 ~~hearings on this legislation on July 12 and 19, 2006. At those hearings, the Committee heard testimony~~
19 ~~from Planning Department staff and consultant Kate Funk of Keyser Marston and Associates regarding~~
20 ~~a study undertaken at the direction of the Planning Department by the consultant Keyser Marston~~
21 ~~Associates. The study was entitled Inclusionary Housing Program Sensitivity Analysis, dated July 7,~~
22 ~~2006, and was undertaken to examine the economic impacts of adjusted inclusionary requirements on~~
23 ~~market rate housing projects ("Sensitivity Analysis"). The study can be found in Board File No. 051685~~
24 ~~and is incorporated herein by reference. The study was guided by the Planning Department and MOH~~
25 ~~and informed by a Technical Advisory Committee comprised of a variety of experts from the San~~

1 ~~Francisco Housing Development and Affordable Housing Advocacy Communities. Planning~~
2 ~~Department staff presented a report summarizing the findings of the Sensitivity Analysis and the~~
3 ~~recommendations of the Technical Advisory Committee. That report, dated July 10, 2006, is found in~~
4 ~~Board File No. 051685 and is incorporated herein by reference. After considering the Sensitivity~~
5 ~~Analysis and staff report and hearing the recommendations and testimony of the Planning Department,~~
6 ~~MOH, members of the Technical Advisory Committee, and members of the public including~~
7 ~~representatives of housing developers, community members, and affordable housing advocates, the~~
8 ~~Land Use and Economic Development Committee considered various amendments to the legislation.~~
9 ~~The Committee found, among other things, that it was in the public interest to increase the percentage~~
10 ~~requirements of the ordinance, but not by as much as originally proposed; to modify the application~~
11 ~~dates of the ordinance to grandfather more existing projects from the increased percentage~~
12 ~~requirements, but to make most projects subject to the other requirements of the ordinance; and to~~
13 ~~require further study on some issues by the Planning Department and MOH.~~

14 ~~— 12. The City of San Francisco, under the direction of the Office of the Controller, has undertaken~~
15 ~~a comprehensive program of analyses to update its programs and supporting documentation for many~~
16 ~~types of fees, including updating nexus analyses in support of development impact fees. At the direction~~
17 ~~of the Board of Supervisors and as part of this larger analysis, the City contracted with Keyser Marston~~
18 ~~Associates to prepare a nexus analysis in support of the Inclusionary Affordable Housing Program, or~~
19 ~~an analysis of the impact of development of market rate housing on affordable housing supply and~~
20 ~~demand. The Planning Department and MOH worked closely with the consultant and also consulted~~
21 ~~with the Technical Advisory Committee, noted above, comprised of a variety of experts from the San~~
22 ~~Francisco housing development and affordable housing advocacy communities.~~

23 ~~— The City's current position is that the City's Inclusionary Housing Program is not subject to the~~
24 ~~requirements of the Mitigation Fee Act, Government Code Sections 66000 et seq. While the City does~~
25 ~~not expect to alter its position on this matter, due to past legislative actions supporting such a study, the~~

1 ~~Citywide study being undertaken to conduct nexus studies in other areas, and a general interest in~~
2 ~~determining whether the Inclusionary Housing Program can be supported by a nexus type analysis as~~
3 ~~an additional support measure, the City contracted to undertake the preparation of a nexus analysis at~~
4 ~~this time.~~

5 ~~—The final study can be found in the Board of Supervisors File and is incorporated by reference~~
6 ~~herein. The Board of Supervisors has reviewed the study and staff analysis and report of the study and,~~
7 ~~on that basis finds that the study supports the current requirements of the Inclusionary Housing~~
8 ~~Program including, but not limited to, the primary requirement that project applicants pay the~~
9 ~~Affordable Housing Fee. Specifically, the Board finds that this study: identifies the purpose of the fee to~~
10 ~~mitigate impacts on the demand for affordable housing in the City; identifies the use to which the fee is~~
11 ~~to be put as being to increase the City's affordable housing supply; and establishes a reasonable~~
12 ~~relationship between the use of the fee for affordable housing and the need for affordable housing and~~
13 ~~the construction of new market rate housing. Moreover, the Board finds that the current inclusionary~~
14 ~~requirements are less than the cost of mitigation and do not include the costs of remedying any existing~~
15 ~~deficiencies. The Board also finds that the study establishes that the current inclusionary requirements~~
16 ~~do not duplicate other city requirements or fees.~~

17 ~~—13. The Board of Supervisors recognizes that this Inclusionary Housing Program is only one part~~
18 ~~of the City's overall strategy for providing affordable housing. The Mayor's Office of Housing~~
19 ~~committed over \$54 million in capital funds to affordable housing development in 2009-10. Only \$5~~
20 ~~million of those monies came from contributions from private developers through this Program or~~
21 ~~other similar programs. The MOH has budgeted approximately \$64 million for affordable housing~~
22 ~~development in 2010-11 and the current expectation is that about \$14 million of those monies will come~~
23 ~~from contributions from private developers through this Program or other similar programs.~~

24 ~~—14. While the Board of Supervisors has amended the Inclusionary Affordable Housing Program to~~
25 ~~have the primary requirement of the Program be the Affordable Housing Fee, for continuity and ease of~~

1 ~~reference the Board finds that the Program should, in name, remain the Inclusionary Affordable~~
2 ~~Housing Program ("Program" or "Inclusionary Housing Program").~~

3
4 **SEC. 415.2. DEFINITIONS.**

5 See Section 401 of this Article. For purposes of Sections 415.3 et seq., "low income" households
6 shall be defined as households whose total household income does not exceed 55% of Area Median
7 Income for purposes of renting an affordable unit, or 80% of Area Median Income for purposes of
8 purchasing an affordable unit, and "moderate income" and "middle income" households shall mean
9 households whose total household income does not exceed 100% of Area Median Income for purposes
10 of renting an affordable unit, or 120% of Area Median Income for purposes of purchasing an
11 affordable unit.

