

1 [Planning Code - Authorize Increases to the Affordable Price and Income Limits for Certain
2 Below Market Rate Owned Units and Require Amenities to be Resold with Unit]

3 **Ordinance amending the Planning Code to allow certain Below Market Rate (BMR)**
4 **Owned Units to be resold at a price affordable to households at an increased Area**
5 **Median Income (AMI) level, increase the qualifying AMI limit for BMR purchasers, and**
6 **require BMR Owned Units originally purchased with parking spaces and other**
7 **amenities to be resold with the same parking and amenities, and require periodic**
8 **reporting to the Inclusionary Housing Technical Advisory Committee, Planning**
9 **Commission, and Board of Supervisors of AMI level increases approved under this**
10 **ordinance; affirming the Planning Department’s determination under the California**
11 **Environmental Quality Act; and making findings of consistency with the General Plan**
12 **and the eight priority policies of Planning Code, Section 101.1, and findings of public**
13 **necessity, convenience, and welfare pursuant to Planning Code, Section 302.**

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

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

22 Section 1. Environmental and Land Use Findings.

23 (a) The Planning Department has determined that the actions contemplated in this
24 ordinance comply with the California Environmental Quality Act (California Public Resources
25 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of

1 Supervisors in File No. 240802 and is incorporated herein by reference. The Board affirms
2 this determination.

3 (b) On October 17, 2024, the Planning Commission, in Resolution No. 21626, adopted
4 findings that the actions contemplated in this ordinance are consistent, on balance, with the
5 City’s General Plan and eight priority policies of Planning Code Section 101.1. The Board
6 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
7 Board of Supervisors in File No. 240802, and is incorporated herein by reference.

8 (c) Pursuant to Planning Code Section 302, this Board finds that these Planning Code
9 amendments will serve the public necessity, convenience, and welfare for the reasons set
10 forth in Planning Commission Resolution No. 21626, and the Board incorporates such
11 reasons herein by reference. A copy of said resolution is on file with the Clerk of the Board of
12 Supervisors in File No. 240802.

13

14 Section 2. Article 4 of the Planning Code is hereby amended by revising Sections 401
15 and 415.8, to read as follows:

16 **SEC. 401. DEFINITIONS.**

17 In addition to the specific definitions set forth in Section 102 and elsewhere in this
18 Article 4, the following definitions shall govern interpretation of this Article:

19 “Affordable Price.” The price at which the Owned Unit would be Affordable to Qualifying
20 Households.

21 “Affordable Unit” or “Affordable Housing Unit.” A unit that is Affordable to Qualifying
22 Households under Section 415 et seq.

23 * * * *

24 “Program” or “Inclusionary Housing Program.” The Inclusionary Affordable Housing
25 Program as detailed in Sections 415-417.

1 “Qualifying Income.” The income at which a household meets the income eligibility
2 requirements for a particular BMR Unit. The Qualifying Income may be higher than the maximum
3 income limit or income range required in the Notice of Special Restrictions or other document
4 establishing affordability restrictions for the BMR Unit.

5 * * * *

6
7 **SEC. 415.8. DURATION AND MONITORING OF AFFORDABILITY.**

8 (a) For any units permitted under the Program:

9 (1) All units constructed pursuant to Sections 415.6 (On-site Affordable Housing
10 Alternative) and 415.7 (Off-site Affordable Housing Alternative) must be owner-occupied, as
11 defined in the Procedures Manual, in the case of Owned Units, or occupied by qualified
12 households in the case of Rental Units.

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

15 (3) All units constructed pursuant to Sections 415.6 and 415.7 must remain Affordable
16 to Qualifying Households for the life of the project.

17 (4) The income levels specified in the Notice of Special Restrictions and/or conditions
18 of approval for the project shall be the required income percentages for the life of the project.
19 Notwithstanding the foregoing sentence, if approved by MOHCD and as provided in the
20 Procedures Manual, an exception to the required income percentage may be made in the
21 following cases:

22 (A) a rental unit that converts to an Owned Unit, with Qualifying Income up to a
23 maximum of ~~120~~150% of AMI and a sales price established pursuant to Section 415.8(b)(5);

24 (B) where there is an existing tenant who has undergone re-certification as defined in
25 the Procedures Manual, the existing tenant's household income may increase ~~by~~ up to ~~200% of~~

1 ~~the levels specified in the Notice of Special Restrictions or conditions of approval~~ a maximum of 200%
2 of AMI;

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

6 (D) resale Owned Units where the owner has used good faith efforts to secure a
7 contract with a qualified buyer but is unable to secure a buyer contract at a maximum resale
8 price specified by MOHCD in a timely manner; ~~or~~

9 (E) the ~~Qualifying~~ ~~Income~~ level for new or resale Owned Units may be set at
10 ~~1020%~~ above the income level stated in the Notice of Special Restrictions or conditions of
11 approval; or

12 (F) resale Owned Units where the owner has requested an adjustment to the maximum
13 income limit stated in the existing Notice of Special Restrictions or other document establishing
14 affordability requirements for the unit and/or has requested an increase to the Qualifying Income level,
15 pursuant to subsection (b)(9).

16 (5) The Commission or the Department shall require all housing projects subject to
17 Section 415.1 et seq. to record a Notice of Special Restrictions ~~with the Recorder~~ in the official
18 records of the City and County of San Francisco. The Notice of Special Restrictions must
19 incorporate the affordability restrictions. All projects described in Section 415.3(a)(1) ~~and~~
20 ~~415.3(a)(3)~~ must incorporate all of the requirements of this Section 415.8 into the Notice for
21 Special Restrictions, including any provisions required to be in the conditions of approval for
22 housing projects described in Section 415.3(a)(2). These Section 415.3(a)(2) projects which
23 are housing projects ~~that~~ ~~which~~ go through the conditional use or planned unit development
24 process shall have conditions of approval. The conditions of approval shall specify that project
25 applicants shall adhere to the marketing, monitoring, and enforcement procedures outlined in

1 the Procedures Manual, as amended from time to time, in effect at the time of project
2 approval. The Commission shall file the Procedures Manual in the case file for each project
3 requiring inclusionary housing pursuant to this Program. The Procedures Manual will be
4 referenced in the Notice of Special Restrictions for each project.

5 (b) For any units permitted to be Owned Units under the Program, the MOHCD shall:

6 (1) Establish and implement a process for reselling an affordable unit in the
7 Procedures Manual;

8 (2) Provide that owners may not change title on the unit without review and approval
9 by MOHCD and according to guidelines published in the Procedures Manual, as amended from
10 time to time.

11 (3) Provide that owners must comply with refinancing procedures and limitations as
12 published in the Procedures Manual, as amended from time to time.

13 (4) Provide that, in order to retain all units restricted as affordable under this Program
14 within the City's affordable housing stock, the specific procedures for passing an affordable
15 unit through inheritance are contained in the Procedures Manual. All transfers through
16 inheritance must be reviewed and approved by MOHCD and, in all cases, the heir must
17 acknowledge and agree to the provisions of the Program. The following households may
18 inherit the ability to occupy a unit restricted under this Program: (i) a spouse or registered
19 domestic partner, regardless of income; or (ii) a child of the owner if the child is a qualifying
20 household for the unit. If the heir qualifies under one of these categories, the heir must occupy
21 the unit or the heir must market and sell the unit at the restricted price through a public lottery
22 process and retain the proceeds from the sale. If the heir does not qualify to occupy the unit,
23 the heir must market and sell the unit at the restricted price to a qualified buyer through a
24 public lottery process. The heir would retain the proceeds of such sale.

1 (5) Require that affordable Rental Units permitted by the Commission to be
2 converted to Owned Units ~~must~~ satisfy the requirements of the Procedures Manual, as
3 amended from time to time, including that the units shall be sold at restricted sales prices to
4 households meeting the income qualifications specified in the Notice of Special Restrictions or
5 conditions of approval, with a right of first refusal for the occupant(s) of such units at the time
6 of conversion. If the current tenant qualifies for and purchases the unit, the unit shall be sold
7 at a sales price corresponding to the affordability level required for the unit as a Rental Unit
8 as specified in the Notice of Special Restrictions or conditions of approval ~~or to the affordability level~~
9 ~~for the specific tenant household, whichever is higher~~, with a maximum allowable ~~Qualifying~~
10 ~~Income level up to 120150%~~ of AMI. If the unit is sold to ~~anyone else~~ buyer who is not a current
11 tenant, the sales price shall correspond to the affordability level required for the unit as an
12 Owned Unit as specified in the Notice of Special Restrictions or conditions of approval. Upon
13 conversion to ownership, the units are subject to the resale and other restrictions of this
14 Program for the life of the project, as defined in the Notice of Special Restrictions or
15 conditions of approval for the Project.

16 (6) For Owned Units approved pursuant to Sections 415.6 or 415.7, the Notice of
17 Special Restrictions or conditions of approval will include provisions restricting resale prices
18 and purchaser income levels according to the formula specified in the Procedures Manual, as
19 amended from time to time. All amenities and parking spaces that were purchased with the initial
20 sale of the Owned Unit must be sold with the Owned Unit upon resale and shall be included in the
21 resale price. In the ~~case that~~ event subordination of the Affordability Conditions contained in a
22 recorded Notice of Special Restrictions may be necessary to ensure the ~~Project Applicant's~~
23 receipt of adequate construction and/or permanent financing for the project, or to enable first-
24 time home buyers to qualify for mortgages, the project applicant may follow the procedures for
25 subordination of affordability restrictions as described in the Principal Project's conditions of

1 approval or in the Procedures Manual. A release following foreclosure or other transfer in lieu
2 of foreclosure may be authorized if required as a condition to financing pursuant to the
3 procedures set forth in the Procedures Manual.

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

9 (8) ~~Procedures For Units Unable To Resell~~. The Board of Supervisors finds that
10 certain requirements of this Program and the Procedures Manual may create hardship for
11 owners of Affordable Units restricted under this Program. However, the Board also recognizes
12 that the requirements of this Program are important to preserve the long-term affordability of
13 units restricted under the Program. In order to allow some relief for owners of Affordable Units
14 during a time of economic downturn, but to provide the maximum protection for the long-term
15 affordability of the units, the Board directs MOHCD to analyze the following issues and, if it
16 deems appropriate, to propose amendments to the Procedures Manual to address the issues:

17 ~~(H)(A)~~ **Waiver of Resale~~Re-Sale~~ Requirements and Maximum Qualifying**
18 **Income Level for New Buyers of Resale BMR Units.** The Board recognizes that the risk to
19 low- and moderate-income homeowners during times of economic downturn can increase the
20 risk of default and foreclosure of units restricted under this Program. The Board directs
21 MOHCD to study ways to reduce such risks in the below market rate unit context and, if it
22 deems appropriate, to make recommendations to the Planning Commission to amend the
23 Procedures Manual to allow MOHCD discretion, in certain limited circumstances, to waive
24 requirements for owners of Affordable Units who have used good faith efforts to secure a
25 contract with a qualified buyer but are unable to resell their unit in a timely manner. Such

1 amendments to the Procedures Manual may include, but are not limited to, authorizing
2 MOHCD to make one or more allowances for owners of Affordable Units unable to resell,
3 such as: ~~(i1)~~ a one-time waiver of the first-time homebuyer rule for the purchasing household;
4 ~~(ii2)~~ a one-time waiver of qualifying household size requirements for the purchasing
5 household; ~~(iii3)~~ ~~and~~ a one-time waiver of owner occupancy rules to allow a temporary rental;
6 ~~(iv4)~~ a one-time modification of the asset test for the new buyer household; and ~~(v5)~~ allowing
7 MOHCD discretion to increase the ~~q~~Qualifying ~~i~~Income level for the unit by up to 20% above
8 the maximum income limit currently allowed by the Use Restrictions for the ~~U~~unit but at no
9 time higher than ~~120~~150% of AMI. MOHCD and the Commission shall set forth criteria for
10 granting such allowances such as establishing a minimum time that the units must have been
11 advertised by MOHCD without selling; establishing criteria related to unusual economic or
12 personal circumstances of the owner; providing a maximum percentage for the increase
13 above the maximum income limit currently allowed; providing that the increase may only be
14 granted on a one-time basis; and requiring the owner to clearly establish that the BMR unit is
15 being resold at the ~~original purchase price plus the current repricing mechanism under the Program~~
16 ~~which calculates the percentage change in AMI from the time of purchase to resale plus the~~
17 ~~commission and any eligible capital improvements or special assessments~~maximum resale price
18 specified in the Procedures Manual, as amended from time to time.

19 ~~(2)(B)~~ **Waiver of Maximum Qualifying Income Level ~~F~~for New Buyers of**
20 **Initial Sale BMR Units.** The Board of Supervisors recognizes that the current Program
21 provides that the income of a new buyer of a below market rate household cannot exceed the
22 maximum income stated in the Planning Approval or Notice of Special Restrictions for the
23 BMR Unit. Due to less desirable developments or geographic areas, a ~~P~~project ~~S~~sponsor is
24 sometimes unable to find a buyer for a BMR Unit within the maximum income stated in the
25 Planning Approval or Notice of Special Restrictions for the ~~U~~unit. This situation makes it

1 difficult, if not impossible, for certain current owners of below market rate units to resell their
2 units. In order to minimize this situation, the Board of Supervisors directs MOHCD to study
3 ways to address this issue and, if it deems appropriate, to make recommendations to the
4 Planning Commission to amend the Procedures Manual to allow MOHCD to assist ~~P~~project
5 ~~S~~sponsors who have used good faith efforts as determined by MOHCD to secure a contract with
6 a qualified buyer but who are unable to secure such a contract in a timely manner from the
7 initiation of marketing. Such amendments may include allowing MOHCD discretion to increase
8 the ~~q~~Qualifying ~~i~~Income level for the unit by up to 20% above the maximum income limit
9 currently allowed by the Use Restrictions for the ~~U~~unit but at no time higher than ~~120~~150% of
10 AMI. MOHCD and the Planning Commission shall establish limits to this or a similar proposal
11 such as: providing a maximum percentage for the increase above the maximum income limit
12 currently allowed; requiring that a certain period without securing a buyer would pass before
13 such an allowance would be made; and providing that the increase may only be granted on a
14 one-time basis.

15 (9) Adjustment of Pricing and Income Limits for Owned Units Purchased at a Price Above
16 the Affordable Price Determined at the Time of Resale.

17 (A) Findings and Purposes. The Board of Supervisors finds that the requirements of this
18 Program and the Procedures Manual may create financial hardship for certain Owners of Affordable
19 Units who could suffer a financial loss if said Owners sold their units at a price in compliance with the
20 existing Notice of Special Restrictions or other affordability restrictions for the unit. However, the
21 Board also recognizes that the requirements of this Program are important to preserve the long-term
22 affordability of units restricted under the Program. To provide flexibility while protecting the long-term
23 affordability of the Affordable Units and viability of the Program, this subsection (b)(9) provides
24 options to allow some relief for Owners of Affordable Units that are re-selling at a time when the
25

1 Affordable Price would be lower than the price at which they originally purchased their Affordable
2 Unit.

3 **(B) Authorization to Reset Pricing and Income Limits.** The Board authorizes MOHCD to
4 adjust the Affordable Price at the time of resale and to establish the corresponding maximum income
5 limit or income range for eligible Owned Units, as further specified and limited in this subsection
6 (b)(9). This authorization and adjustment procedure shall be available only once per eligible Owned
7 Unit and shall result in an Affordable Price that is based on a permanent increase to the restrictions on
8 Affordable Price and maximum income limit for the Owned Unit. For the resale and any subsequent
9 resale of the Owned Unit, the Maximum Purchase Price shall be determined by MOHCD based on the
10 new, increased maximum percentage of AMI established pursuant to this subsection (b)(9).

11 **(C) Eligibility.** An Owned Unit is eligible for an increase in the Affordable Price and
12 corresponding maximum income limit or income range for the Owned Unit if the Owner purchased the
13 unit at a price above the Affordable Price at the time of resale, which Affordable Price shall be
14 determined by MOHCD based on the existing Notice of Special Restrictions or other document
15 establishing affordability requirements for the unit at the time MOHCD processes the Owner's resale
16 request. The Owner is not required to attempt to sell the unit prior to the adjustment described in this
17 subsection (b)(9) to qualify for said adjustment.

18 **(D) Maximum Allowable Adjustment.** For the resale of an Owned Unit eligible for an
19 adjustment under this subsection (b)(9), MOHCD may establish an adjusted Affordable Price up to the
20 original purchase price paid by the current Owner. MOHCD may increase the maximum income limit
21 or income range for the unit to reflect the adjusted Affordable Price, up to a maximum of 130% AMI. In
22 addition, once per eligible Owned Unit, MOHCD may increase the maximum Qualifying Income level
23 for the unit by up to 20% above the maximum income limit or income range in the new Notice of
24 Special Restrictions or other document establishing affordability requirements for the unit, provided
25 that the increased maximum Qualifying Income level does not exceed 150% of AMI. The ultimate resale

1 price may be lower or higher than the **adjusted** Affordable Price. Nothing in this subsection (b)(9)
2 ensures or entitles an Owner to a resale price equal to the adjusted Affordable Price when reselling
3 their Owned Unit.

4 **(E) Procedures.**

5 (i) MOHCD shall propose policies and procedures for implementing price and AMI
6 level adjustments consistent with this subsection (b)(9) to the Planning Commission for inclusion in the
7 Procedures Manual.

8 (ii) MOHCD may establish an adjusted Affordable Price and increase the maximum
9 AMI level consistent with this subsection (b)(9) for the purposes of processing the resale, including
10 marketing the Affordable Unit. If approved pursuant to subsections (b)(9)(E)(iii) through (vi), the
11 increased maximum AMI level shall be established for all other purposes by the recording of a new
12 Notice of Special Restrictions upon closing the resale of the Owned Unit that reflects the increased
13 AMI level. As a condition of MOHCD's approval of the adjustments under this subsection (b)(9), the
14 Owner shall execute and authorize the recordation of the new Notice of Special Restrictions in senior
15 lien priority upon closing the resale of the Owned Unit.

16 (iii) For units in principal projects that required Planning Commission approval, the
17 Planning Commission, in consultation with MOHCD, may modify any original conditions of approval
18 for the principal project related to the maximum price or income levels consistent with this subsection
19 (b)(9), including, but not limited to, modification to the required terms of a Notice of Special
20 Restrictions recorded or to be recorded against the project or the Owned Unit. If the Planning
21 Commission has delegated its authority to the Planning Department to review and approve requests for
22 pricing and AMI level adjustments, such adjustments shall be reviewed and considered for approval by
23 the Director of the Planning Department, and the Planning Commission shall not hold a public hearing
24 for discretionary review.

1 (iv) For units in principal projects that required Planning Department approval but
2 not Planning Commission approval, the Planning Department, in consultation with MOHCD, may
3 modify any original conditions of approval for the principal project related to the maximum price or
4 income levels including but not limited to modification to the required terms of a Notice of Special
5 Restrictions recorded or to be recorded against the project or the Owned Unit.

6 (v) For units in principal projects that did not require Planning Commission or
7 Planning Department approval, the Planning Department, in consultation with MOHCD, may modify
8 the required terms of a Notice of Special Restrictions recorded or to be recorded against the project or
9 the Owned Unit.

10 (vi) Any other City approval required prior to modifying the terms of a Notice of
11 Special Restrictions, such as amending a development agreement, shall be obtained.

12 (vii) Modifications under this subsection (b)(9) shall not be subject to review under
13 any other Planning Code provision applicable to a change of use or change of condition including but
14 not limited to Sections 303(e), 309(f), or 329(f)(7).

15 **(F) Reporting.** MOHCD shall provide a report to the Inclusionary Housing
16 Technical Advisory Committee, Planning Commission, and Board of Supervisors or a
17 committee thereof after 10 adjustments are approved under this subsection (b)(9), and after
18 every tenth adjustment approved thereafter. In addition, MOHCD shall provide a report to the
19 Inclusionary Housing Technical Advisory Committee, Planning Commission, and Board of
20 Supervisors or a committee thereof within twelve months from the effective date of the
21 ordinance in Board File No. 240802 enacting this subsection (b)(9), and every twelve months
22 thereafter. The Board of Supervisors or a committee thereof shall hold a public hearing on the
23 first annual report; accordingly, that report must be accompanied by a draft resolution for the
24 Board to accept the report. Each report provided pursuant to this subsection (F) shall include
25 at least the following information for each approved adjustment:

1 (i) The location of the Affordable Unit;

2 (ii) The date the adjustment was approved; and

3 (iii) Pricing and AMI level information before and after the adjustment.

4 * * * *

5
6 Section 3. Article 1.5 of the Planning Code is hereby amended by revising Section
7 167, to read as follows:

8 **SEC. 167. PARKING COSTS SEPARATED FROM HOUSING COSTS IN NEW**
9 **RESIDENTIAL BUILDINGS.**

10 (a) All off-street parking spaces accessory to residential uses in new structures of 10
11 dwelling units or more, or in new conversions of non-residential buildings to residential use of
12 10 dwelling units or more, shall be leased or sold separately from the rental or purchase fees
13 for dwelling units for the life of the dwelling units, such that potential renters or buyers have
14 the option of renting or buying a residential unit at a price lower than would be the case if
15 there were a single price for both the residential unit and the parking space. In cases where
16 there are fewer parking spaces than dwelling units, the parking spaces shall be offered first to
17 the potential owners or renters of three-bedroom or more units, second to the owners or
18 renters of two bedroom units, and then to the owners or renters of other units. Renters or
19 buyers of on-site inclusionary affordable units provided pursuant to Section 415 *et seq.* shall
20 have an equal opportunity to rent or buy a parking space on the same terms and conditions as
21 offered to renters or buyers of other dwelling units, and at a price determined by the Mayor's
22 Office of Housing *and Community Development (MOHCD)*, subject to procedures adopted by the
23 Planning Commission notwithstanding any other provision of Section 415 et seq.

1 (b) **Exception.** The Planning Commission may grant an exception from ~~this~~
2 requirements in subsection (a) for projects which include financing for affordable housing that
3 requires that costs for parking and housing be bundled together.

4 (c) **Affordable Unit Resale Exemption.** For the initial sale, Affordable Units that are both
5 On-site Units and Owned Units, as defined in Section 401, must be offered for sale separate from
6 parking spaces pursuant to subsection (a), subject to the exception provided in subsection (b). Where
7 the initial sale of such a unit included a parking space, the requirement of subsection (a) that parking
8 be sold separately from the unit shall not apply to any future resale of such unit and parking space.

9
10 Section 4. Effective Date. This ordinance shall become effective 30 days after
11 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
12 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
13 of Supervisors overrides the Mayor’s veto of the ordinance.

14
15 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
16 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
17 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
18 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
19 additions, and Board amendment deletions in accordance with the “Note” that appears under
20 the official title of the ordinance.

21 APPROVED AS TO FORM:
22 DAVID CHIU, City Attorney

23 By: /s/ HEATHER GOODMAN
24 HEATHER GOODMAN
25 Deputy City Attorney

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