

1 [Planning Code - Inclusionary Affordable Housing Program, Updates, and Clarifications]

2

3 **Ordinance amending the San Francisco Planning Code, Section 401, and provisions of**
 4 **the Inclusionary Affordable Housing Ordinance, Sections 415 et seq., to update and**
 5 **clarify provisions of the Inclusionary Affordable Housing Program by providing a cap**
 6 **on rent increases; clarifying the timing of off-site developments; requiring rental units**
 7 **that convert to ownership to sell at less than the price for ownership units under**
 8 **certain circumstance; establishing pricing for affordable Single Room Occupancy**
 9 **units; changing the status of projects using California Debt Limit Allocation Committee**
 10 **tax exempt bonds so that such projects are subject to the Program, but that units may**
 11 **qualify as on or off-site units under certain circumstances; allowing income levels of**
 12 **qualifying households to exceed those specified in certain situations; authorizing the**
 13 **Mayor’s Office of Housing to charge a monitoring fee to verify occupancy of affordable**
 14 **units; making technical clarifications and corrections; and making environmental**
 15 **findings and findings of consistency with the General Plan.**

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

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

21 Section 1. The Planning Department has determined that the actions contemplated in
 22 this ordinance comply with the California Environmental Quality Act (California Public
 23 Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the
 24 Board of Supervisors in File No. _____ and is incorporated herein by reference.

25

1 (b) On _____, 2012, the Planning Commission, in Resolution No.
2 _____ approved and recommended for adoption by the Board this legislation
3 and adopted findings that it is consistent, on balance, with the City's General Plan and eight
4 priority policies of Planning Code Section 101.1. The Board adopts these findings as its own.
5 A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No.
6 _____, and is incorporated by reference herein.

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

11 Section 2. The San Francisco Planning Code is hereby amended by amending
12 selected definitions in Section 401, to read as follows:

13 **SEC. 401. DEFINITIONS.**

14 In addition to the specific definitions set forth elsewhere in this Article, the following
15 definitions shall govern interpretation of this Article:

16 . . .

17 "Affordable to qualifying households."

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

21 (i) Only to first-time homebuyer households, as defined in this Section;

22 (ii) Only to households with an annual gross income equal to or less than the qualifying
23 income limits for a household of moderate income, adjusted for household size, except for the
24 exceptions set forth in Section 415.8 (4) (C), (D) and (E);

25

1 (iii) Only to households that meet the household size requirements, as defined in the
2 Procedures Manual;

3 (iv) On the initial sale, at or below the maximum purchase price, as defined in this
4 Section;

5 (v) On subsequent sales at or below the prices to be determined according to the
6 formula specified in the Procedures Manual in place at the time of the affordable unit owner's
7 purchase, as amended from time to time, such that the units remain affordable to qualifying
8 households. The formula in the Procedures Manual shall permit the seller to include certain
9 allowable capital improvements in the new maximum purchase price. The formula shall
10 include a per unit cap on capital improvements of 10% of the resale price in order to maintain
11 affordability. Special Assessments shall be added to the resale price at an uncapped rate.
12 Capital improvement requests shall be evaluated by the Mayor's Office of Housing according
13 to the formula specified in the Procedures Manual.

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

16 (i) Only to households with an annual gross income equal to or less than qualifying
17 limits for a household of lower income adjusted for household size, as defined in this Section,
18 except for the exceptions set forth in Section 415.8 (4) (A) and (B);

19 (ii) Only households that meet the household size requirements, as defined in the
20 Procedures Manual;

21 (iii) At or less than the maximum annual rent.

22 "Allowable average purchase price." A price for all affordable owned units of the size
23 indicated below that are affordable to a household of median income as defined in this
24 Section, adjusted for the household size indicated below as of the date of the close of escrow,
25 except for Single Room Occupancy units (as defined in Section 890.88), which shall be 75% of the

1 maximum purchase price level for studio units, and, where applicable, adjusted to reflect the
 2 Department's policy on unbundled parking for affordable housing units as specified in the
 3 Procedures Manual and amended from time to time:

| 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 |

14 "Allowable average annual rent." Annual rent for an affordable rental unit of the size
 15 indicated below that is 30 percent of the annual gross income of a household of low income
 16 as defined in this Section, adjusted for the household size indicated below except for Single
 17 Room Occupancy units (as defined in Section 890.88), which shall be 75% of the maximum rent level
 18 for studio units, and, where applicable, adjusted to reflect the Department's policy on
 19 unbundled parking for affordable housing units as specified in the Procedures Manual and
 20 amended from time to time:

| 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 |

At no time can a rent increase, or can multiple rent increases within one year, exceed the percentage change in Maximum Monthly Rent levels as published by MOH from the previous calendar year to the current calendar year.

...

"Maximum annual rent." The maximum rent that a housing developer may charge any tenant occupying an affordable unit for the calendar year. The maximum annual rent for an affordable housing unit of the size indicated below shall be no more than 30 percent of the annual gross income for a household of low income as defined in this Section, as adjusted for the household size indicated below, except in the case of Single Room Occupancy units (as defined in Section 890.88), which shall be 75% of the maximum rent level for studio units, as of the first date of the tenancy:

| 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 |

1 At no time can a rent increase, or can multiple rent increases within one year, exceed the
 2 percentage change in Maximum Monthly Rent levels as published by MOH from the previous calendar
 3 year to the current calendar year.

