

BOARD of SUPERVISORS



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MEMORANDUM

TO: Daniel Adams, Director, Mayor's Office of Housing and Community Development

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

DATE: August 7, 2024

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Melgar on July 30, 2024.

File No. 240802

Ordinance amending the Planning Code to allow certain Below Market Rate (BMR) Owned Units to be resold at a price affordable to households at an increased Area Median Income (AMI) level, and to increase the qualifying AMI limit for BMR purchasers; and affirming the Planning Department's determination under the California Environmental Quality Act, making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and making findings of public necessity, convenience, and welfare pursuant to Planning Code, Section 302.

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:

Office of Chair Melgar

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

[Planning Code - Authorize Increases to the Affordable Price and Income Limits for Certain Below Market Rate Owned Units]

Ordinance amending the Planning Code to allow certain Below Market Rate (BMR) Owned Units to be resold at a price affordable to households at an increased Area Median Income (AMI) level, and to increase the qualifying AMI limit for BMR purchasers; and affirming the Planning Department’s determination under the California Environmental Quality Act, making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and making findings of public necessity, convenience, and welfare pursuant to Planning Code, Section 302.

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

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

Section 1. Environmental and Land Use Findings.

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

(b) On _____, the Planning Commission, in Resolution No. _____, adopted findings that the actions contemplated in this ordinance are consistent, on balance,

1 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
2 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
3 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

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

9
10 Section 2. Article 4 of the Planning Code is hereby amended by revising Section
11 415.8, to read as follows:

12 **SEC. 415.8. DURATION AND MONITORING OF AFFORDABILITY.**

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

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

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

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

22 (4) The income levels specified in the Notice of Special Restrictions and/or conditions
23 of approval for the project shall be the required income percentages for the life of the project.
24 Notwithstanding the foregoing sentence, an adjustment may be made pursuant to subsection(b)(9)
25

1 or, if approved by MOHCD and as provided in the Procedures Manual, an exception to the
2 required income percentage may be made in the following cases:

3 (A) a rental unit that converts to an Owned Unit, up to a maximum of ~~120~~150% of
4 AMI;

5 (B) where there is an existing tenant who has undergone re-certification as defined in
6 the Procedures Manual, the existing tenant's household income may increase ~~by~~ up to ~~200% of~~
7 ~~the levels specified in the Notice of Special Restrictions or conditions of approval~~ a maximum of 200%
8 of AMI;

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

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

15 (E) the qualifying income level for new Owned Units may be set at ~~10~~20% above
16 the income level stated in the Notice of Special Restrictions or conditions of approval.

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

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

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

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

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

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

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

1 (5) Require that affordable Rental Units permitted by the Commission to be
2 converted to Owned Units must satisfy the requirements of the Procedures Manual, as
3 amended from time to time, including that the units shall be sold at restricted sales prices to
4 households meeting the income qualifications specified in the Notice of Special Restrictions or
5 conditions of approval, with a right of first refusal for the occupant(s) of such units at the time
6 of conversion. If the current tenant qualifies for and purchases the unit, the unit shall be sold
7 at a sales price corresponding to the affordability level required for rental units ~~or to the~~
8 ~~affordability level for the specific tenant household, whichever is higher, with a maximum allowable~~
9 ~~qualifying income level up to 120% of AMI.~~ If the unit is sold to ~~anyone else~~ buyer who is not a
10 current tenant, the sales price shall correspond to the affordability level required for Owned
11 Units. Upon conversion to ownership, the units are subject to the resale and other restrictions
12 of this Program for the life of the project, as defined in the Notice of Special Restrictions or
13 conditions of approval for the Project.

14 (6) For Owned Units approved pursuant to Sections 415.6 or 415.7, the Notice of
15 Special Restrictions or conditions of approval will include provisions restricting resale prices
16 and purchaser income levels according to the formula specified in the Procedures Manual, as
17 amended from time to time. In the case that subordination of the Affordability Conditions
18 contained in a recorded Notice of Special Restrictions may be necessary to ensure the
19 ~~P~~project ~~A~~applicant's receipt of adequate construction and/or permanent financing for the
20 project, or to enable first time home buyers to qualify for mortgages, the project applicant may
21 follow the procedures for subordination of affordability restrictions as described in the Principal
22 Project's conditions of approval or in the Procedures Manual. A release following foreclosure
23 or other transfer in lieu of foreclosure may be authorized if required as a condition to financing
24 pursuant to the procedures set forth in the Procedures Manual.