12 **SEC. 415.3. APPLICATION.**

13 (a) Notwithstanding any other provision to the contrary in this Code, Section 415.1 et
14 seq. shall apply to any housing project that consists of ~~ten~~ 10 or more units where an individual
15 project or a phased project is to be undertaken and where the total undertaking comprises a
16 project with ~~ten~~ 10 or more units, even if the development is on separate but adjacent lots.
17 This provision also applies to housing projects that requires Commission approval of
18 replacement housing destroyed by earthquake, fire, or natural disaster only where the
19 destroyed housing included units restricted under the Inclusionary Affordable Housing
20 Program or the City's predecessor inclusionary housing policy, condominium conversion
21 requirements, or other affordable housing program.

22 (b) ~~The effective date of these requirements shall be either April 5, 2002, which is the date that~~
23 ~~the requirements originally became effective, or the date a subsequent modification, if any, became~~
24 ~~operative. The following table is designed to summarize the most significant subsequent modifications~~
25 ~~to this Program and the dates those modifications went into effect. The Planning Department and the~~

1 ~~Mayor's Office of Housing shall maintain a record for the public summarizing various amendments to~~
2 ~~this Program and their effective or operative dates. To the extent there is a conflict between the~~
3 ~~following table or any summary produced by the Department or MOH and the provisions of the~~
4 ~~original implementing ordinances, the implementing ordinances shall prevail. The requirements set~~
5 ~~forth in Planning Code Sections 415.5, 415.6, and 415.7 shall apply to certain development projects~~
6 ~~consisting of 25 dwelling units or more during a limited period of time as follows.~~

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

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

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

16 (C) Any development project that has submitted a complete Environmental
17 Evaluation application on or prior to January 12, 2016 shall provide affordable units in the amount of
18 14.5% of the number of units constructed on-site.

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

22 (E) Notwithstanding the provisions set forth in subsections (b)(1)(A), (B) and
23 (C) of this section 415.3, if a development project is located in the Mission NCT Zoning District, and is
24 eligible and elects to provide on-site units pursuant to Section 415.5(g), such development project shall
25

1 comply with the on-site requirements set forth in Section 415.6 and shall not be eligible to use the lower
2 inclusionary housing requirements set forth in this subsection (b) of this Section 415.3.

3 (F) Notwithstanding the provisions set forth in subsections (b)(1)(A), (B) and
4 (C) of this section 415.3, if a development project is located in a UMU Zoning District or in the South
5 of Market Youth and Family Zoning District, and is eligible and elects to provide on-site units pursuant
6 to Section 415.5(g), such development project shall comply with the on-site requirements applicable
7 within such Zoning Districts, plus the following additional amounts of on-site affordable units: (i) if the
8 development project has submitted a complete Environmental Evaluation application prior to January
9 1, 2014, the Project Sponsor shall provide additional affordable units in the amount of 1% of the
10 number of units constructed on-site; (ii) if the development project has submitted a complete
11 Environmental Evaluation application prior to January 1, 2015, the Project Sponsor shall provide
12 additional affordable units in the amount of 1.5% of the number of units constructed on-site; or (iii) if
13 the development project has submitted a complete Environmental Evaluation application on or prior to
14 January 12, 2016, the Project Sponsor shall provide additional affordable units in the amount of 2% of
15 the number of units constructed on-site.

16 (G) Any development project that has submitted a complete Environmental
17 Evaluation application on or before January 12, 2016 and seeks to utilize a density bonus under State
18 Law shall use its best efforts to provide on-site affordable units in the amount of 25% of the number of
19 units constructed on-site and shall consult with the Planning Department about how to achieve this
20 amount of inclusionary affordable housing. Any project seeking a density bonus under the provisions
21 of State Law shall prepare a report analyzing how the concessions and incentives requested are
22 necessary in order to provide the required on-site affordable housing.

23 (2) If a development project pays the Affordable Housing Fee or is eligible and elects
24 to provide off-site affordable housing, the development project shall provide the following fee amount
25

1 or amounts of off-site affordable housing during the limited periods of time set forth below. All other
2 requirements of Planning Code Sections 415.1 et seq. shall apply.

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

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

9 (C) Any development project that has submitted a complete Environmental
10 Evaluation application on or prior to January 12, 2016 shall pay a fee or provide off-site housing in an
11 amount equivalent to 30% of the number of units constructed on-site.

12 (D) Any development project that submits an Environmental Evaluation
13 application after January 12, 2016 shall comply with the requirements set forth in Sections 415.5,
14 415.6, and 415.7, as applicable.

15 (E) Notwithstanding the provisions set forth in subsections (b)(2)(A), (B) and
16 (C) of this Section 415.3, for development projects proposing buildings over 120 feet in height, as
17 measured under the requirements set forth in the Planning Code, such development projects shall pay a
18 fee or provide off-site housing in an amount equivalent to 33% of the number of units constructed on-
19 site.

20 (F) Notwithstanding the provisions set forth in subsections (b)(2)(A), (B) and
21 (C) of this Section 415.3, if a development project is located in the Mission NCT Zoning District, and
22 pays the Affordable Housing Fee or is eligible and elects to provide off-site units pursuant to Section
23 415.5(g), such development project shall comply with the requirements set forth in Sections 415.5 and
24 415.6 and shall not be eligible to use the lower inclusionary housing requirements set forth in this
25 subsection (b) of this Section 415.3.

1 (G) Notwithstanding the provisions set forth in subsections (b)(2)(A), (B) and
2 (C) of this section 415.3, if a development project is located in a UMU Zoning District or in the South
3 of Market Youth and Family Zoning District, and pays the Affordable Housing Fee or is eligible and
4 elects to provide off-site affordable housing pursuant to Section 415.5(g), or elects to comply with a
5 land dedication alternative, such development project shall comply with the fee, off-site or land
6 dedication requirements applicable within such Zoning Districts, plus the following additional amounts
7 for the Affordable Housing Fee or for land dedication or off-site affordable units: (i) if the development
8 project has submitted a complete Environmental Evaluation application prior to January 1, 2014, the
9 Project Sponsor shall pay an additional fee, or provide additional land dedication or off-site affordable
10 units, in an amount equivalent to 5% of the number of units constructed on-site; (ii) if the development
11 project has submitted a complete Environmental Evaluation application prior to January 1, 2015, the
12 Project Sponsor shall pay an additional fee, or provide additional land dedication or off-site affordable
13 units, in an amount equivalent to 7.5% of the number of units constructed on-site; or (iii) if the
14 development project has submitted a complete Environmental Evaluation application on or prior to
15 January 12, 2016, the Project Sponsor shall pay an additional fee, or provide additional land
16 dedication or off-site affordable units, in an amount equivalent to 10% of the number of units
17 constructed on-site.

