


BOARD of SUPERVISORS



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## MEMORANDUM

TO: Olson Lee, Director, Mayor's Office of Housing & Community Development  
Robert Collins, Acting Executive Director, Rent Board

FROM:  Alisa Somera, Assistant Clerk, Land Use and Transportation Committee  
Board of Supervisors

DATE: January 19, 2016

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Land Use and Transportation Committee has received the following **substitute** legislation, introduced by Mayor Lee on January 12, 2016:

**File No. 150969-2**

Ordinance amending the Planning Code to create the Affordable Housing Bonus Programs, consisting of the Local Affordable Housing Bonus Program, the 100 Percent Affordable Housing Bonus Program, the Analyzed State Density Bonus Program, and the Individually Requested State Density Bonus Program, to provide for development bonuses and zoning modifications for affordable housing, in compliance with, and above those required by the State Density Bonus Law, Government Code, Sections 65915, et seq.; to establish the procedures in which the Local Affordable Housing Bonus Program and the 100 Percent Affordable Housing Bonus Program shall be reviewed and approved; adding a fee for applications under the Program; amending the Planning Code to exempt projects from the height limits specified in the Planning Code and the Zoning Maps; 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.

If you have any additional comments or reports to be included with the file, please forward them to the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

cc: Eugene Flannery, Mayor's Office of Housing  
Sophie Hayward, Mayor's Office of Housing

1 [Planning Code - Affordable Housing Bonus Programs]

2  
3 **Ordinance amending the Planning Code to create the Affordable Housing Bonus**  
4 **Programs, consisting of the Local Affordable Housing Bonus Program, the 100 Percent**  
5 **Affordable Housing Bonus Program, the Analyzed State Density Bonus Program, and**  
6 **the Individually Requested State Density Bonus Program, to provide for development**  
7 **bonuses and zoning modifications for affordable housing, in compliance with, and**  
8 **above those required by the State Density Bonus Law, Government Code, Sections**  
9 **65915, et seq.; to establish the procedures in which the Local Affordable Housing**  
10 **Bonus Program and the 100 Percent Affordable Housing Bonus Program shall be**  
11 **reviewed and approved; adding a fee for applications under the Program; amending the**  
12 **Planning Code to exempt projects from the height limits specified in the Planning Code**  
13 **and the Zoning Maps; affirming the Planning Department's determination under the**  
14 **California Environmental Quality Act; and making findings of consistency with the**  
15 **General Plan, and the eight priority policies of Planning Code, Section 101.1.**

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

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

24 Section 1.  
25

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

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

11 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code  
12 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth  
13 in Planning Commission Resolution No. \_\_\_\_\_, and the Board incorporates such  
14 reasons herein by reference.

15  
16 Section 2. The Planning Code is hereby amended by adding Section 206 through  
17 206.8 to read as follows:

18 **SEC. 206. THE AFFORDABLE HOUSING BONUS PROGRAMS.**

19 *This section shall be known as the Affordable Housing Bonus Programs, which includes the*  
20 *Local Affordable Housing Bonus Program, the 100 Percent Affordable Housing Bonus Program, the*  
21 *Analyzed State Density Bonus Program and the Individually Requested State Density Bonus Program.*

22 **SEC. 206.1. PURPOSE AND FINDINGS.**

23 *(a) The purpose of the Affordable Housing Bonus Programs is to facilitate the development and*  
24 *construction of affordable housing in San Francisco. Affordable housing is of paramount statewide*  
25 *concern, and the California State legislature has declared that local and state governments have a*

1 responsibility to use the powers vested in them to facilitate the improvement and development of  
2 housing to make adequate provision for the housing needs of all economic segments of the community.  
3 The State Legislature has found that local governments must encourage the development of a variety of  
4 types of housing for all income levels, including multifamily rental housing and assist in the  
5 development of adequate housing to meet the needs of low- and moderate-income households.

6 (b) Affordable housing is an especially paramount concern in San Francisco. San Francisco  
7 has one of the highest housing costs in the nation, but San Francisco's economy and culture rely on a  
8 diverse workforce at all income levels. It is the policy of the Board of Supervisors to provide housing  
9 to these workers and ensure that they pay a proportionate share of their incomes to live in adequate  
10 housing and to not commute ever-increasing distances to their jobs. The Association of Bay Area  
11 Governments determined that San Francisco's share of the Regional Housing Need for January 2015  
12 to June 2022 was provision of 28,870 new housing units, with 6,234 (or 21.6%) as very low, 4,639 (or  
13 16.1%) as low, and 5,460 (or 18.9%) as moderate income units.

14 (c) This Board of Supervisors, and the voters in San Francisco, have long recognized the need  
15 for the production of affordable housing. The voters, or this Board have adopted measures such as the  
16 establishment of the mandatory Inclusionary Affordable Housing Ordinance in Planning Code section  
17 415; the San Francisco Housing Trust Fund, adopted in 2012, which established a fund to create,  
18 support and rehabilitate affordable housing, and set aside \$20 million in its first year, with increasing  
19 allocations to reach \$50 million a year for affordable housing; the adoption of Proposition K in 2014  
20 which established as City policy that the City, by 2020, will help construct or rehabilitate at least  
21 30,000 homes, with more than 50% of the housing affordable for middle-income households, and at  
22 least 33% as affordable for low-and moderate income households; and the multiple programs that rely  
23 on Federal, State and local funding sources as identified in the Mayor's Office of Housing and  
24 Community Development Comprehensive Plan.

1           (d) Historically, in the United States and San Francisco, affordable housing requires high  
2 levels of public subsidy, including public investment and reliance on public dollars. Costs to subsidize  
3 an affordable housing unit vary greatly depending on a number of factors, such as household income of  
4 the residents, the type of housing, and the cost to acquire land acquisition. Currently, MOHCD  
5 estimates that the level of subsidy for an affordable housing units is approximately \$250,000 per unit.  
6 Given this high cost per unit, San Francisco can only meet its affordable housing goals through a  
7 combination of increased public dollars dedicated to affordable housing and other tools that do not  
8 rely on public money.

