

BOARD of SUPERVISORS



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October 26, 2018

File No. 151258-5

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

Dear Ms. Gibson:

On October 22, 2018, the Land Use and Transportation Committee heard and amended the following legislation:

File No. 151258-5

Ordinance amending the Planning Code to require additional affordable housing or payment of a fee for certain sites that obtained higher residential development potential as a result of the rezoning of the Divisadero Street Neighborhood Commercial Transit District in 2015; affirming the Planning Department's determination under the California Environmental Quality Act; and 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 amended legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

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

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning
Laura Lynch, Environmental Planning

1 [Planning Code - Affordable Housing Requirement and Fee in Divisadero and Fillmore
2 Neighborhood Commercial Transit Districts]

3 **Ordinance amending the Planning Code to require additional affordable housing or**
4 **payment of a fee for certain sites that obtained higher residential development**
5 **potential as a result of the rezoning of the Divisadero Street Neighborhood Commercial**
6 **Transit District and the Fillmore Street Neighborhood Commercial Transit District in**
7 **2015; affirming the Planning Department's determination under the California**
8 **Environmental Quality Act; and making findings of consistency with the General Plan,**
9 **public convenience, necessity, and welfare under Planning Code, Section 302, and**
10 **making findings of consistency with the General Plan, and the eight priority policies of**
11 **Planning Code, Section 101.1.**

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

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

20 Section 1. Findings.

21 (a) The Planning Department has determined that the actions contemplated in this
22 ordinance comply with the California Environmental Quality Act (California Public Resources
23 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
24 Supervisors in File No. 151258 and is incorporated herein by reference. The Board affirms
25 this determination.

1 (b) On June 30, 2016, the Planning Commission, in Resolution No. 19679, adopted
2 findings that the actions contemplated in this ordinance are consistent, on balance, with the
3 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board
4 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
5 Board of Supervisors in File No. 151258, and is incorporated herein by reference.

6 (c) Pursuant to Planning Code Section 302, this Board finds that the actions
7 contemplated in this ordinance will serve the public necessity, convenience, and welfare for
8 the reasons set forth in Planning Commission Resolution No. 19679 and the Board
9 incorporates such reasons herein by reference. A copy of the Planning Commission
10 Resolution No. 19679 is on file with the Clerk of the Board of Supervisors in File No. 151258.

11 (d) The City adopted legislation rezoning the area along Divisadero Street between
12 Haight and O'Farrell Streets to become the Divisadero Street Neighborhood Commercial
13 Transit District ("NCT") in Ordinance No. 127-15 in August 2015, ~~and the area along Fillmore~~
14 ~~Street between Bush and McAllister Streets to become the Fillmore Street NCT in Ordinance~~
15 ~~No. 126-15 in August 2015.~~ The rezoning for both NCTs removed any residential density
16 limits based on lot area, and instead restricted residential uses by physical envelope controls
17 like height, bulk, and setback requirements for each site. This removal of density limits based
18 on lot areas ~~should afford~~ allows for greater increased residential development potential on
19 certain sites within each the Divisadero NCT.

20 (e) On November 6, 2012, the voters adopted Proposition C ("2012 Prop C"), the
21 Housing Trust Fund, which was set forth in San Francisco Charter Section 16.110. 2012 Prop
22 C established a limitation on the Inclusionary Housing Cost Obligation that the City could
23 impose on residential development projects. 2012 Prop C set forth certain exceptions to this
24 limitation, including but not limited to circumstances in which a project receives a 20% or
25 greater increase in developable residential uses, as measured by a change in height limits,

1 Floor Area Ratio limits, or use, over prior zoning, or a 50% or greater increase in residential
2 densities over prior zoning, through a special use district or other local legislation adopted
3 after November 6, 2012. The Divisadero Street NCT and the Fillmore Street NCT rezonings
4 were was adopted after this date.

5 (f) In July 2017, in Ordinance No. 158-17, the Board of Supervisors amended the
6 Inclusionary Affordable Housing Program, Planning Code Sections 415 et seq., and included
7 a provision that requires the Planning Department, in consultation with the Controller's Office,
8 to study whether a higher on-site inclusionary affordable housing requirement is feasible on
9 sites that, after January 1, 2015, received a 20% or greater increase in developable
10 residential gross floor area or a 35% or greater increase in residential density over prior
11 zoning. The Divisadero Street NCT and the Fillmore Street NCT received a 20% or greater
12 increase in developable residential gross floor area or a 35% or greater increase in residential
13 density over prior zoning after January 1, 2015. Accordingly, an Inclusionary Housing Analysis
14 of Divisadero and Fillmore Street Rezoning was published by the Office of the Controller and
15 the Planning Department on March 19, 2018, and was presented at a public hearing of the
16 Planning Commission on March 22, 2018. The study can be found in Board of Supervisors
17 File No. 151258. The study found that sites in the Divisadero Street NCT could feasibly
18 provide on-site affordable units in an amount ranging from 20% to 22% of dwelling units for
19 Rental Housing projects, or 23% for projects consisting of Owned Units. The study found that
20 increased on-site affordability requirements were not financially feasible for sites in the
21 Fillmore NCT district.

22 (g) In keeping with the intent and provisions of the Housing Trust Fund and the 2017
23 amendments to the Inclusionary Affordable Housing Program, projects on sites that have
24 received increases in developable residential gross floor area or greater density should, and
25 can afford to, mitigate fully their impacts on the need for affordable housing.

1 (fh) The City updated its Nexus Study in November 2016, performed by Keyser
2 Marston and Associates, in support of the Inclusionary Affordable Housing Program, or an
3 analysis of the impact of development of market rate housing on affordable housing supply
4 and demand. The Board of Supervisors reviewed the Nexus Study and staff analysis and
5 report of the Study and, on that basis, found that the Study supported the inclusionary
6 affordable housing requirements combined with the additional affordable housing fee set forth
7 in Planning Code Sections 415 *et seq.*

8 (g) ~~On June 7, 2016, the voters approved a Charter Amendment (“2016 Prop C”) eliminating the limits on inclusionary affordable housing set forth in Charter Section 16.110. The Board of Supervisors also adopted legislation to implement changes to the inclusionary affordable housing requirements, Ordinance No. 76-16, which went into effect when 2016 Prop C went into effect.~~

13 (h) ~~The 2015 rezoning of the Divisadero and Fillmore NCTs allowed a 50% or greater increase in residential densities over prior zoning on certain sites contained within the two NCTs. In keeping with the intent and provisions of both 2012 Prop C and 2016 Prop C, projects on such sites should, and can afford to, mitigate fully their impacts on the need for affordable housing.~~

19 Section 2. The Planning Code is hereby amended by adding Section 428, including
20 Sections 428.1, 428.2, 428.3, 428.4, and 428.5, to read as follows:

21 **SEC. 428. DIVISADERO STREET NCT AND FILLMORE STREET NCT AFFORDABLE**
22 **HOUSING FEE AND REQUIREMENTS.**

23 Sections 428.1 through 428.5, hereafter referred to as Sections 428.1 et seq., set forth the
24 requirements and procedures for the Divisadero Street and Fillmore Street Neighborhood
25 Commercial Transit Districts Affordable Housing Fee.

1 **SEC. 428.1. FINDINGS.**

2 The Board of Supervisors hereby finds that:

3 (a) The additional affordable housing fee requirement of this Section 428.1 et seq. is
4 supported by the November 2016 Nexus Study performed by Keyser Marston and Associates. The
5 Board of Supervisors has reviewed the Nexus Study and other documents and, on that basis, finds that
6 the Study supports the inclusionary affordable housing requirements combined with the additional
7 affordable housing fee and requirements set forth in this Section 428.1 et seq. Specifically, the Board
8 finds that the Study: (1) identifies the purpose of the additional fee and requirements to mitigate
9 impacts on the demand for affordable housing in the City; (2) identifies the use of the additional fee to
10 increase the City's affordable housing supply; and (3) establishes a reasonable relationship between
11 the use of the additional fee for affordable housing and the need for affordable housing and the
12 construction of new market rate housing. Further, the affordable housing fee and requirements do not
13 include the costs of remedying any existing deficiencies and do not duplicate other City requirements or
14 fees.

15 (b) An account has been established, funds appropriated, and a construction schedule adopted
16 for affordable housing projects funded through the Inclusionary Affordable Housing Program. The
17 Affordable Housing Fee will reimburse the City for expenditures on affordable housing that have
18 already been made and that will be made in the future.

19 (c) A major objective of the Divisadero Street and Fillmore Street NCTs, set forth in Planning
20 Code Sections 746, 759, and 747, respectively, is to encourage and promote development that
21 enhances the walkable, mixed-use character of the corridor and surrounding neighborhoods and to
22 encourage housing development in new buildings above the ground floor. New market rate housing
23 development could outnumber both the number of units and potential new sites within the area for
24 permanently affordable housing opportunities. The City has adopted a policy in its General Plan to
25 meet the affordable housing needs of its general population and to require new housing developments

1 to produce sufficient affordable housing opportunities for all income groups, both of which goals are
2 not likely to be met by the potential housing development in the area. In addition, the Nexus Study
3 indicates that market rate housing itself generates additional lower income affordable housing needs
4 for the workforce needed to serve the residents of the new market rate housing proposed for the area.
5 To meet the demand created for affordable housing by the Divisadero Street NCT and Fillmore Street
6 NCT zoning and to be consistent with the policy of the City, additional affordable housing
7 requirements should be included for all market rate housing development in these this NCTs.

8 (d) The Divisadero Street NCT and Fillmore Street NCT rezonings set forth in Ordinance
9 Nos. 126-15 and 127-15 will allow greater residential development on certain sites within the
10 NCTs, and such residential development will create a greater need for affordable housing, and should
11 provide more affordable housing. The higher densities will also make provision of higher levels of
12 affordable housing feasible for such sites.

13 (e) If a site located in the Divisadero Street NCT or Fillmore Street NCT received an increase
14 in density of 50% or more from the 2015 rezoning set forth in Ordinance Nos. 126-15 and 127-15, a
15 higher inclusionary affordable housing requirement should apply. The density for the previously
16 existing Divisadero Neighborhood Commercial District was one unit per 800 square feet of lot area.
17 The density for the Fillmore Neighborhood Commercial District was 1 unit per 600 square feet
18 of lot area, with one parcel (Block 0798, Lot 001) zoned RH-3 (3 units per lot), another parcel
19 (Block 0779, Lot 031) zoned RM-4 (1 unit per 200 square feet of lot area), and one parcel
20 (Block 0702, Lot 038) zoned RM-3 (1 unit per 400 square feet of lot area).

21 **SEC. 428.2. DEFINITIONS.**

22 See Section 401 of this Article 4.

23 **SEC. 428.3. APPLICATION OF AFFORDABLE HOUSING FEE REQUIREMENT.**

24 (a) Applicability. The Inclusionary Affordable Housing Program set forth in Planning
25 Code Sections 415.1 et seq. shall apply in the Divisadero Street NCT and Fillmore Street

1 NCT, with the following requirements that will apply to certain sites in these NCTs. In the
2 event that the Planning Department determines that the residential development potential on
3 a site within the Divisadero Street NCT or the Fillmore Street NCT has been increased
4 through the adoption of the NCT rezoning set forth in Ordinance Nos. 126-15 and 127-15, as
5 detailed in Section 428.1(e) herein, the requirements of Sections 415.1 through 415.9 of the
6 Planning Code shall apply, except that the "grandfathering" provisions of Planning Code
7 Section 415.3(b) shall not apply to such sites and the following affordable housing
8 requirements shall be applied to residential development on such sites:

9 ——— (1) Fee. For a development project that is subject to the Residential
10 Inclusionary Affordable Housing Program, the development project shall pay an affordable
11 housing fee equivalent to a requirement to provide 30% of the units in the principal project as
12 affordable units, using the method of fee calculation set forth in Section 415.5(b).

13 ——— (2) On-Site Housing. If the project sponsor of a housing development project is
14 eligible and elects to construct units affordable to qualifying households on-site of the principal
15 project as set forth in Planning Code Section 415.5(g), the project sponsor shall construct a
16 total of 23% of all units constructed on the project site as affordable housing and shall comply
17 with all otherwise applicable requirements of Section 415.6. The on-site affordable units shall
18 be affordable as follows. A minimum of 6% of the units shall be affordable to households
19 earning up to 55% of Area Median Income, and 8% of the units shall be affordable to
20 households earning up to 120% of Area Median Income, and 9% of the units shall be
21 affordable to households earning up to 140% of Area Median Income.

22 ——— (3) Off-Site Housing. If the project sponsor of a housing development project is
23 eligible and elects to provide units affordable to qualifying households off-site of the principal
24 project as set forth in Section 415.5(g), the project sponsor shall construct or cause to be
25 constructed affordable housing equal to 30% of all units constructed on the principal project

1 ~~site as affordable housing and shall comply with all otherwise applicable requirements of~~
2 ~~Section 415.7.~~

3 (a) For any project for which a complete development application has been submitted
4 before October 1, 2018, the Inclusionary Affordable Housing Program set forth in Planning
5 Code Sections 415.1 et seq. shall apply in the Divisadero Street NCT, except the temporary
6 provisions of Planning Code Section 415.3(b) shall not apply and except as set forth in this
7 Section 428.3(a). For any development site for which the Planning Department determines
8 that the residential development potential within the Divisadero Street NCT has been
9 increased through the adoption of the NCT rezoning set forth in Ordinance No. 127-15, as
10 detailed in Section 428.1(e) herein, the requirements of Sections 415.1 et seq of the Planning
11 Code shall apply, except as set forth in subsections (a)(1), (a)(2), and (a)(3), below, and the
12 temporary provisions of Planning Code Section 415.3(b) shall not apply.

13 (1) Fee. For a development project of 10 or more dwelling units that is subject
14 to the Inclusionary Affordable Housing Program, the development project shall pay an
15 affordable housing fee equivalent to a requirement to provide 33% of the units in the principal
16 project as affordable units if those units are Owned Units, or 30% of the units if the project is a
17 Rental Housing Project, using the method of fee calculation set forth in Section 415.5(b).

18 (2) On-site. For a development project of 10 or more units that is subject to the
19 Inclusionary Affordable Housing Program that elects to construct units affordable to qualifying
20 households on-site of the principal project as set forth in Planning Code Section 415.5(g), the
21 development project shall comply with all otherwise applicable requirements of Section 415.6,
22 except that for all housing development projects consisting of 10 or more units, the following
23 requirements shall apply.

24 (A) For a housing development project consisting of Owned Units, the
25 number of affordable units constructed on site shall be 23% of all units constructed on the

1 site. A minimum of 12% of the units shall be affordable to low-income households, 5.5% of
2 the units shall be affordable to moderate-income households, and 5.5% of the units shall be
3 affordable to middle-income households. In no case shall the total number of affordable units
4 required exceed the number required as determined by the application of the applicable on-
5 site requirement rate to the total project units. Owned Units for low-income households shall
6 have an affordable purchase price set at 80% of Area Median Income or less, with
7 households earning up to 100% of Area Median Income eligible to apply for low-income units.
8 Owned Units for moderate-income households shall have an affordable purchase price set at
9 105% of Area Median Income or less, with households earning from 95% to 120% of Area
10 Median Income eligible to apply for moderate-income units. Owned Units for middle-income
11 households shall have an affordable purchase price set at 130% of Area Median Income or
12 less, with households earning from 120% to 150% of Area Median Income eligible to apply for
13 middle-income units.

14 (B) For a Rental Housing Project, the number of affordable units
15 constructed on site shall be 20% of all units constructed on the site. A minimum of 12% of the
16 units shall be affordable to low-income households, 4% of the units shall be affordable to
17 moderate-income households, and 4% of the units shall be affordable to middle-income
18 households. In no case shall the total number of affordable units required exceed the number
19 required as determined by the application of the applicable on-site requirement rate to the
20 total project units. Rental Units for low-income households shall have an affordable rent set at
21 55% of Area Median Income or less, with households earning up to 65% of Area Median
22 Income eligible to apply for low-income units. Rental Units for moderate-income households
23 shall have an affordable rent set at 80% of Area Median Income or less, with households
24 earning from 65% to 90% of Area Median Income eligible to apply for moderate-income units.
25 Rental Units for middle-income households shall have an affordable rent set at 110% of Area

1 Median Income or less, with households earning from 90% to 130% of Area Median Income
2 eligible to apply for middle-income units.

3 (3) Off-site. If the project sponsor of a housing development project of 10 or
4 more units that is subject to the Inclusionary Affordable Housing Program elects to provide
5 units affordable to qualifying housing households off-site of the principal project as set forth in
6 Section 415.5(g), the project sponsor shall construct or cause to be constructed affordable
7 housing equal to 33% of all units constructed on the principal project site as affordable
8 housing if the units in the principal project are owned units, and 30 % if the project is a Rental
9 Housing Project.

10 (b) For any project for which a complete development application has been submitted
11 on or after October 1, 2018, the Inclusionary Affordable Housing Program set forth in Planning
12 Code Sections 415.1 et seq, shall apply in the Divisadero Street NCT except as set forth in
13 this section (b). For any development site for which the Planning Department has determined
14 that the residential development potential has been increased through the adoption of the
15 NCT rezoning set forth in Ordinance No. 127-15, as detailed in Section 428.1(e) herein, the
16 requirements of Planning Code Sections 415.1 et seq. shall apply, except that the following
17 affordable housing requirements shall be applied to residential development on such sites:

18 (1) Fee. For a development project of 10 or more dwelling units that is subject
19 to the Inclusionary Affordable Housing Program, the development project shall pay an
20 affordable housing fee equivalent to a requirement to provide 33% of the units in the principal
21 project as affordable units if those units are Owned Units, or 30% of the units if the project is a
22 Rental Housing Project, using the method of fee calculation set forth in Section 415.5(b).

23 (2) On-site. If the housing development project of 10 or more dwelling units that
24 is subject to the Inclusionary Affordable Housing Program elects to construct units affordable
25 to qualifying households on-site of the principal project as set forth in Planning Code Section

1 415.5(g), the project sponsor shall comply with all otherwise applicable requirements of
2 Section 415.6, except that for all housing development projects consisting of 10 or more units,
3 the number of affordable units constructed on-site shall be provided as follows.

4 (A) A project that consists of Owned Units shall provide 23% of units as
5 affordable units at the following levels: ten percent shall have an average affordable purchase
6 price set at 80% of Area Median Income; 8% shall have an average affordable purchase price
7 set at 105% of Area Median Income; and 5% shall have an average affordable purchase price
8 set at 130% of Area Median Income.

9 (B) A project that consists of Rental Units shall provide 23% of units in
10 the as affordable units at the following levels: ten percent shall have an average affordable
11 rent set at 55% of Area Median Income; 8% shall have an average affordable rent set at 80%
12 of Area Median Income; and 5% shall have an average affordable rent set at 110% of Area
13 Median Income.

14 (C) Notwithstanding subsections (b)(2)(A) and (b)(2)(B), the percentage
15 and affordability levels of affordable units constructed on-site as set forth in subsections
16 (b)(2)(A) and (b)(2)(B) shall be the same percentage and affordability levels as set forth in
17 Section 206.3(f)(2)(A), as it may be amended from time to time, and in no case shall the
18 percentage of affordable units constructed on-site pursuant to this section (b)(2) be less than
19 the percentage required by Section 415.6 for projects consisting of 25 or more units. If the
20 percentage of affordable units constructed on-site pursuant to this section (b)(2) would be less
21 than the percentage set forth in Section 415.6 for projects consisting of 25 or more units, the
22 percentage of affordable units set forth in Section 415.6 for projects consisting of 25 or more
23 units shall apply.

24 (3) Off-site. If the project sponsor of a housing development project of 10 or
25 more units is eligible and elects to provide units affordable to qualifying housing households

1 off-site of the principal project as set forth in Section 415.5(g), the project sponsor shall
2 construct or cause to be constructed affordable housing equal to 33% of all units constructed
3 on the principal project site as affordable housing if the units in the principal project are owned
4 units, and 30% if the project is a Rental Housing Project.

5 ~~(b) Exemption for Affordable Housing. A project applicant shall not pay the affordable~~
6 ~~housing fee for any space designated as a below market rate unit under Section 415.1 et~~
7 ~~seq., the Citywide Inclusionary Affordable Housing Program, or any other residential unit that~~
8 ~~is designated as an affordable housing unit under a Federal, State, or local restriction in a~~
9 ~~manner that maintains affordability for a term no less than 50 years.~~

10 ~~(c) If the Board adopts higher inclusionary housing requirements, the higher~~
11 ~~requirement shall apply.~~

12 **SEC. 428.4. IMPOSITION OF AFFORDABLE HOUSING REQUIREMENTS.**

13 (a) Determination of Requirements. The Planning Department shall determine the
14 applicability of Sections 428.1 et seq. to any development project requiring a first construction
15 document and, if Sections 428.1 et seq. is applicable, shall impose any such requirements as a
16 condition of approval for issuance of the first construction document. The project sponsor shall supply
17 any information necessary to assist the Department in this determination.

18 (b) Department Notice to Development Fee Collection Unit of Fee Requirements. After the
19 Department has made its final determination regarding the application of the affordable housing
20 requirements to a development project pursuant to Sections 428.1 et seq., it shall immediately notify
21 the Development Fee Collection Unit at DBI of the applicable affordable housing fee amount in
22 addition to the other information required by Planning Code Section 402(b).

23 (c) Process for Revisions of Determination of Requirements. If the Department or the
24 Commission takes action affecting any development project subject to Sections 428.1 et seq. and such
25

1 action is subsequently modified, superseded, vacated, or reversed by the Board of Appeals, the Board
2 of Supervisors, or a court, the procedures of Planning Code Section 402(c) shall be followed.

3 **SEC. 428.5. USE OF FUNDS.**

4 The affordable housing fee specified in this Sections 428.1 et seq. for the Divisadero Street NCT
5 and the Fillmore Street NCT shall be paid into the Citywide Affordable Housing Fund, established in
6 Administrative Code Section 10.100-49, and the funds shall be separately accounted for. The Mayor's
7 Office of Housing and Community Development shall expend the funds to increase the supply of
8 housing affordable to qualifying households in the City. The funds may also be used for monitoring
9 and administrative expenses subject to the process described in Planning Code Section 415.5(f).

10
11 Section 3. The Planning Code is hereby amended by revising Sections 759 746 and
12 747, to read as follows:

13 **SEC. 746 759. DIVISADERO STREET NEIGHBORHOOD COMMERCIAL TRANSIT**
14 **DISTRICT.**

15 The Divisadero Street Neighborhood Commercial Transit District ("Divisadero Street
16 NCT") extends along Divisadero Street between Haight and O'Farrell Streets. Divisadero
17 Street's dense mixed-use character consists of buildings with residential units above ground-
18 story commercial use. Buildings typically range in height from two to four stories with
19 occasional one-story commercial buildings. The district has an active and continuous
20 commercial frontage along Divisadero Street for most of its length. Divisadero Street is an
21 important public transit corridor and throughway street. The commercial district provides
22 convenience goods and services to the surrounding neighborhoods as well as limited
23 comparison shopping goods for a wider market.

24 The Divisadero Street NCT controls are designed to encourage and promote
25 development that enhances the walkable, mixed-use character of the corridor and

1 surrounding neighborhoods. Rear yard requirements above the ground story and at residential
2 levels preserve open space corridors of interior blocks. Housing development in new buildings
3 is encouraged above the ground story. Existing residential units are protected by limitations
4 on demolition and upper-story conversions.

5 Consistent with Divisadero Street's existing mixed-use character, new commercial
6 development is permitted at the ground and second stories. Most neighborhood-serving
7 businesses are strongly encouraged. Controls on new Formula Retail uses are consistent with
8 Citywide policy for Neighborhood Commercial Districts; Eating and Drinking and
9 Entertainment uses are confined to the ground story. The second story may be used by some
10 retail stores, personal services, and medical, business and professional offices. Additional
11 flexibility is offered for second-floor Eating and Drinking, Entertainment, and Trade Shop uses
12 in existing non-residential buildings to encourage the preservation and reuse of such
13 buildings. Hotels are monitored at all stories. Limits on late-night activity, drive-up facilities,
14 and other automobile uses protect the livability within and around the district, and promote
15 continuous retail frontage.

16 If the Planning Department determines that any site proposed for residential development and
17 located within the Divisadero Street NCT has received a 50% or greater increase in residential
18 densities over prior zoning through the adoption of Ordinance No. 127-15, any development project
19 that is subject to the Inclusionary Affordable Housing Program on such site shall pay the Affordable
20 Housing Fee, or provide one of the Alternatives to Payment of the Affordable Housing Fee, set forth in
21 Planning Code Sections 415 et seq., except that the amount of the Affordable Housing Fee or
22 Alternatives to Payment of the Affordable Housing Fee shall be modified as set forth in Planning Code
23 Sections 428 et seq. ~~If the Board adopts inclusionary affordable housing requirements that are~~
24 ~~higher than those set forth in Sections 428 et seq., the higher requirements shall apply.~~

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SEC. 747. FILLMORE STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.

The Fillmore Street Neighborhood Commercial Transit District ("Fillmore Street NCT") extends along Fillmore Street between Bush and McAllister Streets. Fillmore Street's dense mixed-use character consists of buildings with residential units above ground-story commercial use. Buildings range in height from one-story commercial buildings to high-rise towers. Fillmore Street and Geary Boulevard are important public transit corridors. The commercial district provides convenience goods and services to the surrounding neighborhoods as well as shopping, cultural, and entertainment uses that attract visitors from near and far.

The Fillmore Street NCT controls are designed to encourage and promote development that enhances the walkable, mixed-use character of the corridor and surrounding neighborhoods. Rear yard requirements at residential levels preserve open space corridors of interior blocks. Housing development in new buildings is encouraged above the ground story. Existing residential units are protected by limitations on demolition and upper-story conversions.

Consistent with Fillmore Street's existing mixed-use character, new commercial development is permitted at the ground and second stories. Most neighborhood- and visitor-serving businesses are strongly encouraged. Controls on new Formula Retail uses are consistent with Citywide policy for Neighborhood Commercial Districts; Eating and Drinking and entertainment uses are confined to the ground story. The second story may be used by some retail stores, personal services, and medical, business, and professional offices. Parking and hotels are monitored at all stories. Limits on drive-up facilities and other

1 automobile uses protect the livability within and around the district and promote continuous
2 retail frontage.

3 ~~If the Planning Department determines that any site proposed for residential~~
4 ~~development and located within the Fillmore Street NCT has received a 50% or greater~~
5 ~~increase in residential densities over prior zoning through the adoption of Ordinance No. 126-~~
6 ~~15, any development project that is subject to the Inclusionary Affordable Housing Program on~~
7 ~~such site shall pay the Affordable Housing Fee, or provide one of the Alternatives to Payment~~
8 ~~of the Affordable Housing Fee, set forth in Planning Code Sections 415 et seq., except that~~
9 ~~the amount of the Affordable Housing Fee or Alternatives to Payment of the Affordable~~
10 ~~Housing Fee shall be modified as set forth in Planning Code Section 428 et seq. If the Board~~
11 ~~adopts inclusionary affordable housing requirements that are higher than those set forth in~~
12 ~~Sections 428 et seq., the higher requirements shall apply.~~

13 * * * *

14 Section 4. The Planning Code is hereby amended by revising Section 415.3(b), to
15 read as follows:

16 (b)

17 * * * *

18 (3) During the limited period of time in which the provisions of Section 415.3(b)
19 apply, for any housing development that is located in an area with a specific affordable
20 housing requirement set forth in an Area Plan or a Special Use District, or in any other section
21 of the Code such as Section 419, with the exception of the UMU Zoning District or in the
22 South of Market Youth and Family Zoning District, the higher of the affordable housing
23 requirement set forth in such Area Plan or Special Use District or in Section 415.3(b) shall
24 apply. Any affordable housing impact fee paid pursuant to an Area Plan or Special Use
25 District shall be counted as part of the calculation of the inclusionary housing requirements

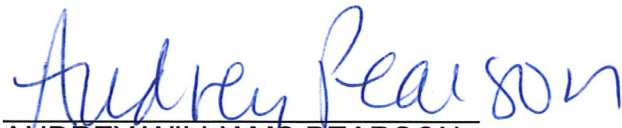
1 contained in Planning Code Sections 415.1 et seq. In the Divisadero Street NCT and the
2 Fillmore Street NCT, the provisions of Section 415.3(b) shall not apply to certain sites, as set forth in
3 the Divisadero Street NCT And Fillmore Street NCT Affordable Housing Fee And Requirements,
4 Planning Code Sections 428.1 et seq.

5 * * * *

6 Section 5. Effective Date. This ordinance shall become effective 30 days after
7 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
8 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
9 of Supervisors overrides the Mayor's veto of the ordinance.

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

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

20 By: 
21 AUDREY WILLIAMS PEARSON
22 Deputy City Attorney

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REVISED LEGISLATIVE DIGEST
(Amended in Committee, 10/22/2018)

[Planning Code - Affordable Housing Requirement and Fee in Divisadero Street Neighborhood Commercial Transit District]

Ordinance amending the Planning Code to require additional affordable housing or payment of a fee for certain sites that obtained higher residential development potential as a result of the rezoning of the Divisadero Street Neighborhood Commercial Transit District in 2015; affirming the Planning Department's determination under the California Environmental Quality Act; and 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.

Existing Law

Residential development projects of 10 or more units are required to comply with inclusionary housing requirements, as provided in the Planning Code in Section 415. Projects may comply by paying a fee equivalent to a requirement to provide a specified percentage of units on-site, or by providing the units on-site or off-site. Section 415 requires that on-site units be affordable to households earning between 55% and 130% of the area median income (AMI). The fee or number of units required differ for projects depending on whether the project is between 10 and 24 units, or 25 or more units, and whether the project is an ownership or a rental project. Projects with environmental evaluation applications filed before January 12, 2016 are subject to temporary inclusionary affordable housing requirements.

Amendments to Current Law

The proposed amendments would create Section 428 of the Planning Code and would impose affordability requirements for certain projects in the Divisadero Street Neighborhood Commercial Transit District (NCT). If the Planning Department determines that the housing development potential on a site within the Divisadero Street NCT has been increased 50% or more through the adoption of rezoning set forth in Ordinance No. 127-15, a proposed housing development project on such site would be subject to specified inclusionary housing requirements.

Residential projects of 10 or more units that have submitted a complete development application before October 1, 2018 would comply with Section 415, except that the temporary inclusionary requirements in Section 415 would not apply, and projects would be required to provide affordable housing in the following amounts:

Fee/Off-site: Ownership project – 33%
Rental Projects – 30%

On-site: Ownership: 23% at the following area median incomes (AMI)

- 12% low income (80% AMI)
- 5.5% moderate income (105% AMI)
- 5.5% middle income (130% AMI)

Rental: 20% at the following AMI's

- 12% low income (55% AMI)
- 4% moderate income (80% AMI)
- 4% middle income (110% AMI)

For projects of 10 or more units that have submitted a complete development application on or after October 1, 2018, projects would comply with Section 415, except that projects would be required to provide affordable housing in the following amounts:

Fee/Off-site: 33% for Ownership projects
30% for Rental projects

On-site: Ownership: 23% at the following AMI's

- 10% low income (80% AMI)
- 8% moderate income (105% AMI)
- 5% middle income (130% AMI)

Rental: 23% at the following AMI's

- 10% low income (55% AMI)
- 8% moderate income (80% AMI)
- 5% middle income (110% AMI)

The percentage of affordable units and level of affordability for projects of 10 or more units that have submit a complete development application on or after October 1, 2018, shall be the same as the levels set forth in 206.3(f)(2)(A), the HOME-SF Program, as that program may be amended from time to time. However, the percentage of affordable units constructed on-site must always be higher than or equal to the percentage required by Section 415.6 for projects consisting of 25 or more units.