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

1 (3) Any development project that constructs on-site or off-site affordable housing units
2 as set forth in subsection (b) of this Section 415.3 shall diligently pursue completion of such units. In
3 the event the project sponsor does not procure a building permit or site permit for construction of the
4 affordable housing units by December 7, 2018, the development project shall comply with the
5 inclusionary affordable housing requirements set forth in Sections 415.5, 415.6, and 415.7, as
6 applicable.

7 (c) The new inclusionary affordable housing requirements contained in Sections 415.5, 415.6,
8 and 415.7, as well as the provisions contained in Section 415.3(b), shall not apply to (1) any mixed use
9 project that is located in a special use district for which a height limit increase has been approved by
10 the voters prior to January 12, 2016 to satisfy the requirements of Administrative Code Section 61.5.1,
11 or (2) any mixed use project that has entered into a development agreement or other similar binding
12 agreement with the City on or before January 12, 2016, or (3) any housing development project that
13 has procured a final first discretionary development entitlement approval, which shall mean approval
14 following any administrative appeal to the relevant City board, on or before January 12, 2016.

15 (d) The City may continue to enter into development agreements or other similar binding
16 agreements for projects that provide inclusionary affordable housing at levels that may be different
17 from the levels set forth in Sections 415.1 et seq.

18 (e) For any housing development that is located in an area with a specific affordable housing
19 requirement set forth in an Area Plan or a Special Use District, or in any other section of the Code
20 such as Section 419, the higher affordable housing requirement shall apply. Any affordable housing
21 impact fee paid pursuant to an Area Plan or Special Use District shall be counted as part of the
22 calculation of the inclusionary housing requirements contained in Planning Code Sections 415.1 et seq.

1 *Table 415.3*

2

3

<i>Program Modification</i>	<i>Effective or Operative Date</i>
<p>4 <i>All projects with 5 or more units must participate</i></p> <p>5 <i>in the Inclusionary Housing Program Section</i></p> <p>6 <i>415 (changed from a threshold of 10 units).</i></p> <p>7</p> <p>8 <i>Threshold changed back to 10 units or more such</i></p> <p>9 <i>that the Section 415 et seq. no longer applies to</i></p> <p>10 <i>buildings of 5-9 units.</i></p>	<p><i>All projects that submitted a first application on or</i></p> <p><i>after July 18, 2006.</i></p> <p><i>Any 5-9 unit project, regardless of when it</i></p> <p><i>submitted a first application, that has not received</i></p> <p><i>a first construction document as of January 15,</i></p> <p><i>2013.</i></p>
<p>11</p> <p>12 <i>Affordable Housing Percentages:</i></p> <p>13 <i>• 20% Fee</i></p> <p>14 <i>• 12% on-site*</i></p> <p>15 <i>• 20% off-site*</i></p> <p>16 <i>*Of total number of units</i></p> <p>17 <i>(Percentages may vary in specific Area Plans or</i></p> <p>18 <i>Special Use Districts. Please refer to those</i></p> <p>19 <i>applicable Code Sections.)</i></p>	<p><i>All projects that submitted a first application on or</i></p> <p><i>after July 18, 2006</i></p> <p><i>(For off-site and fee: except buildings of over 120</i></p> <p><i>feet in height that meet the requirements of Section</i></p> <p><i>415.7(a)(1)(C))</i></p>
<p>20</p> <p>21 <i>On-Site units must be priced and sold at 90% of</i></p> <p>22 <i>AMI and rented at 55% of AMI</i></p>	<p><i>All projects that receive a first site or building</i></p> <p><i>permit on or after September 9, 2006</i></p>

23

24

25

1 2 3	<i>Project sponsor must select Program compliance option upon project approval and cannot alter their compliance option</i>	<i>All projects that received Planning Commission or Planning Department approval on or after September 9, 2006</i>
4 5 6	<i>All off-site units must be located within 1 mile of the principal project and Off-site units must be priced and sold at 70% of AMI</i>	<i>All Projects that receive Planning Commission or Planning Department approval after September 9, 2006</i>
7 8	<i>Lottery preference for applicants living or working in San Francisco</i>	<i>All projects that are marketed on or after June 4, 2007</i>
9 10 11	<i>Lottery preference for applicants holding a Certificate of Preference from the Redevelopment Agency</i>	<i>All projects that are marketed on or after December 30, 2008</i>
12 13 14	<i>Lottery required for all new and resale units</i>	<i>All projects that are marketed on or after September 9, 2006</i>
15 16 17	<i>Must provide on-site units as owner-occupied only unless specifically exempted pursuant to Section 415</i>	<i>All projects beginning February 11, 2010</i>
18 19 20	<i>All off-site units must follow standards set out in Procedures Manual</i>	<i>Projects that receive Planning Commission or Planning Department approval on or after June 4, 2007</i>

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

- (1) That portion of a housing project located on property owned by the United States or any of its agencies, or leased by the United States or any of its agencies for a period

1 in excess of 50 years, with the exception of such property not used exclusively for a
2 governmental purpose;

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

6 (3) That portion of a housing project located on property under the jurisdiction
7 of the San Francisco *Redevelopment Agency Office of Community Investment and Infrastructure* or
8 the Port of San Francisco where the application of Section 415.1 *et seq.* is prohibited by
9 California or local law.

10 (4) A 100% ~~percent~~ affordable housing project in which rents are controlled or
11 regulated by any government unit, agency or authority, excepting those unsubsidized and/or
12 unassisted units which are insured by the United States Department of Housing and Urban
13 Development. The Mayor's Office of Housing *and Community Development* must represent to
14 the Planning Commission or Planning Department that the project meets this requirement.