4 "Maximum purchase price." The maximum purchase price for an affordable owned unit
 5 of the size indicated below except in the case of Single Room Occupancy units (as defined in Section
 6 890.88), which shall be 75% of the maximum purchase price level for studio units, that is affordable
 7 to a household of moderate income, adjusted for the household size indicated below,
 8 assuming an annual payment for all housing costs of 33 percent of the combined household
 9 annual gross income, a down payment recommended by MOH and set forth in the
 10 Procedures Manual, and available financing:

| 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
12
13
14
15
16
17
18
19
20 . . .

21 Section 3. The San Francisco Planning Code is hereby amended by amending
 22 selected portions of Section 415.3, to read as follows:

23 **SEC. 415.3. APPLICATION.**

24 (a) Section 415.1 *et seq.* shall apply to any housing project that consists of five or more
 25 units where an individual project or a phased project is to be undertaken and where the total

1 undertaking comprises a project with five or more units, even if the development is on
2 separate but adjacent lots; and

3 (1) Does not require Commission approval as a Conditional Use Authorization or
4 Planned Unit Development;

5 (2) Requires Commission approval as a Conditional Use Authorization or Planned Unit
6 Development;

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

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

12 (b) The effective date of these requirements shall be either April 5, 2002, which is the
13 date that the requirements originally became effective, or the date a subsequent modification,
14 if any, became operative. The following table is designed to summarize the most significant
15 subsequent modifications to this Program and the dates those modifications went into effect.
16 The Planning Department and the Mayor's Office of Housing shall maintain a record for the
17 public summarizing various amendments to this Program and their effective or operative
18 dates. To the extent there is a conflict between the following table or any summary produced
19 by the Department or MOH and the provisions of the original implementing ordinances, the
20 implementing ordinances shall prevail.

21 Table 415.3

| Program Modification | Effective or Operative Date |
|--|---|
| All projects with 5 or more units must participate in the Inclusionary Housing | All projects that submitted a first application on or after July 18, 2006 |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

| | |
|---|---|
| <p>Program Section 415 (changed from a threshold of 10 units).</p> | |
| <p>Affordable Housing Percentages: 20% Fee 15% on-site* 20% off-site* *Of total number of units <i>(Percentages may vary in specific Area Plans. Please refer to those applicable Code Sections.)</i></p> | <p>All projects that submitted a first application on or after July 18, 2006 <i>(except <u>buildings of over 120 feet in height that meet the requirements of Section 415.6(a)(1)(C) or 415.7(a)(1)(C) projects which require a rezoning to increase buildable residential units or square footage</u></i>)</p> |
| <p>On-Site units must be priced and sold at 90% of AMI and rented at 55% of AMI</p> | <p>All projects that receive a first site or building permit on or after September 9, 2006</p> |
| <p>Project sponsor must select Program compliance option upon project approval and cannot alter their compliance option</p> | <p>All projects that received Planning Commission or Planning Department approval on or after September 9, 2006</p> |
| <p>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</p> | <p>All Projects that receive Planning Commission or Planning Department approval after September 9, 2006</p> |
| <p>Lottery preference for applicants living or working in San Francisco</p> | <p>All projects that are marketed on or after June 4, 2007</p> |

| | | |
|------------------|--|--|
| 1 2 3 4 | Lottery preference for applicants holding a Certificate of Preference from the Redevelopment Agency | All projects that are marketed on or after December 30, 2008 |
| 5 6 7 | Lottery required for all new and resale units | All projects that are marketed on or after September 9, 2006 |
| 8 9 10 | Must provide on-site units as owner-occupied only unless specifically exempted pursuant to Section 415 | All projects beginning February 11, 2010 |
| 11 12 13 | All off-site units must follow standards set out in Procedures Manual | Projects that receive Planning Commission or Planning Department approval on or after June 4, 2007 |

(c) 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 in excess of 50 years, with the exception of such property not used exclusively for a governmental purpose;

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

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

(4) ~~Selected projects that are otherwise providing affordable units comparable to or exceeding the requirements of this program as follows:~~

1 ~~(A) Qualifying Projects. Projects that meet either of the requirements of subsection (i) or (ii)~~
2 ~~below for as long as they meet all of the requirements and conditions of this subsection.~~

3 ~~(i) A project using California Debt Limit Allocation Committee (CDLAC) tax exempt bond~~
4 ~~financing as long as the project provides 20 percent of the units as affordable at 50 percent of area~~
5 ~~median income for on-site housing or 25 percent of the units as affordable at 50 percent of area median~~
6 ~~income for off-site housing.~~

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

12 ~~(AB) Restrictions.~~ If a project sponsor takes advantage of this subsection, all of the
13 rules and regulations of the programs or recorded documents guaranteeing the affordability of
14 the units shall govern the units and the requirements of this Program shall not apply.

15 ~~(BC) Conditions.~~ In order to qualify for this provision, the project sponsor must record
16 an NSR against the property that provides that, in the event of foreclosure or for any other
17 reason, the project no longer qualifies as a project meeting the requirements of subsection
18 ~~(4)(A)(i) or (ii)~~ the project will either:

19 (i) pay the Affordable Housing Fee plus interest from the date the project received its
20 first construction document for the project if no affordable units were ever provided or, if
21 affordable units were provided and occupied, then the Affordable Housing Fee with no interest
22 is due on the date the units were no longer occupied by qualifying households; or

23 (ii) provide the required number of on-site affordable units required at time of original
24 project approval and that those units shall be subject to all of the requirements of this
25 Program.

1 (D) In the event that there is a foreclosure or other event triggering the requirements of
2 subsection (BE) above, the project sponsor shall record a new NSR specifying the manner it
3 which it complies with this Program, including but not limited to any specific units restricted as
4 affordable under (BE)(ii). The new NSR shall provide that the units must comply with all of the
5 requirements of this Program.

6 . . .

7
8 Section 4: The San Francisco Planning Code is hereby amended by amending
9 selected portions of Section 415.5, to read as follows:

10 **SEC. 415.5. AFFORDABLE HOUSING FEE.**

11 Except as provided in Section 415.5(g), all development projects subject to this
12 Program shall be required to pay an Affordable Housing Fee subject to the following
13 requirements:

14 (a) **Payment of a Fee.** Payment of a fee to the Development Collection Unit at DBI for
15 deposit into the Citywide Affordable Housing Fund for the purposes of that Fund.

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

18 (1) The number of units equivalent to the applicable off-site percentage of the number
19 of units in the principal project. The applicable percentage shall be 20 percent or the
20 percentage that applied to the project if the project is subject to the requirements of an earlier
21 version of this Program due to the date it submitted its application or that percentage required in
22 certain Area Plans. For the purposes of this Section, the City shall calculate the fee using the
23 direct fractional result of the total number of units multiplied by the applicable percentage,
24 rather than rounding up the resulting figure as required by Section 415.6(a).

1 (2) The affordability gap using data on the cost of construction of residential housing
2 and the Maximum Purchase Price for the equivalent unit size. Until December 31, 2012, MOH shall
3 use construction cost data from the "San Francisco Sensitivity Analysis Summary Report:
4 Inclusionary Housing Program" prepared by Keyser Marston Associates, Inc. in August 2006
5 for the Maximum Annual Rent or Maximum Purchase Price for the equivalent unit sizes. As of January
6 1, 2012, MOH shall use construction cost data from the "San Francisco Inclusionary Housing
7 Program Financial Analysis 2012" prepared by Seifel Consulting. The Department and MOH shall
8 update the technical report from time to time as they deem appropriate in order to ensure that
9 the affordability gap remains current.

10 (3) ~~Commencing on January 1, 2012, no~~ No later than January 1 of each year, MOH shall
11 adjust the fee. No later than ~~November~~December 1 of each year, MOH shall provide the
12 Planning Department, DBI, and the Controller with information on the adjustment to the fee so
13 that it can be included in the Planning Department's and DBI's website notice of the fee
14 adjustments and the Controller's Annual Citywide Development Fee and Development Impact
15 Requirements Report described in Section 409(b). MOH is authorized to develop an
16 appropriate methodology for indexing the fee, based on adjustments in the costs of
17 constructing housing and the Maximum Purchase Price for the equivalent unit size ~~in the price of~~
18 ~~housing in San Francisco~~. The method of indexing shall be published in the Procedures Manual.

19 . . .

20 (e) If a housing project is located in an Area Plan with an additional or specific
21 affordable housing requirements such as those set forth in section 416, ~~and~~ 417, and 419 or
22 elsewhere in this code, the more specific provisions shall apply in lieu of or in addition to those
23 provided in this Program, as applicable.

24 . . .

25 (g) **Alternatives to Payment of Affordable Housing Fee.**

1 (1) **Eligibility:** A project sponsor must pay the Affordable Housing Fee unless it
2 qualifies for and chooses to meet the requirements of the Program through an Alternative
3 provided in this Subsection. The project sponsor may choose one of the following
4 Alternatives:

5 (A) **Alternative #1: On-Site Units.** Project sponsors may elect to construct units
6 affordable to qualifying households on-site of the principal project pursuant to the
7 requirements of Section 415.6.

8 (B) **Alternative #2: Off-Site Units.** Project sponsors may elect to construct units
9 affordable to qualifying households at an alternative site within the City and County of San
10 Francisco pursuant to the requirements of Section 415.7.

11 (C) **Alternative #3: Combination.** Project sponsors may elect any combination of
12 payment of the Affordable Housing Fee as provided in Section 415.5, construction of on-site
13 units as provided in Section 415.6, or construction of off-site units as provided in Section
14 415.7, provided that the project applicant constructs or pays the fee at the appropriate
15 percentage or fee level required for that option.

16 (2) **Qualifications:** If a project sponsor wishes to comply with the Program through one
17 of the Alternatives described in (1) rather than pay the Affordable Housing Fee, they must
18 demonstrate that they qualify for the Alternative to the satisfaction of the Department and
19 MOH. A project sponsor may qualify for an Alternative by the following methods:

20 (i) **Method #1 - Ownership Units.** All affordable units provided under this Program
21 shall be sold as ownership units and will remain ownership units for the life of the project.
22 Project sponsors must submit the 'Affidavit *of Compliance with the Inclusionary Affordable*
23 *Housing Program to Establish Eligibility for an Alternative to Affordable Housing Fee*' to the
24 Planning Department prior to project approval by the Department or the Commission; or
25

1 (ii) **Method #2 - Government Financial Contribution.** Submit to the Department a
2 contract demonstrating that the project's on- or off-site units are not subject to the Costa
3 Hawkins Rental Housing Act, California Civil Code Section 1954.50 because, under Section
4 1954.52(b), it has entered into an agreement with a public entity in consideration for a direct
5 financial contribution or any other form of assistance specified in California Government Code
6 Sections 65915 et seq. and it submits an Affidavit of such to the Department. All such
7 contracts entered into with the City and County of San Francisco must be reviewed and
8 approved by the Mayor's Office Housing and the City Attorney's Office. All contracts that
9 involve 100% affordable housing projects in the residential portion may be executed by the
10 Mayor or the Director of the Mayor's Office of Housing. Any contract that involves less than
11 100% affordable housing in the residential portion, may be executed by either the Mayor, the
12 Director of the Mayor's Office of Housing or, after review and comment by the Mayor's Office
13 of Housing, the Planning Director; ~~or.~~ A Development Agreement under California Government
14 Code Section 65864 et seq. and Chapter 56 of the San Francisco Administrative Code entered into
15 between a project sponsor and the City and County of San Francisco may, but does not necessarily,
16 qualify as such a contract.

17 ~~(iii) Method #3 - Development Agreement. A project sponsor may apply to enter into a~~
18 ~~Development Agreement with the City and County of San Francisco under California Government~~
19 ~~Code Section 65864 et seq. and Chapter 56 of the San Francisco Administrative Code, permitting the~~
20 ~~project to be eligible for on-site units as an alternative to payment of the Affordable Housing Fee to~~
21 ~~satisfy the requirements of the Program and obligating the project sponsor to provide the affordable~~
22 ~~units on-site.~~

23 (3) The Planning Commission or the Department may not require a project sponsor to
24 select a specific Alternative. If a project sponsor elects to meet the Program requirements
25 through one of the Alternatives described in (1), they must choose it and demonstrate that

1 they qualify prior to any project approvals from the Planning Commission or Department. The
2 Alternative will be a condition of project approval and recorded against the property in an
3 NSR. Notwithstanding the foregoing, if a project sponsor qualifies for an Alternative described
4 in (1) and elects to construct the affordable units on- or off-site, they must submit the 'Affidavit
5 *of Compliance With The Inclusionary Housing Program* ~~'to Establish Eligibility for an Alternative to~~
6 ~~*Affordable Housing Fee*~~' based on the fact that the units will be sold as ownership units. A ~~The~~
7 project sponsor who has elected to construct affordable ownership units on- or off-site may
8 only elect to pay the Affordable Housing Fee up to the issuance of the first construction
9 document if the project sponsor submits a new Affidavit establishing that the units will not be
10 sold as ownership units. If a project sponsor fails to choose an Alternative before project
11 approval by the Planning Commission or Planning Department or if a project becomes
12 ineligible for an Alternative, the provisions of Section 415.5 shall apply.

13 (4) If at any time, the project sponsor eliminates the on-site or off-site affordable
14 ownership-only units, then the project sponsor must immediately inform the Department and
15 MOH and pay the applicable Affordable Housing Fee plus interest and any applicable
16 penalties provided for under this Code. If a project sponsor requests a modification to its
17 conditions of approval for the sole purpose of complying with this Section, the Planning
18 Commission shall be limited to considering issues related to Section 415 et seq. in
19 considering the request for modification.

20
21 Section 5: The San Francisco Planning Code is hereby amended by amending
22 selected portions of Section 415.6, to read as follows:

23 **SEC. 415.6. ON-SITE AFFORDABLE HOUSING ALTERNATIVE**

24 If a project sponsor is eligible and selects to provide on-site units pursuant to Section
25 415.5(g), the development project shall meet the following requirements:

1 . . .

2 (c) **Type of Housing:** All on-site units constructed under this Section must be provided
3 as ownership units unless the project sponsor meets the eligibility requirement of Section
4 415.5(g). All on-site units must be Affordable to Qualifying Households. In general, affordable
5 units constructed under this Section 415.6 shall be comparable in number of bedrooms,
6 exterior appearance and overall quality of construction to market rate units in the principal
7 project. A Notice of Special Restrictions shall be recorded prior to issuance of the first
8 construction document and shall specify the number, location and sizes for all affordable units
9 required under this Subsection. The interior features in affordable units should be generally
10 the same as those of the market rate units in the principal project, but need not be the same
11 make, model or type of such item as long as they are of good and new quality and are
12 consistent with then-current standards for new housing. The square footage of affordable
13 units do not need to be same as or equivalent to those in market rate units in the principal
14 project, so long as it is consistent with then-current standards for new housing. Where
15 applicable, parking shall be offered to the affordable units subject to the terms and conditions
16 of the Department's policy on unbundled parking for affordable housing units as specified in
17 the Procedures Manual and amended from time to time. On-site affordable units shall be
18 ownership units unless the project applicant meets the eligibility requirement of Section
19 415.5(g).

20 . . .

21 (e) Individual affordable units constructed under Section 415.6 ~~415.5~~ as part of an on-
22 site project shall not have received development subsidies from any Federal, State or local
23 program established for the purpose of providing affordable housing, and shall not be counted
24 to satisfy any affordable housing requirement. Other units in the same on-site project may
25 have received such subsidies. In addition, subsidies may be used, only with the express written

1 permission by MOH, to deepen the affordability of an affordable unit beyond the level of
2 affordability required by this Program.

3 (f) Notwithstanding the provisions of Section 415.6(e) above, a project may use California Debt
4 Limit Allocation Committee (CDLAC) tax-exempt bond financing and 4% tax credits under the Tax
5 Credit Allocation Committee (TCAC) to help fund its obligations under this ordinance as long as the
6 project provides 20 percent of the units as affordable to households at 50 percent of Area Median
7 Income for on-site housing. The income table to be used for such projects when the units are priced at
8 50 percent of Area Median Income is the income table used by MOH for the Inclusionary Affordable
9 Housing Program, not that used by TCAC or CDLAC. Except as provided in this subsection, all units
10 provided under this Section must meet all of the requirements of this ordinance and the Procedures
11 Manual for on-site housing.

12 (gf) **Benefits:** If the project sponsor is eligible for and elects to satisfy the affordable
13 housing requirements through the production of on-site affordable housing in this Section
14 415.6, the project sponsor shall be eligible to receive a refund for only that portion of the
15 housing project which is affordable for the following fees: a Conditional Use Authorization or
16 other fee required by Section 352 of this Code, if applicable; an environmental review fee
17 required by Administrative Code Section 31.46B, if applicable; a building permit fee required
18 by the Building Code and by Section 355 of this Code for the portion of the housing project
19 that is affordable. The project sponsor shall pay the building fee for the portion of the project
20 that is market-rate.

21 The Controller shall refund fees from any appropriated funds to the project sponsor on
22 application by the project sponsor. The application must include a copy of the Certificate of
23 Occupancy for all units affordable to a qualifying household required by the Inclusionary
24 Housing Program. It is the policy of the Board of Supervisors to appropriate money for this
25 purpose from the General Fund.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Section 6: The San Francisco Planning Code is hereby amended by amending selected portions of Section 415.7, to read as follows:

SEC. 415.7. OFF-SITE AFFORDABLE HOUSING ALTERNATIVE.

If the project sponsor is eligible and selects pursuant to Section 415.5(gf) to provide off-site units to satisfy the requirements of Section 415.1 et seq., the project sponsor shall notify the Planning Department and MOH of its intent as early as possible. The Planning Department and MOH shall provide an evaluation of the project's compliance with this Section prior to approval by the Planning Commission or Planning Department. The development project shall meet the following requirements:

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

(1) (A) For any housing development of any height that is located in an area with a specific affordable housing requirement, set forth in Sections 416, 417, 419, or elsewhere in this Code, the more specific off-site housing requirement shall apply.

(B) Buildings of 120 feet and under in height or buildings of over 120 feet in height that do not meet the criteria in Subsection (C) below: Except as provided in Subsection (A), the Department shall require for housing projects described in Section 415.3(a)(1), (2), (3), and (4) 20 percent so that a project applicant must construct .20 times the total number of units produced in the principal project. If the total number of units is not a whole number, the project applicant shall round up to the nearest whole number for any portion of .5 or above.

(C) Buildings of over 120 feet in height. Except as provided in subsection (A) above, the requirements of this Subsection shall apply to any project that is over 120 feet in height and does not require a Zoning Map amendment or Planning Code text amendment related to its project approvals which (i) results in a net increase in the number of permissible residential units, or (ii) results in a material increase in the net permissible residential square footage as

1 defined in Section 415.3(b)(2); or has not received or will not receive a Zoning Map
2 amendment or Planning Code text amendment as part of an Area Plan adopted after January
3 1, 2006 which (i) results in a net increase in the number of permissible residential units, or (ii)
4 results in a material increase in the net permissible residential square footage as defined in
5 Section 415.3(b)(2). The Department shall require for housing projects covered by this
6 Subsection and Section 415.3(a)(1), as a condition of Planning Department approval of a
7 project's building permit, or by this Subsection and by Section 415.3(a)(2), (3) and (4), as a
8 condition of approval of a Conditional Use Authorization or Planned Unit Development or as a
9 condition of Department approval of a live/work project, that 17 percent of all units constructed
10 on the project site shall be affordable to qualifying households so that a project sponsor must
11 construct .17 times the total number of units produced in the principal project. If the total
12 number of units is not a whole number, the project sponsor shall round up to the nearest
13 whole number for any portion of .5 or above. Consistent with the conclusions of the MOH
14 study authorized in Section 415.9(e), MOH shall recommend and the Board of Supervisors
15 shall consider whether the requirements of this Subsection for buildings of over 120 feet in
16 height shall continue or expire after approximately five years from April 24, 2007.

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

21 (c) **Location of off-site housing:** The project sponsor must insure that off-site units
22 are located within one mile of the principal project.

23 (d) **Type of Housing:** All off-site units constructed under this Section must be provided
24 as ownership housing for the life of the project unless the project applicant meets the eligibility
25 requirement of Section 415.5(g). ~~and, If offered for ownership, all off-site units~~ must be affordable

1 to households earning no more than 70 percent of the AMI, or if offered for rent, Affordable to
2 Qualifying Households at the rental level. Nothing in this Section shall limit a project sponsor
3 from meeting the requirements of this Section through the construction of units in a limited
4 equity or land trust form of ownership if such units otherwise meet all of the requirements for
5 off-site housing. In general, affordable units constructed under Section 415.7 shall be
6 comparable in number of bedrooms, exterior appearance and overall quality of construction to
7 market rate units in the principal project. The total square footage of the off-site affordable
8 units constructed under Section 415.7 shall be no less than the calculation of the total square
9 footage of the on-site market-rate units in the principal project multiplied by the relevant on-
10 site percentage requirement for the project specified in Section 415.7. The Notice of Special
11 Restrictions or conditions of approval shall include a specific number of units at specified unit
12 sizes - including number of bedrooms and minimum square footage - for affordable units. The
13 interior features in affordable units should generally be the same as those of the market rate
14 units in the principal project but need not be the same make model or type of such item as
15 long as they are of new and good quality and are consistent with then-current standards for
16 new housing and so long as they are consistent with the "Quality Standards for Off-Site
17 Affordable Housing Units" found in the Procedures Manual. Where applicable, parking shall
18 be offered to the affordable units subject to the terms and conditions of the Department's
19 policy on unbundled parking for affordable housing units as specified in the Procedures
20 Manual and amended from time to time. If the residential units in the principal project are
21 live/work units which do not contain bedrooms or are other types of units which do not contain
22 bedrooms separated from the living space, the off-site units shall be comparable in size
23 according to the following equivalency calculation between live/work and units with bedrooms:

| | | |
|----|--------------------|-----------|
| 24 | Number of Bedrooms | Number of |
| 25 | | |

| (or, for live/work units square foot equivalency) | 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 |

...

(f) Individual affordable units constructed as part of a larger off-site project under Section 415.7 shall not receive development subsidies from any Federal, State or local program established for the purpose of providing affordable housing, and shall not be counted to satisfy any affordable housing requirement for the off-site development. Other units in the same off-site project may receive such subsidies. In addition, subsidies may be used, only with the express written permission by MOH, to deepen the affordability of an affordable unit beyond the level of affordability required by this Program.

(g) Notwithstanding the provisions of Section 415.7(f) above, a project may use California Debt Limit Allocation Committee (CDLAC) tax-exempt bond financing and 4% credits under the Tax Credit Allocation Committee (TCAC) to help fund its obligations under this ordinance as long as the project provides 25 percent of the units as affordable at 50 percent of area median income for off-site housing. The income table to be used for such projects when the units are priced at 50 percent of area median income is the income table used by MOH for the Inclusionary Housing Program, not that used by TCAC or CDLAC. Except as provided in this subsection, all units provided under this Section must meet all of the requirements of this ordinance and the Procedures Manual for off-site housing.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Section 7: The San Francisco Planning Code is hereby amended by amending selected portions of Section 415.8, to read as follows:

SEC. 415.8. DURATION AND MONITORING OF AFFORDABILITY.

(a) For any units permitted under the Program:

(1) All units constructed pursuant to Sections 415.6 (on-site alternative) and 415.7 (off-site alternative) must be owner-occupied, as defined in the Procedures Manual, in the case of ownership units or occupied by qualified households in the case of rental units.

(2) Units shall not remain vacant for a period exceeding 60 days without the written consent of MOH.

(3) All units constructed pursuant to Sections 415.6 and 415.7 must remain affordable to qualifying households for the life of the project.

(4) The income levels specified in the Notice of Special Restrictions and/or conditions of approval for the project shall be the required income percentages for the life of the project.

Notwithstanding the foregoing, if approved by MOH and as provided in the Procedures Manual, an exception to the required income percentage may be made in the following cases:

(A) a rental unit that converts to an ownership unit, up to a maximum of 120% of AMI;

(B) where there is an existing tenant, the household income may increase by up to 200% of the levels specified in the Notice of Special Restrictions or conditions of approval;

(C) new ownership units where the project sponsor has used good faith efforts to secure a contract with a qualified buyer but is unable to secure such a contract in a timely manner from the initiation of marketing;

(D) resale ownership units where the owner has used good faith efforts to secure a contract with a qualified buyer but is unable to secure a buyer contract at a maximum resale price specified by MOH in a timely manner; or

1 (E) the qualifying income level for new ownership units may be set at 10% above the income
2 level stated in the Notice of Special Restrictions or conditions of approval.

3 (5) The Commission or the Department shall require all housing projects subject to
4 Section 415.1 et seq. to record a Notice of Special Restrictions with the Recorder of the City
5 and County of San Francisco. The Notice of Special Restrictions must incorporate the
6 affordability restrictions. All projects described in Section 415.3(a)(1) and 415.3(a)(3) must
7 incorporate all of the requirements of this Section 415.8 into the Notice for Special
8 Restrictions, including any provisions required to be in the conditions of approval for housing
9 projects described in Section 415.3(a)(2). These Section 415.3(a)(2) projects which are
10 housing projects which go through the conditional use or planned unit development process
11 shall have conditions of approval. The conditions of approval shall specify that project
12 applicants shall adhere to the marketing, monitoring, and enforcement procedures outlined in
13 the Procedures Manual, as amended from time to time, in effect at the time of project
14 approval. The Commission shall file the Procedures Manual in the case file for each project
15 requiring inclusionary housing pursuant to this Program. The Procedures Manual will be
16 referenced in the Notice of Special Restrictions for each project.

17 (b) For any units permitted to be ownership units under the Program, the Mayor's
18 Office of Housing shall:

19 (1) establish and implement a process for reselling an affordable unit in the Procedures
20 Manual;

21 (2) provide that owners may not change title on the unit without review and approval by
22 MOH and according to guidelines published in the Procedures Manual.

23 (3) provide that owners must comply with refinancing procedures and limitations as
24 published in the Procedures Manual.

1 (4) provide that, in order to retain all units restricted as affordable under this Program
2 within the City's affordable housing stock, the specific procedures for passing an affordable
3 unit through inheritance are contained in the Procedures Manual. All transfers through
4 inheritance must be reviewed and approved by MOH and, in all cases, the heir must
5 acknowledge and agree to the provisions of the Program. The following households may
6 inherit the ability to occupy a unit restricted under this Program: (1) a spouse or registered
7 domestic partner, regardless of income; or (2) a child of the owner if the child is a qualifying
8 household for the unit. If the heir qualifies under one of these categories, the heir must occupy
9 the unit or the heir must market and sell the unit at the restricted price through a public lottery
10 process and retain the proceeds from the sale. If the heir does not qualify to occupy the unit,
11 the heir must market and sell the unit at the restricted price to a qualified buyer through a
12 public lottery process. The heir would retain the proceeds of such sale.

13 (5) Require that~~Any~~ affordable rental units permitted by the Commission to be converted
14 to ownership units must satisfy the requirements of the Procedures Manual, as amended from
15 time to time, including that the units shall be sold at restricted sales prices to households
16 meeting the income qualifications specified in the Notice of Special Restrictions or conditions
17 of approval, with a right of first refusal for the occupant(s) of such units at the time of
18 conversion. If the current tenant qualifies for and purchases the unit, the unit shall be sold at a sales
19 price corresponding to the affordability level required for rental units or to the affordability level for
20 the specific tenant household, whichever is higher, with a maximum allowable qualifying income level
21 up to 120% of AMI. If the unit is sold to anyone else, the sales price shall correspond to the
22 affordability level required for ownership units. Upon conversion to ownership, the units are
23 subject to the resale and other restrictions of this Program for the life of the project, as defined
24 in the Notice of Special Restrictions or conditions of approval for the Project.

1 (6) For ownership units approved pursuant to Sections 415.6 or 415.7, the Notice of
2 Special Restrictions or conditions of approval will include provisions restricting resale prices
3 and purchaser income levels according to the formula specified in the Procedures Manual, as
4 amended from time to time. In the case that subordination of the Affordability Conditions
5 contained in a recorded Notice of Special Restrictions may be necessary to ensure the Project
6 Applicant's receipt of adequate construction and/or permanent financing for the project, or to
7 enable first time home buyers to qualify for mortgages, the project applicant may follow the
8 procedures for subordination of affordability restrictions as described in the principal project's
9 conditions of approval or in the Procedures Manual. A release following foreclosure or other
10 transfer in lieu of foreclosure may be authorized if required as a condition to financing
11 pursuant to the procedures set forth in the Procedures Manual.

12 (7) Purchasers of affordable units shall secure the obligations contained in the Notice
13 of Special Restrictions or conditions of approval by executing and delivering to the City a
14 promissory note secured by a deed of trust encumbering the applicable affordable unit as
15 described in the Procedures Manual or by an alternative means if so provided for in the
16 Procedures Manual, as amended from time to time.

17 (8) **Procedures For Units Unable To Resell.** The Board of Supervisors finds that
18 certain requirements of this Program and the Procedures Manual may create hardship for
19 owners of affordable units restricted under this Program. However, the Board also recognizes
20 that the requirements of this Program are important to preserve the long-term affordability of
21 units restricted under the Program. In order to allow some relief for owners of affordable units
22 during a time of economic downturn, but to provide the maximum protection for the long-term
23 affordability of the units, the Board directs MOH to analyze the following ~~three~~ issues and, if it
24 deems appropriate, to propose amendments to the Procedures Manual to address the issues:
25

1 (1) Waiver of Re-Sale Requirements and Maximum Qualifying Income Level for New Buyers of
2 Resale BMR Units. The Board recognizes that the risk to low and moderate income
3 homeowners during times of economic downturn can increase the risk of default and
4 foreclosure of units restricted under this Program. The Board directs MOH to study ways to
5 reduce such risks in the below market rate unit context and, if it deems appropriate, to make
6 recommendations to the Planning Commission to amend the Procedures Manual to allow
7 MOH discretion, in certain limited circumstances, to waive requirements for owners of
8 affordable units who have used good faith efforts to secure a contract with a qualified buyer but are
9 unable to resell their unit in a timely manner. Such amendments to the Procedures Manual
10 may include, but are not limited to, authorizing MOH to make one or more allowances for
11 owners of affordable units unable to resell such as: (1) a one-time waiver of the first-time
12 homebuyer rule for the purchasing household; (2) a one-time waiver of qualifying household
13 size requirements for the purchasing household; (3) and a one-time waiver of owner
14 occupancy rules to allow a temporary rental; ~~and~~ (4) a one-time modification of the asset test
15 for the new buyer household and (5) allowing MOH discretion to increase the qualifying income
16 level for the unit by up to 20% above the maximum income limit currently allowed by the Use
17 Restrictions for the Unit but at no time higher than 120% of AMI. MOH and the Commission shall
18 set forth criteria for granting such allowances such as establishing a minimum time that the
19 units must have been advertised by MOH without selling; ~~or~~ establishing criteria related to
20 unusual economic or personal circumstances of the owner; providing a maximum percentage for
21 the increase above the maximum income limit currently allowed; providing that the increase may only
22 be granted on a one-time basis; and requiring the owner to clearly establish that the BMR unit is being
23 resold at the original purchase price plus the current repricing mechanism under the Program which
24 calculates the percentage change in AMI from the time of purchase to resale plus the commission and
25 any eligible capital improvements or special assessments.

1 (2) Waiver of Maximum Qualifying Income Level For New Buyers of Initial Sale BMR Units:
2 The Board of Supervisors recognizes that the current Program provides that the income of a new buyer
3 of a below market rate household cannot exceed the maximum income stated in the Planning Approval
4 or Notice of Special Restrictions for the BMR Unit. Due to a less desirable developments or
5 geographic areas, a Project Sponsor is sometimes unable to find a buyer for a BMR Unit within the
6 maximum income stated in the Planning Approval or Notice of Special Restrictions for the Unit. This
7 situation makes it difficult, if not impossible, for certain current owners of below market rate units to
8 sell their units. In order to minimize this situation, the Board of Supervisors directs the Mayor's Office
9 of Housing to study ways to address this issue and, if it deems appropriate, to make recommendations
10 to the Planning Commission to amend the Procedures Manual to allow MOH to assist Project Sponsors
11 who have used good faith efforts to secure a contract with a qualified buyer but who are unable to
12 secure such a contract in a timely manner from the initiation of marketing. Such amendments may
13 include allowing MOH discretion to increase the qualifying income level for the unit by up to 20%
14 above the maximum income limit currently allowed by the Use Restrictions for the Unit but at no time
15 higher than 120% of AMI. MOH and the Planning Commission shall establish limits to this or a
16 similar proposal such as: providing a maximum percentage for the increase above the maximum
17 income limit currently allowed; requiring that a certain period without securing a buyer would pass
18 before such an allowance would be made; providing that the increase may only be granted on a one-
19 time basis.

20 (c) For any units permitted to be rental units under the Program, ~~the~~ MOH shall
21 establish:

22 (1) restrictions on lease changes and propose such restrictions to the Commission for
23 inclusion in the Procedures Manual.

24 (2) additional eligibility criteria for subleasing and propose such restrictions to the
25 Commission for inclusion in the Procedures Manual.

1 (3) criteria for continued eligibility for occupied rental units and propose such
2 restrictions to the Commission for inclusion in the Procedures Manual.

3 (4) criteria for homeownership status and propose such restrictions to the Commission
4 for inclusion in the Procedures Manual.

5 (5) criteria for granting affordable rental households the right of first refusal in
6 purchasing an affordable unit that is converted from rental to ownership and propose such
7 restrictions to the Commission for inclusion in the Procedures Manual.

8 (6) that at no time shall an annual increase exceed the actual allowable increase for that year.
9 In cases where the rent has decreased, the tenant’s rent must be decreased. In cases where the annual
10 adjustments have not been applied year to year, the Project Owner may not take advantage of any
11 increases that were not applied until the Unit is vacant and re-rented.

12
13 Section 8: The San Francisco Planning Code is hereby amended by amending
14 selected portions of Section 415.9, to read as follows:

15 **SEC. 415.9. ENFORCEMENT PROVISIONS AND MONITORING OF PROGRAM.**

16 . . .

17 ~~(f) MOH shall evaluate its monitoring system for affordable units created under this Section and~~
18 ~~shall compare its system with that of the San Francisco Redevelopment Agency with the goal of~~
19 ~~establishing, to the extent feasible, a single monitoring system for all inclusionary affordable housing~~
20 ~~units located in the City and County of San Francisco. MOH shall make any changes to its monitoring~~
21 ~~system necessary to bring its monitoring system into conformity with the system of the Redevelopment~~
22 ~~Agency, or, if necessary, MOH shall make recommendations to the Board of Supervisors to amend~~
23 ~~Section 415.1 et seq. in order to implement improvements to the monitoring system. If it is necessary to~~
24 ~~amend the Procedures Manual to change its monitoring system to comply with this Section, MOH may~~
25 ~~make any changes necessary to the Procedures Manual to comply with this Section 415.9(f). For~~

1 *purposes of this Section 415.9(f) only and on a one-time basis, MOH may amend the Procedures*
2 *Manual without obtaining approval from the Commission. If MOH determines that some or all of the*
3 *aspects of its system are more effective than the Redevelopment Agency's system, it shall inform the*
4 *Board of Supervisors and recommend that the Board urge the Redevelopment Agency to conform its*
5 *procedures to the City's.*

6 **(g) Annual or Bi-annual Monitoring:**

7 (1) MOH shall monitor and require occupancy certification for affordable ownership and
8 rental units on an annual or bi-annual basis, as outlined in the Procedures Manual.

9 (2) MOH may require the owner of an affordable rental unit, the owner's designated
10 representative, or the tenant in an affordable unit to verify the income levels of the tenant on
11 an annual or bi-annual basis, as outlined in the Procedures Manual.

12 (3) MOH may charge the owner of affordable units an annual monitoring fee as authorized
13 under Administrative Code Section 8.43.

14
15 Section 9. Effective Date. This ordinance shall become effective 30 days from the
16 date of passage.

1 Section 10. This section is uncodified. In enacting this Ordinance, the Board intends
2 to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
3 punctuation, charts, diagrams, or any other constituent part of the Planning Code that are
4 explicitly shown in this legislation as additions, deletions, Board amendment additions, and
5 Board amendment deletions in accordance with the "Note" that appears under the official title
6 of the legislation.

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

10 By: _____
11 Susan Cleveland-Knowles
12 Deputy City Attorney

13
14
15
16
17
18
19
20
21
22
23
24
25