

BOARD of SUPERVISORS



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MEMORANDUM

TO: Patrick O'Riordan, Director, Department of Building Inspection
Daniel Adams, Director, Mayor's Office of Housing and Community
Development
Jeffrey Tumlin, Executive Director, San Francisco Municipal
Transportation Agency

FROM: John Carroll, Assistant Clerk, Land Use and Transportation Committee

DATE: November 13, 2024

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Mayor Breed on November 5, 2024.

File No. 241087

Ordinance amending the Planning Code to waive certain development impact fees in the Market and Octavia Area Plan (the Market and Octavia Area Plan and Upper Market Neighborhood Commercial District Affordable Housing Fee, the Van Ness & Market Affordable Housing and Neighborhood Infrastructure Fee, and the Van Ness & Market Community Facilities Fee), and to create a process for previously approved projects to request modification to conditions of approval related to these fees, subject to delegation by the Planning Commission; affirming the Planning Department's determination under the California Environmental Quality Act; and making public necessity, convenience, and welfare findings under Planning Code, Section 302, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: john.carroll@sfgov.org.

cc:

Offices of Chair Melgar and Mayor Breed
Patty Lee, Department of Building Inspection
Tate Hanna, Department of Building Inspection
Sonya Harris, Department of Building Inspection
Lydia Ely, Mayor's Office of Housing and Community Development
Brian Cheu, Mayor's Office of Housing and Community Development
Maria Benjamin, Mayor's Office of Housing and Community Development
Sheila Nickolopoulos, Mayor's Office of Housing and Community Development
Kyra Geithman, Mayor's Office of Housing and Community Development
Janet Martinsen, San Francisco Municipal Transportation Agency
Joel Ramos, San Francisco Municipal Transportation Agency
Viktoriya Wise, San Francisco Municipal Transportation Agency
Christine Silva, San Francisco Municipal Transportation Agency

1 [Planning Code - Waiving Certain Development Impact Fees in the Market and Octavia Area
2 Plan]

3 **Ordinance amending the Planning Code to waive certain development impact fees in**
4 **the Market and Octavia Area Plan (the Market and Octavia Area Plan and Upper Market**
5 **Neighborhood Commercial District Affordable Housing Fee, the Van Ness & Market**
6 **Affordable Housing and Neighborhood Infrastructure Fee, and the Van Ness & Market**
7 **Community Facilities Fee), and to create a process for previously approved projects to**
8 **request modification to conditions of approval related to these fees, subject to**
9 **delegation by the Planning Commission; affirming the Planning Department's**
10 **determination under the California Environmental Quality Act; and making public**
11 **necessity, convenience, and welfare findings under Planning Code, Section 302, and**
12 **findings of consistency with the General Plan, and the eight priority policies of**
13 **Planning Code, Section 101.1.**

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. ____ and is incorporated herein by reference. The Board affirms this
2 determination.

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

13

14 Section 2. General Legislative Findings.

15 (a) California faces a severe crisis of housing affordability and availability, prompting
16 the Legislature to declare, in Section 65589.5 of the Government Code, that the State has “a
17 housing supply and affordability crisis of historic proportions. The consequences of failing to
18 effectively and aggressively confront this crisis are hurting millions of Californians, robbing
19 future generations of a chance to call California home, stifling economic opportunities for
20 workers and businesses, worsening poverty and homelessness, and undermining the state’s
21 environmental and climate objectives.”

22 (b) This crisis is particularly severe in San Francisco. It is characterized by dramatic
23 increases in rent and home sale prices over recent years. According to the Planning
24 Department’s 2020 Housing Inventory, the cost of housing in San Francisco has increased
25 dramatically since the Great Recession of 2008- 2009, with the median sale price for a two-

1 bedroom house more than tripling from \$493,000 in 2011 to \$1,580,000 in 2021. This includes
2 a 9% increase in housing costs from 2019 to 2020, even in the face of the COVID-19
3 pandemic. The median rental price for a two-bedroom apartment saw similar although slightly
4 smaller increases, nearly doubling from \$2,570 per month in 2011 to \$4,500 per month in
5 2019, before declining in 2020 due to the pandemic.

6 (c) On January 31, 2023, the City adopted the 2022 Update of the Housing Element of
7 the General Plan (“2022 Housing Element”), as required by State law. This Update commits
8 the City to meeting its Regional Housing Needs Allocation (“RHNA”) goals that in the 2023-
9 2031 Housing Element cycle total 82,069 units over eight years, which is more than 2.5 times
10 the goal of the previous cycle. Among other policies, the 2022 Housing Element also commits
11 the City to remove governmental constraints on housing.

12 (d) In 2008, the City adopted the Market and Octavia Area Plan (“Plan”), which, among
13 other things, established new height and zoning controls within the Plan area. The Plan
14 substantially upzoned the area around Van Ness Avenue and Market Street to create a high-
15 density, transit-oriented residential neighborhood and established the Van Ness and Market
16 Special Use District, which imposed certain additional development impact fees on projects in
17 this area to fund affordable housing and infrastructure improvements for parks, streets, and
18 transit. These new fee requirements supplement the City’s Inclusionary Affordable Housing
19 Program and Transportation Sustainability Fee, which continue to apply citywide, including in
20 the Market and Octavia Plan area.

21 (e) The economic impacts of the COVID-19 pandemic have presented significant
22 challenges to the financial feasibility of new residential development projects, including supply
23 chain disruptions, labor market constraints, historically high inflation, dramatically increased
24 federal interest rates, and a weaker housing market. These factors have contributed to a
25

1 significant decrease in housing production. In 2023, 2,066 new units were constructed
2 citywide, a substantial decrease from 5,025 units in 2020.

3 (f) In the Market and Octavia Area Plan, only two projects, both of which were not
4 subject to a Development Agreement that provided modified requirements to support financial
5 feasibility, have commenced construction since the onset of the COVID-19 pandemic in 2020:
6 one 29-unit project that secured financing before the economic impacts of the pandemic
7 became manifest, and one 333-unit project that began construction in 2023 but has since
8 paused construction due to post-pandemic market conditions and increased development
9 costs. As of November 1, 2024, an additional 33 projects with a total of 2,487 units have been
10 approved in the Area Plan, but have not commenced with construction.

11
12 Section 3. Article 4 of the Planning Code is hereby amended by revising Sections 406,
13 416.3, 424.3, and 425.2, to read as follows:

14
15 **SEC. 406. WAIVER, REDUCTION, OR ADJUSTMENT OF DEVELOPMENT**
16 **PROJECT REQUIREMENTS.**

17 * * * *

18 (k) Waiver of Fees for Projects in the Market and Octavia Area Plan. Projects located within
19 the Market and Octavia Area Plan that were Finally Approved prior to January 1, 2025, and have not
20 been issued a First Construction Document shall be entitled to a waiver of all development impact fee
21 requirements under Sections 416, 424, and 425, and to request a modification under this subsection
22 406(k) to the project's conditions of approval, conditions on a project permit, notice of special
23 restrictions, or other requirements necessary to waive the development impact fees required by
24 Sections 416, 424, and 425. The projects shall comply with all other conditions of approval, conditions

1 on a project permit, or notice of special restrictions, and any applicable requirements of the Planning
2 Code.

3 (1) For the purposes of this subsection 406(k), a project shall be considered Finally
4 Approved if prior to January 1, 2025, it received: (i) approval of its first Development Application; or
5 (ii) planning approval of its first site or building permit, if only a building permit is required; or (iii) if
6 either of the Development Application or building permit were appealed, the final decision upholding
7 the Development Application, or first site or building permit, on the appeal by the relevant City board
8 or commission.

9 (2) The Planning Commission shall review and approve any necessary revisions to the
10 conditions of approval to waive these development impact fees required by Sections 416, 424, and 425,
11 unless the Planning Commission has delegated its authority to the Planning Director to review and
12 approve waiver requests for modifications consistent with this subsection (k).

13
14 **SEC. 416. MARKET AND OCTAVIA AREA PLAN AND UPPER MARKET**
15 **NEIGHBORHOOD COMMERCIAL DISTRICT AFFORDABLE HOUSING FEE.**

16 * * * *

17 **SEC. 416.3. APPLICATION OF AFFORDABLE HOUSING FEE REQUIREMENT.**

18 The requirements of Sections 415.1 through 415.9 shall apply in the Market and
19 Octavia Plan Area and the entirety of the Upper Market NCT District in addition to the
20 following *additional* affordable housing requirement:

21 **(a) Amount of Fee.**

22 Development projects shall pay this fee as follows:

23 (1) All development projects that have ~~not~~ received Department or Commission
24 approval ~~as of the effective date of May 30, 2008~~ prior to January 1, 2025, and that are subject to
25 the Residential Inclusionary Affordable Housing Program, *that have been issued a First*

1 Construction Document shall pay an additional affordable housing fee per the fee schedule in
2 Table 416.3A-;

3 (2) Development projects that have been Finally Approved, as that term is defined in
4 Section 406(k), prior to January 1, 2025, and have not been issued a First Construction Document
5 shall be entitled to a waiver of all development impact fee requirements of this Section 416 pursuant to
6 the procedures established in Section 406(k); and

7 (3) Development projects that have not received Department or Commission approval as
8 of January 1, 2025 shall not be subject to this fee.

9 * * * *

10
11 **SEC. 424. VAN NESS & MARKET AFFORDABLE HOUSING AND**
12 **NEIGHBORHOOD INFRASTRUCTURE FEE AND PROGRAM.**

13 * * * *

14 **SEC. 424.3. APPLICATION OF VAN NESS & MARKET AFFORDABLE HOUSING**
15 **AND NEIGHBORHOOD INFRASTRUCTURE FEE AND PROGRAM.**

16 **(a) Application and Timing of Fee Payments.** Section 424.1 et seq. shall apply to
17 any development project located in the Van Ness & Market Residential Special Use District,
18 as established in Section 249.33 of this Code, as set forth herein. The Fee shall be paid to DBI
19 for deposit into either the Van Ness and Market Downtown Residential Special Use District
20 Affordable Housing Fund or the Van Ness and Market Downtown Residential Special Use
21 District Infrastructure Fund, as applicable, at the time required by Section 402(d).

22 This fee shall apply as follows:

23 (1) Development projects that have been Finally Approved, as that term is defined in
24 Section 406(k), prior to January 1, 2025, and have been issued a First Construction Document shall be
25 subject to the requirements of this Section 424.3.

1 (2) Development projects that have been Finally Approved, as that term is defined in
2 Section 406(k), prior to January 1, 2025, and have not been issued a First Construction Document
3 shall be entitled to a waiver of all the requirements of this Section 424 pursuant to the procedures
4 established in Section 406(k).

5 (3) Development projects that have not received Department or Commission approval
6 on January 1, 2025 shall not be subject to the requirements of this Section 424.

7 * * * *

8
9 **SEC. 425. VAN NESS & MARKET COMMUNITY FACILITIES FEE AND FUND.**

10 * * * *

11 **SEC. 425.2. APPLICATION OF FEES.**

12 (a) **Applicable Projects.** The Van Ness & Market Community Facilities Fee is
13 applicable to any development project within the Van Ness & Market Residential Special Use
14 District, described in Section 249.33, that meets one or more of the following criteria:

15 (1) Includes new construction, or an addition of space, in excess of 800 gross
16 square feet of residential use; or

17 (2) Converts 800 gross square feet or more of existing structure(s) from non-
18 residential to residential use; or

19 (3) Was Finally Approved, as that term is defined in Section 406(k), prior to January 1,
20 2025, and has been issued a First Construction Document.

21 (b) Development projects that have been Finally Approved, as that term is defined in Section
22 406(k), prior to January 1, 2025, and have not been issued a First Construction Document shall be
23 entitled to a waiver of all development impact fee requirements of this Section 425 pursuant to the
24 procedures established in Section 406(k).

1 (c) Development projects that have not received Department or Commission approval by
2 January 1, 2025 shall not be subject to this fee.

3 **(bd) Fee Calculation.** For applicable projects, the fee is \$1.16 per net additional gross
4 square foot of residential use or gross square foot of space converted from non-residential to
5 residential use.

6 **(ee) Option for In-Kind Provision of Community Improvements and Fee Credits.**
7 Project sponsors may propose to provide community improvements directly to the City. In
8 such a case, the City may enter into an In-Kind Improvements Agreement with the sponsor
9 and issue a partial or total fee waiver for the Van Ness & Market Community Facilities Fund
10 from the Planning Commission, subject to the following rules and requirements:

11 * * * *

12 **(df) Timing of Fee Payments.** The fee shall be due and payable to the
13 Development Fee Collection Unit at DBI at the time of issuance of the first construction
14 document for the development project. However, the project sponsor shall have the option to
15 defer payment to prior to issuance of the first certificate of occupancy upon agreeing to pay a
16 deferral surcharge as set forth in Section 107A.13.3 of the ~~San Francisco~~ Building Code.

17 **(eg) Waiver or Reduction of Fees.** Development projects may be eligible for a
18 waiver or reduction of impact fees, pursuant to Section 406.

19
20 Section 4. Articles 2 and 3 of the Planning Code are hereby amended by revising
21 Sections 249.33 and 303.1, to read as follows:

22
23 **SEC. 249.33. VAN NESS & MARKET RESIDENTIAL SPECIAL USE DISTRICT.**

24 * * * *

25 **(b) Use Controls.**

1 * * * *

2 ~~(3) Residential Affordable Housing Program. All projects in this District shall be~~
3 ~~subject to all the terms of Section 415 et seq. of the Inclusionary Affordable Housing Program.~~
4 ~~Notwithstanding the foregoing, projects within the Van Ness & Market Residential Special Use District~~
5 ~~shall at a minimum fulfill the requirements to the levels specified in this section. Should Section 415~~
6 ~~require greater contributions to the affordable housing program, those requirements shall supersede~~
7 ~~this section. Proposed exceptions to these requirements due to hardships associated with construction~~
8 ~~type, specifically heights above 120 feet, are not applicable in this Special Use District because parcels~~
9 ~~are receiving an up zoning through increased density and benefits through the general transformation~~
10 ~~of the district to a transit oriented neighborhood with a mixed use character. Requirements and~~
11 ~~administration of this program shall follow the conditions outlined in Section 415 et seq. of this Code~~
12 ~~unless otherwise specified in this Section.~~

13 ~~(A) Payment of Affordable Housing Fee. Except as provided in Section~~
14 ~~415.5(g) of this Code, all development projects subject to Section 415 et seq. in the Van Ness Market~~
15 ~~Special Use District shall be required to pay an Affordable Housing Fee under Section 415.5~~
16 ~~equivalent to 20 percent of the number of units in the principal project.~~

17 ~~(B) Alternatives to Payment of Affordable Housing Fee. If a project sponsor~~
18 ~~both qualifies for and chooses to meet the requirements through an Alternative to the Program, the~~
19 ~~project sponsor may choose one of the Alternatives in Section 415.5(g).~~

20 ~~(i) On Site Housing Requirements and Benefits. For projects that~~
21 ~~qualify for and choose to fulfill the requirements of Section 415 through the provision of onsite housing,~~
22 ~~the Planning Department shall require that 12 percent of all units constructed on the project site shall~~
23 ~~be affordable to qualifying households so that a project applicant must construct .12 times the total~~
24 ~~number of units produced in the principal project. If the total number of units is not a whole number,~~
25 ~~the project applicant shall round up to the nearest whole number for any portion of .5 or above.~~

1 *(ii) Compliance Through Off-Site Housing Development. For projects*
2 *that qualify for and choose to fulfill the requirements of Section 415 through the provision of off-site*
3 *housing, the Planning Department shall require that 20 percent of all units constructed on the project*
4 *site shall be affordable to qualifying households so that a project applicant must construct .20 times the*
5 *total number of units produced in the principal project. If the total number of units is not a whole*
6 *number, the project applicant shall round up to the nearest whole number for any portion of .5 or*
7 *above.*

8 (43) **Open Space Provider.** The off-site open space permitted by this Section
9 249.33 may be provided individually by the project sponsor or jointly by the project sponsor
10 and other project sponsors, provided that each square foot of jointly developed open space
11 may count toward only one sponsor's requirement. With the approval of the Planning
12 Commission, a public or private agency may develop and maintain the open space, provided
13 that (A) the project sponsor or sponsors pay for the cost of development of the number of
14 square feet the project sponsor is required to provide, (B) provision satisfactory to the
15 Commission is made for the continued maintenance of the open space for the actual lifetime
16 of the building giving rise to the open space requirement, and (C) the Commission finds that
17 there is reasonable assurance that the open space to be developed by such agency will be
18 developed and open for use by the time the building, the open space requirement of which is
19 being met by the payment, is ready for occupancy.

