

1 [Planning Code - Inclusionary Affordable Housing Fee ~~and Dwelling Unit Mix Requirements~~

2

3 **Ordinance amending the Planning Code to revise the amount of the Inclusionary**  
4 **Affordable Housing Fee and the On-Site and Off-Site Affordable Housing Alternatives**  
5 **and other Inclusionary Housing requirements; ~~adding reporting requirements for~~**  
6 **~~density bonus projects to require minimum dwelling unit mix in most residential~~**  
7 **~~districts; to clarify Inclusionary Housing requirements in the Transbay C-3 Special Use~~**  
8 **District; affirming the Planning Department’s determination under the California**  
9 **Environmental Quality Act; making findings of public necessity, convenience, and**  
10 **welfare under Planning Code, Section 302; and making findings of consistency with the**  
11 **General Plan, and the eight priority policies of Planning Code, Section 101.1.**

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

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

20 Section 1. General Findings.

21 (a) The Planning Department has determined that the actions contemplated in this  
22 ordinance comply with the California Environmental Quality Act (California Public Resources  
23 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
24 Supervisors in File No. 170834 and is incorporated herein by reference. The Board affirms  
25 this determination.

1 (b) On April 27, 2017, and on July 6, 2017, the Planning Commission, in Resolution  
2 Nos. 19903 and 19956, adopted findings that the actions contemplated in this ordinance are  
3 consistent, on balance, with the City's General Plan and eight priority policies of Planning  
4 Code Section 101.1. The Board adopts these findings as its own. A copy of said Resolutions  
5 is on file with the Clerk of the Board of Supervisors in File No. 170834, and is are incorporated  
6 herein by reference.

7 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code  
8 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth  
9 in Planning Commission Resolution Nos. 19903 and 19956, and the Board incorporates such  
10 reasons herein by reference. A copy of Planning Commission Resolution Nos. 19903 and  
11 19956 is on file with the Board of Supervisors in File No. 170834.

12  
13 Section 2. Findings About Inclusionary Affordable Housing Requirements.

14 (a) The purpose of this ordinance is to adopt inclusionary or affordable housing  
15 obligations following voter approval of Proposition C at the June 7, 2016 election to revise the  
16 City Charter's inclusionary affordable housing requirements, which won overwhelming support  
17 with 67.9% of the vote, and to update the provisions of the Planning Code that became  
18 effective after the Charter Amendment passed, consistent with the process set forth in Section  
19 415.10 of the Planning Code, and elaborated upon further outlined in Ordinance No. 76-16,  
20 which required that the City study how to set inclusionary housing obligations in San  
21 Francisco at the maximum economically feasible amount in market rate housing development  
22 to create affordable housing. The inclusionary affordable housing obligations set forth in this  
23 ordinance will supersede and replace any previous requirements.

24 (b) The San Francisco residential real estate market is one of the most expensive in  
25 the United States. In February 2016, the California Association of Realtors reported that the

1 median priced home in San Francisco was \$1,437,500. This price is 222% higher than the  
2 State of California median (\$446,460), and 312% higher than the national average  
3 (\$348,900). While the national homeownership rate is approximately 63.8%, only  
4 approximately 37% of San Franciscans own their own home. The majority of market-rate  
5 homes for sale in San Francisco are priced out of the reach of low- and moderate-income  
6 households. In 2015, the average rent was \$3,524, which is affordable to households earning  
7 over \$126,864.

8 (c) The Board of Supervisors adopted San Francisco's General Plan Housing Element  
9 in March 2015, and the California Housing and Community Development Department certified  
10 it on May 29, 2015. The Housing Element states that San Francisco's share of the regional  
11 housing need for years 2015 through 2022 includes 10,873 housing units for very-low- and  
12 low-income households and 5,460 units for moderate/middle-income households, and a total  
13 production of 28,870 net new units, with almost 60% to be affordable for very-low, low- and  
14 moderate/middle-income San Franciscans.

15 (d) In November 2016, the City provided the updated Residential Affordable Housing  
16 Nexus Analysis that confirms and quantifies the impact of new market rate housing  
17 development on the demand for affordable housing for households earning up to 120% of  
18 area median income. The study demonstrates a need of 31.8% affordable housing for rental  
19 housing, and 37.6% affordable housing for ownership housing, and a need of 24.1% onsite  
20 affordable housing for rental housing, and 27.3% onsite affordable housing for ownership  
21 housing for households with incomes up to 120% of Area Median Income. When quantifying  
22 affordable housing impacts on households making up to 150% of area median income, the  
23 study demonstrates a need of 34.9% affordable housing for rental housing, and a need of  
24 41.3% affordable housing for ownership housing.

25

1 (e) In February 2017, the Office of the Controller presented a study of the economic  
2 feasibility of increased inclusionary housing requirements, entitled “Inclusionary Housing  
3 Working Group: Final Report.” The Controller's Office, supported by a contracted consulting  
4 team of three firms and advised by a Technical Advisory Committee (TAC) with  
5 representatives appointed by the ~~Mayor and Board of Supervisors~~ Controller, developed  
6 several policy recommendations, including: (1) that the City should impose different  
7 inclusionary housing requirements on rental and for-sale (condominium) properties; (2) that  
8 the City ~~could~~ can set the initial onsite requirements at a maximum feasible amount of 18% for  
9 rental projects and 20% for ownership projects; (3) that the City ~~may adopt~~ should commit to a  
10 15-year schedule of increases to the inclusionary housing rate, at a rate of 0.5% increase  
11 each year; and (4) that the City should revise the schedule of Inclusionary housing fees to  
12 provide a more equivalent cost for developers as the on-site requirements. The Controller’s  
13 Office recommended updating the fee percentage to 23% and 28% to create an equivalency  
14 to the recommended 18% and 20% on-site requirements, with the City conducting the specific  
15 calculation of the fee itself.

16 (f) The Controller’s Report further acknowledged that if either the state density bonus  
17 or a local bonus program were widely implemented in San Francisco, the likely result would  
18 be higher residual land values in many locations, which would support a higher inclusionary  
19 requirement. ~~application of the state-provided density bonus could make a difference in the~~  
20 ~~financial feasibility of housing development projects.~~

21 (g) The City’s Inclusionary Affordable Housing Program is intended to help address the  
22 demonstrated need for affordable housing in the City through the application of the City’s land  
23 use controls

1           (h) As rents and sales prices outpace what is affordable to the typical San Francisco  
2 family, the City faces a continuing shortage of affordable housing for not only very low- and  
3 low-income residents, but also for moderate, middle and upper-middle income families.

4           (i) In order to maximize the benefit of state and federal funds supporting affordable  
5 housing construction, which are typically restricted to very low- and low-income households,  
6 and to maximize the amount of affordable units constructed, the majority of the City's new  
7 affordable housing production is likely to continue to focus on households at or below 60% of  
8 area median income.

9           (j) The Board of Supervisors recognizes that this Inclusionary Housing Program is only  
10 one small part of the City's overall strategy for providing affordable housing to very low-, low-,  
11 moderate-, and middle-income households. The City will continue to acquire, rehabilitate and  
12 produce units through the Mayor's Office of Housing and Community Development, provide  
13 rental subsidies, and provide homeownership assistance to continue to expand its reach to  
14 households in need of affordable housing.

15           (k) The City will also continue to pursue innovative solutions to provide and stabilize  
16 affordable housing in San Francisco, including programs such as HOME-SF that incentivize  
17 projects that set aside 30% of on-site units as permanently affordable, and 40% of units as  
18 family-friendly multiple bedroom units.

19           (l) In an effort to support a mix of both ownership project and rental projects, the City is  
20 providing a direct financial contribution to project sponsors who agree to rent units for a period  
21 of 30 years. The direct financial contribution is in the form of a reduction in the applicable  
22 affordable housing requirement.

23  
24           Section 3. The Planning Code is hereby amended by revising Sections 415.3, ~~and~~  
25 415.6, and 415.7, to read as follows:

1           **SEC. 415.3. APPLICATION.**

2           \* \* \* \*

3           (b) Any development project that has submitted a complete Environmental Evaluation  
4 application prior to January 12, 2016 shall comply with the Affordable Housing Fee  
5 requirements, the on-site affordable housing requirements or the off-site affordable housing  
6 requirements, and all other provisions of Section 415.1 et seq., as applicable, in effect on  
7 January 12, 2016. For development projects that have submitted a complete Environmental  
8 Evaluation application on or after January 1, 2013, the requirements set forth in Planning  
9 Code Sections 415.5, 415.6, and 415.7 shall apply to certain development projects consisting  
10 of 25 dwelling units or more during a limited period of time as follows.

11                   (1) If a development project is eligible and elects to provide on-site affordable  
12 housing, the development project shall provide the following amounts of on-site affordable  
13 housing. ~~All other requirements of Planning Code Sections 415.1 et seq. shall apply.~~

14                           (A) Any development project that has submitted a complete  
15 Environmental Evaluation application prior to January 1, 2014 shall provide affordable units in  
16 the amount of 13% of the number of units constructed on-site.

17                           (B) Any development project that has submitted a complete  
18 Environmental Evaluation application prior to January 1, 2015 shall provide affordable units in  
19 the amount of 13.5% of the number of units constructed on-site.

20                           (C) Any development project that has submitted a complete  
21 Environmental Evaluation application on or prior to January 12, 2016 shall provide affordable  
22 units in the amount of 14.5% of the number of units constructed on-site.

23                           (D) Any development project that submits an Environmental Evaluation  
24 application after January 12, 2016, shall comply with the requirements set forth in Planning  
25 Code Sections 415.5, 415.6 and 415.7, as applicable.

1 (E) Notwithstanding the provisions set forth in subsections (b)(1)(A), (B)  
2 and (C) of this Section 415.3, if a development project is located in a UMU Zoning District or  
3 in the South of Market Youth and Family Zoning District, and is eligible and elects to provide  
4 on-site units pursuant to Section 415.5(g), such development project shall comply with the on-  
5 site requirements applicable within such Zoning Districts, as they existed on January 12,  
6 2016, plus the following additional amounts of on-site affordable units: (i) if the development  
7 project has submitted a complete Environmental Evaluation application prior to January 1,  
8 2014, the Project Sponsor shall provide additional affordable units in the amount of 1% of the  
9 number of units constructed on-site; (ii) if the development project has submitted a complete  
10 Environmental Evaluation application prior to January 1, 2015, the Project Sponsor shall  
11 provide additional affordable units in the amount of 1.5% of the number of units constructed  
12 on-site; or (iii) if the development project has submitted a complete Environmental Evaluation  
13 application on or prior to January 12, 2016, the Project Sponsor shall provide additional  
14 affordable units in the amount of 2% of the number of units constructed on-site.

15 (F) Any development project that has submitted a complete  
16 Environmental Evaluation application on or before January 12, 2016 and seeks to utilize a  
17 density bonus under State Law shall use its best efforts to provide on-site affordable units in  
18 the amount of 25% of the number of units constructed on-site and shall consult with the  
19 Planning Department about how to achieve this amount of inclusionary affordable housing. An  
20 applicant seeking a density bonus under the provisions of State Law shall provide reasonable  
21 documentation to establish eligibility for a requested density bonus, incentives or concessions,  
22 and waivers or reductions of development standards.

23 (2) If a development project pays the Affordable Housing Fee or is eligible and  
24 elects to provide off-site affordable housing, the development project shall provide the  
25 following fee amount or amounts of off-site affordable housing during the limited periods of

1 time set forth below. ~~All other requirements of Planning Code Sections 415.1 et seq. shall~~  
2 ~~apply.~~

3 (A) Any development project that has submitted a complete  
4 Environmental Evaluation application prior to January 1, 2014, shall pay a fee or provide off-  
5 site housing in an amount equivalent to 25% of the number of units constructed on-site.

6 (B) Any development project that has submitted a complete  
7 Environmental Evaluation application prior to January 1, 2015, shall pay a fee or provide off-  
8 site housing in an amount equivalent to 27.5% of the number of units constructed on-site.

9 (C) Any development project that has submitted a complete  
10 Environmental Evaluation application on or prior to January 12, 2016 shall pay a fee or  
11 provide off-site housing in an amount equivalent to 30% of the number of units constructed  
12 on-site.

13 (D) Any development project that submits an Environmental Evaluation  
14 application after January 12, 2016 shall comply with the requirements set forth in Sections  
15 415.5, 415.6, and 415.7, as applicable.

16 (E) Notwithstanding the provisions set forth in subsections (b)(2)(A), (B)  
17 and (C) of this Section 415.3, for development projects proposing buildings over 120 feet in  
18 height, as measured under the requirements set forth in the Planning Code, except for  
19 buildings up to 130 feet in height located both within a special use district and within a height  
20 and bulk district that allows a maximum building height of 130 feet, such development projects  
21 shall pay a fee or provide off-site housing in an amount equivalent to 30% of the number of  
22 units constructed on-site. Any buildings up to 130 feet in height located both within a special  
23 use district and within a height and bulk district that allows a maximum building height of 130  
24 feet shall comply with the provisions of subsections (b)(2)(A), (B) and (C) of this Section 415.3  
25 during the limited periods of time set forth therein.



1 (F) Notwithstanding the provisions set forth in subsections (b)(2)(A), (B)  
2 and (C) of this ~~s~~Section 415.3, if a development project is located in a UMU Zoning District or  
3 in the South of Market Youth and Family Zoning District, and pays the Affordable Housing Fee  
4 or is eligible and elects to provide off-site affordable housing pursuant to Section 415.5(g), or  
5 elects to comply with a land dedication alternative, such development project shall comply  
6 with the fee, off-site or land dedication requirements applicable within such Zoning Districts,  
7 as they existed on January 12, 2016, plus the following additional amounts for the Affordable  
8 Housing Fee or for land dedication or off-site affordable units: (i) if the development project  
9 has submitted a complete Environmental Evaluation application prior to January 1, 2014, the  
10 Project Sponsor shall pay an additional fee, or provide additional land dedication or off-site  
11 affordable units, in an amount equivalent to 5% of the number of units constructed on-site; (ii)  
12 if the development project has submitted a complete Environmental Evaluation application  
13 prior to January 1, 2015, the Project Sponsor shall pay an additional fee, or provide additional  
14 land dedication or off-site affordable units, in an amount equivalent to 7.5% of the number of  
15 units constructed on-site; or (iii) if the development project has submitted a complete  
16 Environmental Evaluation application on or prior to January 12, 2016, the Project Sponsor  
17 shall pay an additional fee, or provide additional land dedication or off-site affordable units, in  
18 an amount equivalent to 10% of the number of units constructed on-site. Notwithstanding the  
19 foregoing, a development project shall not pay a fee or provide off-site units in a total amount  
20 greater than the equivalent of 30% of the number of units constructed on-site.

21 (G) Any development project consisting of 25 dwelling units or more that  
22 has submitted a complete Environmental Evaluation application on or prior to January 12,  
23 2016, and is eligible and elects to provide off-site affordable housing, may provide off-site  
24 affordable housing by acquiring an existing building to fulfill all or part of the requirements set  
25 forth in this Section 415.3 and in Section 415.7 with an equivalent amount of units as specified

1 in this Section 415.3(b)(2), as reviewed and approved by the Mayor's Office of Housing and  
2 Community Development and consistent with the parameters of its Small Sites Acquisition  
3 and Rehabilitation Program, in conformance with the income limits for the Small Sites  
4 Program.

5 \* \* \* \*

6 (d) Notwithstanding the provisions set forth in Section 415.3(b), or the inclusionary  
7 affordable housing requirements contained in Sections 415.5, 415.6, and 415.7, such  
8 requirements shall not apply to any project, consisting of 25 dwelling units or more, that has  
9 not submitted a complete Environmental Evaluation Application on or before January 12,  
10 2016, if the project is located within the Eastern Neighborhoods Mission Planning Area, the  
11 North of Market Residential Special Use District Subarea 1 or Subarea 2, or the SOMA  
12 Neighborhood Commercial Transit District, because inclusionary affordable housing levels for  
13 those areas will be addressed in forthcoming area plan processes or an equivalent community  
14 planning process. Until such planning processes are complete and new inclusionary housing  
15 requirements for projects in those areas are adopted, projects consisting of 25 dwelling units  
16 or more shall (1) pay a fee or provide off-site housing in an amount equivalent to 30% if the  
17 principal housing project is a Rental Housing Project, or 33% if the principal housing project  
18 consists of Owned Units, or (2) provide affordable units in the amount of 25% of the number of  
19 Rental Units constructed on-site or 27% of the number of Owned Units constructed on-site.  
20 For Rental Units, 15% of the on-site affordable units shall be affordable to low-income  
21 households, 5% shall be affordable to moderate-income households and 5% shall be  
22 affordable to middle-income households. For Owned Units, 15% of the on-site affordable  
23 units shall be affordable to low-income households, 6% shall be affordable to moderate-  
24 income households and 6% shall be affordable to middle-income households.

25 \* \* \* \*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**SEC. 415.6. ON-SITE AFFORDABLE HOUSING ALTERNATIVE.**

If a project sponsor is eligible and elects to provide on-site units pursuant to Section 415.5(g), the development project shall meet the following requirements:

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

\* \* \* \*

**(8) Specific Geographic Areas.** For any housing development that is located in an area with a specific affordable housing requirement set forth in a Special Use District or in any other section of the Code such as Section 419, the higher housing requirement shall apply. The Planning Department, in consultation with the Controller, shall undertake a study of areas greater than 5 acres in size, where an Area Plan, Special Use District, or other rezoning is being considered for adoption, or has been adopted, after January 1, 2015, to determine whether a higher on-site inclusionary affordable housing requirement is feasible on sites that have received a 20% or greater increase in developable residential gross floor area or a 35% or greater increase in residential density over prior zoning, and shall submit such information to the Planning Commission and Board of Supervisors.