15 * * * *

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

19 ~~(e) In November 2012 the voters amended the Charter by adopting Proposition C "The~~
20 ~~Affordable Housing Trust Fund and Housing Production Incentives" which is, in part, codified as~~
21 ~~Charter Section 16.110 ("Proposition C"). To the extent that there is any inconsistency between the~~
22 ~~provisions of Proposition C and Sections 415 et seq. or any other Planning Code provisions,~~
23 ~~the provisions of Proposition C shall control.~~

1 **SEC. 415.5. AFFORDABLE HOUSING FEE.**

2 The fees set forth in this Section 415.5 will be reviewed when the City completes an Economic
3 Feasibility Study. Except as provided in Section 415.5(g), all development projects subject to
4 this Program shall be required to pay an Affordable Housing Fee subject to the following
5 requirements:

6 (a) **Payment of a Fee.** The fee is due and payable to the Development Fee Collection
7 Unit at DBI for deposit into the Citywide Affordable Housing Fund at the time of and in no
8 event later than issuance of the first construction document, with an option for the project
9 sponsor to defer payment to prior to issuance of the first certificate of occupancy upon
10 agreeing to pay a deferral surcharge that would be deposited into the Downtown Park Citywide
11 Affordable Housing Fund, in accordance with Section 107A.13.15 of the San Francisco Building
12 Code.

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

15 (1) The number of units equivalent to the applicable off-site percentage of the
16 number of units in the principal project. The applicable percentage shall be 20% percent for
17 housing development projects consisting of 10 dwelling units or more, but less than 25 dwelling units.
18 The applicable percentage for development projects consisting of 25 dwelling units or more shall be
19 33% or the percentage that applied to the project if the project is subject to the requirements of an
20 earlier version of this Program due to the date it submitted its application or that percentage required
21 in certain Special Use Districts or Area Plans. For the purposes of this Section 415.5, the City
22 shall calculate the fee using the direct fractional result of the total number of units multiplied
23 by the applicable percentage, rather than rounding up the resulting figure as required by
24 Section 415.6(a).

1 (2) The affordability gap using data on the cost of construction of residential
2 housing and the Maximum Purchase Price for the equivalent unit size. *As of the effective date of*
3 *this Ordinance No. 62-13,1 MOH shall use construction cost data from the "San Francisco*
4 *Inclusionary Housing Program Financial Analysis 2012" prepared by Seifel Consulting.* The
5 Department and MOHCD shall update the technical report from time to time as they deem
6 appropriate in order to ensure that the affordability gap remains current.

7 (3) No later than January 1 of each year *following the effective date of this*
8 *Ordinance No. 62-13*, MOHCD shall adjust the fee. *No later than December 1 following the effective*
9 *date of this Ordinance No. 62-131 of each year*, MOHCD shall provide the Planning Department,
10 DBI, and the Controller with information on the adjustment to the fee so that it can be included
11 in the Planning Department's and DBI's website notice of the fee adjustments and the
12 Controller's Citywide Development Fee and Development Impact Requirements Report
13 described in Section 409(a). MOHCD is authorized to develop an appropriate methodology for
14 indexing the fee, based on adjustments in the cost of constructing housing and the Maximum
15 Purchase Price for the equivalent unit size. The method of indexing shall be published in the
16 Procedures Manual.

17 (4) For any housing development that is located in an area with a specific affordable
18 housing requirement set forth in a Special Use District, or in any other section of the Code such as
19 Section 419, the higher affordable housing requirement shall apply.

20 * * * *

21 (f) **Use of Fees.** All monies contributed pursuant to the Inclusionary Affordable
22 Housing Program shall be deposited in the Citywide Affordable Housing Fund ("the Fund"),
23 established in Administrative Code Section 10.100-49. The Mayor's Office of Housing and
24 Community Development ("MOHCD") shall use the funds collected under this Section in the
25 following manner:

1 (1) Except as provided in subsection (2) below, the funds collected under this
2 Section shall be used to:

3 (A) increase the supply of housing affordable to qualifying households
4 subject to the conditions of this Section; and

5 (B) provide assistance to low and moderate/middle income homebuyers;
6 and

7 (C) pay the expenses of MOHCD in connection with monitoring and
8 administering compliance with the requirements of the Program. MOHCD is authorized to use
9 funds in an amount not to exceed \$200,000 every 5 years to conduct follow-up studies under
10 Section 415.9(e) and to update the affordable housing fee amounts as described above in
11 Section 415.5(b). All other monitoring and administrative expenses shall be appropriated
12 through the annual budget process or supplemental appropriation for MOHCD.

13 (2) **"Small Sites Funds."**

14 (A) **Designation of Funds.** MOHCD shall designate and separately
15 account for 10% percent of all fees that it receives under Section 415.1*et seq.* that are
16 deposited into the Citywide Affordable Housing Fund, established in Administrative Code
17 Section 10.100-49, excluding fees that are geographically targeted such as those referred to
18 in Sections 415.5(b)(1) and 827(b)(1), to support acquisition and rehabilitation of Small Sites
19 ("Small Sites Funds"). MOHCD shall continue to divert 10 percent of all fees for this purpose
20 until the Small Sites Funds reach a total of \$15 million at which point, MOHCD will stop
21 designating funds for this purpose. At such time as designated Small Sites Funds are
22 expended and dip below \$15 million, MOHCD shall start designating funds again for this
23 purpose, such that at no time the Small Sites Funds shall exceed \$15 million. When the total
24 amount of fees paid to the City under Section 415.1*et seq.* totals less than \$10 million over
25 the preceding 12 month period, MOHCD is authorized to temporarily divert funds from the

1 Small Sites Fund for other purposes. MOHCD must keep track of the diverted funds, however,
2 such that when the amount of fees paid to the City under Section 415.1 *et seq.* meets or
3 exceeds \$10 million over the preceding 12 month period, MOHCD shall commit all of the
4 previously diverted funds and 10 percent of any new funds, subject to the cap above, to the
5 Small Sites Fund.

6 (B) **Use of Small Sites Funds.** The funds shall be used exclusively to
7 acquire or rehabilitate "Small Sites" defined as properties consisting of ~~less than 2~~ - 25 units.
8 Units supported by monies from the fund shall be designated as housing affordable to
9 ~~qualifying~~ low-income to Moderate/Middle-income households as defined in Section 415.1 ~~2~~ for no
10 less than 55 years. Properties supported by the Small Sites Funds must be *either*:

- 11 (i) rental properties that will be maintained as rental properties;
- 12 (ii) vacant properties that were formerly rental properties as long
13 as those properties have been vacant for a minimum of two years prior to the effective date of
14 this legislation;
- 15 (iii) properties that have been the subject of foreclosure; or
- 16 (iv) a Limited Equity Housing Cooperative as defined in
17 Subdivision Code Sections 1399.1 *et seq.* or a property owned or leased by a non-profit entity
18 modeled as a Community Land Trust.

19 (C) **Initial Funds.** If, within 18 months from April 23, 2009, MOHCD
20 dedicates an initial one-time contribution of other eligible funds to be used initially as Small
21 Sites Funds, MOHCD may use the equivalent amount of Small Sites Funds received from
22 fees for other purposes permitted by the Citywide Affordable Housing Fund until the amount of
23 the initial one-time contribution is reached.

1 (D) **Annual Report.** At the end of each fiscal year, MOHCD shall issue
2 a report to the Board of Supervisors regarding the amount of Small Sites Funds received from
3 fees under this legislation, and a report of how those funds were used.

4 (E) **Intent.** In ~~adopting this ordinance regarding~~ establishing guidelines for
5 Small Sites Funds, the Board of Supervisors does not intend to preclude MOHCD from
6 expending other eligible sources of funding on Small Sites as described in this Section, or
7 from allocating or expending more than \$15 million of other eligible funds on Small Sites.

8 (3) For all projects funded by the Citywide Affordable Housing Fund, MOHCD requires
9 the project sponsor or its successor in interest to give preference as provided ~~for~~ in
10 Administrative Code Chapter 47.

11
12 **SEC. 415.6. ON-SITE AFFORDABLE HOUSING ALTERNATIVE.**

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

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

17 (1) The number of units constructed on-site shall generally be 12% of all units
18 constructed on the project site for housing development projects consisting of 10 dwelling units or
19 more, but less than 25 dwelling units. The affordable units shall be affordable to low-income
20 households. The number of units constructed on-site shall generally be 25% of all units constructed on
21 the project site for housing development projects consisting of 25 dwelling units or more, with a
22 minimum of 15% of the units affordable to low- income households and 10% of the units affordable to
23 low- or moderate/middle-income households. The Department shall require ~~for housing projects~~
24 ~~covered by Section 415.3(a)(1),~~ as a condition of Department approval of a project's building
25 permit, or ~~by Section 415.3(a)(2), (3) and (4),~~ as a condition of approval of a Conditional Use

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

7 (2) **Specific Geographic Areas.** For any housing development that is located
8 in an area with a specific affordable housing requirement set forth in a Special Use District or
9 in any other section of the Code such as Section 419, the ~~more specific~~ higher housing
10 requirement shall apply ~~as long as it is consistent with Charter Section 16.110.~~

11 (3) If the principal project has resulted in demolition, conversion, or removal of
12 affordable housing units renting or selling to households at income levels and/or for a rental
13 rate or sales price below corresponding income thresholds for units affordable to qualifying
14 households, the Commission or the Department shall require that the project sponsor replace
15 the number of affordable units removed with units of a comparable number of bedrooms or
16 provide that ~~12~~ 25% percent of all units constructed as part of the new project shall be
17 affordable to qualifying households, whichever is greater.

18 ~~(4) Already Approved Projects. Charter Section 16.110(g)(3) contains procedures for~~
19 ~~certain projects that have been approved but that have not received their first construction document as~~
20 ~~defined in Section 107A.13.1 of the San Francisco Building Code by January 1, 2013 to modify their~~
21 ~~conditions of approval under limited circumstances.~~

22 (b) **Timing of Construction.** On-site affordable housing required by this Section
23 415.6 ~~must~~ shall be constructed, completed, ready for occupancy, and marketed no later than
24 the market rate units in the principal project.

1 (c) **Type of Housing.** All on-site units constructed under this Section 415.6 shall must
2 be provided as ownership units unless the project sponsor meets the eligibility requirement of
3 Section 415.5(g). All on-site units must be Affordable to Qualifying Households. In general,
4 affordable units constructed under this Section 415.6 shall be comparable in number of
5 bedrooms, exterior appearance and overall quality of construction to market rate units in the
6 principal project. A Notice of Special Restrictions shall be recorded prior to issuance of the
7 first construction document and shall specify the number, location and sizes for all affordable
8 units required under this ~~S~~subsection (c). The affordable units shall be evenly evenly distributed
9 throughout the building. For buildings over 120 feet in height, as measured under the requirements set
10 forth in the Planning Code, the affordable units may be distributed throughout the lower 2/3 of the
11 building, as measured by the number of floors. The interior features in affordable units should be
12 generally the same as those of the market rate units in the principal project, but need not be
13 the same make, model or type of such item as long as they are of good and new quality and
14 are consistent with then-current standards for new housing. The square footage of affordable
15 units does not need to be the same as or equivalent to ~~those that~~ in market rate units in the
16 principal project, so long as it is consistent with then-current standards for new housing. The
17 affordable units are not required to be the same size as the market rate units, and may be 90% of the
18 average size of the specified unit type. For buildings over 120 feet in height, as measured under the
19 requirements set forth in the Planning Code, the average size of the unit type may be calculated for the
20 lower 2/3 of the building, as measured by the number of floors. Where applicable, parking shall be
21 offered to the affordable units subject to the terms and conditions of the Department's policy
22 on unbundled parking for affordable housing units as specified in the Procedures Manual and
23 amended from time to time. On-site affordable units shall be ownership units unless the
24 project applicant meets the eligibility requirement of Section 415.5(9).