20 * * * *

21 (54) **Lot Coverage.** The rear yard requirements of Section 134 of this Code
22 shall not apply. Lot coverage is limited to 80% percent at all levels containing a dwelling unit or
23 group housing bedroom. The unbuilt portion of the lot shall be open to the sky except for *those*
24 obstructions permitted in yards per Section 136(c) of this Code. Exceptions to the 20% percent
25 open area may be granted pursuant to the procedures of Section 309.

1 (65) **Floor Area Ratio.**

2 (A) *For non-residential uses, ~~the~~ the maximum Floor Area Ratio (“FAR”) allowed, except as allowed in this Section 249.33, shall be that described in Section 123(c),*
3
4 *provided that it shall not be greater than 9:1. For residential uses, there shall be no limits on FAR.*
5 *The definition of Gross Floor Area shall be that in Section 102 as of the date of approval of*
6 *this Section 249.33, ~~and shall include all Residential uses.~~ The provisions of Section 124(g) of*
7 *this Code shall not apply in this special use district.*

8 ~~(B) **Floor Area Bonus Permitted for Public Improvements or In-lieu**~~
9 ~~**Contributions to the Van Ness and Market Neighborhood Infrastructure Fund and In-lieu**~~
10 ~~**Contributions to the Citywide Affordable Housing Fund.**~~

11 ~~(i) *The Gross Floor Area of a structure or structures on a lot may*~~
12 ~~*exceed the maximum ratio described in Section 123(e) of this Code through participation in the Van*~~
13 ~~*Ness and Market Affordable Housing and Neighborhood Infrastructure Program, according to the*~~
14 ~~*procedures described in Section 424.*~~

15 ~~(ii) *Notwithstanding the provisions of Sections 127 and 128 of this Code*~~
16 ~~*projects in this Special Use District are not eligible to acquire Transferable Development Rights from a*~~
17 ~~*Transfer Lot or Lots pursuant to the provisions of Sections 127 and 128 for that increment of FAR*~~
18 ~~*above the base FAR limit in Section 124 up to the maximum FAR described in Section 123(e). Instead,*~~
19 ~~*a project may pay to the City's Citywide Affordable Housing Fund thirty dollars (\$30) per additional*~~
20 ~~*gross square foot for that increment of FAR above the base FAR limit in Section 124 up to the*~~
21 ~~*maximum FAR described in Section 123(e). Any monies deposited into the Citywide Affordable*~~
22 ~~*Housing Fund shall be administered as provided for in Section 415 et seq.*~~

23 (76) **Retail Use Size.** Retail Uses shall be principally permitted up to 5,999
24 gross square feet and conditionally permitted if 6,000 gross square feet and above.
25

1 ~~(8)~~ **Formula Retail.** *Formula Retail Uses, as defined in Section 102, shall require a*
2 *Conditional Use Authorization as set forth in Section 303.1.*

3 (97) **Micro-Retail.** “Micro-Retail” shall mean a Retail Use, other than a Formula
4 Retail Use, measuring no less than 100 gross square feet, no greater than 1,000 gross square
5 feet and a 10 foot minimum depth from the front façade.

6 * * * *

7 ~~(108)~~ **Accessory Parking.** For projects that provide 25% or more on-site
8 affordable housing units as defined in Section 415, accessory non-residential parking may be
9 used jointly as accessory residential parking for residential uses within the same project, so
10 long as the following criteria ~~is~~ are met:

11 * * * *

12 ~~(119)~~ **Cannabis-Related Land Uses.** All cannabis-related uses, which includes
13 Cannabis Retail (Retail Sales and Service Category), Medical Cannabis Dispensary, Industrial
14 Agriculture, Agriculture and Beverage Processing 2, Light Manufacturing, Laboratory,
15 Wholesale, or Parcel Delivery Service, as defined in Section 102 shall follow the land use
16 controls of the NCT-3 Moderate-Scale Neighborhood Commercial Transit District, Section 752
17 of this Code.

18 ~~(1210)~~ **Living Roofs and Living Walls.**

19 * * * *

20 ~~(1311)~~ **Option for In-Kind Provision of Transportation Sustainability Fee.**

21 Notwithstanding the requirements of Planning Code ~~s~~Section 411A et seq., ~~D~~development
22 projects in this District may propose to provide transportation improvements to the City
23 directly. In such a case, the City, at its sole discretion, may enter into an In-Kind
24 Improvements Agreement with the sponsor of such project and issue a fee waiver for the
25 Transportation Sustainability Fee (“TSF”) from the Municipal Transportation Agency Board of

1 Directors (the “MTA” and the “MTA Board,” respectively), subject to the following rules and
2 requirements:

3 * * * *

4 ~~(14) Option for Provision of Affordable Housing Fees. Development projects in this~~
5 ~~District may pay the affordable housing fees required under sections 416 and 424 by choosing any of~~
6 ~~the alternatives set forth in Section 415.5(g), upon approval by the Planning Director and the Director~~
7 ~~of the Mayor’s Office of Housing and Community Development of the methodology to calculate the~~
8 ~~equivalency of the fees required under sections 416 and 424 to the alternatives set forth in Section~~
9 ~~415.5(g). The Planning Department, in consultation with the Mayor’s Office of Housing and~~
10 ~~Community Development, is authorized to prepare rules or regulations to establish this methodology,~~
11 ~~and to bring those rules or regulations to the Planning Commission for inclusion in the Procedures~~
12 ~~Manual, as set forth in Section 415. Nothing in this subsection shall be interpreted to change any~~
13 ~~obligations established by contract with the City.~~

14 ~~(15) Option for Income Levels of Affordable Units. Notwithstanding the provisions of~~
15 ~~Section 415.6(h), a project may use California Debt Limit Allocation Committee (CDLAC) tax-exempt~~
16 ~~bond financing and 4% tax credits under the Tax Credit Allocation Committee (TCAC) to help fund its~~
17 ~~obligations under Section 415.1 et seq. as long as the project provides 20% of the units as affordable to~~
18 ~~households at 50% of Area Median Income for on-site housing, or 10% of the units as affordable to~~
19 ~~households at 50% of Area Median Income and 30% of the units as affordable to households at 60% of~~
20 ~~Area Median Income for on-site housing. The income table to be used for such projects when the units~~
21 ~~are priced at 50% or 60% of Area Median Income is the income table used by MOHCD for the~~
22 ~~Inclusionary Affordable Housing Program, not that used by TCAC or CDLAC. Except as provided in~~
23 ~~this subsection (b)(15), all units provided under this Section must meet all of the requirements of~~
24 ~~Section 415.1 et seq. and the Procedures Manual for on-site housing, except that the requirement to~~
25 ~~provide moderate and middle-income units under in Section 415.6(a) may be replaced with low~~

1 *income affordable units that satisfy TCAC requirements for 4% tax credits. If the number of affordable*
2 *units required by Section 415.6 exceeds the number of affordable units required to use 4% tax credits,*
3 *the project shall comply with higher requirement under Section 415.6 and the additional Inclusionary*
4 *obligation above the tax credit units may be met by providing on-site affordable units equally*
5 *distributed between moderate and middle-income households as defined in Section 415.6.*

6 **(1612) Option for Dedication of Land.**

7 (A) Development projects in this District may opt to fulfill the Inclusionary
8 Housing requirement of Section 415 through the Land Dedication alternative *contained* in
9 Section 419.6. The Land Dedication alternative is available for development projects within
10 the District under the same terms and conditions as provided for in Section 419.5(a)(2),
11 except that in lieu of the Land Dedication Alternative requirements of Table 419.5, projects
12 may satisfy the requirements of Section 415.5 by dedicating land for affordable housing if the
13 dedicated land could accommodate a total amount of units that is equal to or greater than
14 35% of the units that are being provided on the principal development project site, as
15 determined by the Planning Department. Any dedicated land shall be at least partly located
16 within one mile of the boundaries of either the Market and Octavia Plan Area or the Upper
17 Market NCT District.

18 (B) Notwithstanding the requirements of Section 419.5(a)(2)(H),
19 development projects dedicating land shall obtain the required letter from the Mayor's Office
20 of Housing and Community Development verifying acceptance of the dedicated land no later
21 than 180 days following Planning Commission or Planning Department approval of the
22 development project. The Director of the Mayor's Office of Housing and Community
23 Development may waive application of Section 419.5(a)(2)(G).

24 ~~(C) Development projects that elect to dedicate land pursuant to this subsection~~
25 ~~(b)(16) may be eligible for a waiver against all or a portion of their affordable housing fees under~~

1 ~~Sections 416 and 424 if the Planning Director determines that the land acquisition costs for the~~
2 ~~dedicated land exceed the development project's obligations under the fee option of Section 415. The~~
3 ~~Planning Director, in consultation with the Director of the Mayor's Office of Housing and Community~~
4 ~~Development and the Director of Property, shall calculate the waiver amount based on actual~~
5 ~~commercially reasonable costs to acquire the dedicated land. If the Director of the Mayor's Office of~~
6 ~~Housing and Community Development requests that the land dedication occur before the First~~
7 ~~Construction Document for the development project, the waiver amount shall be increased by the~~
8 ~~reasonable value of the City's early use of the dedicated land.~~

9 (~~1713~~) **Required Minimum Dwelling Unit Mix.** Development projects in this
10 District shall comply with Section 207.6.

11 (~~1814~~) **Active Uses.** For purposes of this ~~s~~Section 249.33, Arts Activities and
12 Institutional Community Uses are considered to be "active uses," as defined in Section 145.4
13 of this Code.

14 (~~1915~~) Projects with on-site affordable housing units provided pursuant to a
15 Purchase and Sale Agreement with the City ~~and County of San Francisco~~ that are in excess of
16 the amount required by Planning Code Section 415 may deviate from the building floor
17 distribution requirements of Section 415.6(f)(1) by up to 15%.

18 * * * *

19
20 **SEC. 303.1. FORMULA RETAIL USES.**

21 * * * *

22 (e) **Conditional Use Authorization Required.** A Conditional Use Authorization shall
23 be required for a Formula Retail use in the following zoning districts unless explicitly
24 exempted:

25 * * * *

1 (9) Third Street Formula Retail Restricted Use District, as defined in Section
2 786; and

3 ~~(10) C-3-G District with frontage on Market Street, between 6th Street and the~~
4 ~~intersection of Market Street, 12th Street and Franklin Street; and~~

5 (~~H10~~) Central SoMa Special Use District as defined in Section 848, except for
6 those uses not permitted pursuant to subsection (f) below.

7 * * * *

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

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

20
21 APPROVED AS TO FORM:
22 DAVID CHIU, City Attorney

23 By: /s/ Andrea Ruiz-Esquide
24 ANDREA RUIZ-ESQUIDE
Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning Code - Waiving Certain Development Impact Fees in the Market and Octavia Area Plan]

Ordinance amending the Planning Code to waive certain development impact fees in the Market and Octavia Area Plan (the Market and Octavia Area Plan and Upper Market Neighborhood Commercial District Affordable Housing Fee, the Van Ness & Market Affordable Housing and Neighborhood Infrastructure Fee, and the Van Ness & Market Community Facilities Fee), and to create a process for previously approved projects to request modification to conditions of approval related to these fees, subject to delegation by the Planning Commission; affirming the Planning Department’s determination under the California Environmental Quality Act; and making public necessity, convenience, and welfare findings under Planning Code, Section 302, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

Existing Law

Article 4 of the Planning Code contains development impact fees that the City assesses as part of the development process. Some of those fees apply Citywide, while others apply to specific areas of the City. Three of these area-specific fees apply in the Market and Octavia Area Plan: the Market and Octavia Area Plan and Upper Market Neighborhood Commercial District Affordable Housing Fee, the Van Ness & Market Affordable Housing and Neighborhood Infrastructure Fee, and the Van Ness & Market Community Facilities Fee.

Amendments to Current Law

This Ordinance creates a process for approved development projects in the Market and Octavia Area Plan that have not yet obtained their first construction document to waive the Market and Octavia Area Plan and Upper Market Neighborhood Commercial District Affordable Housing Fee, the Van Ness & Market Affordable Housing and Neighborhood Infrastructure Fee, and the Van Ness & Market Community Facilities Fee. It authorizes the Planning Commission to change the conditions of approval of such projects to reflect the fee waivers, and to delegate to the Planning Director the authority to approve these waivers administratively.

The Ordinance also amends Sections 249.33 and 303.1 of the Planning Code, to make conforming changes.

Background Information

The Ordinance contains ample findings setting forth its intent – primarily, to improve the financial feasibility of development projects in the Plan Area, in order to facilitate housing development, address the housing crisis, and meet the City’s obligations under the Housing Element.

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