\* \* \* \*

**SEC. 415.7. OFF-SITE AFFORDABLE HOUSING.**

\* \* \* \*

(f) Individual affordable units constructed as part of a larger off-site project under this Section 415.7 shall not receive development subsidies from any Federal, State or local program established for the purpose of providing affordable housing, and shall not be counted to satisfy any affordable housing requirement for the off-site development. Other units in the same off-site project may receive such subsidies. In addition, subsidies may be used, only

1 with the express written permission by MOHCD, to deepen the affordability of an affordable  
2 unit beyond the level of affordability required by this Program.

3 (g) Notwithstanding the provisions of Section 415.7(f) above, a project may use  
4 California Debt Limit Allocation Committee (CDLAC) tax-exempt bond financing and 4%  
5 credits under the Tax Credit Allocation Committee (TCAC) to help fund its obligations under  
6 this ordinance as long as the project provides affordable units as required by CDLAC and  
7 TCAC. ~~25% of the units as affordable at 50% of area median income for off-site housing. The~~  
8 ~~income table to be used for such projects when the units are priced at 50% of area median~~  
9 ~~income is the income table used by MOHCD for the Inclusionary Housing Program, not that~~  
10 ~~used by TCAC or CDLAC.~~ Except as provided in this subsection (g), all units provided under  
11 this Section 415.7 must meet all of the requirements of this ordinance and the Procedures  
12 Manual for off-site housing.

13  
14 Section 4. The Planning Code is hereby amended by revising Section 249.28, to read  
15 as follows:

16 **SEC. 249.28. TRANSBAY C-3 SPECIAL USE DISTRICT.**

17 (a) Purpose. There shall be a Transbay C-3 Special Use District, which is wholly  
18 within the Transbay Redevelopment Project Area, comprising all of the parcels, primarily  
19 privately-owned and zoned C-3, within the Redevelopment Area but outside of the Transbay  
20 Downtown Residential District (TB-DTR), and whose boundaries are designated on Sectional  
21 Map No. ISU of the Zoning Map of the City and County of San Francisco. This district is  
22 generally bounded by Mission, Second, Clementina, and Beale Streets and whose primary  
23 features include the Transbay Terminal facility and its associated ramps, and a portion of the  
24 New Montgomery/Second Street Conservation District. A vision and guidelines for this area  
25 as an integral component of the Transbay Redevelopment Area are laid out in the Transbay

1 Redevelopment Plan and its companion documents, including the Design for the  
2 Development and the Development Controls and Design Guidelines for the Transbay  
3 Redevelopment Project. California Public Resources Code Section 5027.1 requires that 35%  
4 of all dwelling units developed during the life of the Transbay Redevelopment Plan in the  
5 Transbay Redevelopment Project Area shall be permanently affordable to low- and moderate-  
6 income households, as such households are defined in State law. Section 4.9.3 of the  
7 Transbay Redevelopment Plan requires that a minimum of 15% of all units constructed on a  
8 particular site shall be affordable to certain qualifying households, as set forth in such Plan.

9 (b) Controls.

10 \* \* \* \*

11 (6) Housing Requirements for Residential and Live/Work Development Projects.

12 The requirements of Section 415.1 et seq. shall apply, subject to the following exceptions:

13 (A) ~~A minimum of 15% of all units~~ The inclusionary affordable housing  
14 provided on-site shall be the higher amount determined under Section 4.9.3 of the Transbay  
15 Redevelopment Plan or Section 415.6(a) of the Planning Code, as it may be amended from  
16 time to time; and the inclusionary affordable housing constructed on the site shall be  
17 affordable to, and occupied by, “qualifying persons and families,” as defined by Section 4.9.3  
18 of the Transbay Redevelopment Plan;

19 (B) All required inclusionary affordable housing units in the Transbay C-3  
20 SUD required by this Section shall be built on-site; and

21 (C) ~~Off-site construction or in-lieu fee payment~~ Payment of the Affordable  
22 Housing Fee or compliance with the Off-Site Affordable Housing Alternative are shall not be  
23 permitted to satisfy this the inclusionary affordable housing requirement.

1           Section 65. Effective Date. This ordinance shall become effective 30 days after  
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
4 of Supervisors overrides the Mayor’s veto of the ordinance.

5  
6           Section 76. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
7 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
8 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
9 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
10 additions, and Board amendment deletions in accordance with the “Note” that appears under  
11 the official title of the ordinance.

12  
13 APPROVED AS TO FORM:  
14 DENNIS J. HERRERA, City Attorney

15 By: \_\_\_\_\_  
16       KATE H. STACY  
17       Deputy City Attorney

18  
19 n:\legana\as2017\1700109\01223471.docx