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

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

14 (A) **Waiver of ~~Resale~~Re-Sale Requirements and Maximum Qualifying**
15 **Income Level for New Buyers of Resale BMR Units.** The Board recognizes that the risk to
16 low- and moderate-income homeowners during times of economic downturn can increase the
17 risk of default and foreclosure of units restricted under this Program. The Board directs
18 MOHCD to study ways to reduce such risks in the below market rate unit context and, if it
19 deems appropriate, to make recommendations to the Planning Commission to amend the
20 Procedures Manual to allow MOHCD discretion, in certain limited circumstances, to waive
21 requirements for owners of Affordable Units who have used good faith efforts to secure a
22 contract with a qualified buyer but are unable to resell their unit in a timely manner. Such
23 amendments to the Procedures Manual may include, but are not limited to, authorizing
24 MOHCD to make one or more allowances for owners of Affordable Units unable to resell such
25 as: (i) a one-time waiver of the first-time homebuyer rule for the purchasing household; (ii) a

1 one-time waiver of qualifying household size requirements for the purchasing household; (~~iii~~³)
2 ~~and~~ a one-time waiver of owner occupancy rules to allow a temporary rental; (~~iv~~⁴) a one-time
3 modification of the asset test for the new buyer household; and (~~v~~⁵) allowing MOHCD
4 discretion to increase the qualifying income level for the unit by up to 20% above the
5 maximum income limit currently allowed by the Use Restrictions for the Unit but at no time
6 higher than ~~120~~150% of AMI. MOHCD and the Commission shall set forth criteria for granting
7 such allowances such as establishing a minimum time that the units must have been
8 advertised by MOHCD without selling; establishing criteria related to unusual economic or
9 personal circumstances of the owner; providing a maximum percentage for the increase
10 above the maximum income limit currently allowed; providing that the increase may only be
11 granted on a one-time basis; and requiring the owner to clearly establish that the BMR unit is
12 being resold at the ~~original purchase price plus the current repricing mechanism under the Program~~
13 ~~which calculates the percentage change in AMI from the time of purchase to resale plus the~~
14 ~~commission and any eligible capital improvements or special assessments~~maximum resale price
15 specified in the Procedures Manual, as amended from time to time.

16 (B) **Waiver of Maximum Qualifying Income Level ~~F~~for New Buyers of**
17 **Initial Sale of BMR Units.** The Board of Supervisors recognizes that the current Program
18 provides that the income of a new buyer of a below market rate household cannot exceed the
19 maximum income stated in the Planning Approval or Notice of Special Restrictions for the
20 BMR Unit. Due to less desirable developments or geographic areas, a ~~P~~project ~~S~~sponsor is
21 sometimes unable to find a buyer for a BMR Unit within the maximum income stated in the
22 Planning Approval or Notice of Special Restrictions for the Unit. This situation makes it
23 difficult, if not impossible, for certain current owners of below market rate units to re-sell their
24 units. In order to minimize this situation, the Board of Supervisors directs MOHCD to study
25 ways to address this issue and, if it deems appropriate, to make recommendations to the

1 Planning Commission to amend the Procedures Manual to allow MOHCD to assist ~~P~~project
2 ~~S~~sponsors who have used good faith efforts as determined by MOHCD to secure a contract with
3 a qualified buyer but who are unable to secure such a contract in a timely manner from the
4 initiation of marketing. Such amendments may include allowing MOHCD discretion to increase
5 the qualifying income level for the unit by up to 20% above the maximum income limit
6 currently allowed by the Use Restrictions for the ~~U~~unit but at no time higher than ~~120~~150% of
7 AMI. MOHCD and the Planning Commission shall establish limits to this or a similar proposal
8 such as: providing a maximum percentage for the increase above the maximum income limit
9 currently allowed; requiring that a certain period without securing a buyer would pass before
10 such an allowance would be made; providing that the increase may only be granted on a one-
11 time basis.

12 **(9) Adjustment of Pricing and Income Limits for Owned Units Purchased at a Price Above**
13 **the Affordable Price.**

14 **(A) Findings and Purposes.** *The Board of Supervisors finds that certain requirements of*
15 *this Program and the Procedures Manual may create additional hardship for Owners of affordable*
16 *units restricted under this Program who originally purchased their unit at a price above the affordable*
17 *price set by MOHCD at the time of resale. However, the Board also recognizes that the requirements of*
18 *this Program are important to preserve the long-term affordability of units restricted under the*
19 *Program. This subsection (b)(9) provides options to allow some relief for Owners of affordable units,*
20 *while protecting the long-term affordability of the units and viability of the Program.*

21 **(B) Authorization to Reset Pricing and Income Limits.** *Notwithstanding subsection*
22 *(a)(4), the Board authorizes MOHCD to increase the maximum percentage of AMI used to set the*
23 *affordable price at the time of resale and to establish the qualifying household income limit or income*
24 *range for eligible Owned Units, as further specified and limited in this subsection (b)(9). This*
25 *authorization and reset procedure shall be available only once per eligible Owned Unit and shall result*

1 in a permanent increase to the restrictions on maximum affordable price and maximum income limit for
2 the Owned Unit. For subsequent resale of the Owned Unit, the maximum affordable price shall be
3 determined by MOHCD based on the new, increased maximum percentage of AMI established pursuant
4 to this subsection (b)(9).

5 (C) **Eligibility.** An Owned Unit is eligible for an increase in the maximum affordable price
6 if the seller purchased the unit at a price above the affordable price at the time MOHCD processes the
7 Owner's resale request, as determined by MOHCD based on the maximum percentage of AMI set for
8 the unit in the Notice of Special Restrictions or other document establishing affordability requirements
9 for the unit. The Owner is not required to attempt to sell the unit at a price corresponding to the
10 maximum percentage of AMI set for the unit in the existing Notice of Special Restrictions or other
11 document establishing affordability requirements for the unit to qualify for this relief.

12 (D) **Maximum Allowable Adjustment.** For the resale of an Owned Unit eligible for an
13 adjustment under this subsection (b)(9), MOHCD may establish the maximum affordable price up to
14 the original purchase price paid by the current Owner. MOHCD may increase the maximum household
15 AMI level for the Owned Unit, to reflect the adjusted maximum affordable price. The maximum
16 qualifying income may be adjusted by up to 20%, provided that it does not exceed 150% of AMI.

17 (E) **Procedures.**

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

21 (ii) MOHCD may establish the maximum affordable price and increase the maximum
22 household AMI level consistent with this subsection (b)(9) for the purposes of processing the resale,
23 including marketing the unit. If approved pursuant to subsections (b)(9)(E)(iii) through (vi) below, the
24 increased maximum household AMI level shall be established for all other purposes upon the recording
25 of a Notice of Special Restrictions at the time of the resale that reflects the increased AMI level.

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

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

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

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

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

24 * * * *

1 Section 3. 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 4. 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 DAVID CHIU, City Attorney

15 By: /s/ HEATHER GOODMAN
16 HEATHER GOODMAN
 Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning Code - Authorize Increases to the Affordable Price and Income Limits for Certain Below Market Rate Owned Units]

Ordinance amending the Planning Code to allow certain Below Market Rate (BMR) Owned Units to be resold at a price affordable to households at an increased Area Median Income (AMI) level, and to increase the qualifying AMI limit for BMR purchasers; and affirming the Planning Department’s determination under the California Environmental Quality Act, making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and making findings of public necessity, convenience, and welfare pursuant to Planning Code, Section 302

Existing Law

The Planning Code establishes affordability requirements for homes in the Below Market Rate (BMR) homeownership program. BMR owned units must remain affordable at an established level, based on the affordability of a household earning a specified percentage of the area median income (AMI). The AMI level requirements apply for the life of the housing development project and are memorialized in a Notice of Special Restrictions recorded against the property. The Planning Code and the BMR Procedures Manual prepared by the Mayor’s Office of Housing and Community Development (MOHCD) and approved by the Planning Commission allow for a one-time adjustment to the AMI level otherwise required for the unit by up to 20%, up to 120% of AMI.

For BMR rental units that convert to owned units, the Planning Code specifies that MOHCD may grant an exception to affordability limits, up to a maximum of 120% AMI. For BMR owned units, MOHCD may also grant an exception to set the qualifying income level to 10% above the required income level.

Amendments to Current Law

This ordinance allows a permanent adjustment to the affordability requirements for a BMR owned unit in situations where the owner purchased the unit at a price above the current affordable price. MOHCD may increase the maximum affordable price for the unit up to the amount of the owner’s purchase price. MOHCD may then increase the AMI level for the unit accordingly, up to a maximum of 150% AMI. For projects where the affordability levels were originally established by the Planning Commission or Planning Department, the Planning Commission or Planning Department, respectively, must also approve the adjustment.

For BMR rental units that convert to owned units, the ordinance provides that MOHCD may grant an exception to affordability limits, up to a maximum of 150% AMI. For BMR owned units, MOHCD may also grant a one-time exception to set the qualifying income level to 20% above the required income level.

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Introduction Form

(by a Member of the Board of Supervisors or the Mayor)



I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)
(Routine, non-controversial and/or commendatory matters only)
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor inquires..."
- 5. City Attorney Request
- 6. Call File No. from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the Board on

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes No

(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)

Sponsor(s):

Subject:

Long Title or text listed:

Signature of Sponsoring Supervisor: