

File No. 240802

Committee Item No. 1

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

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Date: October 28, 2024

Board of Supervisors Meeting:

Date: October 29, 2024

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Prepared by: John Carroll

Date: October 25, 2024

Prepared by: John Carroll

Date: October 28, 2024

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

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

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

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. Environmental and Land Use 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. 240802 and is incorporated herein by reference. The Board affirms  
25 this determination.

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

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

11  
12 Section 2. Article 4 of the Planning Code is hereby amended by revising Sections 401  
13 and 415.8, to read as follows:

14 **SEC. 401. DEFINITIONS.**

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

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

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

21 \* \* \* \*

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

24 “Qualifying Income.” The income at which a household meets the income eligibility  
25 requirements for a particular BMR Unit. The Qualifying Income may be higher than the maximum

1 income limit or income range required in the Notice of Special Restrictions or other document  
2 establishing affordability restrictions for the BMR Unit.

3 \* \* \* \*

4  
5 **SEC. 415.8. DURATION AND MONITORING OF AFFORDABILITY.**

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

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

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

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

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

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

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

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

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

7 (E) the ~~Qualifying~~ ~~Income~~ level for new or resale Owned Units may be set at  
8 ~~1020%~~ above the income level stated in the Notice of Special Restrictions or conditions of  
9 approval; or

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

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

1 requiring inclusionary housing pursuant to this Program. The Procedures Manual will be  
2 referenced in the Notice of Special Restrictions for each project.

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

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

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

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

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

23 (5) Require that affordable Rental Units permitted by the Commission to be  
24 converted to Owned Units ~~must~~ satisfy the requirements of the Procedures Manual, as  
25 amended from time to time, including that the units shall be sold at restricted sales prices to

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

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



1 (ii~~2~~) a one-time waiver of qualifying household size requirements for the purchasing  
2 household; (iii~~3~~) ~~and~~ a one-time waiver of owner occupancy rules to allow a temporary rental;  
3 (iv~~4~~) a one-time modification of the asset test for the new buyer household; and (v~~5~~) allowing  
4 MOHCD discretion to increase the ~~q~~Qualifying ~~i~~Income level for the unit by up to 20% above  
5 the maximum income limit currently allowed by the Use Restrictions for the ~~U~~unit but at no  
6 time higher than ~~±20~~150% of AMI. MOHCD and the Commission shall set forth criteria for  
7 granting 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 ~~(2)(B)~~ **Waiver of Maximum Qualifying Income Level ~~F~~for New Buyers of**  
17 **Initial Sale 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~~ponsor 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 ~~U~~unit. This situation makes it  
23 difficult, if not impossible, for certain current owners of below market rate units to resell 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 ~~q~~Qualifying ~~i~~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; and providing that the increase may only be granted on a  
11 one-time basis.

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

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

24 **(B) Authorization to Reset Pricing and Income Limits.** *The Board authorizes MOHCD to*  
25 *adjust the Affordable Price at the time of resale and to establish the corresponding maximum income*

1 limit or income range for eligible Owned Units, as further specified and limited in this subsection  
2 (b)(9). This authorization and adjustment procedure shall be available only once per eligible Owned  
3 Unit and shall result in an Affordable Price that is based on a permanent increase to the restrictions on  
4 Affordable Price and maximum income limit for the Owned Unit. For the resale and any subsequent  
5 resale of the Owned Unit, the Maximum Purchase Price shall be determined by MOHCD based on the  
6 new, increased maximum percentage of AMI established pursuant to this subsection (b)(9).

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

14 (D) **Maximum Allowable Adjustment.** For the resale of an Owned Unit eligible for an  
15 adjustment under this subsection (b)(9), MOHCD may establish an adjusted Affordable Price up to the  
16 original purchase price paid by the current Owner. MOHCD may increase the maximum income limit  
17 or income range for the unit to reflect the adjusted Affordable Price, up to a maximum of 130% AMI. In  
18 addition, once per eligible Owned Unit, MOHCD may increase the maximum Qualifying Income level  
19 for the unit by up to 20% above the maximum income limit or income range in the new Notice of  
20 Special Restrictions or other document establishing affordability requirements for the unit, provided  
21 that the increased maximum Qualifying Income level does not exceed 150% of AMI. The ultimate resale  
22 price may be lower or higher than the Affordable Price. Nothing in this subsection (b)(9) ensures or  
23 entitles an Owner to a resale price equal to the adjusted Affordable Price when reselling their Owned  
24 Unit.

1                    **(E) Procedures.**

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

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

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

22                    (iv) For units in principal projects that required Planning Department approval but  
23 not Planning Commission approval, the Planning Department, in consultation with MOHCD, may  
24 modify any original conditions of approval for the principal project related to the maximum price or  
25

1 income levels including but not limited to modification to the required terms of a Notice of Special  
2 Restrictions recorded or to be recorded against the project or the Owned Unit.

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

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

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

12 \* \* \* \*

13  
14 Section 3. Article 1.5 of the Planning Code is hereby amended by revising Section  
15 167, to read as follows:

16 **SEC. 167. PARKING COSTS SEPARATED FROM HOUSING COSTS IN NEW**  
17 **RESIDENTIAL BUILDINGS.**

18 (a) All off-street parking spaces accessory to residential uses in new structures of 10  
19 dwelling units or more, or in new conversions of non-residential buildings to residential use of  
20 10 dwelling units or more, shall be leased or sold separately from the rental or purchase fees  
21 for dwelling units for the life of the dwelling units, such that potential renters or buyers have  
22 the option of renting or buying a residential unit at a price lower than would be the case if  
23 there were a single price for both the residential unit and the parking space. In cases where  
24 there are fewer parking spaces than dwelling units, the parking spaces shall be offered first to  
25 the potential owners or renters of three-bedroom or more units, second to the owners or

1 renters of two bedroom units, and then to the owners or renters of other units. Renters or  
2 buyers of on-site inclusionary affordable units provided pursuant to Section 415 *et seq.* shall  
3 have an equal opportunity to rent or buy a parking space on the same terms and conditions as  
4 offered to renters or buyers of other dwelling units, and at a price determined by the Mayor's  
5 Office of Housing *and Community Development (MOHCD)*, subject to procedures adopted by the  
6 Planning Commission notwithstanding any other provision of Section 415 et seq.

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

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

15  
16 Section 4. Effective Date. This ordinance shall become effective 30 days after  
17 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
18 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
19 of Supervisors overrides the Mayor's veto of the ordinance.

20  
21 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
22 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
23 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
24 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
25

1 additions, and Board amendment deletions in accordance with the “Note” that appears under  
2 the official title of the ordinance.

3

4 APPROVED AS TO FORM:  
5 DAVID CHIU, City Attorney

6 By: /s/ HEATHER GOODMAN  
7 HEATHER GOODMAN  
8 Deputy City Attorney

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**LEGISLATIVE DIGEST**  
*(Substituted, October 1, 2024)*

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

**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, increase the qualifying AMI limit for BMR purchasers, and require BMR Owned Units originally purchased with parking spaces and other amenities to be resold with the same parking and amenities; affirming the Planning Department’s determination under the California Environmental Quality Act; and 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.

The Planning Code establishes that, for projects with 10 or more dwelling units, parking must be sold separate from the dwelling units, known as “unbundled parking.” The BMR Procedures Manual allows parking to be sold with a BMR unit, known as “bundled parking.” Where a BMR unit is sold with bundled parking, the BMR Procedures Manual requires any resale of the unit to also include bundled parking.

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 affordable price at the time of resale. MOHCD may increase the affordable price for the unit up to the amount of the owner’s purchase price. MOHCD may increase the AMI level for the unit



accordingly, up to a maximum of 130% AMI. MOHCD also may increase the maximum qualifying income for the unit by up to 20%, up to a maximum of 150% of 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, up to 150% AMI.

The ordinance requires BMR units to be offered for initial sale separate from parking. Where BMR units are purchased with bundled parking, the ordinance establishes that any resale of the unit must also include bundled parking. The ordinance requires that all amenities purchased with a BMR owned unit must be included with the unit at the time of resale.

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October 23, 2024

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

Re: **Transmittal of Planning Department Case Number 2024-007228PCA:**  
Authorize Increases to the Affordable Price and Income Limits for Certain Below Market Rate Owned Units  
and Require Amenities to be Resold with Unit  
Board File No. 240802

**Planning Commission Recommendation: Adopt a Recommendation for Approval as Amended**

Dear Ms. Calvillo and Supervisor Melgar,

On October 17, 2024 the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Melgar. The proposed ordinance would 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. It would also increase the qualifying AMI limit for BMR purchasers. In addition, it would clarify in the Planning Code that BMR Owned Units originally purchased with parking spaces and other amenities to be resold with the same parking and amenities. At the hearing the Planning Commission adopted a recommendation for approval as amended.

The sponsor's amendments were as follows:

1. Add a ten-unit trigger for a report to the Planning Commission, and
2. Allow the Planning Commission to delegate authority to staff.

The proposed amendments are not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because they do not result in a physical change in the environment.

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

Sincerely,



Aaron D. Starr  
*Manager of Legislative Affairs*

cc: Heather Goodman, Deputy City Attorney  
Jen Low, Aide to Supervisor Melgar  
John Carroll, Office of the Clerk of the Board

**ATTACHMENTS :**

Planning Commission Resolution  
Planning Department Executive Summary



# PLANNING COMMISSION RESOLUTION NO. 21626

**HEARING DATE: OCTOBER 17, 2024**

*Project Name:* Authorize Increases to the Affordable Price and Income Limits for Certain Below Market Rate Owned Units  
*Case Number:* 2024-007228PCA [Board File No. 240802]  
*Initiated by:* Supervisor Melgar / Introduced July 30, 2024  
*Staff Contact:* Veronica Flores Legislative Affairs  
veronica.flores@sfgov.org, 628-652-7525  
*Reviewed by:* Aaron Starr, Manager of Legislative Affairs  
aaron.starr@sfgov.org, 628-652-7533

**RESOLUTION ADOPTING A RECOMMENDATION FOR APPROVAL AS AMENDED OF A PROPOSED ORDINANCE THAT WOULD 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.**

WHEREAS, on July 30, 2024 Supervisor Melgar introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 240802, which would 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;

WHEREAS, the Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on October 10, 2024; and,

WHEREAS, the Commission heard the proposed Ordinance on October 10, 2024 and continued the matter for consideration on October 17, 2024; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15378 and 15060(c)(2); and

WHEREAS, the Planning 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 Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the Custodian of Records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby adopts a **recommendation for approval as amended** of the proposed ordinance. During the hearing, the sponsor amended the ordinance as follows:

1. Ten unit trigger for a report to the Planning Commission and
2. Delegation of authority to staff.

## 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:

The proposed Ordinance will support BMR sellers by creating a new resell waiver for BMR owners who purchased a unit at a higher price than today's affordable prices. Additionally, the qualifying income limits would be adjusted to make sure that the unit is affordable to future buyers. This ensures that the unit remains permanently affordable.

## General Plan Compliance

The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

### HOUSING ELEMENT

#### OBJECTIVE 1.A

ENSURE HOUSING STABILITY AND HEALTHY HOMES.

#### OBJECTIVE 4.A

SUBSTANTIALLY EXPAND THE AMOUNT OF PERMANENTLY AFFORDABLE HOUSING FOR EXTREMELY LOW- TO MODERATE-INCOME HOUSEHOLDS.

### Policy 2

Preserve affordability of existing subsidized housing, government-owned or cooperative-owned housing, or SRO hotel rooms where the affordability requirements are at risk or soon to expire.

### Policy 15

Expand permanently affordable housing investments in Priority Equity Geographies to better serve American Indian, Black, and other People of color within income ranges underserved, including extremely-, very low-, and moderate-income households.

### Policy 23

Retain and increase the number of moderate- and middle-income households by increasing their homebuying opportunities and reversing the shortage in housing that is affordable to these households.

### Policy 26

Streamline and simplify permit processes to provide more equitable access to the application process, improve certainty of outcomes, and ensure meeting State- and local-required timelines, especially for 100% affordable housing and shelter projects.

*The proposed Ordinance supports the Housing Element objective of ensuring housing stability. Specifically, the proposed Ordinance aligns with Policy 23: retain and increase the number of homebuying opportunities for moderate- and middle-income households. This is done by creating a new waiver to allow the current BMR seller to sell their BMR at a price closer to the original purchase price. As a result, the eligible BMR owner will be more financially stable in their search for new housing. The new price is calculated in a simpler fashion than the original purchase price. This supports Policy 26: streamline and simplify the permit process. Additionally, this new price is coupled with adjusting the qualifying income AMI for the BMR unit. This supports Policies 2 and 23 by making sure that future buyers can afford the available BMR units. Further, adjusting the qualifying income supports Objective 4.A and Policy 15: expand the amount of permanently affordable housing for extremely low- to moderate-income households. In some cases, this may create more affordable housing opportunities at different income levels.*

## Planning Code Section 101 Findings

The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve

the cultural and economic diversity of our neighborhoods;

*The proposed Ordinance would not have a negative effect on housing or neighborhood character.*

3. That the City's supply of affordable housing be preserved and enhanced;

*The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

*The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

*The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.*

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

*The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.*

7. That the landmarks and historic buildings be preserved;

*The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.*

8. That our parks and open space and their access to sunlight and vistas be protected from development;

*The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.*

### **Planning Code Section 302 Findings.**

The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby ADOPTS A RECOMMENDATION FOR APPROVAL AS AMENDED the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on October 17, 2024.



Jonas P. Ionin  
*Commission Secretary*

Jonas P Ionin Digitally signed by Jonas P Ionin  
Date: 2024.10.22 17:24:31 -07'00'

AYES: Campbell, McGarry, Williams, Braun, So  
NOES: Moore  
ABSENT: Imperial  
ADOPTED: October 17, 2024





# EXECUTIVE SUMMARY

## PLANNING CODE TEXT AMENDMENT

**HEARING DATE: October 10, 2024**

**90-Day Deadline:** November 5, 2024

*Project Name:* Authorize Increases to the Affordable Price and Income Limits for Certain Below Market Rate Owned Units

*Case Number:* 2024-007228PCA [Board File No. 240802]

*Initiated by:* Supervisor Melgar / Introduced July 30, 2024

*Staff Contact:* Veronica Flores Legislative Affairs  
veronica.flores@sfgov.org, 628-652-7525

*Reviewed by:* Aaron Starr, Manager of Legislative Affairs  
aaron.starr@sfgov.org, 628-652-7533

Environmental

*Review:* Not a Project Under CEQA

**RECOMMENDATION: Adopt of Recommendation for Approval**

### Planning Code Amendment

The proposed Ordinance would amend the Planning Code to allow certain Below Market Rate (BMR) Owned Units to be resold at a price affordable to households at a higher Area Median Income (AMI) level. The proposed Ordinance would also increase the qualifying income AMI limit for these BMRs.

#### The Way It Is Now:

1. The Inclusionary Housing Program (hereinafter the Program) uses ambiguous language.
2. BMR owners are restricted on the resale price per the Program, except for a few waivers for units that are unable to be resold.
3. MOHCD requires that parking included during the initial BMR sale continue to be included with the

BMR unit in resales. This means the parking space cannot be sold separately from the BMR unit. This contradicts the Planning Code's unbundled parking requirement.

4. Prior legislation amended the Program but omitted some corresponding changes in other subsections of the Code.

### **The Way It Would Be:**

1. The proposed Ordinance would add new definitions to Section 401 for "Affordable Price" and "Qualifying Income".
2. The proposed Ordinance would create a new waiver for BMR units that were purchased at a higher price than the affordable resale price of today. This new waiver would allow the Mayor's Office of Housing and Community Development (MOHCD) to increase the resale price to reflect the original purchase price up to a maximum Affordable Price of 130% AMI. Additionally, this new waiver would allow MOHCD increase the qualifying income AMI by up to 20%, up to a maximum of 150% of AMI.
3. The proposed Ordinance would explicitly clarify that parking spaces that were included during the initial purchase are exempt from unbundled parking requirements during the resale process. This is a technical clarification and would make the Planning Code consistent with the Inclusionary Affordable Housing Program Monitoring and Procedures Manual.
4. The proposed Ordinance would make other technical clarifications to make the Program consistent.

## **Background**

This ordinance came about because of 201 Valencia Street, Unit 201 (hereinafter Valencia Street unit). The owners of the Valencia Street unit purchased their property in 2018. They decided to sell the property in 2022 and requested a resale price from MOHCD. Since the owners' original purchase date, MOHCD has refined their methodology based on current interest rates and other factors to calculate resale prices. This newer (and current) pricing methodology resulted in an affordable resale price for this property approximately \$60,000 less than the owners' purchase price in 2018. The owners have tried selling their BMR unit at a higher price to be able to recoup more of their equity; however, they have been unable to sell their unit because the pool of buyers is limited to a specific AMI. The proposed Ordinance would create a path for the owners of the Valencia Street unit to sell their unit for the price they paid for it while keeping the unit within the Inclusionary Housing program.

## **Issues and Considerations**

### **BMR Affordability**

BMR units have strict price and qualifying income limits to ensure affordability. These are calculated based on what is deemed affordable for a household making a certain percentage of the Area Median Income (hereinafter AMI). MOHCD considers various factors or assumptions so that the price is affordable to the

buyer. Full details are outlined on page 87 of the [Inclusionary Affordable Housing Program Monitoring and Procedures Manual](#). Some factors include:

- The final HOA dues for each BMR unit.
- The tax rate as published by the San Francisco Assessor and Recorders Office.
- A mortgage interest rate based on data provided by Freddie Mac.
- Ensuring total housing costs<sup>1</sup> are no more than 33% of the gross monthly income.
- A 10% down-payment.
- Whether or not parking is included.

This final price AMI is recorded in a Notice of Special Restrictions (NSR) against the property. The goal of this sale price is to preserve affordability. BMR owners are not anticipated to be able to make a major profit when they sell a unit, rather the price AMI for future resales is set based on the equivalent affordability level.

### New Waiver for Price and Qualifying Income Limits and Why It Is Needed

There is a systemic problem if today's affordable pricing methodology results in a substantial loss for older BMR units.

The proposed Ordinance creates a new waiver for the price and qualifying income limits. This is needed to offset some structural changes in the Program. The Valencia Street unit is an older BMR unit, and the current owners are the second owners. When these owners purchased the unit in 2018, the affordable price was calculated using a method MOHCD now finds is not reflective of current affordable pricing. MOHCD used the newer methodology in 2022 to calculate the new affordable price for the Valencia Street unit. This resulted in an affordable price approximately \$60,000 less than the original purchase price. The proposed waiver allows MOHCD to reset the affordable price to the original purchase price, instead of relying on all the standard factors and assumptions to calculate the price. This is also meant to make the repricing process for eligible BMR units simpler and easier for staff and the public to understand.

The qualifying income AMI limit must also be adjusted to reflect the higher price limit. Without this subsequent qualifying income adjustment, the purchase price then becomes unaffordable to those households at the current qualifying income AMI levels.

The second component of this new waiver preserves the unit's affordability. After the price is adjusted, the qualifying income is also adjusted to make sure that buyers have enough income to afford the new, higher price. This adjustment is limited to an increase of 20% of the qualifying income AMI, up to a maximum of 150%. If the qualifying income is not adjusted in conjunction with this price increase, future buyers would likely spend more than 33% of their household income on housing costs. This would make the unit inherently unaffordable moving forward. Therefore, the price adjustment also needs the corresponding qualifying income adjustment to make sure the unit is affordable to buyers in the future.

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<sup>1</sup> Housing costs may include payments for taxes, insurance, homeowner or association's fees, property tax special assessment costs (if any), and other related costs.

This proposed waiver is a one-time price adjustment to allow the BMR to be sold up to a maximum of the original sale price. MOHCD recognizes that interest rates and the economy fluctuate; however, this proposed price exemption is not anticipated to be needed again because the qualifying income is also adjusted to match the new sale price.

### **Bundled versus Unbundled Parking for BMR Units**

At initial sale, the BMR unit is offered at an option to include parking or not include parking. If parking is included, it is offered at a discounted rate and considered an amenity for the BMR unit. The parking space may not be removed or unbundled from the unit in future sales because of the steep discount in the original purchase price. This is contrary to controls in the Planning Code that require parking to be unbundled from the unit and able to be sold separately. As such, the proposed Ordinance includes a clarification that parking spaces that were included at the initial purchase are exempt from unbundled parking requirements in the Planning Code. This amendment is to match MOHCD's practice of keeping all amenities included during initial sale as part of the resale package. This is not a policy change, but more clean-up in nature.

### **General Plan Compliance**

The proposed Ordinance supports the Housing Element objective of ensuring housing stability. Specifically, the proposed Ordinance aligns with Policy 23: retain and increase the number of homebuying opportunities for moderate- and middle-income households. This is done by creating a new waiver to allow the current BMR seller to sell their BMR at a price closer to the original purchase price. As a result, the eligible BMR owner will be more financially stable in their search for new housing. The new price is calculated in a simpler fashion than the original purchase price. This supports Policy 26: streamline and simplify the permit process. Additionally, this new price is coupled with adjusting the qualifying income AMI for the BMR unit. This supports Policies 2 and 23 by making sure that future buyers can afford the available BMR units. Further, adjusting the qualifying income supports Objective 4.A and Policy 15: expand the amount of permanently affordable housing for extremely low- to moderate-income households. In some cases, this may create more affordable housing opportunities at different income levels.

### **Racial and Social Equity Analysis**

The proposed Ordinance advances racial and social equity by supporting existing BMR owners and preserving affordability. The Inclusionary Housing Program builds a path for low-income households to enter the housing market. For some households, this is the only way to be able to purchase a home. However, these BMR owners are not meant to be able to resell the BMR unit for a lot of equity because the unit is supposed to remain affordable. The Program sets price and qualifying income limits to preserve this affordability. However, MOHCD's historical methodology to calculate affordable pricing resulted in systemic problems when older BMRs try to resell. This is because MOHCD's current methodology makes sure that all the buyer's housing costs are less than 33% of their annual income. One unintentional consequence is that when older BMR units that were priced using the historical methodology are repriced under today's methodology, the resale price is much lower than what the original purchase price was. Newer BMR units that used the current methodology to calculate the original purchase price do not face the same issues. This problem exists for a very specific subset of BMRs, but still yields unwarranted hardships for these BMR owners.

The proposed Ordinance would create a new resell waiver for BMR owners who purchased their unit at higher price than the current affordable housing prices. This allows eligible BMR owners to resell the unit up to a maximum of the original purchase price. This is important because it allows the BMR owners in this unique situation to retain their equity. Without this new price adjustment, the BMR owner may stay in a unit that no longer fits their needs just to preserve the household's assets and wealth. Additionally, without this new price adjustment, the BMR owner would lose substantial equity during the sale. BMR units are not meant to gain a lot of equity during the resale process; but they are also not mean to take such a severe loss when reselling the BMR unit. In the case of the Valencia Street unit, the BMR owner has tried to sell their unit at a rate much higher than the affordable price today but has been unsuccessful.

The proposed Ordinance includes increasing the qualifying income by up to 20%, up to a maximum of 150% of the AMI. This adjustment is needed to make sure that the BMR buyer can actually afford the new price. MOHCD would determine the appropriate AMI by ensuring the BMR buyer would spend only up to 33% of the household income on housing costs. Additionally, adjusting the qualifying income limit would potentially increase the number of eligible applicants. This may create new housing paths for low- to moderate- income households.

## Implementation

The Department has determined that this Ordinance will impact our current implementation procedures; however, the proposed changes can be implemented without increasing permit costs or review time. The proposed Ordinance would require a new process to update the previously approved conditions of approval for the impacted units. As drafted, the proposed Ordinance ensures that this process can be completed administratively. It is likely the Housing Implementation Team will take the lead in this process. Therefore, no extensive training would be required for the Current Planning division or the Department. Additionally, the Housing Implementation Team can model this process after the process to reduce a project's inclusionary housing. Therefore, the proposed Ordinance would have minimal impacts on the Department's implementation procedures.

## Recommendation

The Department recommends that the Commission ***adopt a recommendation for approval*** of the proposed Ordinance and adopt the attached Draft Resolution to that effect.

## Basis for Recommendation

The proposed Ordinance assists BMR sellers whose purchase price was calculated using an outdated methodology and are now trying to resell based on the new methodology. MOHCD refined this calculation in recent years to make sure BMR owners only spend up to 33% of their total income on housing costs. While the revised methodology is an improvement to the Program overall, it created a systemic problem for older BMR units that are repriced under today's affordable pricing methodology. This is so because the new method adds extra financial considerations that were not used when pricing older BMR units. MOHCD is

currently aware of only one unit that is eligible in this situation, but there are likely other older BMR units that could benefit from this proposed Ordinance.

The proposed Ordinance addresses this issue by creating a new price and qualifying income limit waiver. So now instead of being limited to selling the BMR unit to the price AMI listed in the NSR, the price may be adjusted up to the original purchase price. The goal is for the BMR seller to be more competitive with newer BMRs that are generally listed at more affordable prices. The BMR seller would be more likely to recoup most of the purchase price. This is important because the BMR Program should not force BMR sellers to take a loss when selling their unit. Additionally, substantial losses in the housing market would be more crippling to low-income households.

The proposed Ordinance also allows MOHCD to increase the qualifying income by up to 20%, up to a maximum of 150%. Without this adjustment, the new BMR buyer would likely need to spend more than 33% of the household income on housing. The proposed amendment remedies this by calculating what income is needed so that only 33% of the household income is spent on housing costs for the new purchase price. The combination of both the adjusted price and qualifying income ensures that the unit remains permanently affordable. Further, adjusting the qualifying income limit would reach new AMI levels and make more households eligible that are otherwise not eligible today.

The proposed Ordinance also includes technical clarifications and clean-up items to make the code consistent. The Program was amended in 2017, but some code sections were not accurately updated based on that legislation. The proposed Ordinance seeks to correct that.

## **Required Commission Action**

The proposed Ordinance is before the Commission so that it may adopt a recommendation of approval, disapproval, or approval with modifications.

## **Environmental Review**

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c)(2) and 15378 because they do not result in a physical change in the environment.

## **Public Comment**

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

BOARD of SUPERVISORS



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1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. (415) 554-5184  
Fax No. (415) 554-5163  
TDD/TTY No. (415) 554-5227

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## MEMORANDUM

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Date: August 7, 2024  
To: Planning Department/Planning Commission  
From: John Carroll, Assistant Clerk, Land Use and Transportation Committee  
Subject: Board of Supervisors Legislation Referral - File No. 240802  
Planning Code - Authorize Increases to the Affordable Price and Income Limits for Certain Below Market Rate Owned Units

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- California Environmental Quality Act (CEQA) Determination  
(California Public Resources Code, Sections 21000 et seq.)
  - Ordinance / Resolution Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment.
  - Ballot Measure
- 8/9/2024   
 Amendment to the Planning Code, including the following Findings:  
(Planning Code, Section 302(b): 90 days for Planning Commission review)
  - General Plan
  - Planning Code, Section 101.1
  - Planning Code, Section 302
- Amendment to the Administrative Code, involving Land Use/Planning  
(Board Rule 3.23: 30 days for possible Planning Department review)
- General Plan Referral for Non-Planning Code Amendments  
(Charter, Section 4.105, and Administrative Code, Section 2A.53)  
(Required for legislation concerning the acquisition, vacation, sale, or change in use of City property; subdivision of land; construction, improvement, extension, widening, narrowing, removal, or relocation of public ways, transportation routes, ground, open space, buildings, or structures; plans for public housing and publicly-assisted private housing; redevelopment plans; development agreements; the annual capital expenditure plan and six-year capital improvement program; and any capital improvement project or long-term financing proposal such as general obligation or revenue bonds.)
- Historic Preservation Commission
  - Landmark (Planning Code, Section 1004.3)
  - Cultural Districts (Charter, Section 4.135 & Board Rule 3.23)
  - Mills Act Contract (Government Code, Section 50280)
  - Designation for Significant/Contributory Buildings (Planning Code, Article 11)

Please send the Planning Department/Commission recommendation/determination to John Carroll at [john.carroll@sfgov.org](mailto:john.carroll@sfgov.org).

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

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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](mailto: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



BOARD of SUPERVISORS



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## MEMORANDUM

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Date: October 9, 2024  
To: Planning Department/Planning Commission  
From: John Carroll, Assistant Clerk, Land Use and Transportation Committee  
Subject: Board of Supervisors Legislation Referral - File No. 240802-2 – SUBSTITUTE, VER 2  
Planning Code - Authorize Increases to the Affordable Price and Income Limits for Certain  
Below Market Rate Owned Units and Require Amenities to be Resold with Unit

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- California Environmental Quality Act (CEQA) Determination  
(*California Public Resources Code, Sections 21000 et seq.*)
  - Ordinance / Resolution
  - Ballot Measure
  
- Amendment to the Planning Code, including the following Findings:  
(*Planning Code, Section 302(b): 90 days for Planning Commission review*)
  - General Plan     Planning Code, Section 101.1     Planning Code, Section 302
  
- Amendment to the Administrative Code, involving Land Use/Planning  
(*Board Rule 3.23: 30 days for possible Planning Department review*)
  
- General Plan Referral for Non-Planning Code Amendments  
(*Charter, Section 4.105, and Administrative Code, Section 2A.53*)  
(Required for legislation concerning the acquisition, vacation, sale, or change in use of City property; subdivision of land; construction, improvement, extension, widening, narrowing, removal, or relocation of public ways, transportation routes, ground, open space, buildings, or structures; plans for public housing and publicly-assisted private housing; redevelopment plans; development agreements; the annual capital expenditure plan and six-year capital improvement program; and any capital improvement project or long-term financing proposal such as general obligation or revenue bonds.)
  
- Historic Preservation Commission
  - Landmark (*Planning Code, Section 1004.3*)
  - Cultural Districts (*Charter, Section 4.135 & Board Rule 3.23*)
  - Mills Act Contract (*Government Code, Section 50280*)
  - Designation for Significant/Contributory Buildings (*Planning Code, Article 11*)

Please send the Planning Department/Commission recommendation/determination to John Carroll at [john.carroll@sfgov.org](mailto:john.carroll@sfgov.org).

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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: October 9, 2024

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Melgar as a substitute on October 1, 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, increase the qualifying AMI limit for BMR purchasers, and require BMR Owned Units originally purchased with parking spaces and other amenities to be resold with the same parking and amenities; affirming the Planning Department's determination under the California Environmental Quality Act; and 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](mailto: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



**MYRNA MELGAR**

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DATE: October 24, 2024

TO: Angela Calvillo  
Clerk of the Board of Supervisors

FROM: Supervisor Myrna Melgar, Chair, Land Use and Transportation Committee

RE: Land Use and Transportation Committee  
COMMITTEE REPORTS

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*mm*

Pursuant to Board Rule 4.20, as Chair of the Land Use and Transportation Committee, I have deemed the following matters are of an urgent nature and request them be considered by the full Board on Tuesday, October 29, 2024.

**File No. 240802**

**Planning Code - Authorize Increases to the Affordable Price and Income Limits for Certain Below Market Rate Owned Units and Require Amenities to be Resold with Unit**  
Sponsor: Melgar

**File No. 240727**

**Planning Code; Zoning Map - New Asia Senior Housing Special Use District - 758 and 772 Pacific Avenue**  
Sponsors: Peskin; Chan

These matters will be heard in the Land Use and Transportation Committee at a Regular Meeting on Monday, October 28, 2024.

**From:** [Charlie Sciammas](#)  
**To:** [Peskin, Aaron \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Melgar, Myrna \(BOS\)](#)  
**Cc:** [Lovett, Li \(BOS\)](#); [Horrell, Nate \(BOS\)](#); [Low, Jen \(BOS\)](#); [Carroll, John \(BOS\)](#); [Joseph Smooke](#); [John Avalos](#)  
**Subject:** RE: Authorize Increases to the Affordable Price and Income Limits for Certain Below Market Rate Owned Units (File # 240802)  
**Date:** Thursday, October 24, 2024 5:21:45 PM  
**Attachments:** [CCHO Letter, Authorize Increases to the Affordable Price and Income Limits for Certain Below Market Rate Owned Units.pdf](#)

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Members of the Land Use Committee,

We are writing on behalf of the Council of Community Housing Organizations in regards to the Board's legislation to *Authorize Increases to the Affordable Price and Income Limits for Certain Below Market Rate Owned Units* (File # 240802).

Please see our attached letter.

--

Charlie Sciammas, Policy Director (he/him)  
**Council of Community Housing Organizations / CCHO Action**  
Cell: 415-615-2632 Office: 415-882-0901  
325 Clementina Street, San Francisco 94103  
[www.sfccho.org](http://www.sfccho.org). [www.sfcchoaction.org](http://www.sfcchoaction.org)  
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October 24, 2024

President, Board of Supervisors, Supervisor Aaron Peskin  
Chair of the Land Use & Transportation Committee, Supervisor Melgar  
Member of the Land Use & Transportation Committee, Supervisor Preston

Dear Members of the Land Use Committee,

We are writing on behalf of the Council of Community Housing Organizations in regards to the Board's legislation to *Authorize Increases to the Affordable Price and Income Limits for Certain Below Market Rate Owned Units* (File # 240802).

We appreciate the time and effort that Supervisor Melgar has dedicated towards addressing the particular needs of the BMR property owner at 270 Valencia Unit #1, which we understand to be negatively impacted by a change in how MOHCD calculates allowable resale value for BMR units. We agree with the goal of providing relief to this household and see BMR residents as important constituents alongside our broader citywide affordability and community development goals.

This legislation enables waiver(s) to upwardly adjust the AMI levels of an existing category of BMR units, such as 270 Valencia Street #1. We believe this opens the door to permanently reducing the stock of BMR units at deeper affordability. We believe that there is already a troubling lack of alignment between the AMI levels of the BMR program and where the greatest need for affordability lies. We have seen that the City has been setting AMI levels that well exceed the federal definitions of "low to moderate income" which, from a lender's perspective, HUD, or CalHFA program perspective would be capped at 120% unadjusted AMI. A look at the profile of applicants to the citywide lottery for BMR units shows that competition is fierce for units at lower AMIs while units serving higher AMI households are more likely to remain vacant, and have significantly better lottery odds due to an excess of inventory and smaller demand. We are concerned that this may undermine the City's ability to fulfill our obligations under Affirmatively Furthering Fair Housing goals as outlined in our Housing Element and as required by State law.

We are also concerned about the lack of clarity of the scope of units that might be impacted by this legislation. MOHCD has stated that it has not done an analysis of the universe of units that would qualify for an exception under this legislation. We heard initially that there are two known units that would qualify, and saw that MOHCD has reported that there could be up to 100, only to concede that there may only be one affected household.

We'd like to lay out the following policy options for the Land Use and Transportation Committee to consider. More than anything we want the City to find the best pathways to address the needs of this particular BMR household without permanently making their unit less affordable and creating a situation whereby the current residents in the BMR unit would be priced out from accessing their BMR unit in the first place.

- In this narrow circumstance, could the City compensate the BMR owner for the anticipated loss between the allowable resale price and the initial purchase price of their home?
- Could the City acquire the unit in a manner that makes the owners whole and resell it at a lower AMI and ensure that there is a one-to-one replacement of units at the particular AMIs being targeted by this legislation?
- Could the City consider unbundling the parking space from this particular unit in order to provide additional flexibility for the BMR resident to recover the difference between the allowable resale price and their initial purchase price?

If none of these options are possible, we recommend the City create ways to constrict the scope of this legislation as narrowly as possible to maintain the City's inventory of units at lower AMIs and prevent the erosion of an unknown number of BMR units at lower AMIs.

- Could the definition of who is eligible for the waiver be narrowed more tightly, for example to a small universe of BMR owners who purchased during a time period or under conditions that are adversely affected by MOHCD's new regulations?
- Could there be a total or annual on how many units could take advantage of this legislation?
- Could the reporting on implementation be presented to the Inclusionary Housing Technical Advisory Committee to consider in their analysis around setting AMI levels and to consider future amendments to this ordinance?
- Could the City reset the restricted sales price back to the original AMI for that unit upon the next resale providing it is viable? This would be assuming that the sales price might eventually increase to the new purchase price if the formula is based on various factors of AMI, interest rate, and/or HOA fees for that unit, and that a buyer with suitable savings can be found to meet the leverage requirements at that price. And when these conditions cannot be met, this would create the outcome that the unit would be transitioned to the higher price.

Lastly, we believe this legislation points to the need for a more comprehensive review of the BMR program and associated AMIs. We believe that an underlying problem is that this legislation would increase the inventory of units at higher AMIs at the same time that the price of BMR units at the higher AMIs is presently too high to be sustainable in the marketplace. We believe that this is emblematic of the fact that the AMI tiers are not aligned with a data-driven analysis of what the community needs are. **We highly recommend that this legislation be amended to commission an MOHCD study to analyze the AMI tiers among BMR lottery applicants, their socio economic conditions, and the overall demand among the target populations. The study should be administered in consultation with community housing organizations that serve BMR residents and make recommendations to appropriately design the AMI tiers.**

We look forward to working together with members of the Board as you consider this legislation and ways to ensure that it addresses our communities' concerns referenced above.

Sincerely



John Avalos  
Executive Director



Charlie Sciammas  
Policy Director

## 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: