

FILE NO. 070444

ORDINANCE NO. 198-07

1 [Residential Inclusionary Affordable Housing Requirements.]

2  
3 Ordinance approving changes to the Residential Inclusionary Affordable Housing  
4 Requirements by amending Section 315 to clarify the regulations in effect for particular  
5 projects; amending Section 315.1 to modify certain definitions related to income and  
6 sale price calculation; amending Section 315.2 to update findings; amending Section  
7 315.3 to conform the legislation to the requirement that the ordinance apply to all  
8 projects of 5 units or more; amending Sections 315.4 and 315.5 to establish separate  
9 requirements for buildings of 120 feet in height or greater, to clarify the requirements  
10 related to the type of on- and off-site housing required, to require the Mayor's Office of  
11 Housing to establish minimum qualifications for firms that market below market-rate  
12 units; and to establish a preference in the lottery for on- and off-site units for people  
13 who live and work in San Francisco; amending Section 315.6 to provide updated  
14 guidelines for the calculation of the in lieu fee and to allow MOH to expend funds for a  
15 study to periodically update the fee; amending Section 315.7 to change the amount of  
16 time an ownership unit shall remain affordable; amending Section 315.8 to amend  
17 certain monitoring and study obligations; making a related change to the Jobs-Housing  
18 Linkage Program by amending Section 313.6 to make annual adjustments in the in lieu  
19 fee for that program correspond to the method used for the Residential Inclusionary  
20 Affordable Housing Program; and making findings, including findings under the  
21 California Environmental Quality Act.

22 Note: Additions are single-underline italics Times New Roman;  
23 deletions are ~~strikethrough-italics Times New Roman~~.  
24 Board amendment additions are double underlined.  
25 Board amendment deletions are ~~strikethrough-normal~~.

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

1 Section 1. Findings

2 (a) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this  
3 ordinance will serve the public necessity, convenience, and welfare for the reasons set forth in  
4 Planning Commission Resolution No. \_\_\_\_\_, and incorporates such reasons  
5 herein by reference. A copy of said Planning Commission Resolution is on file with the Clerk  
6 of the Board of Supervisors in File No. \_\_\_\_\_.

7 (b) The Board of Supervisors finds that this ordinance is in conformity with the  
8 General Plan, amended in the companion legislation, and the Priority Policies of Planning  
9 Code Section 101.1 for the reasons set forth in Planning Commission Resolution No.  
10 \_\_\_\_\_, and hereby incorporates those reasons by reference.

11 (c) The Planning Department has determined that the actions contemplated in this  
12 ordinance are in compliance with the California Environmental Quality Act (California Public  
13 Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the  
14 Board of Supervisors in File No. \_\_\_\_\_ and is incorporated herein by  
15 reference.

16 Section 2. The San Francisco Planning Code is hereby amended by amending  
17 Sections 315, 315.1, 315.2, 315.3, 315.4, 315.5, 315.6, 315.7, and 315.8 of the Residential  
18 Inclusionary Affordable Housing Program, to read as follows:

19 **SEC. 315. HOUSING REQUIREMENTS FOR RESIDENTIAL AND LIVE/WORK**  
20 **DEVELOPMENT PROJECTS.**

21 Sections 315.1– 315.9 set forth the requirements and procedures for the Residential  
22 Inclusionary Affordable Housing Program ("Program"). The Department of City  
23 Planning and the Mayor's Office of Housing shall periodically publish a Procedures  
24 Manual containing procedures for monitoring and enforcement of the policies and  
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1 procedures for implementation of this Program. The Procedures Manual must be made  
2 available at the Zoning Counter of the Planning Department and on the Planning  
3 Department's web site. The Procedures Manual shall not be amended, except for an  
4 annual update of the affordability housing guidelines, which reflect updated income  
5 limits, prices, and rents, without approval of the Planning Commission or as otherwise  
6 specified herein.

7 The Procedures Manual in effect at the time of initial purchase or initial rental of  
8 a unit shall govern the regulation of that unit until it is sold or re-rented unless an owner  
9 or current tenant chooses to be governed by all of the more up-to-date provisions of the  
10 then-current Procedures Manual. In that case, the owner or tenant must agree to be  
11 governed by the totality of the new regulations – an owner or tenant may not pick some  
12 provisions from the Procedures Manual in effect at the time of initial purchase or initial  
13 rental and some in effect in the then-current Procedures Manual. If the owner or tenant  
14 chooses to be governed by the then-current Procedures Manual he or she shall sign an  
15 agreement with the City to that effect, and the Planning Department and Mayor's Office  
16 of Housing shall apply all of the rules and regulations in the then-current Procedures  
17 Manual to the unit.

18 **SEC. 315.1. DEFINITIONS.**

19 The following definitions shall govern interpretation of this ordinance:

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

22 (2) "Affordable to a household" shall mean a purchase price that a household can  
23 afford to pay based on an annual payment for all housing costs, as defined in California  
24 Code of Regulations ("CCR") Title 25, Section 6920, as amended from time to time, of  
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1 33 percent of the combined household annual gross income, assuming a down  
2 payment recommended by the Mayor's Office of Housing in the Procedures Manual,  
3 and available financing, or a rent that does not exceed 30 percent of a household's  
4 combined annual gross income. Where applicable, the purchase price or rent may be  
5 adjusted to reflect the absence or existence of a parking space(s), subject to the  
6 Department's policy on unbundled parking for affordable housing units as specified in  
7 the Procedures Manual and amended from time to time.

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

9 (A) With respect to owned units, the average purchase price on the initial sale of all  
10 affordable owned units in an affordable housing project shall not exceed the allowable  
11 average purchase price and all units must be sold only to households with annual  
12 gross incomes up to and including 120% of median income for the City and County of  
13 San Francisco. In addition, each unit shall be sold:

14 (i) Only to households with an annual gross income equal to or less than the qualifying  
15 limits for a household of moderate income, adjusted for household size;

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

17 (iii) On subsequent sales at or below the prices to be determined by the Director  
18 Mayor's Office of Housing in the Conditions of Approval or Notice of Special  
19 Restrictions according to the formula specified in the Procedures Manual, as amended  
20 from time to time, such that the units remain affordable to qualifying households. The  
21 formula in the Procedures Manual may permit the seller to include certain allowable  
22 capital improvements in the sales price.

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

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

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

6 (4) "Allowable average purchase price" shall mean a price for all affordable owned  
7 units of the size indicated below that are affordable to a household of median income  
8 as defined in this Section, adjusted for the household size indicated below as of the  
9 date of the close of escrow, and, where applicable, adjusted to reflect the Department's  
10 policy on unbundled parking for affordable housing units as specified in the Procedures  
11 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 1100 square feet)	3
3 (1101 to 1300 square feet)	4
4 (More than 1300 square feet)	5

20 (5) "Allowable average annual rent" shall mean annual rent for an affordable rental unit  
21 of the size indicated below that is 30 percent of the annual gross income of a  
22 household of median income as defined in this Section, adjusted for the household size  
23 indicated below, and, where applicable, adjusted to reflect the Department's policy on  
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1 unbundled parking for affordable housing units as specified in the Procedures Manual  
2 and amended from time to time:

3 Number of Bedrooms (or, for live/work units square foot 4 equivalency)	Number of Persons in Household
5 0 (Less than 600 square feet)	1
6 1 (601 to 850 square feet)	2
7 2 (851 to 1100 square feet)	3
8 3 (1101 to 1300 square feet)	4
9 4 (More than 1300 square feet)	5

11 (6) "Annual gross income" shall mean gross income as defined in CCR Title 25,  
12 Section 6914, as amended from time to time, except that the Mayor's Office of Housing  
13 may, in order to promote consistency with the procedures of the San Francisco  
14 Redevelopment Agency, develop an asset test that differs from the State definition if it  
15 publishes that test in the Procedures Manual.

16 (7) "Average annual rent" shall mean the total annual rent for the calendar year  
17 charged by a housing project for all affordable rental units in the project of an equal  
18 number of bedrooms divided by the total number of affordable units in the project with  
19 that number of bedrooms.

20 (8) "Average purchase price" shall mean the purchase price for all affordable owned  
21 units in an affordable housing project of an equal number of bedrooms divided by the  
22 total number of affordable units in the project with that number of bedrooms.

23 (9) "Community apartment" shall be as defined in San Francisco Subdivision Code  
24 Section 1308(b).

1 (9a) "Conditional use" for purposes of this Ordinance means a conditional use  
2 authorization which, pursuant to the Planning Code, is required for the residential  
3 component of a project.

4 (10) "Conditions of approval" shall be a set of written conditions imposed by the  
5 Planning Commission or another permit-issuing City agency or appellate body to which  
6 a project applicant agrees to adhere and fulfill when it receives a conditional use or  
7 planned unit development permit for the construction of a principal project or other  
8 housing project subject to this Program.

9 (11) "Condominium" shall be as defined in California Civil Code Section 783.

10 (12) "Director" shall mean the Director of City Planning or his or her designee, including  
11 other City agencies or departments.

12 (13) "First certificate of occupancy" shall mean either a temporary certificate of  
13 occupancy or a Certificate of Final Completion and Occupancy as defined in San  
14 Francisco Building Code Section 109, whichever is issued first.

15 (14) Intentionally Left Blank.

16 (15) "Household" shall mean any person or persons who reside or intend to reside in  
17 the same housing unit.

18 (16) "Household of low income" shall mean a household whose combined annual gross  
19 income for all members does not exceed sixty (60) percent of median income for the  
20 City and County of San Francisco, as calculated by the Mayor's Office of Housing  
21 using data from the United States Department of Housing and Urban Development  
22 (HUD) and adjusted for household size or, if data from HUD is unavailable, calculated  
23 by the Mayor's Office of Housing using other publicly available and credible data and  
24 adjusted for household size.

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1 (17) "Household of median income" shall mean a household whose combined annual  
2 gross income for all members does not exceed one hundred (100) percent of the  
3 median income for the City and County of San Francisco, as calculated by the Mayor's  
4 Office of Housing using data from the United States Department of Housing and Urban  
5 Development (HUD) and adjusted for household size or, if data from HUD is  
6 unavailable, calculated by the Mayor's Office of Housing using other publicly available  
7 and credible data and adjusted for household size.

8 (17A) "Household of moderate income" shall mean a household whose combined  
9 annual gross income for all members does not exceed one hundred (120) percent of  
10 the median income for the City and County of San Francisco, as calculated by the  
11 Mayor's Office of Housing using data from the United States Department of Housing  
12 and Urban Development (HUD) and adjusted for household size or, if data from HUD is  
13 unavailable, calculated by the Mayor's Office of Housing using other publicly available  
14 and credible data and adjusted for household size.

15 (18) "Housing project" shall mean any development which has residential units as  
16 defined in the Planning Code, including but not limited to dwellings, group housing,  
17 independent living units, and other forms of development which are intended to provide  
18 long-term housing to individuals and households. "Housing project" shall not include  
19 that portion of a development that qualifies as an Institutional Use under the Planning  
20 Code. "Housing project" for purposes of this Program shall also include the  
21 development of live/work units as defined by Planning Code Section 102.13. Housing  
22 project for purposes of this Program shall mean all phases or elements of a multi-  
23 phase or multiple lot residential development.

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

3 (20) "Live/work unit" shall be as defined in San Francisco Planning Code Section  
4 102.13.

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

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

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

11 (24) "Maximum annual rent" shall mean the maximum rent that a housing developer  
12 may charge any tenant occupying an affordable unit for the calendar year. The  
13 maximum annual rent for an affordable housing unit of the size indicated below shall be  
14 no more than 30 percent of the annual gross income for a household of low income as  
15 defined in this Section, as adjusted for the household size indicated below as of the  
16 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 1100 square feet)	3
3 (1101 to 1300 square feet)	4
4 (More than 1300 square feet)	5

1 (25) "Maximum purchase price" shall mean the maximum purchase price for an  
2 affordable owned unit of the size indicated below that is affordable to a household of  
3 moderate income, adjusted for the household size indicated below, assuming an  
4 annual payment for all housing costs of 33 percent of the combined household annual  
5 gross income, a down payment recommended by MOH and set forth in the Procedures  
6 Manual, and available financing:

7 Number of Bedrooms (or, for live/work units square foot 8 equivalency)	Number of Persons in Household
9 0 (Less than 600 square feet)	1
10 1 (601 to 850 square feet)	2
11 2 (851 to 1100 square feet)	3
12 3 (1101 to 1300 square feet)	4
13 4 (More than 1300 square feet)	5

15 (25A) "Mayor's Office of Housing" shall mean the Mayor's Office of Housing or its  
16 successor.

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

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

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

1 (29) "Ordinance" shall mean Planning Code Sections 315.1 through 315.9.

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

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

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

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

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

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

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

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

21 **SEC. 315.2. FINDINGS.**

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

23 Affordable Housing: The findings in Planning Code Section 315.2 of the Inclusionary

24 Affordable Housing Ordinance are hereby readopted and updated as follows:

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

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

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

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

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

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

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

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

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

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

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

6 2. San Francisco faces a continuing shortage of affordable housing for very low and low-  
7 income residents. The San Francisco Planning Department reported that for the four-year  
8 period between 2000 and 2004, 8,389 total new housing units were built in San Francisco.  
9 This number includes 1,933 units for low and very low-income households out of a total need  
10 of 3,930 low and very low-income housing units for the same period. According to the state  
11 Department of Housing and Community Development, there will be a regional need for  
12 230,743 new housing units in the nine Bay Area counties from 1999--2006. Of that amount, at  
13 least 58 percent, or 133,164 units, are needed for moderate, low and very low-income  
14 households. The Association of Bay Area Governments (ABAG) is responsible for dividing the  
15 total regional need numbers among its member governments which includes both counties  
16 and cities. ABAG estimates that San Francisco's low and very low-income housing production  
17 need from 1999 through 2006 is 7,370 units out of a total new housing need of 20,372 units, or  
18 36% of all units built. Within the past four years, only 23% of all housing built, or 49% of the  
19 previously projected housing need for low and very low-income housing for the same period,  
20 was produced in San Francisco. The production of moderate income rental units also fell short  
21 of the ABAG goal. Only 351 moderate income units were produced over the previous four  
22 years, or 4% of all units built, compared to ABAG's call for 28% of all units to be affordable to  
23 households of moderate income. Given the need for 3,007 moderate income units over the 4-  
24 year period, only 12% of the projected need for moderate income units was built.

1 3. In response to the above mandate from the California Legislature and the projections of  
2 housing needs for San Francisco, San Francisco has instituted several strategies for  
3 producing new affordable housing units. The 2004 Housing Element of the General Plan  
4 recognizes the need to support affordable housing production by increasing site availability  
5 and capacity for permanently affordable housing through the inclusion of affordable units in  
6 larger housing projects. Further, the City, as established in the General Plan, seeks to  
7 encourage the distribution of affordable housing throughout all neighborhoods and, thereby,  
8 offer diverse housing choices and promote economic and social integration. The 2004  
9 Housing Element calls for an increase in the production of new affordable housing and for the  
10 development of mixed income housing to achieve social and cultural diversity. This legislation  
11 furthers the goals of the State Legislature and the General Plan.

12 4. The 2005 Consolidated Plan for July 1, 2000--June 30, 2005, issued by the Mayor's Office  
13 of Community Development and the Mayor's Office of Housing, establishes that extreme  
14 housing pressures face San Francisco, particularly in regard to low- and moderate-income  
15 residents. Many elements constrain housing production in the City. This is especially true of  
16 affordable housing. As discussed in the 2004 Housing Element published by the City Planning  
17 Department. San Francisco is largely built out, with very few large open tracts of land to  
18 develop. As noted in the 2000 Consolidated Plan, its geographical location at the northern end  
19 of a peninsula inherently prevents substantial new development. There is no available  
20 adjacent land to be annexed, as the cities located on San Francisco's southern border are  
21 also dense urban areas. Thus new construction of housing is limited to areas of the City not  
22 previously designated as residential areas, infill sites, or to areas with increased density. New  
23 market-rate housing absorbs a significant amount of the remaining supply of land and other  
24 resources available for development and thus limits the supply of affordable housing.

1 There is a great need for affordable rental and owner-occupied housing in the City. Housing  
2 cost burden is one of the major standards for determining whether a locality is experiencing  
3 inadequate housing conditions, defined as households that expend 30% or more of gross  
4 income for rent or 35% or more of household income for owner costs. The 2000 Census  
5 indicates that 64,400 renter households earning up to 80% of the area median income are  
6 cost burdened. Of these, about 25,000 households earn less than 50% AMI and pay more  
7 than 50% of their income to rent. According to more recent data from the American Housing  
8 Survey, 80,662 total renter households, or 41%, are cost burdened in 2003. A significant  
9 number of owners are also cost burdened. According to 2000 Census data, 18,237 of owners  
10 are cost-burdened, or 23% of all owner households. The 2003 American Housing Survey  
11 indicates that this level has risen to 29%.

12 The San Francisco residential real estate market is one of the most expensive in the United  
13 States. In May 2005, the California Association of Realtors reported that the median priced  
14 home in San Francisco was \$755,000. This is 18% higher than the median priced home one  
15 year earlier, 44% higher than the State of California median, and 365% higher than the nation  
16 average. While the national homeownership rate is approximately 69%, only approximately  
17 35% of San Franciscans own their own home. The majority of market-rate homes for sale in  
18 San Francisco are priced out of the reach of low and moderate income households. In May  
19 2005, the average rent for a 2-bedroom apartment was \$1821, which is affordable to  
20 households earning over \$74,000.

21 These factors contribute to a heavy demand for affordable housing in the City that the private  
22 market cannot meet. Each year the number of market rate units that are affordable to low  
23 income households is reduced by rising market rate rents and sales prices. The number of  
24 households benefiting from rental assistance programs is far below the need established by  
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1 the 2000 Census. Because the shortage of affordable housing in the City can be expected to  
2 continue for many years, it is necessary to maintain the affordability of the housing units  
3 constructed by housing developers under this Program. The 2004 Housing Element of the  
4 General Plan recognizes this need. Objective 1 of the Housing Element is to provide new  
5 housing, especially permanently affordable housing, in appropriate locations which meets  
6 identified housing needs and takes into account the demand for affordable housing created by  
7 employment demand. Objective 6 is to protect the affordability of existing housing, and to  
8 ensure that housing developed to be affordable be kept affordable for 50 -- 75 year terms, or  
9 even longer if possible.

10 In 2004 the National Housing Conference issued a survey entitled "Inclusionary Zoning: The  
11 California Experience." The survey found that as of March 2003, there were 107 cities and  
12 counties using inclusionary housing in California, one-fifth of all localities in the state. Overall,  
13 the inclusionary requirements were generating large numbers of affordable units. Only six  
14 percent of jurisdictions reported voluntary programs, and the voluntary nature appears to  
15 compromise the local ability to guarantee affordable housing production. While there was a  
16 wide range in the affordability percentage-requirements for inclusionary housing, the average  
17 requirement for affordability in rental developments is 13%. Approximately half of all  
18 jurisdictions require at least 15% to be affordable, and one-quarter require 20% or more to be  
19 affordable.

20 5. Development of new market-rate housing makes it possible for new residents to move to  
21 the City. These new residents place demands on services provided by both public and private  
22 sectors. Some of the public and private sector employees needed to meet the needs of the  
23 new residents earn incomes only adequate to pay for affordable housing. Because affordable  
24 housing is in short supply within the City, such employees may be forced to live in less than  
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1 adequate housing within the City, pay a disproportionate share of their incomes to live in  
2 adequate housing within the City, or commute ever-increasing distances to their jobs from  
3 housing located outside the City. These circumstances harm the City's ability to attain goals  
4 articulated in the City's General Plan and place strains on the City's ability to accept and  
5 service new market-rate housing development.

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

17 7. Provided project applicants can take these requirements into consideration when  
18 negotiating to purchase land for a housing project, the requirements of this Section are  
19 generally financially feasible for project applicants to meet, particularly because of the benefits  
20 being conferred by the City to housing projects under this ordinance. This Ordinance provides  
21 a means by which a project applicant may seek a reduction or waiver of the requirements of  
22 this mitigation fees if the project applicant can show that imposition of these requirements  
23 would create an unlawful financial burden.

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

17 9. Live/work as defined in the Planning Code recognizes that "residential living space" is an  
18 integral part of a live/work unit. A substantial portion of new housing development in San  
19 Francisco has been live/work units in Mixed Use Districts South of Market and in industrially  
20 zoned areas of San Francisco where residential development has not traditionally been  
21 permitted as of right. Live/work development projects are subject to less stringent  
22 development standards than other types of housing projects in certain Mixed Use Districts and  
23 industrially zoned areas. Live/work developments are conferred an equivalent benefit as  
24 projects going through the conditional use or planned unit development permit process by  
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1 virtue of the fact that (1) live/work developments are not required to get a conditional use  
2 permit for housing development in some Mixed Use Districts and in all industrially zoned  
3 districts where other residential uses are required to get a conditional use permit; (2) live/work  
4 developments receive a five foot height bonus above prevailing height limits for specific  
5 neighborhoods; (3) live/work units are permitted to cover 100% of a lot rather than the stricter  
6 lot coverage requirements that apply to other residential development, typically requiring rear  
7 yards equal to 15 feet in length or 25% of the lot, whichever is greater. Given these benefits  
8 conferred by statute which allow live/work developments to exceed the limitations on other  
9 housing development in the City, the Board of Supervisors finds that, for purposes of this  
10 Program, live/work developments are conferred a private benefit equal to or in excess of  
11 housing projects which require a conditional use or planned unit development permit. The  
12 relaxed building standards applied to live/work projects promote the ability to include lower  
13 cost home production in live/work projects. A unit meets the definition of California Civil Code  
14 Section 1940(c) as a "dwelling unit" because it "is used as a home, residence or sleeping  
15 place by one person who maintains a household or by two or more persons who maintain a  
16 common household." Live/work units shall not be considered "commercial real property" for  
17 purposes of Civil Code Section 1954.25 et seq.

18 10. The City wants to balance the burden on private property owners with the demonstrated  
19 need for affordable housing in the City. For the reasons stated above, the Board of  
20 Supervisors thus intends to increase the inclusionary housing requirements for all residential  
21 projects. In order to balance the burden on property owners, the Board intends to limit the  
22 application of an inclusionary housing requirement to 15% for housing projects that do not  
23 receive any of the benefits described above through the conditional use or planned unit  
24 development process, or in live/work projects. A slightly higher percentage will be applied to  
25

1 projects which generally receive benefits through the conditional use or planned unit  
2 development process, or in live/work projects. The Housing Element (Policy 4.2) states:  
3 Include affordable units in larger housing developments. It also calls for the City to review its  
4 inclusionary housing program regularly to ensure fair burden and not constrain new housing  
5 production. The Board of Supervisors has reviewed the inclusionary affordable housing  
6 program and finds that, for purposes of the Housing Element of the General Plan, increasing  
7 the inclusionary housing requirements ensures more fair burden on all housing development  
8 and will not constrain new housing production. The Board of Supervisors has reviewed the  
9 inclusionary affordable housing program and finds that, for purposes of the Housing Element  
10 of the General Plan, a housing project of five units or more is a larger housing project.

11 Expanding the inclusionary housing requirements to buildings of five units or more ensures  
12 more fair burden on all housing development and will not constrain new housing production.

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

17 12. The Land Use and Economic Development Committee of the Board of Supervisors held  
18 hearings on this legislation on July 12 and 19, 2006. At those hearings, the Committee heard  
19 testimony from Planning Department staff and consultant Kate Funk of Keyser Marston and  
20 Associates regarding a study undertaken at the direction of the Planning Department by the  
21 consultant Keyser Marston Associates. The study was entitled Inclusionary Housing Program  
22 Sensitivity Analysis, dated July 7, 2006, and was undertaken to examine the economic  
23 impacts of adjusted inclusionary requirements on market-rate housing projects ("Sensitivity  
24 Analysis"). The study can be found in Board File No. 6051685 and is incorporated herein by  
25

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

18 13. The City of San Francisco, under the direction of the Office of the Controller, is  
19 undertaking a comprehensive program of analyses to update its programs and supporting  
20 documentation for many types of fees, including updating nexus analyses in support of  
21 development impact fees. At the direction of the Board of Supervisors and as part of this  
22 larger analysis, the City contracted with Keyser Marston Associates to prepare a nexus  
23 analysis in support of the Inclusionary Housing Program, or an analysis of the impact of  
24 development of market rate housing on affordable housing supply and demand. The Planning  
25

1 Department and Mayor's Office of Housing worked closely with the consultant and also  
2 consulted with the Technical Advisory Committee, noted above, comprised of a variety of  
3 experts from the San Francisco housing development and affordable housing advocacy  
4 communities.

5 The City's current position is that the City's Inclusionary Housing Program including the  
6 in lieu fee provision which is offered as an alternative to building units within market rate  
7 projects, is not subject to the requirements of the Mitigation Fee Act, Government Code  
8 Sections 66000 et seq. While the City does not expect to alter its position on this matter, due  
9 to past legislative actions supporting such a study, the Citywide study being undertaken to  
10 conduct nexus studies in other areas, and a general interest in determining whether the  
11 Inclusionary Program can be supported by a nexus type analysis as an additional support  
12 measure, the City contracted to undertake the preparation of a nexus analysis at this time.

13 The final study can be found in Board of Supervisors File No. \_\_\_\_\_ and is  
14 incorporated by reference herein. The Board of Supervisors has reviewed the study and staff  
15 analysis and report of the study and, on that basis finds that the study supports the current  
16 inclusionary housing requirements. Specifically, the Board finds that this study: identifies the  
17 purpose of the fee to mitigate impacts on the demand for affordable housing in the City;  
18 identifies the use to which the fee is to be put as being to increase the City's affordable  
19 housing supply; and establishes a reasonable relationship between the use of the fee for  
20 affordable housing and the need for affordable housing and the construction of new market  
21 rate housing. Moreover, the Board finds that the current inclusionary requirements are less  
22 than the cost of mitigation and do not include the costs of remedying any existing deficiencies.  
23 The Board also finds that the study establishes that the current inclusionary requirements do  
24 not duplicate other city requirements or fees.

1 14. The Board of Supervisors recognizes that this Inclusionary Housing Program is only one  
2 part of the City's overall strategy for providing affordable housing. The City will spend over  
3 \$154 million in capital funds on affordable housing in 2006-07 of combined expenditures by  
4 the Mayor's Office of Housing and San Francisco Redevelopment Agency, but not including  
5 expenditures by the Department of Public Health or the Human Services Agency. At the very  
6 most, only \$22 million of those monies will come from contributions from private developers  
7 through this Inclusionary Program or other similar programs. The City expects to spend over  
8 \$78 million on affordable housing in 2007-08 and, the current expectation is that only \$2.5  
9 million of those monies will come from contributions from private developers through this  
10 Inclusionary Program or other similar programs.

11 **SEC. 315.3. APPLICATION.**

12 (a) This Ordinance shall apply to any housing project that consists of five or more units where  
13 an individual project or a phased project is to be undertaken and where the total undertaking  
14 comprises a project with 5 or more units, even if the development is on separate but adjacent  
15 lots; and

16 (1) Does not require Planning Commission approval as a conditional use or planned unit  
17 development;

18 (2) Requires Planning Commission approval as a conditional use or planned unit  
19 development;

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

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

1 (b) This Ordinance shall apply to all housing projects that have not received a first site or  
2 building permit on or before the effective date of this ordinance with the following exceptions.  
3 Until these application dates take effect as described below, the provisions of the Ordinance  
4 as it exists on July 18, 2006 shall govern.

5 (1) The amendments to the off-site requirements in Section 315.5(c) and (d) relating to  
6 location and type of off-site housing, and Section 315.4(e) relating to when a developer shall  
7 declare whether it will choose an alternative to the on-site requirement shall apply only to  
8 projects that receive their Planning Commission or Department approval on or after the  
9 effective date of this legislation.

10 (2) The amendments to the percentage-requirements of this Ordinance that govern the  
11 number of affordable units a housing project is required to provide in Section 315.4(a) and  
12 315.5(a) apply only to housing projects that submit their first application, including an  
13 environmental evaluation application or any other Planning Department or Building  
14 Department application, on or after July 18, 2006. Notwithstanding the foregoing, the  
15 amendments to the percentage-requirements of this Ordinance also apply to any project that  
16 has not received its final Planning Commission or Department approvals before July 18,  
17 2006 for housing projects that receive a Zoning Map amendment or Planning Code text  
18 amendment related to their project approvals that (A) results in a net increase in the number  
19 of permissible residential units, or (B) results in a material increase in the net permissible  
20 residential square footage. For purposes of subsection B above a material increase shall  
21 mean an increase of 5 percent or more, or an increase in 10,000 square feet or more,  
22 whichever is less.

23 (3) The amendments in Section 315.1 to the way median income is calculated apply to any  
24 housing project that has not received a first site or building permit by the effective date of this  
25



1 Ordinance. (4) This Ordinance shall apply to all housing projects of 5 to 9 units that filed their  
2 first application, including an environmental evaluation application or any other Planning  
3 Department application on or after July 18, 2006.

4 (c) This Ordinance shall not apply to:

5 (1) That portion of a housing project located on property owned by the United States or any  
6 of its agencies or leased by the United States or any of its agencies for a period in excess of  
7 50 years, with the exception of such property not used exclusively for a governmental  
8 purpose;

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

12 (3) That portion of a housing project located on property under the jurisdiction of the San  
13 Francisco Redevelopment Agency or the Port of San Francisco where the application of this  
14 Ordinance is prohibited by California or local law;

15 (4) That portion of a housing project for which a project applicant can demonstrate that an  
16 impact fee under the Jobs-Housing Linkage Program, commencing with Planning Code  
17 Section 313, has been paid.

18 (d) Waiver or Reduction:

19 (1) A project applicant of any project subject to the requirements in this Program may appeal  
20 to the Board of Supervisors for a reduction, adjustment, or waiver of the requirements based  
21 upon the absence of any reasonable relationship or nexus between the impact of  
22 development and either the amount of the fee charged or the inclusionary requirement.

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

5 (3) Any such appeal shall be made in writing and filed with the Clerk of the Board no later  
6 than 15 days after the date the Planning Department sends notice to the project applicant of  
7 the number of affordable units required as provided in Section 315.4(a) and 315.5(a). The  
8 appeal shall set forth in detail the factual and legal basis for the claim of waiver, reduction, or  
9 adjustment. The Board of Supervisors shall consider the appeal at the hearing within 60 days  
10 after the filing of the appeal. The appellant shall bear the burden of presenting substantial  
11 evidence to support the appeal, including comparable technical information to support  
12 appellant's position. The decision of the Board shall be by a simple majority vote and shall be  
13 final. If a reduction, adjustment, or waiver is granted, any change in use within the project  
14 shall invalidate the waiver, adjustment, or reduction of the fee or inclusionary requirement. If  
15 the Board grants a reduction, adjustment or waiver, the Clerk of the Board shall promptly  
16 transmit the nature and extent of the reduction, adjustment or waiver to the Treasurer.

17 (e) For projects that have received a first site or building permit prior to the effective date of  
18 this legislation, the requirements in effect prior to the effective date of this Ordinance shall  
19 apply.

20 **SEC. 315.4. ON-SITE HOUSING REQUIREMENT AND BENEFITS.**

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

24 (a) Number of Units:  
25

1 (1)  
2 (A) For any housing development of any height that is located in an area with a specific  
3 inclusionary housing requirement, the more specific inclusionary housing requirement shall  
4 apply.

5 (B) Buildings 120 feet in height and under or buildings of over 120 feet in height that do not  
6 meet the criteria in subsection (C) below: Except as provided in Subsection (C) below, the  
7 Planning Department shall require for housing projects covered by Section 315.3(a)(1), as a  
8 condition of Planning Department approval of a project's building permit, and by Section  
9 315.3(a)(2), (3) and (4), as a Condition of Approval of a conditional use or planned unit  
10 development permit or as a condition of Planning Department approval of a live/work project,  
11 that 15% of all units constructed on the project site shall be affordable to qualifying  
12 households so that a project applicant must construct .15 times the total number of units  
13 produced in the principal project beginning with the construction of the fifth unit. If the total  
14 number of units is not a whole number, the project applicant shall round up to the nearest  
15 whole number for any portion of .5 or above.

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

19 (C) Buildings of over 120 feet in height. Except as provided in subsection (A) above, the  
20 requirements of this Subsection shall apply to any project that is over 120 feet in height and  
21 does not require a Zoning Map amendment or Planning Code text amendment related to its  
22 project approvals which (i) results in a net increase in the number of permissible residential  
23 units, or (ii) results in a material increase in the net permissible residential square footage as  
24 defined in Section 315.3(b)(2) or has not received or will not receive a zoning map

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1 amendment or Planning Code text amendment as part of an Area Plan adopted after January  
2 1, 2006 which (i) results in a net increase in the number of permissible residential units, or (ii)  
3 results in a material increase in the net permissible residential square footage as defined in  
4 Section 315.3(b)(2). The Planning Department shall require for housing projects covered by  
5 this Subsection and Section 315.3(a)(1), as a condition of Planning Department approval of a  
6 project's building permit, or by this Subsection and by Section 315.3(a)(2), (3) and (4), as a  
7 Condition of Approval of a conditional use or planned unit development permit or as a  
8 condition of Planning Department approval of a live/work project, that 12% of all units  
9 constructed on the project site shall be affordable to qualifying households so that a project  
10 applicant must construct .12 times the total number of units produced in the principal project  
11 beginning with the construction of the fifth unit. If the total number of units is not a whole  
12 number, the project applicant shall round up to the nearest whole number for any portion of  
13 .5 or above. Consistent with the conclusions of the Mayor's Office of Housing study  
14 authorized in Section 315.8(e), the Mayor's Office of Housing shall recommend and the  
15 Board of Supervisors shall consider whether the requirements of this Subsection for buildings  
16 of over 120 feet in height shall continue or expire after approximately 5 years.

17 The Planning Department shall provide written notice by mail to the project applicant of the  
18 number of affordable units which shall be required within 30 days of approval by the Planning  
19 Department or Planning Commission. This notice shall also be sent to project applicants who  
20 elect to pay an in-lieu fee.

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

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

7 (c) Type of Housing: The type of affordable housing needed in San Francisco is documented  
8 in the City's Consolidated Plan and the Residence Element of the General Plan. In general,  
9 affordable units constructed under this Section 315.4 shall be comparable in number of  
10 bedrooms, exterior appearance and overall quality of construction to market rate units in the  
11 principal project. The Notice of Special Restrictions or Conditions of Approval shall include a  
12 specific number of units at specified unit sizes for affordable units. The square footage of  
13 affordable units and interior features in affordable units do not need to be same as or  
14 equivalent to those in market rate units in the principal project, so long as they are of good  
15 quality and are consistent with then-current standards for new housing. Where applicable,  
16 parking shall be offered to the affordable units subject to the terms and conditions of the  
17 Department's policy on unbundled parking for affordable housing units as specified in the  
18 Procedures Manual and amended from time to time. Unless provided otherwise by the  
19 Mayor's Office of Housing in writing, if the units in the market rate portion of the development  
20 are ownership units, then the affordable units shall be ownership units and if the market rate  
21 units are rental units, then the affordable units shall be rental units.

22 (d) Marketing the Units: The Mayor's Office of Housing shall be responsible for overseeing  
23 and monitoring the marketing of affordable units under this Section. In general, the marketing  
24 requirements and procedures shall be contained in the Procedures Manual as amended from  
25

1 time to time and shall apply to the affordable units in the project. The Mayor's Office of  
2 Housing may develop occupancy standards for units of different bedroom sizes in the  
3 Procedures Manual in order to promote an efficient allocation of affordable units. The  
4 Mayor's Office of Housing may require in the Procedures Manual that prospective purchasers  
5 complete homebuyer education training or fulfill other requirements. The Mayor's Office of  
6 Housing shall develop a list of minimum qualifications for marketing firms that market affordable  
7 units under this ordinance, referred to the Procedures Manual as Below Market Rate (BMR units).  
8 Within 3 months from the effective date of this legislation, the Mayor's Office of Housing shall  
9 recommend to the Planning Commission that these minimum qualifications be published in the  
10 Procedures Manual such that, upon approval of the qualifications by the Planning Commission, no  
11 developer marketing units under the Inclusionary Housing Program shall be able to market BMR units  
12 except through a firm meeting all of the minimum qualifications. For purposes of this ordinance, any  
13 developer that has not yet submitted a marketing plan to the Mayor's Office of Housing by the date of  
14 Planning Commission approval of the qualifications shall be required to comply with this section.  
15 The Notice of Special Restrictions or Conditions of Approval shall specify that the marketing  
16 requirements and procedures contained in the Procedures Manual as amended from time to  
17 time, shall apply to the affordable units in the project.

18 (1) Lottery: At the initial offering of affordable units in a housing project, the Mayor's Office of  
19 Housing must require the use of a public lottery approved by the Mayor's Office of Housing to  
20 select purchasers or tenants. The Mayor's Office of Housing shall also hold a general public  
21 lottery and maintain and utilize a list generated from this lottery or utilize a list generated from  
22 a recent lottery at another similar housing project to fill spaces in units that become available  
23 for re-sale or occupancy in any housing project subject to this ordinance after the initial  
24  
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1 offering. The list shall be updated from time to time but in no event less than annually to  
2 ensure that it remains current.

3 (2) Preferences: The Mayor's Office of Housing shall create a lottery system that gives  
4 preference to people who live or work in San Francisco. MOH shall propose policies and  
5 procedures for implementing this preference to the Planning Commission for inclusion in the  
6 Procedures Manual. Otherwise, it is the policy of the Board of Supervisors to treat all  
7 households equally in allocating affordable units under this Program.

8 (e) Alternatives: The project sponsor may elect to satisfy the requirements of Section 315.4  
9 by one of the alternatives specified in this Section. The project sponsor has the choice  
10 between the alternatives and the Planning Commission may not require a specific alternative.  
11 The project sponsor must elect an alternative before it receives project approvals from the  
12 Planning Commission or Planning Department and that alternative will be a condition of  
13 project approval. Notwithstanding the foregoing, if a project sponsor elects an alternative  
14 other than the on-site alternative, the project sponsor still has the option to choose the on-site  
15 alternative up to the issuance of the first site or building permit. If a project sponsor fails to  
16 elect an alternative before project approval by the Planning Commission or Planning  
17 Department, the provisions of Section 315.4 shall apply. The alternatives are as follows:

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

20 (2) Paying an in lieu fee to the Mayor's Office of Housing pursuant to the requirements of  
21 Section 315.6.

22 (3) Any combination of construction of on-site units as provided in Section 315.4, off-site  
23 units as provided in Section 315.5, or payment of an in lieu fee as provided in Section 315.6,  
24  
25

1 provided that the project applicant constructs or pays the fee at the appropriate percentage  
2 or fee level required for that option.

3 (4) Using California Debt Limit Allocation Committee (CDLAC) tax-exempt bonds under the  
4 requirements of Section 315.5(g).

5 (f) Benefits: If the project applicant elects to satisfy the inclusionary housing requirements  
6 through the production of on-site inclusionary housing in this Section 315.4, the project  
7 applicant shall at his or her option, be eligible to receive a refund of the following fees: a  
8 conditional use or other fee required by Planning Code Section 352, if applicable; an  
9 environmental review fee required by Administrative Code Section 31.46B, if applicable; a  
10 building permit fee required by the Building Code and by Planning Code Section 355 for the  
11 portion of the housing project that is affordable. The project applicant shall pay the building  
12 fee for the portion of the project that is market-rate.

13 The Controller shall refund fees from any appropriated funds to the project applicant on  
14 application by the project applicant. The application must include a copy of the certificate of  
15 occupancy for all units affordable to a qualifying household required by the Inclusionary  
16 Affordable Housing Program. It is the policy of the Board of Supervisors to appropriate  
17 money for this purpose from the General Fund.

18 **SEC. 315.5. COMPLIANCE THROUGH OFF-SITE HOUSING DEVELOPMENT.**

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

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

23 (1)  
24  
25



1 (A) For any housing development of any height that is located in an area with a specific  
2 inclusionary housing requirement, the more specific off-site inclusionary housing requirement  
3 shall apply.

4 (B) Buildings of 120 feet and under in height or buildings of over 120 feet in height that do  
5 not meet the criteria in subsection (C) below: Except as provided in Subsection (A), the for  
6 projects described in Section 315.3(a)(1), (2), (3), and (4) 20% so that a project applicant  
7 must construct .20 times the total number of units produced in the principal project beginning  
8 with the construction of the fifth unit. If the total number of units is not a whole number, the  
9 project applicant shall round up to the nearest whole number for any portion of .5 or above.  
10 The Planning Department shall provide written notice by mail to the project applicant of the  
11 number of affordable units which shall be required within 30 days of approval by the Planning  
12 Department or Planning Commission. This notice shall also be sent to project applicants who  
13 elect to pay an in-lieu fee.

14 (C) Buildings of over 120 feet in height. Except as provided in subsection (A) above, the  
15 requirements of this Subsection shall apply to any project that is over 120 feet in height and  
16 does not require a Zoning Map amendment or Planning Code text amendment related to its  
17 project approvals which (i) results in a net increase in the number of permissible residential  
18 units, or (ii) results in a material increase in the net permissible residential square footage as  
19 defined in Section 315.3(b)(2); or has not received or will not receive a zoning map  
20 amendment or Planning Code text amendment as part of an Area Plan adopted after January  
21 1, 2006 which (i) results in a net increase in the number of permissible residential units, or (ii)  
22 results in a material increase in the net permissible residential square footage as defined in  
23 Section 315.3(b)(2). The Planning Department shall require for housing projects covered by  
24 this Subsection and Section 315.3(a)(1), as a condition of Planning Department approval of a  
25

1 project's building permit, or by this Subsection and by Section 315.3(a)(2), (3) and (4), as a  
2 Condition of Approval of a conditional use or planned unit development permit or as a  
3 condition of Planning Department approval of a live/work project, that 17% of all units  
4 constructed on the project site shall be affordable to qualifying households so that a project  
5 applicant must construct .17 times the total number of units produced in the principal project  
6 beginning with the construction of the fifth unit. If the total number of units is not a whole  
7 number, the project applicant shall round up to the nearest whole number for any portion of  
8 .5 or above. Consistent with the conclusions of the Mayor's Office of Housing study  
9 authorized in Section 315.8(e), the Mayor's Office of Housing shall recommend and the  
10 Board of Supervisors shall consider whether the requirements of this Subsection for buildings  
11 of over 120 feet in height shall continue or expire after approximately 5 years.

12 The Planning Department shall provide written notice by mail to the project applicant of the  
13 number of affordable units which shall be required within 30 days of approval by the Planning  
14 Department or Planning Commission. This notice shall also be sent to project applicants who  
15 elect to pay an in-lieu fee.

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

19 (c) Location of off-site housing: The project applicant must insure that off-site units are  
20 located within one mile of the principal project.

21 (d) Type of Housing: The type of affordable housing needed in San Francisco is documented  
22 in the City's Consolidated Plan and the Residence Element of the General Plan. New  
23 affordable rental housing and ownership housing affordable to households earning less than  
24 the median income is greatly needed in San Francisco. The Planning Department shall  
25

1 develop Quality Standards for Off-Site Affordable Housing Units and recommend such  
2 standards to the Planning Commission for adoption as part of the Procedures Manual. All  
3 off-site units constructed under this Section must be provided as rental housing for the life of  
4 the project or, if they are ownership units, must be affordable to households earning no more  
5 than 80% of the median income for the City and County of San Francisco. Nothing in this  
6 section shall limit a developer from meeting the requirements of this Section through the  
7 construction of units in a limited equity or land trust form of ownership if such units otherwise  
8 meet all of the requirements for off-site housing. In general, affordable units constructed  
9 under this Section 315.5 shall be comparable in number of bedrooms, exterior appearance  
10 and overall quality of construction to market rate units in the principal project. The total  
11 square footage of the off-site affordable units constructed under this Section 315.5 shall be  
12 no less than the calculation of the total square footage of the on-site market-rate units in the  
13 principal project multiplied by the relevant on-site percentage requirement for the project  
14 specified in Section 315.4. The Notice of Special Restrictions or Conditions of Approval shall  
15 include a specific number of units at specified unit sizes - including number of bedrooms and  
16 minimum square footage - for affordable units. The interior features in affordable units need  
17 not be the same as or equivalent to those in market rate units in the principal project, so long  
18 as they are consistent with the Planning Department's Quality Standards for Off-Site  
19 Affordable Housing Units found in the Procedures Manual. Where applicable, parking shall  
20 be offered to the affordable units subject to the terms and conditions of the Department's  
21 policy on unbundled parking for affordable housing units as specified in the Procedures  
22 Manual and amended from time to time. If the residential units in the principal project are  
23 live/work units which do not contain bedrooms or are other types of units which do not  
24 contain bedrooms separated from the living space, the off-site units shall be comparable in  
25

1 size according to the following equivalency calculation between live/work and units with  
2 bedrooms:

3 Number of Bedrooms (or, for live/work units square foot 4 equivalency)	Number of Persons in Household
5 0 (Less than 600 square feet)	1
6 1 (601 to 850 square feet)	2
7 2 (851 to 1100 square feet)	3
8 3 (1101 to 1300 square feet)	4
9 4 (More than 1300 square feet)	5

11 (e) Marketing the Units: The Mayor's Office of Housing shall be responsible for overseeing  
12 and monitoring the marketing of affordable units under this Section. In general, the marketing  
13 requirements and procedures shall be contained in the Procedures Manual as amended from  
14 time to time and shall apply to the affordable units in the project. The Mayor's Office of  
15 Housing may develop occupancy standards for units of different bedroom sizes in the  
16 Procedures Manual in order to promote an efficient allocation of affordable units. The  
17 Mayor's Office of Housing may require in the Procedures Manual that prospective purchasers  
18 complete homebuyer education training or fulfill other requirements. The Mayor's Office of  
19 Housing shall develop a list of minimum qualifications for marketing firms that market affordable  
20 units under this ordinance, referred to the Procedures Manual as Below Market Rate (BMR units).  
21 Within 3 months from the effective date of this legislation, the Mayor's Office of Housing shall  
22 recommend to the Planning Commission that these minimum qualifications be published in the  
23 Procedures Manual such that, upon approval of the qualifications by the Planning Commission, no  
24 developer marketing units under the Inclusionary Housing Program shall be able to market BMR units  
25

1 except through a firm meeting all of the minimum qualifications. For purposes of this ordinance, any  
2 developer that has not yet submitted a marketing plan to the Mayor's Office of Housing by the date of  
3 Planning Commission approval of the qualifications shall be required to comply with this section.

4 The Notice of Special Restrictions or Conditions of Approval shall specify that the marketing  
5 requirements and procedures contained in the Procedures Manual as amended from time to  
6 time, shall apply to the affordable units in the project.

7 (1) Lottery: At the initial offering of affordable units in a housing project, the Mayor's Office of  
8 Housing must require the use of a public lottery approved by MOH to select purchasers or  
9 tenants. The Mayor's Office of Housing shall also hold a general public lottery and maintain  
10 and utilize a list generated from this lottery or utilize a list generated from a recent lottery at  
11 another similar housing project to fill spaces in units that become available for re-sale or  
12 occupancy in any housing project subject to this Ordinance after the initial offering. The list  
13 shall be updated from time to time but in no event less than annually to insure that it remains  
14 current.

15 (2) Preferences: The Mayor's Office of Housing shall create a lottery system that gives  
16 preference to people who live or work in San Francisco. MOH shall propose policies and  
17 procedures for implementing this preference to the Planning Commission for inclusion in the  
18 Procedures Manual. Otherwise, it is the policy of the Board of Supervisors to treat all  
19 households equally in allocating affordable units under this Program.

20 (f) Affordable units constructed under Section 315.5 shall not have received development  
21 subsidies from any Federal, State or local program established for the purpose of providing  
22 affordable housing, and shall not be counted to satisfy any affordable housing requirement  
23 for the off-site development.

1 (g) Notwithstanding the provisions of Section 315.5(f) above, a developer may use California  
2 Debt Limit Allocation Committee (CDLAC) tax-exempt bonds to help fund its obligations  
3 under this ordinance as long as it provides 20% of the units as affordable at 50% of area  
4 median income for on-site housing or 25% of the units as affordable at 50% of area median  
5 income for off-site housing. Except as provided in this subsection, all units provided under  
6 this Section must meet all of the requirements of this ordinance and the Procedures Manual  
7 for either on- or off-site housing.

8 **SEC. 315.6. COMPLIANCE THROUGH IN-LIEU FEE.**

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

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

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

18 (1) The number of units required by Section 315.5 if the project applicant were to elect to  
19 meet the requirements of this section by off-site housing development. For the purposes of  
20 this section, the City shall calculate the fee using the direct fractional result of the total  
21 number of units multiplied by the percentage of off-site housing required, rather than  
22 rounding up the resulting figure as required by Section 315.5(a).

23 (2) The affordability gap using data on the cost of construction of residential housing from the  
24 "San Francisco Sensitivity Analysis Summary Report: Inclusionary Housing Program"

1 prepared by Keyser Marston Associates, Inc. in August 2006 for the Maximum Annual Rent  
2 or Maximum Purchase Price for the equivalent unit sizes. The Planning Department and  
3 MOH shall update the technical report from time to time as they deem appropriate in order to  
4 ensure that the affordability gap remains current.

5 (3) No later than July 1 of each year, the Mayor's Office of Housing shall adjust the in lieu  
6 fee payment option and provide a report on its adjustment to the Board of Supervisors. MOH  
7 shall provide notice of any fee adjustment on its website at least 30 days prior to the  
8 adjustment taking effect. The Mayor's Office of Housing is authorized to develop an  
9 appropriate methodology for indexing the fee, based on adjustments in the costs of  
10 constructing housing and in the price of housing in San Francisco. The method of indexing  
11 shall be published in the Procedures Manual.

12 (c) Within 30 days of determining the amount of the fee to be paid by the applicant, MOH  
13 shall transmit the amount of the fee to the Treasurer. Prior to the issuance by DBI of the first  
14 site or building permit for the project applicant, the project applicant must notify the Planning  
15 Department and MOH in writing that it has paid in full the sum required to the Treasurer. If  
16 the project applicant fails by the applicable date to demonstrate to the Planning Department  
17 that the project applicant has paid the applicable sum in full to the Treasurer, DBI shall deny  
18 any and all site or building permits or certificates of occupancy for the development project  
19 until the Planning Department notifies DBI and MOH that such payment has been made.

20 (d) Upon payment of the fee in full to the Treasurer and upon request of the project applicant,  
21 the Treasurer shall issue a certification that the fee has been paid. The project applicant shall  
22 present such certification to the Planning Department, DBI and MOH prior to the issuance by  
23 DBI of the first site or building permit or certificate of occupancy for any development subject  
24 to this Section. Any failure of the Treasurer, DBI, or Planning Department to give any notice  
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1 under this Section shall not relieve a project applicant from compliance with this Section.  
2 Where DBI inadvertently issues a site or building permit without payment of the fee, DBI shall  
3 not issue any certificate of occupancy for the project without notification from the Treasurer  
4 that the fee required by this Section has been paid. The procedure set forth in this subsection  
5 is not intended to preclude enforcement of the provisions of this section pursuant to any other  
6 section of this Code, or other authority under the laws of the State of California.

7 (e) All monies contributed pursuant to this section shall be deposited in the special fund  
8 maintained by the Controller called the Citywide Affordable Housing Fund. The receipts in the  
9 Fund are hereby appropriated in accordance with law to be used to (1) increase the supply of  
10 housing affordable to qualifying households subject to the conditions of this Section, and (2)  
11 pay the expenses of MOH in connection with monitoring and administering compliance with  
12 the requirements of the Program. MOH is authorized to use funds in an amount not to  
13 exceed \$200,000 every 5 years to conduct follow-up studies under Section 315.8(e) and to  
14 update the in lieu fee amounts as described above in Section 315.6(b). All other monitoring  
15 and administrative expenses shall be appropriated through the annual budget process or  
16 supplemental appropriation for MOH. The fund shall be administered and expended by MOH,  
17 which shall have the authority to prescribe rules and regulations governing the Fund which  
18 are consistent with this Section.

19 (f) Lien Proceedings.

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

23 (2) If, for any reason, the fee imposed pursuant to this Ordinance remains unpaid following  
24 issuance of the permit, the Treasurer shall initiate proceedings to impose the lien in  
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1 accordance with the procedures set forth in Chapter 10, Article XX of the San Francisco  
2 Administrative Code to make the entire unpaid balance of the fee, including interest, a lien  
3 against all parcels used for the development project. The Treasurer shall send all notices  
4 required by that Article to the owner of the property as well as the sponsor. The Treasurer  
5 shall also prepare a preliminary report notifying the sponsor of a hearing to confirm such  
6 report by the Board of Supervisors at least 10 days before the date of the hearing. The report  
7 to the sponsor shall contain the sponsor's name, a description of the sponsor's development  
8 project, a description of the parcels of real property to be encumbered as set forth in the  
9 Assessor's Map Books for the current year, a description of the alleged violation of this  
10 Ordinance, and shall fix a time date and place for hearing. The Treasurer shall cause this  
11 report to be mailed to the sponsor and each owner of record of the parcels of real property  
12 subject to lien. Except for the release of lien recording fee authorized by Administrative Code  
13 Section 10.237, all sums collected by the Tax Collector pursuant to this Ordinance shall be  
14 held in trust by the Treasurer and deposited in the Citywide Affordable Housing Fund  
15 established in Section 313.12.

16 (3) Any notice required to be given to a sponsor or owner shall be sufficiently given or served  
17 upon the sponsor or owner or all purposes hereunder if personally served upon the sponsor  
18 or owner or if deposited, postage prepaid, in a post office letterbox addressed in the name of  
19 the sponsor or owner at the official address of the sponsor or owner maintained by the Tax  
20 Collector for the mailing of tax bills or, if no such address is available, to the sponsor at the  
21 address of the development project, and to the applicant for the site or building permit at the  
22 address on the permit application.

23 (g) In the event a building permit expires prior to completion of the work on and  
24 commencement of occupancy of a housing project so that it will be necessary to obtain a  
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1 new permit to carry out any development, the obligation to comply with this Program shall be  
2 cancelled, and any in-lieu fee previously paid to the Treasurer shall be refunded. If and when  
3 the sponsor applies for a new permit, the procedures set forth in this Ordinance regarding  
4 construction of housing or payment of the in-lieu fee shall be followed.

5 (h) In the event that a development project for which an in-lieu fee imposed under this Section  
6 has been fully paid is demolished or converted to a use or uses not subject to this ordinance  
7 prior to the expiration of its estimated useful life, the City shall refund to the sponsor a portion  
8 of the amount of an in-lieu fee paid. The portion of the fee refunded shall be determined on a  
9 pro rata basis according to the ratio of the remaining useful life of the project at the time of  
10 demolition or conversion in relation to its total useful life. For purposes of this Ordinance, the  
11 useful life of a development project shall be 50 years.

12 **SEC. 315.7. DURATION AND MONITORING OF AFFORDABILITY.**

13 (a) All units constructed pursuant to Sections 315.4 and 315.5 must be owner-occupied in the  
14 case of ownership units or occupied by qualified households in the case of rental units, and  
15 shall not remain vacant for a period exceeding 60 days without the written consent of the  
16 Mayor's Office of Housing. All units constructed pursuant to Sections 315.4 and 315.5 must  
17 remain affordable to qualifying households for the life of the project. The income levels  
18 specified in the Notice of Special Restrictions and/or Conditions of Approval for the project  
19 shall be the required income percentages for the life of the project.

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

10 (c) Any affordable rental units permitted by the Planning Commission to be converted to  
11 ownership units must satisfy the requirements of the Procedures Manual, as amended from  
12 time to time, including that the units shall be sold at restricted sales prices to households  
13 meeting the income qualifications specified in the Notice of Special Restrictions or Conditions  
14 of Approval, with a right of first refusal for the occupant(s) of such units at the time of  
15 conversion. Upon conversion to ownership, the units are subject to the 50-year rolling resale  
16 restrictions, as described in Section 315.7(a).

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

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

9 **SEC. 315.8. ENFORCEMENT PROVISIONS AND MONITORING OF PROGRAM.**

10 (a) A first certificate of occupancy shall not be issued by the Director of the Department  
11 of Building Inspection to any unit in the principal project until all of the on-site or off-site  
12 housing development requirements of Sections 315.4 or 315.5, if applicable, and  
13 Section 315.7 are met. A first site permit for the principal project shall not be issued by  
14 the Director of the Department of Building Inspection until the requirements of Sections  
15 315.4(e) and 315.6 regarding payment of the in-lieu fee, if applicable, have been met.

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

1 (c) The Planning Commission or Planning Department shall notify the Mayor's Office of  
2 Housing of any housing project subject to this Program, including the name of the  
3 project applicant and the number and location of the affordable units, within 30 days of  
4 the Planning Commission's or the Planning Department's approval of a building, site,  
5 conditional use, planned unit development, or live/work permit application. The Mayor's  
6 Office of Housing shall provide all project applicants with information concerning the  
7 City's first time home-buyer assistance programs and any other related programs the  
8 Mayor's Office of Housing shall deem relevant to this Program.

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

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

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

21 (3) The number of, location of, and project applicant for every housing project to which  
22 this Ordinance applied and the number of market rate units and the number of  
23 affordable on- and off-site units provided, including the location of all of the affordable  
24 units; and  
25

1 (e) A study is authorized to be undertaken under the direction of the Mayor's Office of  
2 Housing approximately every 5 years to update the requirements of this legislation.  
3 The Mayor's Office of Housing shall make recommendations to the Board of  
4 Supervisors and the Planning Commission regarding any legislative changes. The  
5 Mayor's Office of Housing shall specifically evaluate the different inclusionary housing  
6 requirements for developments of over 120 feet approximately 5 years from the  
7 enactment of the requirement or as deemed appropriate by the Mayor's Office of  
8 Housing.

9 (f) The Mayor's Office of Housing shall evaluate its monitoring system for affordable  
10 units created under this Section and shall compare its system with that of the San  
11 Francisco Redevelopment Agency with the goal of establishing, to the extent feasible,  
12 a single monitoring system for all inclusionary affordable housing units located in the  
13 City and County of San Francisco. Within 6 months of the effective date of this  
14 Ordinance, MOH shall make any changes to its monitoring system necessary to bring  
15 its monitoring system into conformity with the system of the Redevelopment Agency,  
16 or, if necessary, MOH shall make recommendations to the Board of Supervisors to  
17 amend this Ordinance in order to implement improvements to the monitoring system. If  
18 it is necessary to amend the Procedures Manual to change its monitoring system to  
19 comply with this Section, MOH may make any changes necessary to the Procedures  
20 Manual to comply with this Section 315.8(e). For purposes of this Section 315.8(e) only  
21 and on a one-time basis, MOH may amend the Procedures Manual without obtaining  
22 approval from the Planning Commission. If MOH determines that some or all of the  
23 aspects of its system are more effective than the Redevelopment Agency's system, it  
24  
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1 shall inform the Board of Supervisors and recommend that the Board urge the  
2 Redevelopment Agency to conform its procedures to the City's.

3 (g) Annual Monitoring:

4 (1) The Mayor's Office of Housing shall monitor and require occupancy certification  
5 for affordable ownership and rental units on an annual basis, as outlined in the  
6 Procedures Manual.

7 (2) The Mayor's Office of Housing may require the owner of an affordable rental  
8 unit, the owner's designated representative, or the tenant in an affordable unit to verify  
9 the income levels of the tenant on an annual basis, as outlined in the Procedures  
10 Manual.

11 Section 2: The San Francisco Planning Code is hereby amended by amending Section  
12 313.6 of the Jobs Housing Linkage Program, to read as follows:

13 **SEC. 313.6. COMPLIANCE THROUGH PAYMENT OF IN-LIEU FEE.**

14 (a) Commencing on March 11, 1999, the amount of the fee which may be paid by the  
15 sponsor of a development project subject to this ordinance in lieu of developing and  
16 providing the housing required by Section 313.5 shall be determined by the following  
17 formulas for each type of space proposed as part of the development project and  
18 subject to this ordinance.

19	Net Addition Gross Sq. Ft. Entertainment Space	× \$10.57 = Total Fee
20	Net Addition Gross Sq. Ft. Hotel Space	× \$8.50 = Total Fee
21	Net Addition Gross Sq. Ft. Office Space	× \$11.34 = Total Fee
22	Net Addition Gross Sq. Ft. Research and Development	× \$7.55 = Total Fee
23	Net Addition Gross Sq. Ft. Retail Space	× \$10.57 = Total Fee
24		
25		

(b) Commencing on January 1, 2002, the amount of the fee which may be paid by the sponsor of a development project subject to this ordinance in lieu of developing and providing the housing required by Section 313.5 shall be determined by the following formulas for each type of space proposed as part of the development project and subject to this ordinance:

Net Addition Gross Sq. Ft. Entertainment Space	× \$13.95 = Total Fee
Net Addition Gross Sq. Ft. Hotel Space	× \$11.21 = Total Fee
Net Addition Gross Sq. Ft. Office Space	× \$14.96 = Total Fee
Net Addition Gross Sq. Ft. R & D Space	× \$9.97 = Total Fee
Net Addition Gross Sq. Ft. Retail Space	× \$13.95 = Total Fee

No later than July 1 of each year, the Mayor's Office of Housing shall adjust the in lieu fee payment option and provide a report on its adjustment to the Board of Supervisors. The Mayor's Office of Housing shall provide notice of any fee adjustment on its website at least 30 days prior to the adjustment taking effect. The Mayor's Office of Housing is authorized to develop an appropriate methodology for indexing the fee, based on adjustments in the costs of constructing housing and in the price of housing in San Francisco consistent with the indexing for the Residential Inclusionary Affordable



1 Housing Program in lieu fee set out in Planning Code Section 315.6. The method of  
2 indexing shall be published in the Procedures Manual for the Residential Inclusionary  
3 Affordable Housing Program. In making a determination as to the amount of the fee to  
4 be paid, the Planning Department shall credit to the sponsor any excess Interim  
5 Guideline credits or excess credits which the sponsor elects to apply against its  
6 housing requirement.

7 (c) Prior to the issuance by DBI of the first site or building permit for a development  
8 project subject to this ordinance, the sponsor must notify the Planning Department and  
9 MHO in writing that it has either (i) satisfied the conditions of Section 313.5(e) or (ii)  
10 paid in full the sum required by this Section to the Treasurer. If the sponsor fails by the  
11 applicable date to demonstrate to the Planning Department that the sponsor has  
12 satisfied the conditions of Section 313.5(e) or paid the applicable sum in full to the  
13 Treasurer, DBI shall deny any and all site or building permits or certificates of  
14 occupancy for the development project until the Treasurer notifies DBI and MOH that  
15 such payment has been made, and the Treasurer shall immediately initiate lien  
16 proceedings against the sponsor's property pursuant to Section 313.9 to recover the  
17 fee.

18 (d) Upon payment of the fee in full to the Treasurer and upon request of the sponsor,  
19 the Treasurer shall issue a certification that the fee has been paid. The sponsor shall  
20 present such certification to the Planning Department, DBI and MOH prior to the  
21 issuance by DBI of the first site or building permit or certificate of occupancy for the  
22 development project. DBI shall not issue the site or building permit or certificate of  
23 occupancy without proof of payment of the fee from the Treasurer. Any failure of the  
24 Treasurer, DBI or the Planning Department to give any notice under this Section shall  
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1 not relieve a sponsor from compliance with this Section. Where DBI inadvertently  
2 issues a site or building permit without payment of the fee, DBI shall not issue any  
3 certificate of occupancy for the project without notification from the Treasurer that the  
4 fee required by this Section has been paid. The procedure set forth in this Subsection  
5 is not intended to preclude enforcement of the provisions of this Section pursuant to  
6 any other section of this Code, or other authority under the laws of the State of  
7 California.

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

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

File No. 070444

I hereby certify that the foregoing Ordinance was **FINALLY PASSED** on July 31, 2007 by the Board of Supervisors of the City and County of San Francisco.

8/10/07

Date Approved

Angela Calvillo

Angela Calvillo  
Clerk of the Board

Mayor Gavin Newsom



# City and County of San Francisco

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

## Tails Ordinance

**File Number:** 070444

**Date Passed:**

Ordinance approving changes to the Residential Inclusionary Affordable Housing Requirements by amending Section 315 to clarify the regulations in effect for particular projects; amending Section 315.1 to modify certain definitions related to income and sale price calculation; amending Section 315.2 to update findings; amending Section 315.3 to conform the legislation to the requirement that the ordinance apply to all projects of 5 units or more; amending Sections 315.4 and 315.5 to establish separate requirements for buildings of 120 feet in height or greater, to clarify the requirements related to the type of on- and off-site housing required, to require the Mayor's Office of Housing to establish minimum qualifications for firms that market below market-rate units; and to establish a preference in the lottery for on- and off-site units for people who live and work in San Francisco; amending Section 315.6 to provide updated guidelines for the calculation of the in lieu fee and to allow MOH to expend funds for a study to periodically update the fee; amending Section 315.7 to change the amount of time an ownership unit shall remain affordable; amending Section 315.8 to amend certain monitoring and study obligations; making a related change to the Jobs-Housing Linkage Program by amending Section 313.6 to make annual adjustments in the in lieu fee for that program correspond to the method used for the Residential Inclusionary Affordable Housing Program; and making findings, including findings under the California Environmental Quality Act.

July 24, 2007 Board of Supervisors — PASSED ON FIRST READING

Ayes: 10 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Jew, Maxwell,  
Mirkarimi, Peskin, Sandoval  
Absent: 1 - McGoldrick

July 31, 2007 Board of Supervisors — FINALLY PASSED

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Jew, Maxwell,  
McGoldrick, Mirkarimi, Peskin, Sandoval