

1 [Residential Inclusionary Affordable Housing Requirements.]

2

3 **Ordinance approving changes to the Residential Inclusionary Affordable Housing**

4 **Requirements by amending Section 315 to clarify the regulations in effect for particular**

5 **projects; amending Section 315.1 to modify certain definitions related to income and**

6 **sale price calculation; amending Section 315.3 to conform the legislation to the**

7 **requirement that the ordinance apply to all projects of 5 units or more; amending**

8 **Sections 315.4 and 315.5 to establish separate requirements for buildings of 120 feet in**

9 **height or greater, to clarify the requirements related to the type of on- and off-site**

10 **housing required, and to establish a preference in the lottery for on- and off-site units**

11 **for people who live and work in San Francisco; amending Section 315.6 to provide**

12 **updated guidelines for the calculation of the in lieu fee and to allow MOH to expend**

13 **funds for a study to periodically update the fee; amending Section 315.7 to change the**

14 **amount of time an ownership unit shall remain affordable; amending Section 315.8 to**

15 **amend certain monitoring and study obligations; and making a related change to the**

16 **Jobs-Housing Linkage Program by amending Section 313.6 to make annual**

17 **adjustments in the in lieu fee for that program correspond to the method used for the**

18 **Residential Inclusionary Affordable Housing Program.**

19 Note: Additions are *single-underline italics Times New Roman*;

20 deletions are *~~strikethrough italics Times New Roman~~*.

21 Board amendment additions are double underlined.

22 Board amendment deletions are ~~strikethrough normal~~.

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

24 Section 1. The San Francisco Planning Code is hereby amended by amending

25 Sections 315, 315.1, 315.3, 315.4, 315.5, 315.6, 315.7, and 315.8 of the Residential  
Inclusionary Affordable Housing Program, to read as follows:

1     **SEC. 315. HOUSING REQUIREMENTS FOR RESIDENTIAL AND LIVE/WORK**  
2     **DEVELOPMENT PROJECTS.**

3     Sections 315.1– 315.9 set forth the requirements and procedures for the Residential  
4     Inclusionary Affordable Housing Program ("Program"). The Department of City  
5     Planning and the Mayor's Office of Housing shall periodically publish a Procedures  
6     Manual containing procedures for monitoring and enforcement of the policies and  
7     procedures for implementation of this Program. The Procedures Manual must be made  
8     available at the Zoning Counter of the Planning Department and on the Planning  
9     Department's web site. The Procedures Manual shall not be amended, except for an  
10    annual update of the affordability housing guidelines, which reflect updated income  
11    limits, prices, and rents, without approval of the Planning Commission or as otherwise  
12    specified herein.

13           The Procedures Manual in effect at the time of initial purchase or initial rental of a unit  
14    shall govern the regulation of that unit until it is sold or re-rented unless an owner or current  
15    tenant chooses to be governed by all of the more up-to-date provisions of the then-current  
16    Procedures Manual. In that case, the owner or tenant must agree to be governed by the totality  
17    of the new regulations – an owner or tenant may not pick some provisions from the Procedures  
18    Manual in effect at the time of initial purchase or initial rental and some in effect in the then-  
19    current Procedures Manual. If the owner or tenant chooses to be governed by the then-current  
20    Procedures Manual he or she shall sign an agreement with the City to that effect, and the  
21    Planning Department and Mayor's Office of Housing shall apply all of the rules and regulations  
22    in the then-current Procedures Manual to the unit.

23    **SEC. 315.1. DEFINITIONS.**

24    The following definitions shall govern interpretation of this ordinance:  
25

1 (1) "Affordable housing project" shall mean a housing project containing units  
2 constructed to satisfy the requirements of Sections 315.4 or 315.5.

3 (2) "Affordable to a household" shall mean a purchase price that a household can  
4 afford to pay based on an annual payment for all housing costs, as defined in California  
5 Code of Regulations ("CCR") Title 25, Section 6920, as amended from time to time, of  
6 33 percent of the combined household annual ~~net~~ gross income, assuming a ~~10 percent~~  
7 down payment recommended by the Mayor's Office of Housing in the Procedures Manual,  
8 and available financing, or a rent that does not exceed 30 percent of a household's  
9 combined annual ~~net~~ gross income. Where applicable, the purchase price or rent may be  
10 adjusted to reflect the absence or existence of a parking space(s), subject to the Department's  
11 policy on unbundled parking for affordable housing units as specified in the Procedures Manual  
12 and amended from time to time.

13 (3) "Affordable to qualifying households" shall mean:

14 (A) With respect to owned units, the average purchase price on the initial sale of all  
15 affordable owned units in an affordable housing project shall not exceed the allowable  
16 average purchase price and all units must be sold only to households with annual gross  
17 incomes between 80% and 120% of median income for the City and County of San Francisco.  
18 In addition, each ~~Each~~ unit shall be sold:

19 (i) Only to households with an annual ~~net~~ gross income equal to or less than the  
20 qualifying limits for a household of ~~median~~ moderate income, adjusted for household  
21 size;

22 (ii) On the initial sale, at or below the maximum purchase price; and

23 (iii) On subsequent sales at or below the prices to be determined by the Director  
24 Mayor's Office of Housing in the Conditions of Approval or Notice of Special Restrictions  
25

1 according to the formula specified in the Procedures Manual, as amended from time to  
2 time, such that the units remain affordable to qualifying households. The formula in the  
3 Procedures Manual may permit the seller to include certain allowable capital improvements in  
4 the sales price.

5 (B) With respect to rental units in an affordable housing project, the average annual  
6 rent, including the cost utilities paid by the tenant according to HUD utility allowance  
7 established by the San Francisco Housing Authority, shall not exceed the allowable  
8 average annual rent. Each unit shall be rented:

9 (i) Only to households with an annual ~~net~~ gross income equal to or less than the  
10 qualifying limits for a household of low income as defined in this Section;

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

12 (4) "Allowable average purchase price" shall mean a price for all affordable owned units  
13 of the size indicated below that ~~is~~ are affordable to a household of median income as  
14 defined in this Section, adjusted for the household size indicated below as of the date  
15 of the close of escrow, and, where applicable, adjusted to reflect the Department's policy on  
16 unbundled parking for affordable housing units as specified in the Procedures Manual and  
17 amended from time to time:

18 Number of Bedrooms (or, for live/work units square foot 19 equivalency)	Number of Persons in Household
20 0 (Less than 600 square feet)	1
21 1 (601 to 850 square feet)	2
22 2 (851 to 1100 square feet)	3
23 3 (1101 to 1300 square feet)	4

25

4 (More than 1300 square feet)	5
--------------------------------	---

(5) "Allowable average annual rent" shall mean annual rent for an affordable rental unit of the size indicated below that is ~~1830~~-percent of the annual ~~net~~ gross income of a household of median income as defined in this Section, adjusted for the household size indicated below, and, where applicable, adjusted to reflect the Department's policy on unbundled parking for affordable housing units as specified in the Procedures Manual and amended from time to time:

Number of Bedrooms (or, for live/work units square foot equivalency)	Number of Persons in Household
0 (Less than 600 square feet)	1
1 (601 to 850 square feet)	2
2 (851 to 1100 square feet)	3
3 (1101 to 1300 square feet)	4
4 (More than 1300 square feet)	5

(6) ~~"Annual net income" shall mean net income as defined in CCR Title 25, Section 6916, as amended from time to time.~~ "Annual gross income" shall mean gross income as defined in CCR Title 25, Section 6914, as amended from time to time, except that the Mayor's Office of Housing may, in order to promote consistency with the procedures of the San Francisco Redevelopment Agency, develop an asset test that differs from the State definition if it publishes that test in the Procedures Manual.

(7) "Average annual rent" shall mean the total annual rent for the calendar year charged by a housing project for all affordable rental units in the project of an equal

1 number of bedrooms divided by the total number of affordable units in the project with  
2 that number of bedrooms.

3 (8) "Average purchase price" shall mean the purchase price for all affordable owned  
4 units in an affordable housing project of an equal number of bedrooms divided by the  
5 total number of affordable units in the project with that number of bedrooms.

6 (9) "Community apartment" shall be as defined in San Francisco Subdivision Code  
7 Section 1308(b).

8 (9a) "Conditional use" for purposes of this Ordinance means a conditional use  
9 authorization which, pursuant to the Planning Code, is required for the residential  
10 component of a project.

11 (10) "Conditions of approval" shall be a set of written conditions imposed by the  
12 Planning Commission or another permit-issuing City agency or appellate body to which  
13 a project applicant agrees to adhere and fulfill when it receives a conditional use or  
14 planned unit development permit for the construction of a principal project or other  
15 housing project subject to this Program.

16 (11) "Condominium" shall be as defined in California Civil Code Section 783.

17 (12) "Director" shall mean the Director of City Planning or his or her designee, including  
18 other City agencies or departments.

19 (13) "First certificate of occupancy" shall mean either a temporary certificate of  
20 occupancy or a Certificate of Final Completion and Occupancy as defined in San  
21 Francisco Building Code Section 109, whichever is issued first.

22 (14) ~~"High need area" will mean an area identified by the Mayor's Office of Housing, or its~~  
23 ~~successor, as having a large percentage of low income households. Intentionally Left Blank.~~

24

25

1 (15) "Household" shall mean any person or persons who reside or intend to reside in  
2 the same housing unit.

3 (16) "Household of low income" shall mean a household whose combined annual gross  
4 income for all members does not exceed sixty (60) percent of median income for the  
5 City and County of San Francisco, as calculated by the Mayor's Office of Housing  
6 using data from the United States Department of Housing and Urban Development  
7 (HUD) and adjusted for household size or, if data from HUD is unavailable, calculated  
8 by the Mayor's Office of Housing using other publicly available and credible data and  
9 adjusted for household size.

10 (17) "Household of median income" shall mean a household whose combined annual  
11 gross income for all members does not exceed one hundred (100) percent of the  
12 median income for the City and County of San Francisco, as calculated by the Mayor's  
13 Office of Housing using data from the United States Department of Housing and Urban  
14 Development (HUD) and adjusted for household size or, if data from HUD is  
15 unavailable, calculated by the Mayor's Office of Housing using other publicly available  
16 and credible data and adjusted for household size.

17 (17A) "Household of moderate income" shall mean a household who is not a low- or median-  
18 income household whose combined annual gross income for all members does not exceed one  
19 hundred (120) percent of the median income for the City and County of San Francisco, as  
20 calculated by the Mayor's Office of Housing using data from the United States Department of  
21 Housing and Urban Development (HUD) and adjusted for household size or, if data from HUD  
22 is unavailable, calculated by the Mayor's Office of Housing using other publicly available and  
23 credible data and adjusted for household size.

24  
25

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

10 (19) "Housing unit" or "unit" shall mean a dwelling unit as defined in San Francisco  
11 Housing Code Section 401.

12 (20) "Live/work unit" shall be as defined in San Francisco Planning Code Section  
13 102.13.

14 (21) "Live/work project" shall mean a housing project containing more than one  
15 live/work unit.

16 (22) "Long term housing" shall mean housing intended for occupancy by a person or  
17 persons for 32 consecutive days or longer.

18 (23) "Market rate housing" shall mean housing constructed in the principal project that  
19 is not subject to sales or rental restrictions.

20 (24) "Maximum annual rent" shall mean the maximum rent that a housing developer  
21 may charge any tenant occupying an affordable unit for the calendar year. The  
22 maximum annual rent for an affordable housing unit of the size indicated below shall be  
23 no more than 30 percent of the annual ~~net~~ *gross* income for a household of low income  
24  
25



1 as defined in this Section, as adjusted for the household size indicated below as of the  
 2 first date of the tenancy:

Number of Bedrooms (or, for live/work units square foot equivalency)	Number of Persons in Household
0 (Less than 600 square feet)	1
1 (601 to 850 square feet)	2
2 (851 to 1100 square feet)	3
3 (1101 to 1300 square feet)	4
4 (More than 1300 square feet)	5

11 (25) "Maximum purchase price" shall mean the maximum purchase price for an  
 12 affordable owned unit of the size indicated below that is affordable to a household of  
 13 ~~median-moderate~~ income, adjusted for the household size indicated below, ~~as of the date~~  
 14 ~~of the close of escrow~~, assuming an annual payment for all housing costs of 33 percent of  
 15 the combined household annual ~~net gross~~ income, a ~~10 percent~~ down payment  
 16 recommended by MOH and set forth in the Procedures Manual, and available financing:

Number of Bedrooms (or, for live/work units square foot equivalency)	Number of Persons in Household
0 (Less than 600 square feet)	1
1 (601 to 850 square feet)	2
2 (851 to 1100 square feet)	3
3 (1101 to 1300 square feet)	4
4 (More than 1300 square feet)	5

- 1 (25A) "Mayor's Office of Housing" shall mean the Mayor's Office of Housing or its successor.
- 2 (26) "Notice of Special Restrictions" shall mean a document recorded with the San  
3 Francisco Recorder's Office for any unit subject to this Program detailing the sale and  
4 resale or rental restrictions and any restrictions on purchaser or tenant income levels  
5 included as a Condition of Approval of the principal project relating to the unit.
- 6 (27) "Off-site unit" shall mean a unit affordable to qualifying households constructed  
7 pursuant to this Ordinance on a site other than the site of the principal project.
- 8 (28) "On-site unit" shall mean a unit affordable to qualifying households constructed  
9 pursuant to this Ordinance on the site of the principal project.
- 10 (29) "Ordinance" shall mean Planning Code Sections 315.1 through 315.9.
- 11 (30) "Owned unit" shall mean a unit affordable to qualifying households which is a  
12 condominium, stock cooperative, community apartment, or detached single-family  
13 home. The owner or owners of an owned unit must occupy the unit as their primary  
14 residence.
- 15 (31) "Owner" shall mean the record owner of the fee or a vendee in possession.
- 16 (32) "Principal project" shall mean a housing development on which a requirement to  
17 provide affordable housing units is imposed.
- 18 (33) "Procedures Manual" shall mean the City and County of San Francisco Affordable  
19 Housing Monitoring Procedures Manual issued by the San Francisco Department of  
20 City Planning, as amended.
- 21 (34) "Program" shall mean the Residential Inclusionary Affordable Housing Program.
- 22 (35) "Project applicant" shall mean an applicant for a building permit or a site permit or  
23 an applicant for a conditional use permit or planned unit development permit, seeking  
24  
25

1 approval from the Planning Commission or Planning Department for construction of a  
2 housing project subject to this Section, such applicant's successors and assigns.

3 (36) "Rent" or "rental" shall mean the total charges for rent, utilities, and related  
4 housing services to each household occupying an affordable unit.

5 (37) "Rental unit" shall mean a unit affordable to qualifying households which is not a  
6 condominium, stock cooperative, or community apartment.

7 **SEC. 315.3. APPLICATION.**

8 (a) This Ordinance shall apply to any housing project that consists of five or more units where  
9 an individual project or a phased project is to be undertaken and where the total undertaking  
10 comprises a project with ~~10~~ 5 or more units, even if the development is on separate but  
11 adjacent lots; and

12 (1) Does not require Planning Commission approval as a conditional use or planned unit  
13 development;

14 (2) Requires Planning Commission approval as a conditional use or planned unit  
15 development;

16 (3) Consists of live/work units as defined by Planning Code Section 102.13; or

17 (4) Requires Planning Commission approval of replacement housing destroyed by  
18 earthquake, fire or natural disaster only where the destroyed housing included units restricted  
19 under the Residential Inclusionary Housing Program or the City's predecessor inclusionary  
20 housing policy, condominium conversion requirements, or other affordable housing program.

21 (b) This Ordinance shall apply to all housing projects that have not received a first site or  
22 building permit on or before the effective date of this ordinance with the following exceptions.  
23 Until these application dates take effect as described below, the provisions of the Ordinance  
24 as it exists on July 18, 2006 shall govern.

25

1 (1) The amendments to the off-site requirements in Section 315.5(c) and (d) relating to  
2 location and type of off-site housing, and Section 315.4(e) relating to when a developer shall  
3 declare whether it will choose an alternative to the on-site requirement shall apply only to  
4 projects that receive their Planning Commission or Department approval on or after the  
5 effective date of this legislation.

6 (2) The amendments to the percentage-requirements of this Ordinance that govern the  
7 number of affordable units a housing project is required to provide in Section 315.4(a) and  
8 315.5(a) apply only to housing projects that submit their first application, including an  
9 environmental evaluation application or any other Planning Department or Building  
10 Department application, on or after July 18, 2006. Notwithstanding the foregoing, the  
11 amendments to the percentage-requirements of this Ordinance also apply to any project that  
12 has not received its final Planning Commission or Department approvals before July 18,  
13 2006 for housing projects that receive a Zoning Map amendment or Planning Code text  
14 amendment related to their project approvals that (A) results in a net increase in the number  
15 of permissible residential units, or (B) results in a material increase in the net permissible  
16 residential square footage. For purposes of subsection B above a material increase shall  
17 mean an increase of 5 percent or more, or an increase in 10,000 square feet or more,  
18 whichever is less.

19 (3) The amendments in Section 315.1 to the way median income is calculated apply to any  
20 housing project that has not received a first site or building permit by the effective date of this  
21 Ordinance. (4) This Ordinance shall apply to all housing projects of 5 to 9 units that filed their  
22 first application, including an environmental evaluation application or any other Planning  
23 Department application on or after July 18, 2006.

24 (c) This Ordinance shall not apply to:  
25

1 (1) That portion of a housing project located on property owned by the United States or any  
2 of its agencies or leased by the United States or any of its agencies for a period in excess of  
3 50 years, with the exception of such property not used exclusively for a governmental  
4 purpose;

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

8 (3) That portion of a housing project located on property under the jurisdiction of the San  
9 Francisco Redevelopment Agency or the Port of San Francisco where the application of this  
10 Ordinance is prohibited by California or local law;

11 (4) That portion of a housing project for which a project applicant can demonstrate that an  
12 impact fee under the Jobs-Housing Linkage Program, commencing with Planning Code  
13 Section 313, has been paid.

14 (d) Waiver or Reduction:

15 (1) A project applicant of any project subject to the requirements in this Program may appeal  
16 to the Board of Supervisors for a reduction, adjustment, or waiver of the requirements based  
17 upon the absence of any reasonable relationship or nexus between the impact of  
18 development and either the amount of the fee charged or the inclusionary requirement.

19 (2) A project applicant subject to the requirements of this Program who has received an  
20 approved building permit, conditional use permit or similar discretionary approval and who  
21 submits a new or revised building permit, conditional use permit or similar discretionary  
22 approval for the same property may appeal for a reduction, adjustment or waiver of the  
23 requirements with respect to the number of lots or square footage of construction previously  
24 approved.

25

1 (3) Any such appeal shall be made in writing and filed with the Clerk of the Board no later  
2 than 15 days after the date the Planning Department sends notice to the project applicant of  
3 the number of affordable units required as provided in Section 315.4(a) and 315.5(a). The  
4 appeal shall set forth in detail the factual and legal basis for the claim of waiver, reduction, or  
5 adjustment. The Board of Supervisors shall consider the appeal at the hearing within 60 days  
6 after the filing of the appeal. The appellant shall bear the burden of presenting substantial  
7 evidence to support the appeal, including comparable technical information to support  
8 appellant's position. The decision of the Board shall be by a simple majority vote and shall be  
9 final. If a reduction, adjustment, or waiver is granted, any change in use within the project  
10 shall invalidate the waiver, adjustment, or reduction of the fee or inclusionary requirement. If  
11 the Board grants a reduction, adjustment or waiver, the Clerk of the Board shall promptly  
12 transmit the nature and extent of the reduction, adjustment or waiver to the Treasurer.  
13 (e) For projects that have received a first site or building permit prior to the effective date of  
14 this legislation, the requirements in effect prior to the effective date of this Ordinance shall  
15 apply.

16 **SEC. 315.4. ON-SITE HOUSING REQUIREMENT AND BENEFITS.**

17 Except as provided in Section 315.4(e), all housing projects subject to this Program through  
18 the application of Section 315.3 shall be required to construct on-site units subject to the  
19 following requirements:

20 (a) Number of Units:

21 (1)

22 (A) For any housing development of any height that is located in an area with a specific inclusionary  
23 housing requirement, the more specific inclusionary housing requirement shall apply.

24

25

1 (B) Buildings 120 feet in height and under or buildings of over 120 feet in height that do not meet the  
2 criteria in subsection (C) below: Except as provided in Subsection (C) below, the ~~The~~ Planning  
3 Department shall require for housing projects covered by Section 315.3(a)(1), as a condition  
4 of Planning Department approval of a project's building permit, and by Section 315.3(a)(2),  
5 (3) and (4), as a Condition of Approval of a conditional use or planned unit development  
6 permit or as a condition of Planning Department approval of a live/work project, that 15% of  
7 all units constructed on the project site shall be affordable to qualifying households so that a  
8 project applicant must construct .15 times the total number of units produced in the principal  
9 project beginning with the construction of the ~~tenth~~ fifth unit. If the total number of units is not  
10 a whole number, the project applicant shall round up to the nearest whole number for any  
11 portion of .5 or above.

12 ~~Notwithstanding any other provision of this section, any inclusionary affordable requirement imposed~~  
13 ~~on housing projects covered by Section 315.3(a)(1) in connection with an application filed with the~~  
14 ~~Department of Building Inspection from the effective date of this legislation and 180 days thereafter~~  
15 ~~shall be 5% so that a project applicant must construct .05 times the total number of units produced in~~  
16 ~~the principal project beginning with the construction of the tenth unit. If the total number of units is~~  
17 ~~not a whole number, the project applicant shall round up to the nearest whole number for any portion~~  
18 ~~of .5 or above.~~

19 The Planning Department shall provide written notice by mail to the project applicant of the  
20 number of affordable units which shall be required within 30 days of approval by the Planning  
21 Department or Planning Commission.

22 (C) Buildings of over 120 feet in height. Except as provided in subsection (A) above, the  
23 requirements of this Subsection shall apply to any project that is over 120 feet in height and does not  
24 require a Zoning Map amendment or Planning Code text amendment related to its project approvals

25

1 which (i) results in a net increase in the number of permissible residential units, or (ii) results in a  
2 material increase in the net permissible residential square footage as defined in Section 315.3(b)(2) or  
3 has not received or will not receive a zoning map amendment or Planning Code text amendment as  
4 part of an Area Plan adopted after January 1, 2006 which (i) results in a net increase in the number of  
5 permissible residential units, or (ii) results in a material increase in the net permissible residential  
6 square footage as defined in Section 315.3(b)(2). The Planning Department shall require for housing  
7 projects covered by this Subsection and Section 315.3(a)(1), as a condition of Planning Department  
8 approval of a project's building permit, or by this Subsection and by Section 315.3(a)(2), (3) and (4),  
9 as a Condition of Approval of a conditional use or planned unit development permit or as a condition  
10 of Planning Department approval of a live/work project, that 12% of all units constructed on the  
11 project site shall be affordable to qualifying households so that a project applicant must construct .12  
12 times the total number of units produced in the principal project beginning with the construction of the  
13 fifth unit. If the total number of units is not a whole number, the project applicant shall round up to the  
14 nearest whole number for any portion of .5 or above. Consistent with the conclusions of the Mayor's  
15 Office of Housing study authorized in Section 315.8(e), the Mayor's Office of Housing shall  
16 recommend and the Board of Supervisors shall consider whether the requirements of this Subsection  
17 for buildings of over 120 feet in height shall continue or expire after approximately 5 years.  
18 The Planning Department shall provide written notice by mail to the project applicant of the number  
19 of affordable units which shall be required within 30 days of approval by the Planning Department or  
20 Planning Commission. This notice shall also be sent to project applicants who elect to pay an in-lieu  
21 fee.

22 (2) If the principal project has resulted in demolition, conversion, or removal of affordable  
23 housing units renting or selling to households at income levels and/or for a rental rate or  
24 sales price below corresponding income thresholds for units affordable to qualifying  
25



1 households, the Planning Commission shall require that the project applicant replace the  
2 number of affordable units removed with units of a comparable number of bedrooms or  
3 provide that 15% of all units constructed as part of the new project shall be affordable to  
4 qualifying households, whichever is greater.

5 (b) Timing of Construction: On-site inclusionary housing required by this Section 315.4 must  
6 be constructed, completed, and ready for occupancy no later than the market rate units in the  
7 principal project.

8 (c) Type of Housing: The type of affordable housing needed in San Francisco is documented  
9 in the City's Consolidated Plan and the Residence Element of the General Plan. In general,  
10 affordable units constructed under this Section 315.4 shall be comparable in number of  
11 bedrooms, exterior appearance and overall quality of construction to market rate units in the  
12 principal project. The Notice of Special Restrictions or Conditions of Approval shall include a  
13 specific number of units at specified unit sizes for affordable units. The square footage of  
14 affordable units and interior features in affordable units do not need to be same as or  
15 equivalent to those in market rate units in the principal project, so long as they are of good  
16 quality and are consistent with then-current standards for new housing. Where applicable,  
17 parking shall be offered to the affordable units subject to the terms and conditions of the Department's  
18 policy on unbundled parking for affordable housing units as specified in the Procedures Manual and  
19 amended from time to time. Unless provided otherwise by the Mayor's Office of Housing in writing, if  
20 the units in the market rate portion of the development are ownership units, then the affordable units  
21 shall be ownership units and if the market rate units are rental units, then the affordable units shall be  
22 rental units. In the case of life care or assisted living developments where amenities such as meals are  
23 provided as a mandatory part of the cost of living at the facility, such care and amenities shall be

24  
25

1 provided to the inhabitant of the affordable unit at a cost proportionate to the market rate rent  
2 compared to the affordable rent.

3 (d) Marketing the Units: The Mayor's Office of Housing ~~or its successor~~ shall be responsible for  
4 overseeing and monitoring the marketing of affordable units under this Section. In general,  
5 the marketing requirements and procedures shall be contained in the Procedures Manual as  
6 amended from time to time and shall apply to the affordable units in the project. The Mayor's  
7 Office of Housing may develop occupancy standards for units of different bedroom sizes in the  
8 Procedures Manual in order to promote an efficient allocation of affordable units. The Mayor's Office  
9 of Housing may require in the Procedures Manual that prospective purchasers complete homebuyer  
10 education training or fulfill other requirements. The Notice of Special Restrictions or Conditions  
11 of Approval shall specify that the marketing requirements and procedures contained in the  
12 Procedures Manual as amended from time to time, shall apply to the affordable units in the  
13 project.

14 (1) Lottery: At the initial offering of affordable units in a housing project, the Mayor's Office of  
15 Housing ~~or its successor~~ must require the use of a public lottery approved by ~~MOH~~ the Mayor's  
16 Office of Housing to select purchasers or tenants. The Mayor's Office of Housing ~~or its~~  
17 ~~successor~~ shall also hold a general public lottery and maintain and utilize a list generated from  
18 this lottery or utilize a list generated from a recent lottery at another similar housing project to  
19 fill spaces in units that become available for re-sale or occupancy in any housing project  
20 subject to this ordinance after the initial offering. The list shall be updated from time to time  
21 but in no event less than annually to ensure that it remains current.

22 (2) Preferences: ~~The Mayor's Office of Housing or its successor shall consider appropriate~~  
23 ~~preferences for the allocation of inclusionary units to qualifying households and shall, within 90 days,~~  
24 ~~present amendments of the Procedures Manual to the Planning Department for Commission review~~

25

1 ~~that require that certain preferences be given in the lottery process. In determining the appropriate~~  
2 ~~preferences, the Mayor's Office of Housing shall hold at least one meeting open to members of the~~  
3 ~~public and shall, as appropriate, consult with other City departments and interested nonprofit~~  
4 ~~organizations. The Mayor's Office of Housing shall create a lottery system that gives preference to~~  
5 ~~people who live or work in San Francisco. MOH shall propose policies and procedures for~~  
6 ~~implementing this preference to the Planning Commission for inclusion in the Procedures Manual.~~  
7 ~~Otherwise, it is the policy of the Board of Supervisors to treat all households equally in allocating~~  
8 ~~affordable units under this Program.~~

9 (e) Alternatives: The project sponsor may elect to satisfy the requirements of Section 315.4  
10 by one of the alternatives specified in this Section. The project sponsor has the choice between  
11 the alternatives and the Planning Commission may not require a specific alternative. The project  
12 sponsor must elect an alternative before it receives project approvals from the Planning  
13 Commission or Planning Department and that alternative will be a condition of project  
14 approval. If a project sponsor fails to elect an alternative before project approval by the  
15 Planning Commission or Planning Department, the provisions of Section 315.4 shall apply.  
16 The alternatives are as follows:

17 (1) Constructing units affordable to qualifying households at an alternative site within the City  
18 and County of San Francisco pursuant to the requirements of Section 315.5.

19 (2) Paying an in lieu fee to the Mayor's Office of Housing pursuant to the requirements of  
20 Section 315.6.

21 (3) Any combination of construction of on-site units as provided in Section 315.4, off-site  
22 units as provided in Section 315.5, or payment of an in lieu fee as provided in Section 315.6,  
23 provided that the project applicant constructs or pays the fee at the appropriate percentage  
24 or fee level required for that option.

25

1 (4) Using California Debt Limit Allocation Committee (CDLAC) tax-exempt bonds under the  
2 requirements of Section 315.5(g).

3 (f) Benefits: If the project applicant elects to satisfy the inclusionary housing requirements  
4 through the production of on-site inclusionary housing in this Section 315.4, the project  
5 applicant shall at his or her option, be eligible to receive a refund of the following fees: a  
6 conditional use or other fee required by Planning Code Section 352, if applicable; an  
7 environmental review fee required by Administrative Code Section 31.46B, if applicable; a  
8 building permit fee required by the Building Code and by Planning Code Section 355 for the  
9 portion of the housing project that is affordable. The project applicant shall pay the building  
10 fee for the portion of the project that is market-rate.

11 The Controller shall refund fees from any appropriated funds to the project applicant on  
12 application by the project applicant. The application must include a copy of the certificate of  
13 occupancy for all units affordable to a qualifying household required by the Inclusionary  
14 Affordable Housing Program. It is the policy of the Board of Supervisors to appropriate  
15 money for this purpose from the General Fund.

16 **SEC. 315.5. COMPLIANCE THROUGH OFF-SITE HOUSING DEVELOPMENT.**

17 If the project applicant elects, pursuant to Section 315.4(e), that the project applicant will  
18 build off-site units to satisfy the requirements of this Program, the project applicant shall meet  
19 the following requirements:

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

21 (1)

22 (A) For any housing development of any height that is located in an area with a specific inclusionary  
23 housing requirement, the more specific off-site inclusionary housing requirement shall apply.

24

25

1 (B) Buildings of 120 feet and under in height or buildings of over 120 feet in height that do not meet  
2 the criteria in subsection (C) below: Except as provided in Subsection (A), the ~~For~~ for projects  
3 described in Section 315.3(a)(1), (2), (3), and (4) 20% so that a project applicant must  
4 construct .20 times the total number of units produced in the principal project beginning with  
5 the construction of the ~~tent~~ fifth unit. If the total number of units is not a whole number, the  
6 project applicant shall round up to the nearest whole number for any portion of .5 or above.  
7 The Planning Department shall provide written notice by mail to the project applicant of the  
8 number of affordable units which shall be required within 30 days of approval by the Planning  
9 Department or Planning Commission. This notice shall also be sent to project applicants who  
10 elect to pay an in-lieu fee.

11 (C) Buildings of over 120 feet in height. Except as provided in subsection (A) above, the  
12 requirements of this Subsection shall apply to any project that is over 120 feet in height and does not  
13 require a Zoning Map amendment or Planning Code text amendment related to its project approvals  
14 which (i) results in a net increase in the number of permissible residential units, or (ii) results in a  
15 material increase in the net permissible residential square footage as defined in Section 315.3(b)(2);  
16 or has not received or will not receive a zoning map amendment or Planning Code text amendment as  
17 part of an Area Plan adopted after January 1, 2006 which (i) results in a net increase in the number of  
18 permissible residential units, or (ii) results in a material increase in the net permissible residential  
19 square footage as defined in Section 315.3(b)(2). The Planning Department shall require for housing  
20 projects covered by this Subsection and Section 315.3(a)(1), as a condition of Planning Department  
21 approval of a project's building permit, or by this Subsection and by Section 315.3(a)(2), (3) and (4),  
22 as a Condition of Approval of a conditional use or planned unit development permit or as a condition  
23 of Planning Department approval of a live/work project, that 17% of all units constructed on the  
24 project site shall be affordable to qualifying households so that a project applicant must construct .17  
25

1 times the total number of units produced in the principal project beginning with the construction of the  
2 fifth unit. If the total number of units is not a whole number, the project applicant shall round up to the  
3 nearest whole number for any portion of .5 or above. Consistent with the conclusions of the Mayor's  
4 Office of Housing study authorized in Section 315.8(e), the Mayor's Office of Housing shall  
5 recommend and the Board of Supervisors shall consider whether the requirements of this Subsection  
6 for buildings of over 120 feet in height shall continue or expire after approximately 5 years.  
7 The Planning Department shall provide written notice by mail to the project applicant of the number  
8 of affordable units which shall be required within 30 days of approval by the Planning Department or  
9 Planning Commission. This notice shall also be sent to project applicants who elect to pay an in-lieu  
10 fee.

11 (b) Timing of Construction: The project applicant shall insure that the off-site units are  
12 constructed, completed, and ready for occupancy no later than the market rate units in the  
13 principal project.

14 (c) Location of off-site housing: The project applicant must insure that off-site units are  
15 located within one mile of the principal project.

16 (d) Type of Housing: The type of affordable housing needed in San Francisco is documented  
17 in the City's Consolidated Plan and the Residence Element of the General Plan. New  
18 affordable rental housing and ownership housing affordable to households earning less than  
19 the median income is greatly needed in San Francisco. All off-site units constructed under  
20 this Section must be provided as rental housing for the life of the project or, if they are  
21 ownership units, must be affordable to households earning no more than 80% of the median  
22 income for the City and County of San Francisco. Nothing in this section shall limit a  
23 developer from meeting the requirements of this Section through the construction of units in a  
24 limited equity or land trust form of ownership if such units otherwise meet all of the  
25

1 requirements for off-site housing. In general, affordable units constructed under this Section  
 2 315.5 shall be comparable in number of bedrooms, exterior appearance and overall quality of  
 3 construction to market rate units in the principal project. The total square footage of the off-  
 4 site affordable units constructed under this Section 315.5 shall be no less than the calculation  
 5 of the total square footage of the on-site market-rate units in the principal project multiplied  
 6 by the relevant on-site percentage requirement for the project specified in Section 315.4 (~~12~~  
 7 *for conditional use, planned unit developments or live work projects, and 10 for all other housing*  
 8 *projects*). The Notice of Special Restrictions or Conditions of Approval shall include a specific  
 9 number of units at specified unit sizes - including number of bedrooms and minimum square  
 10 footage - for affordable units. The interior features in affordable units need not be the same  
 11 as or equivalent to those in market rate units in the principal project, so long as they are of  
 12 good quality and are consistent with then-current standards for new housing. Where  
 13 applicable, parking shall be offered to the affordable units subject to the terms and conditions of the  
 14 Department's policy on unbundled parking for affordable housing units as specified in the Procedures  
 15 Manual and amended from time to time. In the case of life care or assisted living developments where  
 16 amenities such as meals are provided as a mandatory part of the cost of living at the facility, such care  
 17 and amenities shall be provided to the inhabitant of the affordable unit at a cost proportionate to the  
 18 market rate rent compared to the affordable rent. If the residential units in the principal project  
 19 are live/work units which do not contain bedrooms or are other types of units which do not  
 20 contain bedrooms separated from the living space, the off-site units shall be comparable in  
 21 size according to the following equivalency calculation between live/work and units with  
 22 bedrooms:

Number of Bedrooms (or, for live/work units square foot equivalency)	Number of Persons in Household
---	-----------------------------------

0 (Less than 600 square feet)	1
1 (601 to 850 square feet)	2
2 (851 to 1100 square feet)	3
3 (1101 to 1300 square feet)	4
4 (More than 1300 square feet)	5

(e) Marketing the Units: The Mayor's Office of Housing ~~or its successor~~ shall be responsible for overseeing and monitoring the marketing of affordable units under this Section. In general, the marketing requirements and procedures shall be contained in the Procedures Manual as amended from time to time and shall apply to the affordable units in the project. The Mayor's Office of Housing may develop occupancy standards for units of different bedroom sizes in the Procedures Manual in order to promote an efficient allocation of affordable units. The Mayor's Office of Housing may require in the Procedures Manual that prospective purchasers complete homebuyer education training or fulfill other requirements. The Notice of Special Restrictions or Conditions of Approval shall specify that the marketing requirements and procedures contained in the Procedures Manual as amended from time to time, shall apply to the affordable units in the project.

(1) Lottery: At the initial offering of affordable units in a housing project, the Mayor's Office of Housing ~~or its successor~~ must require the use of a public lottery approved by MOH to select purchasers or tenants. The Mayor's Office of Housing ~~or its successor~~ shall also hold a general public lottery and maintain and utilize a list generated from this lottery or utilize a list generated from a recent lottery at another similar housing project to fill spaces in units that become available for re-sale or occupancy in any housing project subject to this Ordinance



1 after the initial offering. The list shall be updated from time to time but in no event less than  
2 annually to insure that it remains current.

3 (2) Preferences: ~~The Mayor's Office of Housing or its successor shall consider appropriate~~  
4 ~~preferences for the allocation of inclusionary units to qualifying households and shall, within 90 days,~~  
5 ~~present amendments of the Procedures Manual to the Planning Department for Commission review~~  
6 ~~that require that certain preferences be given in the lottery process. In determining the appropriate~~  
7 ~~preferences, the Mayor's Office of Housing shall hold at least one meeting open to members of the~~  
8 ~~public and shall, as appropriate, consult with other City departments and interested nonprofit~~  
9 ~~organizations. The Mayor's Office of Housing shall create a lottery system that gives preference to~~  
10 ~~people who live or work in San Francisco. MOH shall propose policies and procedures for~~  
11 ~~implementing this preference to the Planning Commission for inclusion in the Procedures Manual.~~  
12 Otherwise, it is the policy of the Board of Supervisors to treat all households equally in allocating  
13 affordable units under this Program.

14 (f) Affordable units constructed under Section 315.5 shall not have received development  
15 subsidies from any Federal, State or local program established for the purpose of providing  
16 affordable housing, and ~~should~~ shall not be counted to satisfy ~~the~~ any affordable housing  
17 requirement ~~in~~ for the off-site development.

18 (g) Notwithstanding the provisions of Section 315.5(f) above, a developer may use California  
19 Debt Limit Allocation Committee (CDLAC) tax-exempt bonds to help fund its obligations  
20 under this ordinance as long as it provides 20% of the units as affordable at 50% of area  
21 median income for on-site housing or 25% of the units as affordable at 50% of area median  
22 income for off-site housing. Except as provided in this subsection, all units provided under  
23 this Section must meet all of the requirements of this ordinance and the Procedures Manual  
24 for either on- or off-site housing.

25

1     **SEC. 315.6. COMPLIANCE THROUGH IN-LIEU FEE.**

2     If the project applicant elects, pursuant to Section 315.4(e)(2) that the project applicant will  
3     pay an in lieu fee to satisfy the requirements of this Program, the project applicant shall meet  
4     the following requirements:

5     (a) By paying an in-lieu fee to the Treasurer for use by the Mayor's Office of Housing for the  
6     purpose of constructing at an alternate site the type of housing required by Section 315.5  
7     within the City and County of San Francisco.

8     (b) The amount of the fee which may be paid by the project applicant subject to this  
9     Ordinance in-lieu of developing and providing housing required by Section 315.4 shall be  
10    determined by Mayor's Office of Housing ("MOH") utilizing the following factors:

11    (1) The number of units required by Section 315.5 if the project applicant were to elect to  
12    meet the requirements of this section by off-site housing development. For the purposes of  
13    this section, developers of 5– 9 units may elect to calculate the unit requirement using the  
14    direct fractional result of the total number of units multiplied by the percentage of off-site  
15    housing required, rather than rounding up the resulting figure as required by Section  
16    315.5(a).

17    (2) The affordability gap using data on the cost of construction of residential housing from the "San  
18    Francisco Sensitivity Analysis Summary Report: Inclusionary Housing Program" prepared by Keyser  
19    Marston Associates, Inc. in August 2006 as identified in the "Jobs Housing Nexus Analysis" prepared  
20    by Keyser Marston Associates, Inc. in June 1997 for the Maximum Annual Rent or Maximum  
21    Purchase Price for the equivalent unit sizes. The Planning Department and MOH shall update the  
22    technical report from time to time as they deem appropriate in order to ensure that the affordability  
23    gap remains current.

24

25

1 ~~(3) Annual adjustments to the affordability gap based upon the percentage increase or decrease in the~~  
2 ~~Average Area Purchase Price Safe Harbor Limitations for New Single Family Residences for the San~~  
3 ~~Francisco Primary Metropolitan Statistical ("PMSA") established by the Internal Revenue Service~~  
4 ~~("IRS") since January 1st of the previous year; provided however, that in the event that said~~  
5 ~~percentage increase exceeds 20 percent, the in lieu fee shall be increased by 20 percent, and the~~  
6 ~~difference between the percentage increase in the Average Area Purchase Price and 20 percent shall~~  
7 ~~be carried over and added to the in lieu fee adjustment for the following calendar year. In the event~~  
8 ~~that the IRS does not adjust the above figure within 14 months, the Mayor's Office of Housing shall~~  
9 ~~authorize and certify a study for adjusting the last published IRS figure to be effective until IRS revises~~  
10 ~~the figure.~~

11 (4) No later than July 1 of each year, the Mayor's Office of Housing shall adjust the in lieu fee  
12 payment option and provide a report on its adjustment to the Board of Supervisors. MOH  
13 shall provide notice of any fee adjustment on its website at least 30 days prior to the adjustment taking  
14 effect. The Mayor's Office of Housing is authorized to develop an appropriate methodology for  
15 indexing the fee, based on adjustments in the costs of constructing housing and in the price of housing  
16 in San Francisco. The method of indexing shall be published in the Procedures Manual.

17 (c) Within 30 days of determining the amount of the fee to be paid by the applicant, MOH  
18 shall transmit the amount of the fee to the Treasurer. Prior to the issuance by DBI of the first  
19 site or building permit for the project applicant, the project applicant must notify the Planning  
20 Department and MOH in writing that it has paid in full the sum required to the Treasurer. If  
21 the project applicant fails by the applicable date to demonstrate to the Planning Department  
22 that the project applicant has paid the applicable sum in full to the Treasurer, DBI shall deny  
23 any and all site or building permits or certificates of occupancy for the development project  
24 until the Planning Department notifies DBI and MOH that such payment has been made.

25

1 (d) Upon payment of the fee in full to the Treasurer and upon request of the project applicant,  
2 the Treasurer shall issue a certification that the fee has been paid. The project applicant shall  
3 present such certification to the Planning Department, DBI and MOH prior to the issuance by  
4 DBI of the first site or building permit or certificate of occupancy for any development subject  
5 to this Section. Any failure of the Treasurer, DBI, or Planning Department to give any notice  
6 under this Section shall not relieve a project applicant from compliance with this Section.

7 Where DBI inadvertently issues a site or building permit without payment of the fee, DBI shall  
8 not issue any certificate of occupancy for the project without notification from the Treasurer  
9 that the fee required by this Section has been paid. The procedure set forth in this subsection  
10 is not intended to preclude enforcement of the provisions of this section pursuant to any other  
11 section of this Code, or other authority under the laws of the State of California.

12 (e) All monies contributed pursuant to this section shall be deposited in the special fund  
13 maintained by the Controller called the Citywide Affordable Housing Fund. The receipts in the  
14 Fund are hereby appropriated in accordance with law to be used to (1) increase the supply of  
15 housing affordable to qualifying households subject to the conditions of this Section, and (2)  
16 pay the expenses of MOH in connection with monitoring and administering compliance with  
17 the requirements of the Program. MOH is authorized to use funds in an amount not to exceed  
18 \$200,000 every 5 years to conduct follow-up studies under Section 315.8(e) and to update the in lieu  
19 fee amounts as described above in Section 315.6(b). All other monitoring ~~Monitoring~~ and  
20 administrative expenses shall be appropriated through the annual budget process or  
21 supplemental appropriation for MOH. The fund shall be administered and expended by MOH,  
22 which shall have the authority to prescribe rules and regulations governing the Fund which  
23 are consistent with this Section.

24 (f) Lien Proceedings.

25

1 (1) A project applicant's failure to comply with the requirements of this Section shall  
2 constitute cause for the City to record a lien against the development project in the sum of  
3 the in-lieu fee required under this Ordinance, as adjusted under this Section.

4 (2) If, for any reason, the fee imposed pursuant to this Ordinance remains unpaid following  
5 issuance of the permit, the Treasurer shall initiate proceedings to impose the lien in  
6 accordance with the procedures set forth in Chapter 10, Article XX of the San Francisco  
7 Administrative Code to make the entire unpaid balance of the fee, including interest, a lien  
8 against all parcels used for the development project. The Treasurer shall send all notices  
9 required by that Article to the owner of the property as well as the sponsor. The Treasurer  
10 shall also prepare a preliminary report notifying the sponsor of a hearing to confirm such  
11 report by the Board of Supervisors at least 10 days before the date of the hearing. The report  
12 to the sponsor shall contain the sponsor's name, a description of the sponsor's development  
13 project, a description of the parcels of real property to be encumbered as set forth in the  
14 Assessor's Map Books for the current year, a description of the alleged violation of this  
15 Ordinance, and shall fix a time date and place for hearing. The Treasurer shall cause this  
16 report to be mailed to the sponsor and each owner of record of the parcels of real property  
17 subject to lien. Except for the release of lien recording fee authorized by Administrative Code  
18 Section 10.237, all sums collected by the Tax Collector pursuant to this Ordinance shall be  
19 held in trust by the Treasurer and deposited in the Citywide Affordable Housing Fund  
20 established in Section 313.12.

21 (3) Any notice required to be given to a sponsor or owner shall be sufficiently given or served  
22 upon the sponsor or owner or all purposes hereunder if personally served upon the sponsor  
23 or owner or if deposited, postage prepaid, in a post office letterbox addressed in the name of  
24 the sponsor or owner at the official address of the sponsor or owner maintained by the Tax  
25

1 Collector for the mailing of tax bills or, if no such address is available, to the sponsor at the  
2 address of the development project, and to the applicant for the site or building permit at the  
3 address on the permit application.

4 (g) In the event a building permit expires prior to completion of the work on and  
5 commencement of occupancy of a housing project so that it will be necessary to obtain a  
6 new permit to carry out any development, the obligation to comply with this Program shall be  
7 cancelled, and any in-lieu fee previously paid to the Treasurer shall be refunded. If and when  
8 the sponsor applies for a new permit, the procedures set forth in this Ordinance regarding  
9 construction of housing or payment of the in-lieu fee shall be followed.

10 (h) In the event that a development project for which an in-lieu fee imposed under this Section  
11 has been fully paid is demolished or converted to a use or uses not subject to this ordinance  
12 prior to the expiration of its estimated useful life, the City shall refund to the sponsor a portion  
13 of the amount of an in-lieu fee paid. The portion of the fee refunded shall be determined on a  
14 pro rata basis according to the ratio of the remaining useful life of the project at the time of  
15 demolition or conversion in relation to its total useful life. For purposes of this Ordinance, the  
16 useful life of a development project shall be 50 years.

17 **SEC. 315.7. DURATION AND MONITORING OF AFFORDABILITY.**

18 (a) All units constructed pursuant to Sections 315.4 and 315.5 must be owner-occupied in the case of  
19 ownership units or occupied by qualified households in the case of rental units, and shall not remain  
20 vacant for a period exceeding 60 days without the written consent of the Mayor's Office of Housing.

21 All units constructed pursuant to Sections 315.4 and 315.5 must remain affordable to  
22 qualifying households for ~~the life of the project, to be defined as~~ 50 years from the date of ~~issuance~~  
23 ~~of the first certificate of temporary~~ occupancy of a qualifying household. For ownership units, the  
24 50-year term shall be recalculated at the time of sale such that a new 50-year restriction shall apply to

25

1 any subsequent purchaser. If a purchaser owns and occupies a unit for 50 years, the City shall lift the  
2 restriction on the unit imposed under this ordinance. For rental units, the unit must remain affordable  
3 to qualifying households for 50 years from the date of issuance of the first certificate of temporary  
4 occupancy. If an owner can provide proof to the City that it has rented a unit for 50 years to qualifying  
5 households, the City shall lift the restriction on the unit imposed by this ordinance. The income  
6 levels specified in the Notice of Special Restrictions and/or Conditions of Approval for the  
7 project shall be the required income percentages for the 50-year life of the project restrictions.  
8 (b) The Planning Commission or the Planning Department shall require all housing projects  
9 subject to this ordinance to record a Notice of Special Restrictions with the Recorder of the  
10 City and County of San Francisco. The Notice of Special Restrictions must incorporate the  
11 affordability restrictions. All projects described in Section 315.3(a)(1) and 315.3(a)(3) must  
12 incorporate all of the requirements of this Section 315.7 into the Notice for Special  
13 Restrictions, including any provisions required to be in the Conditions of Approval for housing  
14 projects described in Section 315.3(a)(2). These Section 315.3(a)(2) projects which are  
15 housing projects which go through the conditional use or planned unit development process  
16 shall have Conditions of Approval. The Conditions of Approval shall specify that project  
17 applicants shall adhere to the marketing, monitoring, and enforcement procedures outlined in  
18 the Procedures Manual, as amended from time to time, in effect at the time of project  
19 approval. The Planning Commission shall file the Procedures Manual in the case file for each  
20 project requiring inclusionary housing pursuant to this Program. The Procedures Manual will  
21 be referenced in the Notice of Special Restrictions for each project.  
22 (c) Any affordable rental units permitted by the Planning Commission to be converted to  
23 ownership units must satisfy the requirements of the Procedures Manual, as amended from  
24 time to time, including that the units shall be sold at restricted sales prices to households  
25

1 meeting the income qualifications specified in the Notice of Special Restrictions or Conditions  
2 of Approval, with a right of first refusal for the occupant(s) of such units at the time of  
3 conversion. Upon conversion to ownership, the units are subject to the 50-year rolling resale  
4 restrictions, as described in Section 315.7(a).

5 (d) For ownership units, the Notice of Special Restrictions or Conditions of Approval will  
6 include provisions restricting resale prices and purchaser income levels according to the  
7 formula specified in the Procedures Manual, as amended from time to time. In the case that  
8 subordination of the Affordability Conditions contained in a recorded Notice of Special  
9 Restrictions may be necessary to ensure the Project Applicant's receipt of adequate  
10 construction and/or permanent financing for the project, or to enable first time home buyers to  
11 qualify for mortgages, the project applicant may follow the procedures for subordination of  
12 affordability restrictions as described in the principal project's Conditions of Approval and in  
13 the Procedures Manual. A release following foreclosure or other transfer in lieu of foreclosure  
14 may be authorized if required as a condition to financing pursuant to the procedures set forth  
15 in the Procedures Manual.

16 Purchasers of affordable units shall secure the obligations contained in the Notice of Special  
17 Restrictions or Conditions of Approval by executing and delivering to the City a promissory  
18 note secured by a deed of trust encumbering the applicable affordable unit as described in the  
19 Procedures Manual or by an alternative means if so provided for in the Procedures Manual,  
20 as amended from time to time.

21 **SEC. 315.8. ENFORCEMENT PROVISIONS AND MONITORING OF PROGRAM.**

22 (a) A first certificate of occupancy shall not be issued by the Director of the Department  
23 of Building Inspection to any unit in the principal project until all of the on-site or off-site  
24 housing development requirements of Sections 315.4 or 315.5, if applicable, and  
25



1 Section 315.7 are met. A first site permit for the principal project shall not be issued by  
2 the Director of the Department of Building Inspection until the requirements of Sections  
3 315.4(e) and 315.6 regarding payment of the in-lieu fee, if applicable, have been met.

4 (b) If the Planning Commission or Planning Department determines that a project  
5 applicant has failed to comply with Sections 315.4 or 315.5 and the recording of  
6 reporting requirements of Section 315.7 as detailed in the Procedures Manual, or has  
7 violated the Conditions of Approval or terms of the Notice of Special Restrictions, the  
8 Planning Commission or Planning Department may, until the violation is cured, (a)  
9 revoke the certificate of occupancy for the principal project or required affordable units,  
10 (b) impose a penalty on the project pursuant to Section 176(c) of this Code, and/or (c)  
11 the Zoning Administrator may enforce the provisions of this Program through any  
12 means provided for in Section 176 of this Code.

13 (c) The Planning Commission or Planning Department shall notify the Mayor's Office of  
14 Housing of any housing project subject to this Program, including the name of the  
15 project applicant and the number and location of the affordable units, within 30 days of  
16 the Planning Commission's or the Planning Department's approval of a building, site,  
17 conditional use, planned unit development, or live/work permit application. The Mayor's  
18 Office of Housing shall provide all project applicants with information concerning the  
19 City's first time home-buyer assistance programs and any other related programs the  
20 Mayor's Office of Housing shall deem relevant to this Program.

21 (d) The Planning Commission shall, as part of the annual Housing Inventory, report to  
22 the Board of Supervisors on the results of this Program including, but not limited to, a  
23 report on the following items:

24

25

1 (1) The number of, location of, and project applicant for housing projects which came  
2 before the Planning Commission for a conditional use or planned unit development  
3 permit, and the number of, location of, and project applicant for housing projects which  
4 were subject to the requirements of this Ordinance;

5 (2) The number of, location of, and project applicant for housing projects which applied  
6 for a waiver, adjustment, or reduction from the requirements of this Ordinance pursuant  
7 to Section 315.3(c), and the number of, location of, and project applicant for housing  
8 projects which were granted such a waiver, adjustment, or reduction and, if a reduction,  
9 to what percentage;

10 (3) The number of, location of, and project applicant for every housing project to which  
11 this Ordinance applied and the number of market rate units and the number of  
12 affordable on- and off-site units provided, including the location of all of the affordable  
13 units; and

14 (e) A study is authorized to be undertaken under the direction of the Mayor's Office of  
15 Housing *immediately and to be updated approximately* every 5 years *thereafter* to *determine*  
16 *update the requirements of this legislation. the relationship in nature and amount between*  
17 *the production of market rate residential housing and the availability and demand for*  
18 *affordable housing in San Francisco.* The Mayor's Office of Housing shall make  
19 recommendations to the Board of Supervisors and the Planning Commission regarding  
20 any legislative changes, *to requirements pertaining to housing development, including*  
21 *developments requiring conditional use permits and planned unit development permits and*  
22 *live/work projects. The Mayor's Office of Housing shall also study the relationship in nature*  
23 *and amount between the production of various types of market rate residential development*  
24 *including stick frame, steel frame, and concrete construction and the availability and demand*  
25

1 *for affordable housing in San Francisco and look at the relationship between the cost of*  
2 *construction of market rate housing and the availability and demand for affordable housing.*  
3 *The Mayor's Office of Housing shall also study the cost of developing market rate housing and*  
4 *the market price for sale and rental of such housing. Based on this data, the Mayor's Office of*  
5 *Housing shall determine the median and average profit margins for developers of for profit*  
6 *housing. The Mayor's Office shall also make a determination whether levels of affordability can*  
7 *be increased pursuant to Finding J, enumerated in Section 315.2. The Mayor's Office of*  
8 *Housing shall specifically evaluate the different inclusionary housing requirements for*  
9 *developments of over 120 feet approximately 5 years from the enactment of the requirement or*  
10 *as deemed appropriate by the Mayor's Office of Housing.*

11 (f) The Mayor's Office of Housing shall evaluate its monitoring system for affordable  
12 units created under this Section and shall compare its system with that of the San  
13 Francisco Redevelopment Agency with the goal of establishing, to the extent feasible,  
14 a single monitoring system for all inclusionary affordable housing units located in the  
15 City and County of San Francisco. Within 6 months of the effective date of this  
16 Ordinance, MOH shall make any changes to its monitoring system necessary to bring  
17 its monitoring system into conformity with the system of the Redevelopment Agency,  
18 or, if necessary, MOH shall make recommendations to the Board of Supervisors to  
19 amend this Ordinance in order to implement improvements to the monitoring system. If  
20 it is necessary to amend the Procedures Manual to change its monitoring system to  
21 comply with this Section, MOH may make any changes necessary to the Procedures  
22 Manual to comply with this Section 315.8(e). For purposes of this Section 315.8(e) only  
23 and on a one-time basis, MOH may amend the Procedures Manual without obtaining  
24 approval from the Planning Commission. If MOH determines that some or all of the  
25

1 aspects of its system are more effective than the Redevelopment Agency's system, it  
 2 shall inform the Board of Supervisors and recommend that the Board urge the  
 3 Redevelopment Agency to conform its procedures to the City's.

4 (g) Annual Monitoring:

5 (1) The Mayor's Office of Housing shall monitor and require occupancy certification for  
 6 affordable ownership and rental units on an annual basis, as outlined in the Procedures  
 7 Manual.

8 (2) The Mayor's Office of Housing may require the owner of an affordable rental unit, the  
 9 owner's designated representative, or the tenant in an affordable unit to verify the income levels  
 10 of the tenant on an annual basis, as outlined in the Procedures Manual.

11 Section 2: The San Francisco Planning Code is hereby amended by amending Section  
 12 313.6 of the Jobs Housing Linkage Program, to read as follows:

13 **SEC. 313.6. COMPLIANCE THROUGH PAYMENT OF IN-LIEU FEE.**

14 (a) Commencing on March 11, 1999, the amount of the fee which may be paid by the  
 15 sponsor of a development project subject to this ordinance in lieu of developing and  
 16 providing the housing required by Section 313.5 shall be determined by the following  
 17 formulas for each type of space proposed as part of the development project and  
 18 subject to this ordinance.

19	Net Addition Gross Sq. Ft. Entertainment Space	x \$10.57 = Total Fee
20	Net Addition Gross Sq. Ft. Hotel Space	x \$8.50 = Total Fee
21	Net Addition Gross Sq. Ft. Office Space	x \$11.34 = Total Fee
22	Net Addition Gross Sq. Ft. Research and Development	x \$7.55 = Total Fee
23	Net Addition Gross Sq. Ft. Retail Space	x \$10.57 = Total Fee
24		
25		

1 (b) Commencing on January 1, 2002, the amount of the fee which may be paid by the  
 2 sponsor of a development project subject to this ordinance in lieu of developing and  
 3 providing the housing required by Section 313.5 shall be determined by the following  
 4 formulas for each type of space proposed as part of the development project and  
 5 subject to this ordinance:

6	Net Addition Gross Sq. Ft. Entertainment Space	× \$13.95 = Total Fee
7		
8	Net Addition Gross Sq. Ft. Hotel Space	× \$11.21 = Total Fee
9		
10	Net Addition Gross Sq. Ft. Office Space	× \$14.96 = Total Fee
11		
12		
13	Net Addition Gross Sq. Ft. R & D Space	× \$9.97 = Total Fee
14		
15	Net Addition Gross Sq. Ft. Retail Space	× \$13.95 = Total Fee
16		

17 ~~Such in lieu fee shall be revised effective January 1st of each year thereafter by the percentage~~  
 18 ~~increase or decrease in the Average Area Purchase Price Safe Harbor Limitations for New~~  
 19 ~~Single Family Residences for the San Francisco Primary Metropolitan Statistical Area~~  
 20 ~~("PMSA") established by the Internal Revenue Service ("IRS") since January 1st of the previous~~  
 21 ~~year; provided, however, that in the event that said percentage increase exceeds 20 percent, the~~  
 22 ~~in lieu fee shall be increased by 20 percent, and the difference between the percentage increase~~  
 23 ~~in the Average Area Purchase Price and 20 percent shall be carried over and added to the in-~~  
 24 ~~lieu fee adjustment for the following calendar year. In the event that the IRS does not adjust the~~  
 25

1 ~~above figure within a 14 month period, the Commission shall authorize and certify a study for~~  
2 ~~adjusting the last published IRS figure, to be effective until the IRS revises the figure. No later~~  
3 ~~than July 1 of each year, the Mayor's Office of Housing shall adjust the in lieu fee payment~~  
4 ~~option and provide a report on its adjustment to the Board of Supervisors. The Mayor's Office~~  
5 ~~of Housing shall provide notice of any fee adjustment on its website at least 30 days prior to the~~  
6 ~~adjustment taking effect. The Mayor's Office of Housing is authorized to develop an~~  
7 ~~appropriate methodology for indexing the fee, based on adjustments in the costs of constructing~~  
8 ~~housing and in the price of housing in San Francisco consistent with the indexing for the~~  
9 ~~Residential Inclusionary Affordable Housing Program in lieu fee set out in Planning Code~~  
10 ~~Section 315.6. The method of indexing shall be published in the Procedures Manual for the~~  
11 ~~Residential Inclusionary Affordable Housing Program.~~ In making a determination as to the  
12 amount of the fee to be paid, the Planning Department shall credit to the sponsor any  
13 excess Interim Guideline credits or excess credits which the sponsor elects to apply  
14 against its housing requirement.

15 (c) Prior to the issuance by DBI of the first site or building permit for a development  
16 project subject to this ordinance, the sponsor must notify the Planning Department and  
17 MHO in writing that it has either (i) satisfied the conditions of Section 313.5(e) or (ii)  
18 paid in full the sum required by this Section to the Treasurer. If the sponsor fails by the  
19 applicable date to demonstrate to the Planning Department that the sponsor has  
20 satisfied the conditions of Section 313.5(e) or paid the applicable sum in full to the  
21 Treasurer, DBI shall deny any and all site or building permits or certificates of  
22 occupancy for the development project until the Treasurer notifies DBI and MOH that  
23 such payment has been made, and the Treasurer shall immediately initiate lien

24  
25

1 proceedings against the sponsor's property pursuant to Section 313.9 to recover the  
2 fee.

3 (d) Upon payment of the fee in full to the Treasurer and upon request of the sponsor,  
4 the Treasurer shall issue a certification that the fee has been paid. The sponsor shall  
5 present such certification to the Planning Department, DBI and MOH prior to the  
6 issuance by DBI of the first site or building permit or certificate of occupancy for the  
7 development project. DBI shall not issue the site or building permit or certificate of  
8 occupancy without proof of payment of the fee from the Treasurer. Any failure of the  
9 Treasurer, DBI or the Planning Department to give any notice under this Section shall  
10 not relieve a sponsor from compliance with this Section. Where DBI inadvertently  
11 issues a site or building permit without payment of the fee, DBI shall not issue any  
12 certificate of occupancy for the project without notification from the Treasurer that the  
13 fee required by this Section has been paid. The procedure set forth in this Subsection  
14 is not intended to preclude enforcement of the provisions of this Section pursuant to  
15 any other section of this Code, or other authority under the laws of the State of  
16 California.

17  
18 APPROVED AS TO FORM:  
19 DENNIS J. HERRERA, City Attorney

20 By: \_\_\_\_\_  
21 Susan Cleveland-Knowles  
22 Deputy City Attorney

23  
24  
25