

File No. 101095

Committee Item No. 6

Board Item No. 21

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date November 22, 2010

Board of Supervisors Meeting

Date December 7, 2010

Cmte Board

<input type="checkbox"/>	<input type="checkbox"/>	Motion
<input type="checkbox"/>	<input type="checkbox"/>	Resolution
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Ordinance
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Legislative Digest
<input type="checkbox"/>	<input type="checkbox"/>	Budget Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Youth Commission Report
<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form (for hearings)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Department/Agency Cover Letter and/or Report
<input type="checkbox"/>	<input type="checkbox"/>	MOU
<input type="checkbox"/>	<input type="checkbox"/>	Grant Information Form
<input type="checkbox"/>	<input type="checkbox"/>	Grant Budget
<input type="checkbox"/>	<input type="checkbox"/>	Subcontract Budget
<input type="checkbox"/>	<input type="checkbox"/>	Contract/Agreement
<input type="checkbox"/>	<input type="checkbox"/>	Form 126 – Ethics Commission
<input type="checkbox"/>	<input type="checkbox"/>	Award Letter
<input type="checkbox"/>	<input type="checkbox"/>	Application
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OTHER

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<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Environmental Review Determination</u>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Planning Commission Resolution No. 10210</u>
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Completed by: Alisa Somera Date November 19, 2010

Completed by: Alisa Somera Date December 1, 2010

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

1 [Planning Code – Affordable Housing Program Exemption For Qualified Student Housing]

2
3 Ordinance amending the Residential Inclusionary Affordable Housing Program,
4 Planning Code Sections 415 et seq. to exempt certain Qualified Student Housing
5 Projects, as defined, if the project meets certain requirements; adding corresponding
6 definitions to Section 401; and making findings including environmental findings.

7 NOTE: Additions are single-underline italics Times New Roman;
8 deletions are ~~strike through italics Times New Roman~~.
9 Board amendment additions are double-underlined;
Board amendment deletions are ~~strikethrough normal~~.

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

11 Section 1. Findings. The Board of Supervisors hereby finds and declares as follows:

12 (a) The Planning Department has determined that the actions contemplated in this
13 Ordinance are in compliance with the California Environmental Quality Act (California Public
14 Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the
15 Board of Supervisors in File No. 101095 and is incorporated herein by
16 reference.

17 (b) On November 4, 2010, 2009, the Planning Commission, in Resolution
18 No. 18218 approved and recommended for adoption by the Board this legislation
19 and adopted findings that it is consistent, on balance, with the City's General Plan and eight
20 priority policies of Planning Code Section 101.1. The Board adopts these findings as its own.
21 A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No.
22 101095, and is incorporated by reference herein.

23 (c) Pursuant to Planning Code Section 302, this Board of Supervisors finds
24 that this legislation will serve the public necessity, convenience, and welfare for the reasons
25 _____

Supervisor Duffy
BOARD OF SUPERVISORS

1 set forth in Planning Commission Resolution No. 18218, and incorporates such
2 reasons by reference herein.

3 Section 2. The San Francisco Planning Code is hereby amended by amending Section
4 401 and 415.3, to read as follows:

5 **SEC. 401. DEFINITIONS.**

6 (a) In addition to the specific definitions set forth elsewhere in this Article, the
7 following definitions shall govern interpretation of this Article:

8 (1)—"Affordable housing project." A housing project containing units constructed to
9 satisfy the requirements of Sections 413.5, 413.8, 415.4, or 4.5.5 of this Article, or receiving
10 funds from the Citywide Affordable Housing Fund.

11 (2)—"Affordable to a household." A purchase price that a household can afford to pay
12 based on an annual payment for all housing costs of 33 percent of the combined household
13 annual net income, a 10 percent down payment, and available financing, or a rent that a
14 household can afford to pay based on an annual payment for all housing costs of 30 percent
15 of the combined annual net income.

16 (3)—"Affordable to qualifying households":

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

20 (i) Only to households with an annual net income equal to or less than that of a
21 household of moderate income; and

22 (ii) At or below the maximum purchase price.

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

1 (i) Only to households with an annual net income equal to or less than that of a
2 household of lower income;

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

4 (4) — "Allowable average purchase price":

5 (A) For all affordable one-bedroom units in a housing project, a price affordable to a
6 two-person household of median income as set forth in Title 25 of the California Code of
7 Regulations Section 6932 ("Section 6932") on January 1st of that year;

8 (B) For all affordable two-bedroom units in a housing project, a price affordable to a
9 three-person household of median income as set forth in Section 6932 on January 1st of that
10 year;

11 (C) For all affordable three-bedroom units in a housing project, a price affordable to
12 a four-person household of median income as set forth in Section 6932 on January 1st of that
13 year;

14 (D) For all affordable four-bedroom units in a housing project, a price affordable to a
15 five-person household of median income as set forth in Section 6932 on January 1st of that
16 year.

17 (1) "Affordable to qualifying middle income households":

18 (A) With respect to owned units, the average purchase price on the initial sale of all
19 qualifying middle income units shall not exceed the allowable average purchase price deemed
20 acceptable for households with an annual gross income equal to or less than the qualifying
21 limits for a household of middle income, adjusted for household size. This purchase price shall
22 be based on household spending of 35% of income for housing, and shall only apply to initial
23 sale, and not for the life of the unit.

24 (B) With respect to rental units, the average annual rent—including the cost of
25 utilities paid by the tenant according to the HUD utility allowance established by the San

1 Francisco Housing Authority -- for qualifying middle income units shall not exceed the
2 allowable average purchase price deemed acceptable for households with an annual gross
3 income equal to or less than the qualifying limits for a household of middle income, adjusted
4 for household size. This price restriction shall exist for the life of the unit.

5 (5) — "Allowable average annual rent":

6 (A) For all affordable one-bedroom units in a housing project, 18 percent of the
7 median income for a household of two persons as set forth in Section 6932 on January 1st of
8 that year;

9 (B) For all affordable two-bedroom units in a housing project, 18 percent of the
10 median income for a household of three persons as set forth in Section 6932 on January 1st
11 of that year;

12 (C) For all affordable three-bedroom units in a housing project, 18 percent of the
13 median income for a household of four persons as set forth in Section 6932 on January 1st of
14 that year;

15 (D) For all affordable four-bedroom units in a housing project, 18 percent of the
16 median income for a household of five persons as set forth in Section 6932 on January 1st of
17 that year.

18 (6) — "Annual gross income." Gross income as defined in CCR Title 25, Section 6914,
19 as amended from time to time, except that MOH may, in order to promote consistency with
20 the procedures of the San Francisco Redevelopment Agency, develop an asset test that
21 differs from the State definition if it publishes that test in the Procedures Manual.

22 (7) — "Annual net income." Net income as defined in Title 25 of the California Code of
23 Regulations Section 6916.

1 (8)—"Average annual rent." The total annual rent for the calendar year charged by a
2 housing project for all affordable rental units in the project of an equal number of bedrooms
3 divided by the total number of affordable units in the project with that number of bedrooms.

4 (9)—"Average purchase price." The purchase price for all affordable owned units in
5 an affordable housing project of an equal number of bedrooms divided by the total number of
6 affordable units in the project with that number of bedrooms.

7 (10)—"Balboa Park Community Improvements Fund." The fund into which all fee
8 revenue the City collects from the Balboa Park Impact Fee is deposited.

9 (11)—"Balboa Park Community Improvements Program." The program intended to
10 implement the community improvements identified in the Balboa Park Area Plan, as
11 articulated in the Balboa Park Community Improvements Program Document on file with the
12 Clerk of the Board in File No. 090179.

13 (12)—"Balboa Park Impact Fee." The fee collected by the City to mitigate impacts of
14 new development in the Balboa Park Program Area, as described in the findings in Section
15 422.1.

16 (13)—"Balboa Park Program Area." The Balboa Park Plan Area in Figure 1 of the
17 Balboa Park Station Area Plan of the San Francisco General Plan.

18 (14)—"Base service standard." The relationship between revenue service hours
19 offered by the Municipal Railway and the number of automobile and transit trips estimated to
20 be generated by certain non-residential uses, expressed as a ratio where the numerator
21 equals the average daily revenue service hours offered by MUNI and the denominator equals
22 the daily automobile and transit trips generated by non-residential land uses as estimated by
23 the TIDF Study or updated under Section 411.5 of this Article.

24 (15)—"Base service standard fee rate." The TIDF that would allow the City to recover
25 the estimated costs incurred by the Municipal Railway to meet the demand for public transit

1 resulting from new development in the economic activity categories for which the fee is
2 charged, after deducting government grants, fare revenue, and costs for non-vehicle
3 maintenance and general administration.

4 (16)—"Board" or "Board of Supervisors." The Board of Supervisors of the City and
5 County of San Francisco.

6 "Change of Use." A change of gross floor area from one category of use to another
7 category of use listed in the use table for the zoning district of the subject lot.

8 (17)—"Child-care facility." A child-care facility as defined in California Health and
9 Safety Code Section 1596.750.

10 (18)—"Child-care provider." A provider as defined in California Health and Safety Code
11 Section 1596.791.

12 (19)—"City" or "San Francisco." The City and County of San Francisco.

13 (23)—"Commission" or "Planning Commission." The San Francisco Planning
14 Commission.

15 (24)—"Community apartment." As defined in San Francisco Subdivision Code Section
16 1308(b).

17 (25)—"Community facilities." All uses as defined under Section 209.4(a) and 209.3(d)
18 of this Code.

19 (26)—"Condition of approval" or "Conditions of approval." A condition or set of written
20 conditions imposed by the Planning Commission or another permit-approving or issuing City
21 agency or appellate body to which a project applicant agrees to adhere and fulfill when it
22 receives approval for the construction of a development project subject to this Article .

23 (27)—"Condominium." As defined in California Civil Code Section 783.

24 (28)—"Cultural/Institution/Education (CIE)." An economic activity category subject to
25 the TIDF that includes, but is not limited to, schools, as defined in Sections 209.3(g), (h), and

1 (i) and 217(f)-(i) of this Code; child care facilities; museums and zoos; and community
2 facilities, as defined in Sections 209.4 and 221(a)-(c) of this Code.

3 (29)—"DBI." The San Francisco Department of Building Inspection, or its successor.

4 (30)—"Dedicated." Legally transferred to the City and County of San Francisco,
5 including all relevant legal documentation, at no cost to the City.

6 (31)—"Dedicated site." The portion of site proposed to be legally transferred at no cost
7 to the City and County of San Francisco under the requirements of this section.

8 (32)—"Department" or "Planning Department." The San Francisco Planning
9 Department or the Planning Department's designee, including the Mayor's Office of Housing
10 and other City agencies or departments.

11 (33)—"Designated affordable housing zones." For the purposes of implementing the
12 Eastern Neighborhoods Public Benefits Fund, shall mean the Mission NCT defined in Section
13 736 and the Mixed Use Residential District defined in Section 841.

14 (34)—"Development fee." Either a development impact fee or an in-lieu fee. It shall not
15 include a fee for service or any time and material charges charged for reviewing or processing
16 permit applications.

17 (35)—"Development Fee Collection Unit" or "Unit." The Development Fee Collection
18 Unit at DBI.

19 (36)—"Development impact fee." A fee imposed on a development project as a
20 condition of approval to mitigate the impacts of increased demand for public services, facilities
21 or housing caused by the development project that may or may not be an impact fee
22 governed by the California Mitigation Fee Act (California Government Code Section 66000 et
23 seq.).

24 (37)—"Development impact requirement." A requirement to provide physical
25 improvements, facilities or below market rate housing units imposed on a development project

1 as a condition of approval to mitigate the impacts of increased demand for public services,
2 facilities or housing caused by the development project that may or may not be governed by
3 the California Mitigation Fee Act (California Government Code Section 66000 et seq.).

4 (38)—"Development project." Any change of use within an existing structure, addition
5 to an existing structure, or new construction, which includes any occupied floor area.

6 (39)—"Development under the TIDF." Any new construction, or addition to or
7 conversion of an existing structure under a building or site permit issued on or after
8 September 4, 2004, that results in 3,000 gross square feet or more of a covered use. In the
9 case of mixed use development that includes residential development, the term "new
10 development" shall refer to only the non-residential portion of such development. "Existing
11 structure" shall include a structure for which a sponsor already paid a fee under the prior TIDF
12 ordinance, as well as a structure for which no TIDF was paid.

13 (40)—"Director." The Director of Planning or his or her designee.

14 (41)—"DPW." The Department of Public Works, or its successor.

15 (42)—"Eastern Neighborhoods Infrastructure Impact Fee." The fee collected by the
16 City to mitigate impacts of new development in the Eastern Neighborhoods Program Area, as
17 described in the Findings in Section 423.1

18 (43)—"Eastern Neighborhoods Public Benefits Fund." The fund into which all fee
19 revenue collected by the City from the Eastern Neighborhoods Impact Fee is deposited.

20 (44)—"Eastern Neighborhoods Public Benefits Program." The program intended to
21 implement the community improvements identified in the four Area Plans affiliated with the
22 Eastern Neighborhoods (Central Waterfront, East SoMa, Mission, and Showplace
23 Square/Potrero Hill), as articulated in the Eastern Neighborhoods Public Benefits Program
24 Document, on file with the Clerk of the Board in File No. 081155.)
25

1 (45)—"Eastern Neighborhoods Program Area." The Eastern Neighborhoods Plan Area
2 in Map 1 (Land Use Plan) of the Eastern Neighborhoods Area Plan of the San Francisco
3 General Plan.

4 (46)—"Economic activity category." Under the TIDF, one of the following six categories
5 of non-residential uses: Cultural/Institution/Education (CIE), Management, Information and
6 Professional Services (MIPS), Medical and Health Services, Production/Distribution/Repair
7 (PDR), Retail/Entertainment, and Visitor Services.

8 (48)—"Entertainment use." Space within a structure or portion thereof intended or
9 primarily suitable for or accessory to the operation of uses defined in San Francisco Planning
10 Code Sections 102.17 (Nighttime Entertainment), 790.38 and 890.37 (Other Entertainment),
11 790.36 and 890.36 (Adult Entertainment), 790.64 and 890.64 (Movie Theater), and 790.4 and
12 890.4 (Amusement Arcade), regardless of the zoning district that the use is located in.

13 (49)—"First certificate of occupancy." Either a temporary certificate of occupancy or a
14 Certificate of Final Completion and Occupancy as defined in San Francisco Building Code
15 Section 109A, whichever is issued first.

16 (50)—"First construction document." As defined in Section 107A.13.1 of the San
17 Francisco Building Code.

18 (51)—"Gross floor area." The total area of each floor within the building's exterior
19 walls, as defined in Section 102.9(b)(12) of this Code.

20 (52)—"Gross square feet of use." The meaning set forth in Section 102.9 of this Code,
21 with the exception of the TIDF. With respect to the TIDF, the total square feet of gross floor
22 area in a building and/or space within or adjacent to a structure devoted to all uses covered by
23 the TIDF, including any common areas exclusively serving such uses and not serving
24 residential uses. Where a structure contains more than one use, areas common to two or
25 more uses, such as lobbies, stairs, elevators, restrooms, and other ancillary spaces included

1 in gross floor area that are not exclusively assigned to one uses shall be apportioned among
2 the two or more uses in accordance with the relative amounts of gross floor area, excluding
3 such space, in the structure or on any floor thereof directly assignable to each use.

4 (55)—"Hotel" or "Hotel use." Space within a structure or portion thereof intended or
5 primarily suitable for or accessory to the operation of uses defined in San Francisco Planning
6 Code Sections 790.46 and 890.46, regardless of the zoning district that the use is located in.

7 (56)—"Household." Any person or persons who reside or intend to reside in the same
8 housing unit.

9 (57)—"Household of lower income." A household composed of one or more persons
10 with a combined annual net income for all adult members which does not exceed the
11 qualifying limit for a lower-income family of a size equivalent to the number of persons
12 residing in such household, as set forth for the County of San Francisco in Title 25 of the
13 California Code of Regulations Section 6932.

14 (58)—"Household of median income." A household composed of one or more persons
15 with a combined annual net income for all adult members which does not exceed the
16 qualifying limit for a median-income family of a size equivalent to the number of persons
17 residing in such household, as set forth for the County of San Francisco in Title 25 of the
18 California Code of Regulations Section 6932.

19 (59)—"Household of moderate income." A household composed of one or more
20 persons with a combined annual net income for all adult members which does not exceed the
21 qualifying limit for a moderate-income family of a size equivalent to the number of persons
22 residing in such household, as set forth for the County of San Francisco in Title 25 of the
23 California Code of Regulations Section 6932.

24 (60)—"Housing developer." Any business entity building housing units which receives
25 a payment from a sponsor for use in the construction of the housing units. A housing

1 developer may be (a) the same business entity as the sponsor, (b) an entity in which the
2 sponsor is a partner, joint venturor, or stockholder, or (c) an entity in which the sponsor has no
3 control or ownership.

4 (61)—"Housing project." Any development which has residential units as defined in the
5 Planning Code, including but not limited to dwellings, group housing, independent living units,
6 and other forms of development which are intended to provide long-term housing to
7 individuals and households. "Housing project" shall not include that portion of a development
8 that qualifies as an Institutional Use under the Planning Code. "Housing project" for purposes
9 of this Program shall also include the development of live/work units as defined by Section
10 102.13 of this Code. Housing project for purposes of this Program shall mean all phases or
11 elements of a multi-phase or multiple lot residential development.

12 (62)—"Housing unit" or "unit." A dwelling unit as defined in San Francisco Housing
13 Code Section 401.

14 (63)—"Improvements Fund." The fund into which all revenues collected by the City for
15 each Program Area's impact fees are deposited.

16 (64)—"In-Kind Agreement." An agreement acceptable in form and substance to the
17 City Attorney and the Director of Planning, under which the project sponsor agrees to provide
18 a specific set of community improvements, at a specific phase of construction, in lieu of
19 contribution to the relevant Fund.

20 (65)—"Infrastructure." Open space and recreational facilities; public realms
21 improvements such as pedestrian improvements and streetscape improvements; public transit
22 facilities; and community facilities such as libraries, child care facilities, and community
23 centers.

1 (66)—"In lieu fee." A fee paid by a project sponsor in lieu of complying with a
2 requirement of this Code and that is not a development impact fee governed by the Mitigation
3 Fee Act.

4 "Institutional use" shall mean space within a structure or portion thereof intended or
5 primarily suitable for or accessory to the operation of uses contained in San Francisco
6 Planning Code Section 217 and 890.50, regardless of the zoning district that the use is
7 located in.

8 "Integrated PDR use" shall mean space within a structure or portion thereof intended or
9 primarily suitable for or accessory to the operation of uses defined in San Francisco Planning
10 Code Section 890.49, regardless of the zoning district that the use is located in.

11 (67)—"Interim Guidelines" shall mean the Office Housing Production Program Interim
12 Guidelines adopted by the City Planning Commission on January 26, 1982, as amended.

13 (68)—"Licensed Child-care facility." A child-care facility which has been issued a valid
14 license by the California Department of Social Services pursuant to California Health and
15 Safety Code Sections 1596.80-1596.875, 1596.95-1597.09, or 1597.30-1597.61.

16 (69)—"Live/work project." A housing project containing more than one live/work unit.

17 (70)—"Live/work unit" shall be as defined in Section 102.13 of this Code.

18 (71)—"Long term housing." Housing intended for occupancy by a person or persons
19 for 32 consecutive days or longer.

20 (72)—"Low income." For purposes of this Article, up to 80% of median family income
21 for the San Francisco PMSA, as calculated and adjusted by the United States Department of
22 Housing and Urban Development (HUD) on an annual basis, except that as applied to
23 housing-related purposes such as the construction of affordable housing and the provision of
24 rental subsidies with funds from the SOMA Stabilization Fund established in Section 418.7, it
25

1 shall mean up to 60% of median family income for the San Francisco PMSA, as calculated
2 and adjusted by HUD on an annual basis.

3 (73)—"Management, Information and Professional Services (MIPS). An economic
4 activity category under the TIDF that includes, but is not limited to, office use; medical offices
5 and clinics, as defined in Section 890.114 of this Code; business services, as defined in
6 Section 890.111 of this Code; Integrated PDR, as defined in Section 890.49 of this Code, and
7 Small Enterprise Workspaces, as defined in Section 227(t) of this Code.

8 (74)—"Market and Octavia Community Improvements Fund" The fund into which all
9 fee revenue collected by the City from the Market and Octavia Community Improvements
10 Impact Fee is deposited.

11 (75)—"Market and Octavia Community Improvements Impact Fee." The fee collected
12 by the City to mitigate impacts of new development in the Market and Octavia Program Area,
13 as described in the findings in Section 421.1.

14 (76)—"Market and Octavia Community Improvements Program." The program
15 intended to implement the community improvements identified in the Market and Octavia Area
16 Plan, as articulated in the Market and Octavia Community Improvements Program Document
17 on file with the Clerk of the Board in File No. 071157.)

18 (77)—"Market and Octavia Program Area." The Market and Octavia Plan Area in Map
19 1 (Land Use Plan) of the Market and Octavia Area Plan of the San Francisco General Plan,
20 which includes those districts zoned RTO, NCT, or any neighborhood specific NCT, a few
21 parcels zoned RH-1 or RH-2, and those parcels within the Van Ness and Market Downtown
22 Residential Special Use District (VMDRSUD).

23 (78)—"Market rate housing." Housing constructed in the principal project that is not
24 subject to sales or rental restrictions.

1 (79)—"Maximum annual rent." The maximum rent that a housing developer may
2 charge any tenant occupying an affordable unit for the calendar year. The maximum annual
3 rent shall be 30 percent of the annual income for a lower-income household as set forth in
4 Section 6932 on January 1st of each year for the following household sizes:

- 5 (A) For all one-bedroom units, for a household of two persons;
- 6 (B) For all two-bedroom units, for a household of three persons;
- 7 (C) For all three-bedroom units, for a household of four persons;
- 8 (D) For all four-bedroom units, for a household of five persons.

9 (19)—"Maximum purchase price." The maximum purchase price that a household of
10 moderate income can afford to pay for an owned unit based on an annual payment for all
11 housing costs of 33 percent of the combined household annual net income, a 10 percent
12 down payment, and available financing, for the following household sizes:

- 13 (A) For all one-bedroom units, for a household of two persons;
- 14 (B) For all two-bedroom units, for a household of three persons;
- 15 (C) For all three-bedroom units, for a household of four persons;
- 16 (D) For all four-bedroom units, for a household of five persons.

17 (80)—"Medical and Health Services." An economic activity category under the TIDF
18 that includes, but is not limited to, those non-residential uses defined in Sections 209.3(a) and
19 217(a) of this Code; animal services, as defined in Section 224(a) and (b) of this Code; and
20 social and charitable services, as defined in Sections 209.3(d) and 217(d) of this Code.

21 (84)—"Middle Income Household." A household whose combined annual gross
22 income for all members is between 120 percent and 150 percent of the local median income
23 for the City and County of San Francisco, as calculated by the Mayor's Office of Housing
24 using data from the United States Department of Housing and Urban Development (HUD) and
25 adjusted for household size or, if data from HUD is unavailable, as calculated by the Mayor's

1 Office of Housing using other publicly available and credible data and adjusted for household
2 size.

3 (83)—"MOH." The Mayor's Office of Housing, or its successor.

4 (84)—"MTA." The Municipal Transportation Agency, or its successor.

5 (85)—"MTA Director." The Director of MTA or his or her designee.

6 (86)—"Municipal Railway; MUNI." The public transit system owned by the City and
7 under the jurisdiction of the MTA.

8 (87)—"Net addition." The total amount of gross floor area defined in Planning Code
9 Section 102.9 contained in a development project, less the gross floor area contained in any
10 structure demolished or retained as part of the proposed development project.

11 "New development." Under the TIDF, any new construction, or addition to or
12 conversion of an existing structure under a building or site permit issued on or after
13 September 4, 2004 that results in 3,000 gross square feet or more of a use covered by the
14 TIDF. In the case of mixed use development that includes residential development, the term
15 "new development" shall refer to only the non-residential portion of such development.

16 "Existing structure" shall include a structure for which a sponsor already paid a fee under the
17 prior TIDF ordinance, as well as a structure for which no TIDF was paid.

18 (97)—"Nonprofit child-care provider." A child-care provider that is an organization
19 organized and operated for nonprofit purposes within the provisions of California Revenue
20 and Taxation Code Sections 23701–23710, inclusive, as demonstrated by a written
21 determination from the California Franchise Tax Board exempting the organization from taxes
22 under Revenue and Taxation Code Section 23701.

23 (98)—"Nonprofit organization." An organization organized and operated for nonprofit
24 purposes within the provisions of California Revenue and Taxation Code Sections 23701–
25 23710, inclusive, as demonstrated by a written determination from the California Franchise

1 Tax Board exempting the organization from taxes under Revenue and Taxation Code Section
2 23701.

3 ~~(102)~~ "Non-residential use." Space within any structure or portion thereof intended or
4 primarily suitable for or accessory to occupancy by retail, office, commercial, or other non-
5 residential uses defined in Section 209.3, 209.8, 217, 218, 219 of this Code, and 221,
6 regardless of the zoning district that the use is located in; except that residential components
7 of uses defined in Section 209.3(a)-(c) and (g)-(i) shall be defined as a "residential use" for
8 purposes of this Article. For the purposes of this Article, non-residential use shall not include
9 PDR and publicly owned and operated community facilities.

10 ~~(103)~~ "Notice of Special Restrictions." A document recorded with the San Francisco
11 Recorder's Office for any unit subject to this Program detailing the sale and resale or rental
12 restrictions and any restrictions on purchaser or tenant income levels included as a Condition
13 of Approval of the principal project relating to the unit.

14 ~~(105)~~ "Office use." Space within a structure or portion thereof intended or primarily
15 suitable for or accessory to the operation of uses defined in San Francisco Planning Code
16 Section 890.70, regardless of the zoning district that the use is located in.

17 ~~(106)~~ "Off-site unit." A unit affordable to qualifying households constructed pursuant to
18 this Ordinance on a site other than the site of the principal project.

19 ~~(107)~~ "On-site unit." A unit affordable to qualifying households constructed pursuant to
20 this Article on the site of the principal project.

21 ~~(108)~~ "Owned unit." A unit affordable to qualifying households which is a
22 condominium, stock cooperative, community apartment, or detached single-family home. The
23 owner or owners of an owned unit must occupy the unit as their primary residence.

24 ~~(109)~~ "Owner." The record owner of the fee or a vendee in possession.
25

1 (110) "PDR use." Space within any structure or portion thereof intended or primarily
2 suitable for or accessory to the operation of uses defined in San Francisco Planning Code
3 Sections 220, 222, 223, 224, 225, 226, 227(a), 227(b), and 227(p), regardless of the zoning
4 district that the use is located in.

5 (111) "Principal project." A housing development on which a requirement to provide
6 affordable housing units is imposed.

7 (112) "Principal site." The total site proposed for development, including the portion of
8 site proposed to be legally transferred to the City and County of San Francisco.

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

12 (113A) "Qualified Educational Institution" for purposes of Section 415 shall mean an
13 accredited post secondary Educational Institution which has Qualified Students.

14 (113B) "Qualified Student" for purposes of Section 415 shall mean a student who
15 receives or is eligible to receive need-based financial aid including, but not limited to, from Pell
16 Grants, Perkins Loans, Stafford Subsidized Loans or other grants or loans made or guaranteed by
17 the United States Government or a state or local government, or by an entity sponsored and
18 regulated by such unit of government and is currently enrolled at a Qualified Educational Institute.

19 (113C) "Qualified Student Housing Project" for purposes of Section 415 shall mean
20 any housing project that contains housing for Qualified Students and which may also contain housing
21 for persons who are enrolled students but not Qualified Students, created either through new
22 construction or conversion of an existing building or space.

23 (113D) "Qualified Student Housing" shall mean housing or group housing (measured
24 either by units or beds) or accessory living space within a non-residential space, either owned by a
25 Qualified Educational Institution or controlled by a Qualified Educational Institution through a long-

1 term master lease for a period of at least 20 years in which at least thirty percent (30%) of such units
2 or beds are occupied by Qualified Students. The Qualified Student Housing may be on the site of the
3 Institution or at another location in the City and County of San Francisco.

4 (114) "Rent" or "rental." The total charges for rent, utilities, and related housing
5 services to each household occupying an affordable unit.

6 (115) "Rental unit." A unit affordable to qualifying households which is not a
7 condominium, stock cooperative, or community apartment.

8 (116) "Replacement of use." The total amount of gross floor area, as defined in
9 Section 102.9 of this Code, to be demolished and reconstructed by a development project.

10 (118) "Research and development use." Space within any structure or portion thereof
11 intended or primarily suitable for or accessory to the operation of uses defined in San
12 Francisco Planning Code Section 890.52, regardless of the zoning district that the use is
13 located in.

14 (122) "Residential use." Space within any structure or portion thereof intended or
15 primarily suitable for or accessory to occupancy by uses defined in San Francisco Planning
16 Code Sections 209.1, 790.88, and 890.88 of this Code, as relevant for the subject zoning
17 district, or containing group housing as defined in Section 209.2(a)-(c) of this Code and any
18 residential components of institutional uses as defined in Section 209.3(a)-(c) and (g)-(i) of this
19 Code.

20 (124) "Retail/entertainment." An economic activity category under the TIDF that
21 includes, but is not limited to, a retail use; an entertainment use; massage establishments, as
22 defined in Section 218.1 of this Code; laundering, and cleaning and pressing, as defined in
23 Section 220 of this Code.

1 ~~(125)~~—"Retail use." Space within any structure or portion thereof intended or primarily
2 suitable for or accessory to the operation of uses contained in San Francisco Planning Code
3 Section 218, regardless of the zoning district that the use is located in.

4 ~~(126)~~—"Revenue services hours." The number of hours that the Municipal Railway
5 provides service to the public with its entire fleet of buses, light rail (including streetcars), and
6 cable cars.

7 ~~(127)~~—"Rincon Hill Community Improvements Fund." The fund into which all fee
8 revenue collected by the City from the Rincon Hill Community Infrastructure Impact Fee is
9 deposited.

10 ~~(128)~~—"Rincon Hill Community Infrastructure Impact Fee." The fee collected by the City
11 to mitigate impacts of new development in the Rincon Hill Program Area, as described in the
12 findings in Section 418.1.

13 ~~(129)~~—"Rincon Hill Program Area." Those districts identified as the Rincon Hill
14 Downtown Residential (RH DTR) Districts in the Planning Code and on the Zoning Maps.

15 ~~(130)~~—"Section 6932." Section 6932 of Title 25 of the California Code of Regulations as
16 such section applies to the County of San Francisco.

17 "Small Enterprise Workspace use" shall mean space within a structure or portion
18 thereof intended or primarily suitable for or accessory to the operation of uses as defined in
19 San Francisco Planning Code Section 227(t), regardless of the zoning district that the use is
20 located in.

21 ~~(75)~~—"SOMA." The area bounded by Market Street to the north, Embarcadero to the
22 east, King Street to the south, and South Van Ness and Division to the west.

23 ~~(131)~~—"SOMA Community Stabilization Fee." The fee collected by the City to mitigate
24 impacts on the residents and businesses of SOMA of new development in the Rincon Hill
25 Program Area, as described in the findings in Section 418.1.

1 (132)—"SOMA Community Stabilization Fund." The fund into which all fee revenue
2 collected by the City from the SOMA Community Stabilization Fee is deposited.

3 (133)—"Sponsor" or "project sponsor." An applicant seeking approval for construction of
4 a development project subject to this Article, such applicant's successor and assigns, and/or
5 any entity which controls or is under common control with such applicant.

6 (134)—"Stock cooperative." As defined in California Business and Professions Code
7 Section 11003.2.

8 (135)—"Student housing." A building where 100 percent of the residential uses are
9 affiliated with and operated by an accredited post-secondary educational institution. Typically,
10 student housing is for rent, not for sale. This housing shall provide lodging or both meals and
11 lodging, by prearrangement for one week or more at a time. This definition only applies in the
12 Eastern Neighborhoods Mixed Use Districts.

13 (136)—"TIDF Study." The study commissioned by the San Francisco Planning
14 Department and performed by Nelson/Nygaard Associates entitled "Transit Impact
15 Development Fee Analysis – Final Report," dated May 2001, including all the Technical
16 Memoranda supporting the Final Report and the Nelson/Nygaard update materials contained
17 in Board of Supervisors File No. 040141.

18 (137)—"Total developable site area." That part of the site that can be feasibly
19 developed as residential development, excluding land already substantially developed, parks,
20 required open spaces, streets, alleys, walkways or other public infrastructure.

21 (138)—"Transit Impact Development Fee; TIDF." The development fee that is the
22 subject of Section 411.1 et seq. of this Article.

23 (139)—"Treasurer." The Treasurer for the City and County of San Francisco.

24 (140)—"Trip generation rate." The total number of automobile and Municipal Railway
25 trips generated for each 1,000 square feet of development in a particular economic activity

1 category as established in the TIDF Study, or pursuant to the five-year review process
2 established in Section 411.5 of this Article.

3 (141)—"Use." The purpose for which land or a structure, or both, are legally designed,
4 constructed, arranged, or intended, or for which they are legally occupied or maintained, let or
5 leased.

6 (142)—"Visitation Valley." The area bounded by Carter Street and McLaren Park to the
7 west, Mansell Street to the north, Route 101 between Mansell Street and Bayshore Boulevard
8 to the northeast, Bayview Park to the north, Candlestick Park and Candlestick Point
9 Recreation Area to the east, the San Francisco Bay to the southeast, and the San Francisco
10 County line to the south.

11 (143)—"Visitor services." An economic activity category under the TIDF that includes,
12 but is not limited to, hotel use; motel use, as defined in Section 216(c) and (d); and time-share
13 projects, as defined in Section 11003.5(a) of the California Business and Professions Code.

14 (144)—"Waiver Agreement." An agreement acceptable in form and substance to the
15 City Attorney and the Planning Department under which the City agrees to waive all or a
16 portion of the Community Improvements Impact Fee.

17 SEC. 415.3. APPLICATION.

18 (a) Section 415.1 et seq. shall apply to any housing project that consists of five or
19 more units where an individual project or a phased project is to be undertaken and where the
20 total undertaking comprises a project with five or more units, even if the development is on
21 separate but adjacent lots; and

22 (1) Does not require Commission approval as a conditional use or planned unit
23 development;

24 (2) Requires Commission approval as a conditional use or planned unit
25 development;

1 (3) Consists of live/work units as defined by Section 102.13 of this Code; or
2 (4) Requires Commission approval of replacement housing destroyed by
3 earthquake, fire or natural disaster only where the destroyed housing included units restricted
4 under the Residential Inclusionary Housing Program or the City's predecessor inclusionary
5 housing policy, condominium conversion requirements, or other affordable housing program.

6 (b) Section 415.1 et seq. shall apply to all housing projects that have not received a
7 first site or building permit on or before the effective date of Section 415.1 et seq. with the
8 following exceptions. Until these application dates take effect as described below, the
9 provisions of Section 415.1 et seq. as it exists on July 18, 2006 shall govern.

10 (1) The amendments to the off-site requirements in Section 415.6(c) and (d) relating
11 to location and type of off-site housing, and Section 415.4(c) relating to when a developer
12 shall declare whether it will choose an alternative to the on-site requirement shall apply only to
13 projects that receive their Commission or Department approval on or after the effective date of
14 Section 415.1 et seq.

15 (2) The amendments to the percentage-requirements of Section 415.1 et seq. that
16 govern the number of affordable units a housing project is required to provide in Section
17 415.5(a) and 415.6(a) apply only to housing projects that submit their first application,
18 including an environmental evaluation application or any other Planning Department or
19 Building Department application, on or after July 18, 2006. Notwithstanding the foregoing, the
20 amendments to the percentage-requirements of Section 415.1 et seq. also apply to any
21 project that has not received its final Commission or Department approvals before July 18,
22 2006 for housing projects that receive a Zoning Map amendment or Planning Code text
23 amendment related to their project approvals that (A) results in a net increase in the number
24 of permissible residential units, or (B) results in a material increase in the net permissible
25 residential square footage. For purposes of subsection B above a material increase shall

1 mean an increase of 5 percent or more, or an increase in 10,000 square feet or more,
2 whichever is less.

3 (3) The amendments in Section 415.1 to the way median income is calculated apply
4 to any housing project that has not received a first site or building permit by the effective date
5 of Section 415.1 et seq..

6 (4) Section 415.1 et seq. shall apply to all housing projects of 5 to 9 units that filed
7 their first application, including an environmental evaluation application or any other Planning
8 Department application on or after July 18, 2006.

9 (c) Section 415.1 et seq. shall not apply to:

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

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

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

20 (4) A Qualified Student Housing Project that meets all of the following criteria:

21 (A) The building or space conversion does not result in loss or conversion of existing
22 rental housing, including but not limited to rental housing and dwelling units;

23 (B) An institutional master plan (IMP) pursuant to Section 304.5 is on file with the Planning
24 Department prior to the issuance of any building permit or alteration permit in connection with the
25 creation of the Qualified Student Housing Project, and, in addition to the requirements of Section

1 304.5, such IMP shall describe: (i) to the extent such information is available, the type and location of
2 housing used by its students; (ii) any plans for the provision of Qualified Student Housing; and (iii) the
3 Educational Institution's need for student housing to support its program; and (iv) the percentage of its
4 students, on an average annual basis, that receive some form of need-based assistance as described in
5 (113B).

6 (C) The Mayor's Office of Housing (MOH) is authorized to monitor this program.
7 MOH shall develop a monitoring form and annual monitoring fee to be paid by the Qualified
8 Educational Institution. MOH shall submit an annual monitoring report on this exemption to
9 the Planning Department and to the Board for a hearing at a committee of the Board. The
10 Qualified Educational Institution shall agree to submit annual documentation to the Mayor's Office of
11 Housing (MOH) and the Planning Department, on or before December 31 of each year, that addresses
12 the following:

13 (i) Evidence that the Qualified Educational Institution continues to own or otherwise
14 control the Qualified Student Housing Project under a master lease, including a certificate from the
15 owner of the real property and the Qualified Educational Institution attaching a true and complete
16 copy of the master lease (financial information may be redacted) and certifying that the lease has not
17 otherwise been amended or terminated; and

18 (ii) Evidence, on an average annualized basis, of the percentage of Qualified Students in
19 good standing enrolled in the Qualified Educational Institution who are occupying the units or beds or
20 accessory living space in the Qualified Student Housing, including but not limited to the number
21 and percentage of qualifying students; the rent paid by each student; the type of dwelling the
22 rent covers (i.e. single room; double room; etc.); and

23 (iii) The Qualified Educational Institution records a Notice of Special Restrictions (NSR)
24 against fee title to the real property on which the Qualified Student Housing is located that states the
25 following:

1 -- The Qualified Educational Institution must file a statement with the Department if it
2 intends to terminate the Qualified Student Housing Project at least 60 days before it
3 terminates such use ("statement of termination");

4 -- the The Qualified Student Housing Project becomes subject to the Inclusionary Housing
5 Ordinance requirements applicable to Housing Projects other than Qualified Housing Projects if (1)
6 the Qualified Educational Institution files a statement of termination with the Department; or
7 (2) the Qualified Educational Institution fails to file a statement of termination and within one
8 year of a notice of violation issued by the Planning Department, the Student Housing Project
9 fails to meet the requirements for a Qualified Student Housing Project, then within not more than
10 one year of a Notice Of Violation issued by the Planning Department;

11 -- If the Qualified Student Housing Project becomes subject to the Inclusionary
12 Housing Ordinance then it shall (1) pay the Affordable Housing Fee plus interest from the date
13 the project received its first construction document for the project if there is no evidence the
14 Project ever qualified as Qualified Student Housing or, if Qualified Student Housing was
15 provided and occupied, then the Affordable Housing Fee with no interest is due on the date
16 the units were no longer occupied by qualifying households and interest would accrue from
17 that date if the fee is not paid; or (2) provide the required number of on-site affordable units
18 required at time of original project approval and that those units shall be subject to all of the
19 requirements of this Program. In this event, the project sponsor shall record a new NSR
20 providing that the designated units must comply with all of the requirements of this Program.

21 --The the-Qualified Educational Institution is required to report annually as required in
22 subsection (C) above;

23 -- The the City may commence legal action against the owner and/or Qualified Educational
24 Institution to enforce the NSR and the terms of Article IV of the Planning Code and Planning Code.

1 Section 415 et seq. if ~~the~~ it determines that the project no longer meets the requirements for a Qualified
2 Student Housing Project; and

3 -- The ~~the~~ Qualified Student Housing Project may be inspected by any City employee to
4 determine its status as a Qualified Student Housing Project and its compliance with this Section at any
5 time upon at least 24 hours' prior notice to the owner of the real property or to the master lessee.

6 (d) For projects that have received a first site or building permit prior to the effective
7 date of Section 415.1 et seq., the requirements in effect prior to the effective date of Section
8 415.1 et seq. shall apply.

9 Section 2. Operative Date. This provisions of Section 415.3(c)(4) shall apply to
10 exempt any project meeting its criteria approved by the Planning Commission or Department
11 on or after the effective date of this Ordinance.

12 Section 3. This section is uncodified.

13 In enacting this Ordinance, the Board intends to amend only those words, phrases,
14 paragraphs, subsections, sections, articles, numbers, punctuation, charts, diagrams or any
15 other constituent part of the Planning Code that are explicitly shown in this legislation as
16 additions, deletions, Board amendment additions, and Board amendment deletions in
17 accordance with the "Note" that appears under the official title of the legislation. This
18 Ordinance shall not be construed to effectuate any unintended amendments. Any additions or
19 deletions not explicitly shown as described above, omissions, or other technical and non-
20 substantive differences between this Ordinance and the Planning Code that are contained in
21 this legislation are purely accidental and shall not effectuate an amendment to the Planning
22 Code. The Board hereby authorizes the City Attorney, in consultation with the Clerk and other
23 affected City departments, to make those necessary adjustments to the published Planning
24 Code, including non-substantive changes such as renumbering or relettering, to ensure that
25 the published version of the Planning Code is consistent with the laws that this Board enacts.

1 Specifically, the Board of Supervisors recognizes that three pending ordinances in
2 Files Nos. 100046, 101247, and 101095 amend some of the same sections of the Planning
3 Code. The Board intends that, if adopted, the Board amendment additions, and Board
4 amendment deletions shown in all three Ordinances be given effect so that the substance of
5 each ordinance be given full force and effect. To this end, the Board directs the City
6 Attorney's office and the publisher to harmonize the provisions of each ordinance.

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

10 By:

11 
12 SUSAN CLEVELAND-KNOWLES
13 Deputy City Attorney
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REVISED LEGISLATIVE DIGEST

(Revised on 11/22/2010)

[Planning Code – Affordable Housing Program Exemption For Qualified Student Housing.]

Ordinance amending the Residential Inclusionary Affordable Housing Program, Planning Code Sections 415 et seq. to exempt certain Qualified Student Housing Projects, as defined, if the project meets certain requirements; adding corresponding definitions to Section 401; and making findings including environmental findings.

Existing Law

The Residential Inclusionary Affordable Housing Program, Planning Code Section 415 et seq. currently contains no exemption from its requirements for student housing of any type.

Amendments to Current Law

The proposed legislation would provide an exemption from the requirements of the Residential Inclusionary Affordable Housing Program for "Qualified Student Housing Projects" as defined in the proposed legislation that meet certain requirements. Qualified Student Housing is defined as housing or group housing that is owned or controlled by an accredited post secondary educational institution in which at least thirty percent of the units or beds are occupied by "Qualified Students." Qualified Students are defined as students who receive or are eligible to receive certain types of needs-based financial aid. A Qualified Student Housing Project is a housing project that contains housing for Qualified Students. Such a project may be exempted from the ordinance if it meets certain criteria including: (1) that the project does not result in the loss or conversion of rental housing including rental housing or dwelling units; (2) an Institutional Master Plan (IMP) is on file for the educational institution and contains certain specific information related to housing and housing for Qualified Students; (3) the educational institution agrees to provide certain data annually related to the Qualified Student Housing; and (4) the educational institution records a Notice of Special Restrictions on the Property that meets certain requirements. The Qualified Educational Institution must file a notice of termination with the Planning Department if it intends to terminate the Qualified Student Housing use and the project would then become subject to the requirements of the Inclusionary Affordable Housing Program. The Mayor's Office of Housing is authorized to monitor the Program and shall submit an annual report to the Board on the exemption.

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

August 30, 2010

File No. 101095

Bill Wycko
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Mr. Wycko:

On August 10, 2010, Supervisor Duffy introduced the following proposed legislation:

File No. 101095

Ordinance amending the Residential Inclusionary Affordable Housing Program, Planning Code Sections 415 et seq. to exempt certain Qualified Student Housing Projects, as defined, if the project meets certain requirements; and making findings including environmental findings.

The legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, reading "Alisa Somera".

By: Alisa Somera, Committee Clerk
Land Use & Economic Development Committee

Attachment

c: Nannie Turrell, Major Environmental Analysis
Brett Bollinger, Major Environmental Analysis

*NOT A PROJECT PER CEQA
GUIDELINES SECTION
15060(c)(2)*

*Nannie R. Turrell
August 30, 2010
2010.0839E*



SAN FRANCISCO PLANNING DEPARTMENT

November 19, 2010

Ms. Angela Calvillo, Clerk
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

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415.558.6409

Planning
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415.558.6377

Re: Transmittal of Planning Commission Recommendation: Student Housing
Board File Number 10-1095
Planning Commission Recommendation: Approval with Modifications

Dear Ms. Calvillo,

On November 4th, the San Francisco Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider a proposed Ordinance contained in the aforementioned Board File.

The proposed Ordinance introduced by Supervisor Duffy would amend Sections 401 (Definitions) 415 (Inclusionary Affordable Housing Program) to do the following:

1. Add four definitions in Section 401 that outline and define a "Qualified Educational Institution", "Qualified Student", "Qualified Student Housing Project", and "Qualified Student Housing"; and
2. Amend Section 415.3 (Application) to exempt particular student housing projects from the Inclusionary Housing Program.

The proposed changes have been determined to not be a project under the California Environmental Quality Act Guidelines Section 15378(B)(5).

At the November 4 hearing, the Commission voted to recommend approval along with additional amendments. Specifically, the Planning Commission recommending the following modifications:

1. Create a definition for student housing in the Planning Code.
2. Recapture Inclusionary fees if a "qualified student housing" project later converts to another housing type.
3. Prohibit the conversion of existing residential units including dwelling units, Single Room Occupancy, and Residential Hotel Housing as regulated by Chapter 41 of the Administrative Code, as well as Large Tourist Hotels as regulated by Chapter 41F of the Administrative Code to student housing use;
4. Allow conversions of other uses to the new "student housing use" by Conditional Use authorization;

5. Remove the requirement that each development be occupied by students of a certain income and instead require qualified education institution to require that at least 30% of students meet the definition of "qualified students"; and
6. Encourage the placement of new student housing projects along transit-preferential corridors.

Please find attached documents relating to the Commission's action. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

Kelly Amden
for John Rahaim
Director of Planning

cc: Supervisor Dufty

Attachments

Planning Commission Resolution No. 18218

Planning Commission Executive Summary for Case No. 2010.0839T



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 18218

HEARING DATE: NOVEMBER 4, 2010

Project Name: Amendments relating to Planning Code Section 415:
Exempting Student Housing from the Inclusionary Housing
Program

Case Number: 2010.0839T [Board File No. 10-10195]

Initiated by: Supervisor Dufty, Introduced August 10, 2010

Staff Contact: Tara Sullivan, Legislative Affairs
tara.sullivan@sfgov.org, 415-558-6257

Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395

90-day Deadline: November 23, 2010

Recommendation: Recommend Approval With Modifications

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RECOMMENDING THAT THE BOARD OF SUPERVISORS APPROVE WITH MODIFICATIONS THE PROPOSED ORDINANCE THAT WOULD AMEND SAN FRANCISCO PLANNING CODE SECTIONS 401 AND 415.3 TO EXEMPT CERTAIN QUALIFIED STUDENT HOUSING PROJECTS FROM THE INCLUSIONARY AFFORDABLE HOUSING PROGRAM; AND MAKING FINDINGS IN CLUSIND ENVIRONMENTAL FINDINGS.

PREAMBLE

Whereas, on August 10, 2010, Supervisor Dufty introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 10-1095 to do the following:

1. Add four definitions in Section 401 that outline and define a "Qualified Educational Institution", "Qualified Student", "Qualified Student Housing Project", and "Qualified Student Housing"; and
2. Amend Section 415.3 (Application) to exempt particular student housing projects from the Inclusionary Housing Program.

Whereas, on November 4, 2010 the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance;

Whereas, the proposed zoning changes have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2); and

Whereas, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties; and

Whereas, the all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

Whereas, the Commission has reviewed the proposed Ordinance; and

MOVED, that the Commission hereby recommends approval of the proposed Ordinance with modifications and adopts the attached Draft Resolution to that effect. Specifically, the Department recommends the following modifications:

1. Create a definition for student housing in the Planning Code.
2. Recapture Inclusionary fees if a "qualified student housing" project later converts to another housing type.
3. Prohibit the conversion of existing residential units including dwelling units, Single Room Occupancy, and Residential Hotel Housing as regulated by Chapter 41 of the Administrative Code, as well as Large Tourist Hotels as regulated by Chapter 41F of the Administrative Code to student housing use;
4. Allow conversions of other uses to the new "student housing use" by Conditional Use authorization; and
5. Remove the requirement that each development be occupied by students of a certain income and instead require qualified education institution to require that at least 30% of students meet the definition of "qualified students"; and
6. Encourage the placement of new student housing projects along transit-preferential corridors.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. San Francisco's Inclusionary Affordable Housing Policy was first adopted by the Planning Commission in 1992, and in 2002 the City formally adopted this policy as a part of the Planning Code (Section 415, formerly Section 315).
2. All projects that involve five or more new dwelling units must participate in the *Inclusionary Affordable Housing Program* contained in Section 415 of the Planning Code. Section 415 is currently being amended to comply with the *Palmer/Sixth Street Properties vs. City of Los Angeles* case, which held that the California Costa-Hawkins Rental Housing

Act¹ preempts a Los Angeles requirement mandating, as a condition of development, that a portion of newly constructed dwelling units be rented at low-income rents

3. Once the Inclusionary Housing Program is amended, all projects must pay an Affordable Housing Fee unless they qualify and choose an alternative – providing the units on-site or off-site.
4. It is a long-stated goal of the City that persons of all affordability be able to live in San Francisco. To that end, the Inclusionary Housing Program requires developers to provide funding and/or units that will be dedicated to affordable housing.
5. Educational Institutions are a unique land use in that they have a transient population that must be housed nearby the educational facilities.
6. The Residential Nexus Analysis for the City and County of San Francisco (Keyser Marston Associates April 2007) examined the impact of the consumption of condominium buyers and how the goods and services these households purchase could create a need for housing for lower income households, to arrive at the demand for affordable housing generated by the residents of new units. The income of those condominium buyers was estimated based upon the income required to purchase or rent a unit in a prototypical new low-rise wood frame building. The analysis did not specifically examine the consumption of students. While it would be difficult to estimate the consumption of students, given the variety in their economic situations and incomes, one could reasonably assume that they would, on average, have a lower impact on demand for affordable housing.
7. Student housing would create a demand for affordable housing, although likely lower than the demand created by typical market rate housing because students typically have less disposable income. However, the lack of student housing creates pressure on existing housing stock, resulting in a negative impact on existing affordable housing. Therefore, there are public motives to make a policy decision to address that housing pressure, given that this pressure is likely a larger impact than the direct demand they generate.
8. The Commission understands the unique situation that large Educational Institutions have in San Francisco and supports the concept of allowing an exemption from the Inclusionary Housing Program to create an incentive for the production of new student housing.
9. By creating an incentive to encourage the production of student housing while protecting the City's existing housing stock and other vulnerable uses, the City may be able to both 1) relieve the pressure student demand for housing on the existing housing stock and 2) and encourage the creation of new housing for students within the City.

¹ California Civil Code Section 1954.50-1954.535.

10. However, the Commission believes that the certain potential loopholes in the legislation should be closed.
11. Therefore, the Commission supports the proposed legislation with the modifications listed above and recommends approval with modifications of the proposed Ordinance.
12. **General Plan Compliance.** The proposed Ordinance is, on balance, consistent with the following Objectives and Policies of the General Plan:

I. HOUSING ELEMENT INTRODUCTION

THE OBJECTIVES AND POLICIES DETAILED BELOW ADDRESS THE STATE'S, THE REGION'S AND THE CITY'S GOALS OF ACHIEVING DECENT, SUITABLE, AND AFFORDABLE HOUSING FOR CURRENT AND FUTURE SAN FRANCISCANS. INCREASING THE CITY'S HOUSING STOCK, PROTECTING AND CONSERVING EXISTING UNITS, AND ENCOURAGING HOUSING CHOICE ARE OBJECTIVES PREDICATED ON AFFORDABILITY..

OBJECTIVE 5

INCREASE THE EFFECTIVENESS AND EFFICIENCY OF THE CITY'S AFFORDABLE HOUSING PRODUCTION SYSTEM.

POLICY 5.1

Prioritize affordable housing projects in the planning review and approval processes, and work with the development community to devise methods of streamlining housing projects.

POLICY 5.2

Support efforts of for-profit and non-profit organizations and other community-based groups and expand their capacity to produce and manage permanently affordable housing.

POLICY 5.3

Create greater public awareness about the quality and character of affordable housing projects and generate community-wide support for new affordable housing.

POLICY 5.4

Coordinate governmental activities related to affordable housing.


The proposed Ordinances amends the Inclusionary Housing Program to allow for certain large-scale educational institutions to be exempt from the Program. As these institutions provide housing for a large number of students who receive government subsidies, the Commission finds that the balance between providing educational intuitions vs. the payment of the Affordable Housing Fee is met and that there will be little impact to the Inclusionary Housing Program by exempting these institutions.

1. The proposed replacement project is generally consistent with the eight General Plan priority policies set forth in Section 101.1 in that:
 - A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:
The proposed Ordinance will not impact existing neighborhood-serving retail uses or opportunities for employment in or ownership of such businesses.
 - B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:
The proposed Ordinance will have no impact to neighborhood character.
 - C) The City's supply of affordable housing will be preserved and enhanced:
The proposed Ordinance would create an incentive to encourage the production of student housing while protecting the City's existing housing stock and other vulnerable uses, the City may be able to both 1) relieve the pressure student demand for housing on the existing housing stock and 2) and encourage the creation of new housing for students within the City.
 - D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:
The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.
 - E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:
The proposed Ordinance would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.
 - F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.
Preparedness against injury and loss of life in an earthquake is unaffected by the proposed Ordinance.
 - G) That landmark and historic buildings will be preserved:
Landmarks and historic buildings would be unaffected by the proposed amendments.
 - H) Parks and open space and their access to sunlight and vistas will be protected from development:
The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed amendments.

Hearing Date: November 4, 2010
Resolution No. 18218

CASE NO. 2010.0839T
Section 415: Exemption of Student Housing

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on November 4, 2010.


for Linda Avery
Commission Secretary

AYES: Miguel, Olague, Moore, Sugaya
NAYS: Antonini
ABSENT: Borden
ADOPTED: November 4, 2010



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change HEARING DATE: NOVEMBER 4, 2010

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Project Name: Amendments relating to Planning Code Section 415:
Exempting Student Housing from the Inclusionary Housing
Program
Case Number: 2010.0839T [Board File No. 10-10195]
Initiated by: Supervisor Dufty, Introduced August 10, 2010
Staff Contact: Tara Sullivan, Legislative Affairs
tara.sullivan@sfgov.org, 415-558-6257
Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395
90-day Deadline: November 23, 2010
Recommendation: Recommend Approval With Modifications

PLANNING CODE AMENDMENT

The proposed Ordinance introduced by Supervisor Dufty would amend Sections 401 (Definitions) 415 (Inclusionary Affordable Housing Program) to do the following:

1. Add four definitions in Section 401 that outline and define a "Qualified Educational Institution", "Qualified Student", "Qualified Student Housing Project", and "Qualified Student Housing"; and
2. Amend Section 415.3 (Application) to exempt particular student housing projects from the Inclusionary Housing Program.

The Way It Is Now:

All projects that involve five or more new dwelling units must participate in the *Inclusionary Affordable Housing Program* contained in Section 415 of the Planning Code. Section 415 is currently being amended to comply with the *Palmer/Sixth Street Properties vs. City of Los Angeles* case, which held that the California Costa-Hawkins Rental Housing Act¹ preempts a Los Angeles requirement mandating, as a condition of development, that a portion of newly constructed dwelling units be rented at low-income rents.

Once the Inclusionary Housing Program is amended, all projects must pay an Affordable Housing Fee unless they qualify and choose an alternative – providing the units on-site or off-site.

¹ California Civil Code Section 1954.50-1954.535.

The Inclusionary Housing Program does not contain any definitions of student housing or educational institutions. All projects that involve five or more units, regardless of type, must participate in the Program.

The Way It Would Be:

The proposed Ordinance would add four definitions to Section 401 related to student housing:

1. Qualified Educational Institution: shall mean an accredited post secondary Educational Institution which has Qualified Students.
2. Qualified Student: shall mean a student who receives or is eligible to receive need-based financial aid from Pell Grants, Perkins Loans, Stafford Subsidized Loans or other grants or loans made or guaranteed by the United States Government or a state or local government, or by an entity sponsored and regulated by such unit of government and is currently enrolled at a Qualified Educational Institute.
3. Qualified Student Housing Project: shall mean any housing project that contains housing for Qualified Students and which may also contain housing for persons who are enrolled students but not Qualified Students, created either through new construction or conversion of an existing building or space.
4. Qualified Student Housing: shall mean housing or group housing (measured either by units or beds) or accessory living space within a non-residential space, either owned by a Qualified Educational Institution or controlled by a Qualified Educational Institution through a long-term master lease for a period of at least 20 years in which at least thirty percent (30%) of such units or beds are occupied by Qualified Students. The Qualified Student Housing may be on the site of the Institution or at another location in the City and County of San Francisco.

In addition, Section 415.3 will be amended to exempt a Qualified Student Housing Project that meets the following criteria:

1. The building or conversion of a space does not result in the loss of existing rental housing;
2. An IMP is on file with the Planning Department which shall describe
 - a. Type and location of housing used by students;
 - b. Plans for the provision of qualified student housing;
 - c. The Institutions' need for student housing to support its program; and
 - d. Percentage of its students that receive some form on need-based assistance.
3. The Institution will submit an annual report to the Mayors Office of Housing and the Planning Department that contains:
 - a. Evidence of all ownership of or leasehold of properties that are used as student housing;
 - b. Number of qualified students who are occupying the units;

- c. Records of the Notice of Special Restrictions on each property exempting the Institution from the Inclusionary Housing Program.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATION

The Department recommends that the Commission recommend *approval with the modifications* of the proposed Ordinance and adopt the attached Draft Resolution to that effect. Specifically, the Department recommends the following modifications:

1. Create a definition for student housing in the Planning Code.
2. Recapture Inclusionary fees if a "qualified student housing" project later converts to another housing type.
3. Prohibit the conversion of existing residential units including dwelling units, Single Room Occupancy, and Residential Hotel Housing as regulated by Chapter 41 of the Administrative Code, as well as Large Tourist Hotels as regulated by Chapter 41F of the Administrative Code to student housing use;
4. Allow conversions of other uses to the new "student housing use" by Conditional Use authorization;
5. Remove the requirement that each development be occupied by students of a certain income and instead require qualified education institution to require that at least 30% of students meet the definition of "qualified students".

BASIS FOR RECOMMENDATION

It is a long-stated goal of the City that persons of all affordability be able to live in San Francisco. To that end, the Inclusionary Housing Program requires developers to provide funding and/or units that will be dedicated to affordable housing.

Educational Institutions are a unique land use in that they have a transient population who may have a low income² that must be housed nearby the educational facilities. In a dense, built-up city such as San Francisco, it is difficult for large educational institutions to provide housing for their students.

As the Commission is aware there have been recent concerns about some facilities for higher education inappropriately converting existing uses (including existing housing) to student housing without the benefit of permit. By creating an incentive to encourage the production of student housing while protecting the City's existing housing stock and other vulnerable uses, the

² A majority of students receive some sort of financial aid – either directly from the institution itself, the Federal Government, or private loans that are guaranteed by the government.

City may be able to both 1) relieve the pressure student demand for housing on the existing housing stock and 2) and encourage the creation of new housing for students within the City.

Specifically, each of the proposed modifications is recommended for the following reasons:

1. **Create a definition for student housing in the Planning Code³.** This proposed change will enable the Department to monitor changes of use to the new student housing definition through "change of use" permits. In doing so, the City can track better track student housing projects that did not pay Inclusionary housing fees and could ensure that only the "student housing" use portion of the project would be exempted from Inclusionary fees. This new definition should be subject to the density limitations, parking controls, and all other requirements for group housings or dwellings, as appropriate, for the zoning district in which it is located. This new student housing use shall meet the applicable provisions of Section 304.5 of this Code concerning institutional master plans.
2. **Recapture Inclusionary fees if a "qualified student housing" project later converts to another housing type.** This modification will also allow us to collect fees if the project should transition from student housing to another housing use in the future. Without this mechanism in place, there would be the potential for a project to apply for the exemption from Inclusionary fees as a "qualified student housing" project and then to convert to market-rate housing after entitlement without paying Inclusionary housing fees.
3. **Prohibit the conversion of existing residential units including dwelling units, Single Room Occupancy, and Residential Hotel Housing as regulated by Chapter 41 of the Administrative Code, as well as Large Tourist Hotels as regulated by Chapter 41F of the Administrative Code to student housing use.** This proposed modification will ensure the protection of our existing housing stock and other vulnerable uses and, therefore, encourage production of new student housing.
4. **Allow the conversion of other uses to the new student housing use by Conditional Use authorization.** This proposed modification will enable the Commission to use discretion in approving the conversion of existing uses to student housing. Again, the City's goal is the production of new student housing. There may be times when it is appropriate to convert existing uses to student housing but the preference would be the creation of new student housing.
5. **Remove the requirement that each development be occupied by students of a certain income and instead require qualified education institution to require that at least 30% of students meet the definition of "qualified students".** The Department is concerned about implications of needing to verify the income levels for a parcel every year. This may involve students submitting income information. Instead, if the Commission agrees with the goal to facilitate the production of student housing, the Department recommends simply verifying

³ This new definition could be created within both "other housing" 209.2. for dormitories and in Section 209.1 under "dwelling units" for student apartments or it could be created as a stand-alone definition. The Department would like to discuss the implications of where this new definition is located with both the City Attorney and Supervisor Dufty prior to drafting the specific language.

that the student population of the qualified educational institution includes at least 30% "qualified students".

In summary, the Department supports the proposed legislation with the few modifications listed above.

ENVIRONMENTAL REVIEW

The proposal to amend the San Francisco Planning Code Section 415 would result in no physical impact on the environment. The proposed amendment is exempt from environmental review under Section 15060(c)(2) of the CEQA Guidelines.

PUBLIC COMMENT

As of the date of this report, the Planning Department has received no letters in support or opposition of the proposal from the public.

RECOMMENDATION:	Recommendation of Approval with Modifications
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Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Draft Board of Supervisors Ordinance (BOS File No. 10-1095)