25 * * * *

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

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

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

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

14 ~~(B)~~ For housing development projects consisting of 10 dwelling units or more but less
15 than 25 units, the number of units constructed off-site shall be 20%, so that a project applicant shall
16 construct .20 times the total number of units produced in the principal project. If the total number of
17 units is not a whole number, the project applicant shall round up to the nearest whole number for any
18 portion of .5 or above. The off-site affordable units shall be affordable to low-income households

19 ~~(C)~~ For housing development projects consisting of 25 dwelling units or more, the
20 number of units constructed off-site shall be 33%, with 20% of the units affordable to low-income
21 households and 13% of the units affordable to low- or moderate/middle-income households, so that a
22 project applicant shall construct .33 times 20 percent so that a project applicant must construct .20
23 times Buildings of 120 feet and under in height or buildings of over 120 feet in height that do not meet
24 the criteria in Subsection (C) below: Except as provided in Subsection (A), the Department shall
25 require for housing projects described in Section 415.3(a)(1), (2), (3), and (4) the total number of

1 units produced in the principal project. If the total number of units is not a whole number, the
2 project applicant shall round up to the nearest whole number for any portion of .5 or above.

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

6
7 ~~(C) —Buildings of over 120 feet in height. Except as provided in subsection (A)~~
8 ~~above, the requirements of this Subsection shall apply to any project that is over 120 feet in height and~~
9 ~~does not require a Zoning Map amendment or Planning Code text amendment related to its project~~
10 ~~approvals which (i) results in a net increase in the number of permissible residential units, or (ii)~~
11 ~~results in a material increase in the net permissible residential square footage as defined in Section~~
12 ~~415.3(b)(2); or has not received or will not receive a Zoning Map amendment or Planning Code text~~
13 ~~amendment as part of an Area Plan adopted after January 1, 2006 which (i) results in a net increase in~~
14 ~~the number of permissible residential units, or (ii) results in a material increase in the net permissible~~
15 ~~residential square footage as defined in Section 415.3(b)(2). The Department shall require for housing~~
16 ~~projects covered by this Subsection and Section 415.3(a)(1), as a condition of Planning Department~~
17 ~~approval of a project's building permit, or by this Subsection and by Section 415.3(a)(2), (3) and (4), as~~
18 ~~a condition of approval of a Conditional Use Authorization or Planned Unit Development or as a~~
19 ~~condition of Department approval of a live/work project, that 17 percent of all units constructed on the~~
20 ~~project site shall be affordable to qualifying households so that a project sponsor must construct 17~~
21 ~~times the total number of units produced in the principal project. If the total number of units is not a~~
22 ~~whole number, the project sponsor shall round up to the nearest whole number for any portion of .5 or~~
23 ~~above. Consistent with the conclusions of the MOH study authorized in Section 415.9(e), MOH shall~~
24 ~~recommend and the Board of Supervisors shall consider whether the requirements of this Subsection~~
25

1 ~~for buildings of over 120 feet in height shall continue or expire after approximately five years from~~
2 ~~April 24, 2007.~~

3 (b) **Timing of Construction:** The project sponsor shall ~~insure~~ ensure that the off-site
4 units are constructed, completed, ready for occupancy, and marketed no later than the market
5 rate units in the principal project. In no case shall the Principal Project receive its first
6 certificate of occupancy until the off-site project has received its first certificate of occupancy.

7 (c) **Location of off-site housing:** ~~The project sponsor must insure that~~ off-site units ~~are~~
8 shall be located within one mile of the principal project.

9 (d) **Type of Housing:** All off-site units constructed under this Section ~~415.7 shall~~ must
10 be provided as ownership housing for the life of the project unless the project applicant meets
11 the eligibility requirement of Section 415.5(g). ~~If offered for ownership, all off-site units must be~~
12 ~~affordable to households earning no more than 70% percent of the AMI, or if offered for rent,~~
13 ~~Affordable to Qualifying Households at the rental level.~~ Nothing in this Section shall limit a project
14 sponsor from meeting the requirements of this Section through the construction of units in a
15 limited equity or land trust form of ownership if such units otherwise meet all of the
16 requirements for off-site housing. In general, affordable units constructed or otherwise provided
17 under this Section ~~415.7~~ shall be comparable in number of bedrooms, exterior appearance and
18 overall quality of construction to market rate units in the principal project. The total square
19 footage of the off-site affordable units constructed or otherwise provided under this Section
20 ~~415.7~~ shall be no less than the calculation of the total square footage of the on-site market-
21 rate units in the principal project multiplied by the relevant on-site percentage requirement for
22 the project specified in this Section ~~415.7~~. The Notice of Special Restrictions or conditions of
23 approval shall include a specific number of units at specified unit sizes - including number of
24 bedrooms and minimum square footage - for affordable units. The interior features in
25 affordable units should generally be the same as those of the market rate units in the principal

1 project but need not be the same make, model, or type of such item as long as they are of
 2 new and good quality and are consistent with then-current standards for new housing and so
 3 long as they are consistent with the "Quality Standards for Off-Site Affordable Housing Units"
 4 found in the Procedures Manual. Where applicable, parking shall be offered to the affordable
 5 units subject to the terms and conditions of the Department's policy on unbundled parking for
 6 affordable housing units as specified in the Procedures Manual and amended from time to
 7 time. If the residential units in the principal project are live/work units which do not contain
 8 bedrooms or are other types of units which do not contain bedrooms separated from the living
 9 space, the off-site units shall be comparable in size according to the following equivalency
 10 calculation between live/work and units with bedrooms:

Number of Bedrooms (or, for live/work units, square foot equivalency)	Number of Persons in Household
0 (Less than 600 square feet)	1
1 (601 to 850 square feet)	2
2 (851 to 1,100 square feet)	3
3 (1,101 to 1,300 square feet)	4
4 (More than 1,300 square feet)	5

11
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 18 * * * *

19 Section 4. The Planning Code is hereby amended by adding Section 415.10, to read
 20 as follows:

21 **SEC. 415.10. ECONOMIC FEASIBILITY STUDY TO MAXIMIZE HOUSING**

22 **AFFORDABILITY.**

23 **(a) Findings.**

1 San Francisco continues to experience a housing crisis that requires a broad spectrum
2 of land use and financing tools to address. The Housing Element of the City's General Plan calls for
3 38% of all new housing production to be affordable for lower income households below 80% of area
4 median income and 19% of new housing affordable to be built for moderate/middle income households
5 up to 120% of area median income. San Francisco's inclusionary housing program, which requires
6 housing developers to provide affordable units as part of their projects, is a critical component of the
7 City's programs to expand affordable housing options. The Inclusionary Housing program is one of the
8 City's tools for increasing affordable housing dedicated to lower income San Franciscans without
9 using public subsidies, and in particular it is a useful tool for creating any affordable housing to meet
10 the growing need of moderate/middle income households.

11 The City adopted an Inclusionary Housing ordinance in 2002 that set requirements on market
12 rate development to include affordable units at 12% of the total for the first time. The inclusionary
13 program has successfully resulted in more than 2,000 units of below-market, permanently affordable
14 housing since its adoption. The City prepared a Nexus Study in 2007 in support of the program. The
15 report demonstrated the necessary affordable housing in order to mitigate the impacts of market rate
16 housing, and the inclusionary requirements were increased to 15% of total units. The City's
17 inclusionary housing requirements are codified in Section 415 of the Planning Code. The City is now
18 in the process of updating that nexus analysis.

19 In 2011, Governor Jerry Brown dissolved the State Redevelopment Agency, which was the
20 City's primary permanent funding stream for affordable housing. In 2012, in response to this loss, the
21 voters amended the San Francisco Charter to create the Affordable Housing Trust Fund, which
22 included a provision to lower the on-site inclusionary requirement to 12%. In November 2014, in
23 response to an escalating affordable housing crisis, the voters passed Proposition K, which set forth a
24 policy directive to the City to ensure that additional affordable housing is a minimum of 33% of its
25 overall housing production to low- and moderate/middle-income households up to 120% of the Area

1 Median Income and at least another 17% affordable to households from 120% to 150% of the Area
2 Median Income.

3 The Board of Supervisors has proposed to the voters a Charter amendment that will appear on
4 the June 7, 2016 ballot. The Charter amendment would authorize the City to enact by ordinance
5 subsequent changes to the inclusionary housing requirements, including changes to the minimum or
6 maximum inclusionary or affordable housing obligations applicable to market rate housing projects.

7 On March 1, 2016, the Board of Supervisors unanimously adopted Resolution No. 79-16
8 declaring that (1) it shall be City policy to maximize the economically feasible percentage of affordable
9 inclusionary housing in market rate housing development to create housing for lower and
10 moderate/middle income households; (2) if the voters adopt the proposed Charter amendment on June
11 7, the Board intends to adopt a future ordinance requiring the Controller and other City departments to
12 conduct a periodic economic study to maximize affordability in the City's inclusionary housing
13 requirements; and (3) the future ordinance would create an advisory committee to ensure that the
14 economic study is the result of a transparent and inclusive public process.

15 The purpose of this Section 415.10 is to study how to set inclusionary housing obligations in
16 San Francisco at the maximum economically feasible amount in market rate housing development to
17 create housing for low and moderate / middle income households, at the income levels set forth in
18 Section 415.10(d), and with guidance from the City's Nexus Study, which should be periodically
19 updated.

20 (b) **Triennial Economic Feasibility Analysis.** With the support of independent consultants as
21 deemed appropriate by the Controller and with advice on setting qualifications and criteria for
22 consultant selection from the Inclusionary Housing Technical Advisory Committee established in
23 Administrative Code Chapter 5, Article XXIX, the Controller, in consultation with relevant City
24 Departments and the Inclusionary Housing Technical Advisory Committee, shall conduct a feasibility
25 study of the City's inclusionary affordable housing obligations set forth in Planning Code Section 415

1 et seq., including but not limited to the affordable housing fee and on-site and off-site alternatives, and
2 shall submit a report to the Board of Supervisors by July 31, 2016 and by October 31 for subsequent
3 years. Thereafter, the Controller, in consultation with the Department and the Inclusionary Housing
4 Technical Advisory Committee, shall repeat this process at least every 36 months, or more frequently
5 as deemed necessary by the Controller in response to a significant shift in economic or market
6 conditions.

7 (c) **Elements of the Economic Feasibility Analysis.** The economic feasibility analysis required
8 by subsection (b) of this Section 415.10 shall include sensitivity analyses of key economic parameters
9 that can vary significantly over time, such as, but not limited to: interest rates; capitalization rates;
10 equity return rates; land prices; construction costs; project scale, available state and federal housing
11 finance programs including Low Income Housing Tax Credits readily available for market rate
12 housing; tax-exempt bond financing; Federal Housing Administration and U.S. Department of Housing
13 and Urban Development mortgage insurance; available City or local housing finance programs, such
14 as Enhanced Infrastructure District (EIFD) and tax increments; zoning changes that increase or
15 decrease development potential; variable City exactions, including community benefit fees, capacity
16 charges, community facilities districts; the value of state density bonus, concessions and incentives
17 under California Government Code Section 65915 and any other state law that confers value to
18 development and which project sponsors may attempt to avail themselves of; and public-private
19 partnership development agreements where applicable and other factors as deemed reasonably
20 relevant.

21 (d) **Report to Board of Supervisors.** The Board of Supervisors may review the feasibility
22 analyses, as well as the periodic updates to the City's Nexus Study evaluating the necessary affordable
23 housing in order to mitigate the impacts of market rate housing. The Board of Supervisors, in its sole
24 and absolute discretion, will review the feasibility analyses within three months of completion and will
25 consider legislative amendments to the City's Inclusionary Housing in-lieu fees, on-site, off-site or

1 other alternatives, and in so doing will seek consultation from the Planning Commission, adjusting
2 levels of inclusionary or affordable housing obligations and income levels up to maximums as defined
3 in Section 415.2, based on the feasibility analyses, with the objective of maximizing affordable
4 Inclusionary Housing in market rate housing production, and with guidance from the City's Nexus
5 Study. The Board of Supervisors may also utilize the Nexus Study in considering legislative
6 amendments to the Inclusionary Housing requirements. Updates to the City's Inclusionary Housing
7 requirements shall address affordable housing fees, on-site affordable housing and off-site affordable
8 housing, as well as the provision of affordable housing available to low-income households at or below
9 55% of Area Median Income for rental units and up to 80% of Area Median Income for ownership
10 units, and moderate/middle-income households from 80% to 120% of Area Median Income.

11
12 Section 5. The Administrative Code is hereby amended by adding Article XXIX,
13 Sections 5.29-1 through 5.29-7, to Chapter 5, to read as follows:

14 **ARTICLE XXIX:**

15 **INCLUSIONARY HOUSING TECHNICAL ADVISORY COMMITTEE**

16 **Sec. 5.29-1. Creation of Advisory Committee.**

17 **Sec. 5.29-2. Findings.**

18 **Sec. 5.29-3. Membership.**

19 **Sec. 5.29-4. Organization and Terms of Office.**

20 **Sec. 5.29-5. Duties.**

21 **Sec. 5.29-6. Meetings and Procedures.**

22 **Sec. 5.29-7. Sunset.**

23 **SEC. 5.29-1. CREATION OF ADVISORY COMMITTEE.**

24 The Board of Supervisors hereby establishes the Inclusionary Housing Technical Advisory
25 Committee (the "Advisory Committee") of the City and County of San Francisco.

1 **SEC. 5.29-2. FINDINGS.**

2 The Board of Supervisors intends that the economic feasibility analysis required by Planning
3 Code Section 415.10 shall be prepared through a transparent and inclusive public process that will
4 include the Advisory Committee. The feasibility study inputs and assumptions should be based on
5 documented and verifiable costs of housing development over the full course of a business cycle.

6 **SEC. 5.29-3. MEMBERSHIP.**

7 The Advisory Committee shall consist of eight members. All members shall have experience
8 and expertise in development finance. The Board of Supervisors shall appoint members to Seats 1
9 through 4, and the Mayor shall appoint members to Seats 5 through 8.

10 **SEC. 5.29-4. ORGANIZATION AND TERMS OF OFFICE.**

11 (a) Each member shall serve at the pleasure of the member's appointing authority. Each
12 member appointed to the Advisory Committee in 2016 shall serve until three months after the date the
13 Controller produces the first economic feasibility analysis required by Planning Code Section 415.10,
14 at which point the member's term shall expire. The Board of Supervisors and the Mayor shall appoint
15 new members to the Advisory Committee in anticipation of each subsequent economic feasibility
16 analysis by the Controller, and those members' terms shall similarly expire three months after the date
17 the Controller produces the economic feasibility analysis required by Planning Code Section 415.10.
18 Members shall not hold over after the expiration of their terms.

19 (b) If a vacancy occurs in any seat on the Advisory Committee, the appointing authority for
20 the vacated seat shall appoint a successor to that seat.

21 (c) Members of the Advisory Committee shall receive no compensation from the City for
22 servicing on the Advisory Committee.

23 (d) Any member who misses three regular meetings of the Advisory Committee without the
24 express approval of the Advisory Committee at or before each missed meeting shall be deemed by
25

1 operation of law to have resigned from the Advisory Committee ten days after the third unapproved
2 absence. The Advisory Committee shall inform the appointing authority of the resignation.

3 (e) The Controller's Office shall provide clerical and administrative support and staffing
4 for the Advisory Committee.

5 **SEC. 5.29-5. DUTIES.**

6 (a) The Advisory Committee shall provide input and advice to the Controller, the Mayor, the
7 Planning Department and the Board of Supervisors regarding the content of the economic feasibility
8 analysis required by Planning Code Section 415.10. The Advisory Committee shall hold technical
9 workshops to evaluate the fiscal feasibility of various inclusionary housing fees and on-site and off-site
10 alternatives, including evaluating a range of project types, inclusionary percentages, and resident
11 income levels, and assessing whether fiscal feasibility varies within the City across different
12 neighborhoods. The Advisory Committee may, but is not required to, prepare written reports.

13 (b) All City departments, commissions, boards, and agencies shall cooperate with the
14 Advisory Committee in conducting its business.

15 **SEC. 5.29-6. MEETINGS AND PROCEDURES.**

16 The Advisory Committee shall hold a regular meeting not less than once every four months until
17 the sunset date set forth in Section 5.29-7.

18 **SEC. 5.29-7. SUNSET.**

19 The Board of Supervisors and Mayor intend the Advisory Committee to last until the enactment
20 of an ordinance removing this Article XXIX from the Administrative Code. Notwithstanding Rule 2.21
21 of the Board of Supervisors Rules of Order, which provides that advisory bodies created by the Board
22 should sunset within three years, the Board intends the Advisory Committee to exist for longer than
23 three years.

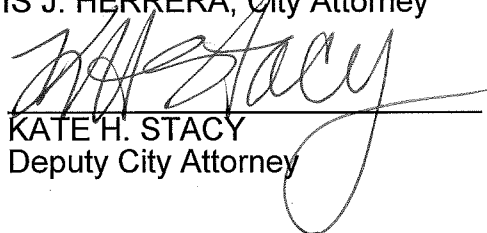
1 Section 6. Severability. Clauses of this ordinance are declared to be severable, and if
2 any provision or clause of this ordinance or the application thereof is held to be
3 unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such
4 invalidity shall not affect other provisions of this ordinance.

5
6 Section 7. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
7 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
8 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
9 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
10 additions, and Board amendment deletions in accordance with the "Note" that appears under
11 the official title of the ordinance.

12
13 Section 8. Effective Date. This ordinance shall become effective 30 days after
14 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
15 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
16 of Supervisors overrides the Mayor's veto of the ordinance.

17
18 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

19
20 By:


KATE H. STACY
Deputy City Attorney

21
22 n:\egana\as2016\1600550\01097586.docx