9           (e) Development bonuses are a long standing zoning tool that enable cities to encourage  
10 private development projects to provide public benefits including affordable housing. By offering  
11 increased development potential, a project sponsor can offset the expenses necessary to provide  
12 additional public benefits. In 1979, the State of California adopted the Density Bonus Law,  
13 Government Code section 65915 et seq, which requires that density bonuses and other concessions and  
14 incentives be offered to projects that provide a minimum amount of on-site affordable housing.

15           (f) In recognition of the City's affordable housing goals, including the need to produce more  
16 affordable housing without need for public subsidies, the Planning Department contracted with David  
17 Baker Architects and Seifel Consulting to determine a menu of zoning modifications and development  
18 bonuses that could offset a private developer's costs of providing various levels of additional on-site  
19 affordable housing. David Baker Architects and Seifel Consulting analyzed various parcels in San  
20 Francisco, to determine the conditions in which a zoning accommodation would be necessary to  
21 achieve additional density. The analysis modeled various zoning districts and lot size configurations,  
22 consistent with current market conditions and the City's stated policy goals, including to achieve a mix  
23 of unit types, including larger units that can accommodate larger households. These reports are on file  
24 in Board of Supervisors File No. \_\_\_\_\_.

1 (g) Based on the results of the studies, the Department developed four programs set forth in  
2 this Section 206, the Affordable Housing Bonus Programs, which provide options by which developers  
3 can include affordable units on-site in exchange for increased density and other zoning or design  
4 modifications. These programs are the Local Affordable Housing Bonus Program, the 100 Percent  
5 Affordable Housing Bonus Program, the Analyzed State Density Bonus Program and the Individually  
6 Requested Bonus Program.

7 (h) The goal of the Local Affordable Housing Program is to increase affordable housing  
8 production, especially housing affordable to Middle Income households. Housing for Middle Income  
9 Households in San Francisco is necessary to stabilize San Francisco's households and families, ensure  
10 income and household diversity in the long term population of San Francisco, and reduce  
11 transportation impacts of middle income households working in San Francisco. Middle Income  
12 households do not traditionally benefit from public subsidies.

13 (i) The 100 Percent Affordable Housing Bonus Program provides additional incentives for  
14 developers of 100% affordable housing projects, thereby reducing the overall cost of such  
15 developments on a per unit basis.

16 (j) The Affordable Housing Bonus Program also establishes a clear local process for all  
17 projects seeking the density bonuses guaranteed through the State Density Bonus Law. The State  
18 Analyzed Program provides an expedited process for projects that comply with a pre-determined menu  
19 of incentives, concessions and waivers of development standards that the Department, in consultation  
20 with David Baker Architects and Seifel Consulting can appropriately respond to neighborhood context  
21 without causing adverse impacts on public health and safety, and provide affordable units through the  
22 City's already-established Inclusionary Housing Program. Projects requesting density or concessions,  
23 incentives and waivers outside of the City's preferred menu may seek a density bonus consistent with  
24 State law in the Individually Requested Density Bonus Program.

25 **SEC. 206.2 DEFINITIONS.**

1           This Section applies to Sections 206 through 206.8. The definitions of Section 102 and the  
2 definitions in Section 401 for “Area Median Income” or “AMI,” “First Construction Document,”  
3 “Housing Project,” “Life of the Project,” “MOHCD,” “On-site Unit,” “Off-site Unit,” “Principal  
4 Project,” and “Procedures Manual,” shall generally apply. For purposes of this Section 206 et seq.,  
5 the following definitions shall apply, and shall prevail if there is a conflict with other sections of the  
6 Planning Code.

7           “100 Percent Affordable Housing Project” shall be a project where all of the dwelling units  
8 with the exception of the manager’s unit are “Affordable Units” as that term is defined in section  
9 406(b).

10           “Affordable to a Household of Lower, Very Low, or Moderate Income shall mean, at a  
11 minimum (1) a maximum purchase price that is affordable to a Household of Lower, Very Low, or  
12 Moderate Income, adjusted for the household size, assuming an annual payment for all housing costs of  
13 33 percent of the combined household annual gross income, a down payment recommended by the  
14 Mayor’s Office of Housing and Community Development and set forth in the Procedures Manual, and  
15 available financing; and (2) an affordable rent as defined in Section 50053 of the Health and Safety  
16 Code sufficient to ensure continued affordability of all very low and low-income rental units that  
17 qualified the applicant for the award of the density bonus for 55 years or a longer period of time if  
18 required by the construction or mortgage financing assistance program, mortgage insurance program,  
19 or rental subsidy program.

20           “Affordable to a Household of Middle Income” shall mean, at a minimum, (1) a maximum  
21 purchase price that is affordable to a Household of Middle Income at 140% of Area Median Income,  
22 adjusted for the household size, assuming an annual payment for all housing costs of 33 percent of the  
23 combined household annual gross income, a down payment recommended by the Mayor’s Office of  
24 Housing and Community Development and set forth in the Procedures Manual, and available  
25 financing; and (2) the maximum annual rent for an affordable housing unit shall be no more than 30%

1 of the annual gross income for a Household of Middle Income at an Area Median Income of 120%, as  
2 adjusted for the household size, as of the first date of the tenancy.

3 "Base Density" is lot area divided by the maximum lot area per unit permitted under existing  
4 density regulations (e.g 1 unit per 200, 400, 600, 800, or 1000 square feet of lot area). Calculations  
5 that result in a decimal point of 0.5 and above are rounded to the next whole number. In the Fillmore  
6 Neighborhood Commercial Transit District and the Divisadero Neighborhood Commercial Transit  
7 District, "Base Density" shall mean 1 unit per 600 square feet of lot area.

8 "Density Bonus" means a density increase over the Maximum Allowable Residential Density  
9 granted pursuant to Government Code Section 65915 and Section 206 et seq.

10 "Density Bonus Units" means those market rate dwelling units granted pursuant to the  
11 provisions of this Section 206.3, 206.5 and 206.6 that exceed the otherwise Maximum Allowable  
12 Residential Density for the development site.

13 "Development standard" shall mean a site or construction condition, including, but not limited  
14 to, a height limitation, a setback requirement, a floor area ratio, an onsite open space requirement, or  
15 an accessory parking ratio that applies to a residential development pursuant to any ordinance,  
16 general plan element, specific plan, charter, or other local condition, law, policy, resolution or  
17 regulation.

18 "Household of Middle Income" shall mean a household whose combined annual gross income  
19 for all members does not exceed 140% of AMI to qualify for ownership housing and 120% of AMI to  
20 qualify for rental housing.

21 "Inclusionary Units" shall mean on-site income-restricted residential units provided within a  
22 development that meet the requirements of the Inclusionary Affordable Housing Program, Planning  
23 Code Section 415 et seq.

24 "Lower, Very Low, or Moderate Income" means annual income of a household that does not  
25 exceed the maximum income limits for the income category, as adjusted for household size, applicable



1 to San Francisco, as published and periodically updated by the State Department of Housing and  
2 Community Development pursuant to Sections 50079.5, 50105, or 50093 of the California Health and  
3 Safety Code. Very low income is currently defined in California Health and Safety Code section  
4 50105 as 50% of area median income. Lower Income is currently defined in California Health and  
5 Safety Code section 50079.5 as 80% of area median income. Moderate Income is currently defined in  
6 California Health and Safety Code section 50093 as 120% of area median income.

7 "Maximum Allowable Residential Density" means the maximum number of dwelling units per  
8 square foot of lot area in zoning districts that have such a measurement, or, in zoning districts without  
9 such a density measurement, the maximum number of dwelling units that could be developed on a  
10 property while also meeting all other applicable Planning Code requirements and design guidelines,  
11 and without obtaining an exception, modification, variance, or waiver from the Zoning Administrator  
12 or Planning Commission for any Planning Code requirement.

13 "Middle Income Unit" shall mean a residential unit affordable to a Household of Middle  
14 Income.

15 "Qualifying Resident" means senior citizens or other persons eligible to reside in a Senior  
16 Citizen Housing Development.

17 "Regulatory Agreement" means a recorded and legally binding agreement between an applicant  
18 and the City to ensure that the requirements of this Chapter are satisfied. The Regulatory Agreement,  
19 among other things, shall establish: the number of Restricted Affordable Units, their size, location,  
20 terms and conditions of affordability, and production schedule.

21 "Restricted Affordable Unit" means a dwelling unit within a Housing Project which will be  
22 Affordable to Very Low, Lower or Moderate Income Households, as defined in this Section 206.2 for a  
23 minimum of 55 years. Restricted Affordable Units shall meet all of the requirements of Government  
24 Code 65915, except that Restricted Affordable Units that are ownership units shall not be restricted  
25 using an equity sharing agreement."

1 “Senior Citizen Housing Development” has the meaning in California Civil Code section 51.3.

2 **SEC. 206.3. LOCAL AFFORDABLE HOUSING BONUS PROGRAM.**

3 (a) Purpose. This Section sets forth the Local Affordable Housing Bonus Program. The Local  
4 Affordable Housing Bonus Program or “Local Program” provides benefits to project sponsors of  
5 housing projects that set aside a total of 30% of residential units onsite at below market rate rent or  
6 sales price, including a percentage of units affordable to low and moderate income households  
7 consistent with Section 415, the Inclusionary Housing Program, and the remaining percentage  
8 affordable to a Household of Middle Income. The purpose of the Local Affordable Housing Bonus  
9 Program is to expand the number of Inclusionary Units produced in San Francisco and provide  
10 housing opportunities to a wider range of incomes than traditional affordable housing programs, which  
11 typically provide housing only for very low, low or moderate income households. The Local Program  
12 allows market-rate projects to match the City’s shared Proposition K housing goals that 50% of new  
13 housing constructed or rehabilitated in the City by 2020 be within the reach of working middle class  
14 San Franciscans, and at least 33% affordable for low and moderate income households.

15 (b) Applicability. A Local Affordable Housing Bonus Project or “Local Project” under this  
16 Section 206.3 shall be a project that:

17 (1) contains three or more residential units, as defined in Section 102, not including any  
18 Group Housing as defined in Section 102, efficiency dwelling units with reduced square footage  
19 defined in Section 318, and Density Bonus Units permitted through this Section 206.3, or any other  
20 density bonus;

21 (2) is located in any zoning district that: (A) is not designated as an RH-1 or RH-2  
22 Zoning Districts; and (B) establishes a maximum dwelling unit density through a ratio of number of  
23 units to lot area, including RH-3, RM, RC, C-2, Neighborhood Commercial, Named Neighborhood  
24 Commercial, Chinatown Mixed Use Districts, and SoMa Mixed Use Districts; but only if the SoMa  
25 Mixed Use District has a density measured by a maximum number of dwelling units per square foot of

1 lot area; (C) is in the Fillmore Neighborhood Commercial Transit District and Divisadero  
2 Neighborhood Commercial Transit District; and (D) is not in the North of Market Residential Special  
3 Use District, Planning Code Section 249.5 until the Affordable Housing Incentive Study is completed at  
4 which time the Board will review whether the North of Market Residential Special Use District should  
5 continue to be excluded from this Program. The Study will explore opportunities to support and  
6 encourage the provision of housing at the low, moderate, and middle income range in neighborhoods  
7 where density controls have been eliminated. The goal of this analysis is to incentivize increased  
8 affordable housing production levels at deeper and wider ranges of AMI and larger unit sizes in these  
9 areas through 100% affordable housing development as well as below market rate units within market  
10 rate developments; and.

11 (3) is not seeking and receiving a density or development bonus under the provisions of  
12 California Government Code Section 65915 et seq, Planning Code Section 207, Section 124(f), Section  
13 202.2(f), 304, or any other State or local program that provides development bonuses;

14 (4) includes at least 135% of the Base Density as calculated under Planning Code  
15 Section 206.5;

16 (5) in Neighborhood Commercial Districts is not a project that involves merging lots  
17 that result in more than 125 feet in lot frontage for projects located; and

18 (6) consists only of new construction, and excluding any project that includes an  
19 addition to an existing structure.

20 (c) **Local Affordable Housing Bonus Project Eligibility Requirements.** To receive the  
21 development bonuses granted under this Section, a Local Project must meet all of the following  
22 requirements:

23 (1) Comply with the Inclusionary Affordable Housing Program, Section 415 of this  
24 Code, by providing the applicable number of units on-site under Section 415.6. For projects not subject  
25 to the Inclusionary Affordable Housing Program, the applicable number of on-site units under this

1 section shall be zero. If the Dial Alternative currently proposed in an ordinance in Board of  
2 Supervisors File No. 150911 is adopted and permits a project sponsor to provide more Inclusionary  
3 Units at higher AMIs than currently required (referred to as “dialing up”), a project sponsor may dial  
4 up and meet the requirements of this subsection (D). If the Dial Alternative of the Inclusionary  
5 Affordable Housing Program is ever amended to allow a project sponsor to provide fewer Inclusionary  
6 Units at lower AMIs than currently required (referred to as “dialing down”), then a Project cannot  
7 qualify for this Section 206.5 if it elects to dial down;

8 (2) Provide an additional percentage of affordable units in the Local Project as Middle  
9 Income Units, as defined herein, such that the total percentage of Inclusionary Units and Middle  
10 Income Units equals 30%. The Middle Income Units shall be restricted for the Life of the Project and  
11 shall comply with all of the requirements of the Procedures Manual authorized in Section 415. As  
12 provided for in subsection (e), the Planning Department and MOHCD shall amend the Procedures  
13 Manual to provide policies and procedures for the implementation, including monitoring and  
14 enforcement, of the Middle Income units;

15 (3) Demonstrate to the satisfaction of the Environmental Review Officer that the Local  
16 Project does not:

17 (A) cause a substantial adverse change in the significance of an historic  
18 resource as defined by California Code of Regulations, Title 14, Section 15064.5,

19 (B) create new shadow in a manner that substantially affects outdoor recreation  
20 facilities or other public areas; and

21 (C) alter wind in a manner that substantially affects public areas;

22 (4) Inclusive of Inclusionary Units and Middle Income Units, provides either (A) a  
23 minimum unit mix of at least 40% of all units as two bedroom units or larger; or (B) any unit mix such  
24 that 50% of all bedrooms within the Local Project are provided in units with more than one bedroom.

1 Local Projects are not eligible to modify this requirement under Planning Code Section 303, 328, or  
2 any other provision of this Code; and,

3 (5) Provides replacement units for any units demolished or removed that are subject to  
4 the San Francisco Rent Stabilization and Arbitration Ordinance, San Francisco Administrative Code  
5 Section 37, or are units qualifying for replacement as units being occupied by households of Low or  
6 Very Low Income, consistent with the requirements of Government Code section 65915(c)(3).

7 (d) **Development Bonuses.** Any Local Project shall, at the project sponsor's request, receive  
8 any or all of the following:

9 (1) **Form based density.** Notwithstanding any zoning designation to the contrary,  
10 density of a Local Project shall not be limited by lot area but rather by the applicable requirements and  
11 limitations set forth elsewhere in this Code. Such requirements and limitations include, but are not  
12 limited to, height, including any additional height allowed by subsection (d)(2), Bulk, Setbacks,  
13 Required Open Space, Exposure and unit mix as well as applicable design guidelines, elements and  
14 area plans of the General Plan and design review, including consistency with the Affordable Housing  
15 Bonus Program Design Guidelines, referenced in Section 328, as determined by the Planning  
16 Department.

17 (2) **Height.** Up to 20 additional feet above the height authorized for the Local Project  
18 under the Height Map of the Zoning Map. This additional height may only be used to provide up to two  
19 additional 10-foot stories to the project, or one additional story of no more than 10 feet in height.  
20 Building features exempted from height controls under Planning Code Section 260(b) shall be  
21 measured from the roof level of the highest story provided under this section.

22 (3) **Ground Floor Ceiling Height.** In addition to the permitted height allowed under  
23 (d)(2), Local Projects with active uses on the ground floor as defined in Section 145.1(b)(2) shall  
24 receive up to a maximum of 5 additional feet in height above the height limit, in addition to the  
25 additional 20 feet granted in subsection (2) above. However, the additional 5 feet may only be applied

1 at the ground floor to provide a 14-foot (floor to ceiling) ceiling height for nonresidential uses, and to  
2 allow walk-up dwelling units to be consistent with the Ground Floor Residential Design Guidelines.  
3 This additional 5 feet shall not be granted to projects that already receive such a height increase under  
4 Planning Code Section 263.20.

5 (4) **Zoning Modifications.** Local Affordable Housing Bonus Projects may select up to  
6 three of the following zoning modifications:

7 (A) **Rear yard:** The required rear yard per Section 134 or any applicable  
8 special use district may be reduced to no less than 20 percent of the lot depth, or 15 feet, whichever is  
9 greater. Corner properties may provide 20 percent of the lot area at the interior corner of the property  
10 to meet the minimum rear yard requirement, provided that each horizontal dimension of the open area  
11 is a minimum of 15 feet; and that the open area is wholly or partially contiguous to the existing  
12 midblock open space, if any, formed by the rear yards of adjacent properties.

13 (B) **Dwelling Unit Exposure:** The dwelling unit exposure requirements of  
14 Section 140(a)(2) may be satisfied through qualifying windows facing an unobstructed open area that  
15 is no less than 25 feet in every horizontal dimension, and such open area is not required to expand in  
16 every horizontal dimension at each subsequent floor.

17 (C) **Off-Street Loading:** Off-street loading spaces per Section 152 shall not be  
18 required.

19 (D) **Automobile Parking:** Up to a 75% reduction in the residential and  
20 commercial parking requirements in Section 151 or any applicable special use district.

21 (E) **Open Space:** Up to a 5% reduction in common open space if provided  
22 under Section 135 or any applicable special use district.

23 (F) **Additional Open Space:** Up to an additional 5% reduction in common open  
24 space if provided under Section 135 or any applicable special use district, beyond the 5% provided in  
25 subsection (E) above.

1                    (G) Inner Courts as Open Space: In order for an inner court to qualify as  
2 useable common open space, Section 135(g)(2) requires it to be at least 20 feet in every horizontal  
3 dimension, and for the height of the walls and projections above the court on at least three sides (or 75  
4 percent of the perimeter, whichever is greater) to be no higher than one foot for each foot that such  
5 point is horizontally distant from the opposite side of the clear space in the court. Local Affordable  
6 Housing Bonus Projects may instead provide an inner court that is at least 25 feet in every horizontal  
7 dimension, with no restriction on the heights of adjacent walls. All area within such an inner court  
8 shall qualify as common open space under Section 135.

9                    (e) Implementation.

10                    (1) Application. The following procedures shall govern the processing of a request for  
11 a project to qualify under the Local Program.

12                    (A) An application to participate in the Local Program shall be submitted with  
13 the first application for approval of a Housing Project and processed concurrently with all other  
14 applications required for the Housing Project. The application shall be submitted on a form prescribed  
15 by the City and shall include at least the following information:

16                    (i) A full plan set, including a site plan, elevations, sections and floor  
17 plans, showing total number of units, number of and location of Inclusionary Units, and Middle Income  
18 Units; and a draft Regulatory Agreement;

19                    (ii) The number of dwelling units which are on the property, or if the  
20 dwelling units have been vacated or demolished in the five year period preceding the application, have  
21 been and which were subject to a recorded covenant, ordinance, or law that restricts rents to levels  
22 affordable to persons and families of lower or very low income; subject to any other form of rent or  
23 price control through the City or other public entity's valid exercise of its police power; or occupied by  
24 lower or very low income households; and

1 (iii) If the property includes a parcel or parcels in which dwelling units  
2 under subsection (ii) are located or were located in the five year period preceding the application, the  
3 type and size of those units, and the incomes of the persons or families occupying those units.

4 (iv) The requested development bonuses and/or zoning modifications  
5 from those listed in subsection (d).

6 (B) Documentation that the applicant has provided written notification to all  
7 existing commercial or residential tenants that the applicant intends to develop the property pursuant  
8 to this section. Any affected commercial tenants shall be given priority processing similar to the  
9 Department's Community Business Priority Processing Program, as adopted by the San Francisco  
10 Commission on February 12, 2015 under Resolution Number 19323, to support relocation of such  
11 business in concert with access to relevant local business support programs.

12 (2) **Procedures Manual.** The Planning Department and MOHCD shall amend the  
13 Procedures Manual, authorized in Section 415, to include policies and procedures for the  
14 implementation, including monitoring and enforcement, of the Middle Income units. As an amendment  
15 to the Procedures Manual, such policies and procedures are subject to review and approval by the  
16 Planning Commission under Section 415. Amendments to the Procedures Manual shall include a  
17 requirement that project sponsors complete a market survey of the area before marketing Middle  
18 Income Units. All affordable units that are affordable to households between 120 and 140% of AMI  
19 must be marketed at a price that is at least 20% less than the current market rate for that unit size and  
20 neighborhood, in addition to any other applicable Program requirements.

21 (3) **Notice and Hearing.** Local Projects shall comply with Section 328 for review and  
22 approval.

23 (4) **Controls.** Local Projects shall comply with Section 328. Notwithstanding any other  
24 provision of this Code, no conditional use authorization shall be required for a Local Project unless  
25 such conditional use requirement was adopted by the voters.



1                   (5) Regulatory Agreements. Recipients of a Density Bonus, Incentive, Concession,  
2 waiver, or modification shall enter into a Regulatory Agreement with the City, as follows.

3                   (A) The terms of the agreement shall be acceptable in form and content to the Planning  
4 Director, the Director of MOHCD, and the City Attorney. The Planning Director shall have the  
5 authority to execute such agreements.

6                   (B) Following execution of the agreement by all parties, the completed Density Bonus  
7 Regulatory Agreement, or memorandum thereof, shall be recorded and the conditions filed and  
8 recorded on the Housing Project.

9                   (C) The approval and recordation of the Regulatory Agreement shall take place prior to  
10 the issuance of the First Construction Document. The Regulatory Agreement shall be binding to all  
11 future owners and successors in interest.

12                   (D) The Regulatory Agreement shall be consistent with the guidelines of the City's  
13 Inclusionary Housing Program and shall include at a minimum the following:

14                   (i) The total number of dwelling units approved for the Housing Project,  
15 including the number of Restricted Affordable Units, Inclusionary Units, Middle Income Units or  
16 other restricted units;

17                   (ii) A description of the household income group to be accommodated by the  
18 Restricted Affordable Units, and the standards for determining the corresponding Affordable Rent or  
19 Affordable Sales Price. The project sponsor must commit to completing a market survey of the area  
20 before marketing Middle Income Units. All affordable units that are affordable to households between  
21 120 and 140% of AMI must be marketed at a price that is at least 20% less than the current market  
22 rate for that unit size and neighborhood, in addition to any other applicable Program requirements;

23                   (iii) The location, dwelling unit sizes (in square feet), and number of bedrooms  
24 of the Restricted Affordable Units;

1 (iv) Term of use restrictions for Restricted Affordable Units of at least 55 years  
2 for Moderate Income units and at least 55 years for Low and Very Low units;

3 (v) A schedule for completion and occupancy of Restricted Affordable Units;

4 (vi) A description of any Concession, Incentive, waiver, or modification, if any,  
5 being provided by the City;

6 (vii) A description of remedies for breach of the agreement (the City may  
7 identify tenants or qualified purchasers as third party beneficiaries under the agreement); and

8 (viii) Other provisions to ensure implementation and compliance with this  
9 Section.

10 **SEC. 206.4. THE 100 PERCENT AFFORDABLE HOUSING BONUS PROGRAM.**

11 (a) Purpose and Findings. This Section 206.4 describes the 100 Percent Affordable Housing  
12 Bonus Program, or “100 Percent Affordable Housing Program”. In addition to the purposes  
13 described in section 206.1, the purpose of the 100 Percent Affordable Housing Program is to facilitate  
14 the construction and development of projects in which all of the residential units are affordable to Low  
15 and Very-Low Income Households. Projects pursuing a development bonus under this 100 Percent  
16 Affordable Program would exceed the City’s shared Proposition K housing goals that 50% of new  
17 housing constructed or rehabilitated in the City by 2020 be within the reach of working middle class  
18 San Franciscans, and at least 33% affordable for low and moderate income households.

19 (b) Applicability. A 100 Percent Affordable Housing Bonus Project under this Section 206.4  
20 shall be a Housing Project that:

21 (1) contains three or more Residential Units, as defined in Section 102, not including  
22 Density Bonus Units permitted through this Section 206 through a density bonus;

23 (2) is located in any zoning district that:

24 (A) is not designated as an RH-1 or RH-2 Zoning District; and

25 (B) allows Residential Uses;

1                   (3) is not seeking and receiving a density or development bonus under the provisions of  
2 California Government Code Section 65915 et seq., Planning Code Sections 207, 124(f), 304, 803.8 or  
3 any other state or local program that provides development bonuses; and

4                   (4) meets the definition of a “100 Percent Affordable Housing Project” in Section  
5 206.2.

6                   (5) demonstrates to the satisfaction of the Environmental Review Officer that the  
7 Project does not:

8                                 (A) cause a substantial adverse change in the significance of an historic  
9 resource as defined by California Code of Regulations, Title 14, Section 15064.5,

10                                (B) create new shadow in a manner that substantially affects outdoor recreation  
11 facilities or other public areas; and

12                                (C) alter wind in a manner that substantially affects public areas.

13                   (c) **Development Bonuses.** A 100 Percent Affordable Housing Bonus Project shall, at the  
14 project sponsor’s request, receive any or all of the following:

15                                (1) **Priority Processing.** 100 Percent Affordable Housing Bonus Projects shall receive  
16 Priority Processing.

17                                (2) **Form based density.** Notwithstanding any zoning designation to the contrary,  
18 density of the 100 Percent Affordable Housing Bonus Project shall not be limited by lot area but rather  
19 by the applicable requirements and limitations set forth elsewhere in this Code. Such requirements and  
20 limitations include, but are not limited to, height, including any additional height allowed by subsection  
21 (c)(2) herein, Bulk, Setbacks, Open Space, Exposure and unit mix as well as applicable design  
22 guidelines, elements and area plans of the General Plan and design review, including consistency with  
23 the Affordable Housing Bonus Program Design Guidelines, referenced in Section 328, as determined  
24 by the Planning Department.

1                   (3) **Height.** 100 Percent Affordable Housing Bonus Projects shall be allowed up to 30  
2 additional feet, not including allowed exceptions per Section 260(b), above the property's height  
3 district limit in order to provide three additional stories of residential use. This additional height may  
4 only be used to provide up to three additional 10-foot stories to the project, or one additional story of  
5 not more than 10 feet in height

6                   (4) **Ground Floor Ceiling Height.** In addition to the permitted height allowed under  
7 subsection (c)(3), 100 Percent Affordable Housing Bonus Projects with active ground floors as defined  
8 in Section 145.1(b)(2) shall receive one additional foot of height, up to a maximum of an additional five  
9 feet at the ground floor, exclusively to provide a minimum 14-foot (floor to ceiling) ground floor ceiling  
10 height.

11                   (5) **Zoning Modifications.** 100 Percent Affordable Housing Bonus Projects may select  
12 any or all of the following zoning modifications:

13                   (A) **Rear Yard:** the required rear yard per Section 134 or any applicable  
14 special use district may be reduced to no less than 20% of the lot depth or 15 feet, whichever is greater.  
15 Corner properties may provide 20% of the lot area at the interior corner of the property to meet the  
16 minimum rear yard requirement, provided that each horizontal dimension of the open area is a  
17 minimum of 15 feet; and that the open area is wholly or partially contiguous to the existing midblock  
18 open space, if any, formed by the rear yards of adjacent properties.

19                   (B) **Dwelling Unit Exposure:** The dwelling unit exposure requirements of  
20 Section 140(a)(2) may be satisfied through qualifying windows facing an unobstructed open area that  
21 is no less than 15 feet in every horizontal dimension, and such open area is not required to expand in  
22 every horizontal dimension at each subsequent floor.

23                   (C) **Off Street Loading:** No off-street loading spaces under Section 152.

24                   (D) **Automobile Parking:** Up to a 100% reduction in the minimum off-street  
25 residential and commercial automobile parking requirement under Article 1.5 of this Code.

1 (E) Open Space: Up to a 10% reduction in common open space requirements if  
2 required by Section 135, but no less than 36 square feet of open space per unit.

3 (F) Inner Courts as Open Space: In order for an inner court to qualify as  
4 useable common open space, Section 135(g)(2) requires it to be at least 20 feet in every horizontal  
5 dimension, and for the height of the walls and projections above the court on at least three sides (or 75  
6 percent of the perimeter, whichever is greater) to be no higher than one foot for each foot that such  
7 point is horizontally distant from the opposite side of the clear space in the court. 100% Affordable  
8 Housing Bonus Projects may instead provide an inner court that is at least 25 feet in every horizontal  
9 dimension, with no restriction on the heights of adjacent walls. All area within such an inner court  
10 shall qualify as common open space under Section 135.

11 (d) Implementation.

12 (1) Application. The following procedures shall govern the processing of a request for  
13 a project to qualify as under the 100 Percent Affordable Housing Bonus Program.

14 (A) An application to participate in the 100 Percent Affordable Housing Bonus  
15 Program shall be submitted with the first application for approval of a Housing Project and processed  
16 concurrently with all other applications required for the Housing Project. The application shall be  
17 submitted on a form prescribed by the City and shall include at least the following information:

18 (i) A full plan set including a site plan, elevations, sections and floor  
19 plans, showing total number of units, unit sizes and planned affordability levels and any applicable  
20 funding sources;

21 (ii) The requested development bonuses from those listed in subsection  
22 (c); and,

23 (iii) Unit size and distribution of multi-bedroom units.

24 (B) Documentation that the applicant has provided written notification to all  
25 existing commercial or residential tenants that the applicant intends to develop the property pursuant

1 to this section. Any affected commercial tenants shall be given priority processing similar to the  
2 Department's Community Business Priority Processing Program, as adopted by the San Francisco  
3 Commission on February 12, 2015 under Resolution Number 19323 to support relocation of such  
4 business in concert with access to relevant local business support programs.

5 (2) **Conditions.** Entitlements of 100 Percent Affordable Housing Bonus Projects  
6 approved under this Section shall be valid for 10 years from the date of Planning Commission or  
7 Planning Department approval.

8 (3) **Notice and Hearing.** 100 Percent Affordable Housing Bonus Projects shall comply  
9 with Section 328 for review and approval.

10 (4) **Controls.** Notwithstanding any other provision of this Code, no conditional use  
11 authorization shall be required for a 100 Percent Affordable Housing Bonus Project, unless such  
12 conditional use requirement was adopted by the voters.

13 **206.5. STATE RESIDENTIAL DENSITY BONUS PROGRAM: ANALYZED**

14 (a) **Purpose:** Sections 206.5, 206.6, and 206.7 shall be referred to as the San Francisco State  
15 Residential Density Bonus Program or the State Density Bonus Program. First, the Analyzed State  
16 Density Bonus Program in Section 206.5 offers an expedited process for projects that seek a density  
17 bonus that is consistent with the pre-vetted menu of incentives, concessions and waivers that the  
18 Planning Department and its consultants have already determined are feasible, result in actual cost  
19 reductions, and do not have specific adverse impacts upon public health and safety of the physical  
20 environment. Second the Individually Requested State Density Bonus Program in Section 206.6 details  
21 the review, analysis and approval process for any project seeking a density bonus that is consistent  
22 with State Law, but is not consistent with the requirements for the Analyzed State Density Bonus  
23 Program established in Section 206.5. Third, Sections 206.7, describes density bonuses available  
24 under the State code for the provision of childcare facilities.

1           This Section 206.5 implements the Analyzed State Density Bonus Program or “Analyzed State  
2 Program.” The Analyzed State Program offers an expedited process for projects that seek a density  
3 bonus that is consistent with, among other requirements set forth below, the pre-vetted menu of  
4 incentives, waiver and concessions.

5           **(b) Applicability:**

6           (1) A Housing Project that meets all of the requirements of this subsection (b)(1) or is a  
7 Senior Housing Project meeting the criteria of (b)(2) shall be an Analyzed State Density Bonus Project  
8 or an “Analyzed Project” for purposes of Section 206 et seq. A Housing Project that does not meet all  
9 of the requirements of this subsection (b), but seeks a density bonus under State law may apply for a  
10 density bonus under Section 206.6 as an Individually Requested State Density Bonus Project. To  
11 qualify for the Analyzed State Density Bonus Program a Housing Project must meet all of the  
12 following:

13                   (A) contain five or more residential units, as defined in Section 102, not  
14 including any Group Housing as defined in Section 102, efficiency dwelling units with reduced square  
15 footage defined in Section 318, and Density Bonus Units permitted through this Section 206.5 or other  
16 density program;

17                   (B) is not seeking and receiving a density or development bonus under Section  
18 207; the Local Affordable Housing Bonus Program, Section 206.3; the 100 Percent Affordable Housing  
19 Bonus Program, Section 206.4; or any other local or State density bonus program that provides  
20 development bonuses;

21                   (C) for projects located in Neighborhood Commercial Districts is not seeking to  
22 merge lots that result in more than 125 in lot frontage on any one street;

23                   (D) is located in any zoning district that: (i) is not designated as an RH-1 or  
24 RH-2 Zoning District; (ii) establishes a maximum dwelling unit density through a ratio of number of  
25 units to lot area, including but not limited to, RH-3, RM, RC, C-2, Neighborhood Commercial, Named

1 Neighborhood Commercial, Chinatown Mixed Use Districts, and SoMa Mixed Use Districts, but only if  
2 the SoMa Mixed Use District has a density measured by a maximum number of dwelling units per  
3 square foot of lot area; (iii) is in the Fillmore Neighborhood Commercial Transit District and  
4 Divisadero Neighborhood Commercial Transit District; and (D) is not in the North of Market  
5 Residential Special Use District, Planning Code Section 249.5 until the Affordable Housing Incentive  
6 Study is completed at which time the Board will review whether the North of Market Residential  
7 Special Use District should continue to be excluded from this Program. The Study will explore  
8 opportunities to support and encourage the provision of housing at the low, moderate, and middle  
9 income range in neighborhoods where density controls have been eliminated. The goal of this analysis  
10 is to incentivize increased affordable housing production levels at deeper and wider ranges of AMI and  
11 larger unit sizes in these areas through 100% affordable housing development as well as below market  
12 rate units within market rate developments; and

13 (E) is providing all Inclusionary Units as On-site Units under Section 415.6. If  
14 the Dial Alternative currently proposed in an ordinance in Board of Supervisors File No. 150911 is  
15 adopted and permits a project sponsor to provide more Inclusionary Units at higher AMIs than  
16 currently required (referred to as “dialing up”), a project sponsor may dial up and meet the  
17 requirements of this subsection (D). If the Dial Alternative of the Inclusionary Affordable Housing  
18 Program is ever amended to allow a project sponsor to provide fewer Inclusionary Units at lower AMIs  
19 than currently required (referred to as “dialing down”), then a Project cannot qualify for this Section  
20 206.5 if it elects to dial down;

21 (F) includes a minimum of nine foot ceilings on all residential floors;

22 (G) is seeking only Concessions or Incentives set forth in subsection (c)(4);

23 (H) is seeking height increases only in the form of a waiver as described in  
24 subsection (c)(5); and,



(1) provides replacement units for any units demolished or removed that are subject to the San Francisco Residential Rent Stabilization and Arbitration Ordinance, San Francisco Administrative Code Section 37, or are units qualifying for replacement as units being occupied by households of low or very low income, consistent with the requirements of Government Code section 65915(c)(3).

(2) A Senior Housing Project, as defined in Section 102, may qualify as an Analyzed State Density Bonus Project if it follows all of the procedures and conditions set forth in Planning Code Section 202.2(f).

(c) **Development Bonuses.** All Analyzed State Law Density Bonus Projects shall receive, at the project sponsor’s written request, any or all of the following:

(1) **Priority Processing.** Analyzed Projects that provide 30% or more of Units as On-site Inclusionary Housing Units or Restricted Affordable Units that meet all of the requirements of for an Inclusionary Housing Unit shall receive Priority Processing.

(2) **Density Bonus.** Analyzed Projects that provide On-site Inclusionary Housing Units or Restricted Affordable Units that meet all of the requirements of for an Inclusionary Housing Unit shall receive a density bonus as described in Table 206.5 A as follows:

Table 206.5A

Density Bonus Summary – Analyzed

<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>
<u>Restricted Affordable Units or Category</u>	<u>Minimum Percentage of Restricted Affordable Units</u>	<u>Percentage of Density Bonus Granted</u>	<u>Additional Bonus for Each 1% Increase In Restricted Affordable Units</u>	<u>Percentage of Restricted Units Required for Maximum 35% Density Bonus</u>
<u>Very Low Income</u>	<u>5%</u>	<u>20%</u>	<u>2.50%</u>	<u>11%</u>
<u>Lower Income</u>	<u>10%</u>	<u>20%</u>	<u>1.50%</u>	<u>20%</u>
<u>Moderate Income</u>	<u>10%</u>	<u>5%</u>	<u>1%</u>	<u>40%</u>

<p>1 <u>Senior Citizen Housing, as</u>  2 <u>defined in § 102, and meeting</u>  3 <u>the requirements of</u>  4 <u>§ 202.2(f).</u></p>	<p><u>100%</u></p>	<p><u>50%</u></p>	<p><u>----</u></p>	<p><u>----</u></p>
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5 Note: A density bonus may be selected from more than one category, up to a maximum of 35% of the  
6 Maximum Allowable Residential Density.

7 In calculating density bonuses under this subsection 206.5(c)(2) the following shall apply:

8 (A) When calculating the number of permitted Density Bonus Units or Restricted  
9 Affordable Units, any fractions of units shall be rounded to the next highest number. Analyzed Density  
10 Bonus Program projects must include the minimum percentage of Restricted Affordable Units  
11 identified in Column B of Table 206.5A for at least one income category, but may combine density  
12 bonuses from more than one income category, up to a maximum of 35% of the Maximum Allowable  
13 Residential Density.

14 (B) An applicant may elect to receive a Density Bonus that is less than the  
15 amount permitted by this Section; however, the City shall not be required to similarly reduce the  
16 number of Restricted Affordable Units required to be dedicated pursuant to this Section and  
17 Government Code Section 65915(b).

18 (C) In no case shall a Housing Project be entitled to a Density Bonus of more  
19 than 35%, unless it is a Senior Housing Project meeting the requirements of Section 202.2(f).

20 (D) The Density Bonus Units shall not be included when determining the  
21 number of Restricted Affordable Units required to qualify for a Density Bonus. Density bonuses shall  
22 be calculated as a percentage of the Maximum Allowable Residential Density.

23 (E) Any Restricted Affordable Unit provided pursuant to the on-site  
24 requirements of the Inclusionary Affordable Housing Program, Section 415 et seq., shall be included  
25 when determining the number of Restricted Affordable Units required to qualify for a Development

Bonus under this Section 206.5. The payment of the Affordable Housing Fee shall not qualify for a Development Bonus under this Section. The provision of Off-site Units shall not qualify the Principal Project for a Density Bonus under this Section; however an Off-site Unit may qualify as a Restricted Affordable Unit to obtain a density bonus for the Off-site Project.

(F) In accordance with state law, neither the granting of a Concession, Incentive, waiver, or modification, nor the granting of a Density Bonus, shall be interpreted, in and of itself, to require a general plan amendment, zoning change, variance, or other discretionary approval.

(3) Concessions and Incentives. Analyzed Projects shall receive concessions or incentives, in the amounts specified in Table 206.5B :

Table 206.5B

Concessions and Incentives Summary – Analyzed Projects

<u>Target Group</u>	<u>Restricted Affordable Units</u>		
<u>Very Low Income</u>	<u>5%</u>	<u>10%</u>	<u>15%</u>
<u>Lower Income</u>	<u>10%</u>	<u>20%</u>	<u>30%</u>
<u>Moderate Income (Common Interest Development)</u>	<u>10%</u>	<u>20%</u>	<u>30%</u>
<u>Maximum Incentive(s)/Concession(s)</u>	<u>1</u>	<u>2</u>	<u>3</u>

Notes: 1. Concessions or Incentives may be selected from only one category (very low, lower, or moderate) 2. Common Interest Development is defined in California Civil Code Section 4100.

(4) Menu of Concessions and Incentives: In submitting a request for Concessions or Incentives, an applicant for an Analyzed State Density Bonus Project may request the specific Concessions and Incentives set forth below. The Planning Department, based on Department research and a Residential Density Bonus Study prepared by David Baker Architects, Seifel Consulting, and the San Francisco Planning Department dated August 2015, on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_, has determined that the following Concessions and Incentives are

1 generally consistent with Government Code Section 65915(d) because, in general, they: are required  
2 in order to provide for affordable housing costs; will not be deemed by the Department to have a  
3 specific adverse impact as defined in Government Code Section 65915(d); and are not contrary to State  
4 or Federal law.

5 (A) **Rear yard:** the required rear yard per Section 134 or any applicable special  
6 use district may be reduced to no less than 20% of the lot depth, or 15 feet, whichever is greater.  
7 Corner properties may provide 20% of the lot area at the interior corner of the property to meet the  
8 minimum rear yard requirement, provided that each horizontal dimension of the open area is a  
9 minimum of 15 feet; and that the open area is wholly or partially contiguous to the existing midblock  
10 open space, if any, formed by the rear yards of adjacent properties.

11 (B) **Dwelling Unit Exposure:** the dwelling unit exposure requirements of  
12 Section 140(a)(2) may be satisfied through qualifying windows facing an unobstructed open area that  
13 is no less than 25 feet in every horizontal dimension, and such open area is not required to expand in  
14 every horizontal dimension at each subsequent floor.

15 (C) **Off-Street Loading:** off-street loading spaces under Section 152 shall not  
16 be required.

17 (D) **Parking:** up to a 50% reduction in the residential and commercial parking  
18 requirement, per Section 151 or any applicable special use district.

19 (E) **Open Space:** up to a 5% reduction in required common open space per  
20 Section 135, or any applicable special use district.

21 (F) **Additional Open Space:** up to an additional 5% reduction in required  
22 common open space per Section 135 or any applicable special use district, beyond the 5% provided in  
23 subsection (E) above.

24 (5) **Waiver or Modification of Height Limits.** Analyzed Projects may request a waiver  
25 of the applicable height restrictions if the applicable height limitation will have the effect of physically

1 precluding the construction of a Housing Project at the densities or with the Concessions or Incentives  
2 permitted by this subsection (c)(4). Analyzed Projects may receive a height bonus as of right of up to  
3 twenty feet or two stories, excluding exceptions permitted per Section 260(b), if the applicant  
4 demonstrates that it qualifies for a height waiver through the following formula:

5 **Step one: Calculate Base Density and Bonus Density Limits**

6 Calculate Base Density (BD), as defined in Section 206.2.

7 Bonus Density Limit (BD): ED multiplied by 1.XX where XX is the density bonus  
8 requested per Section 206.5 of this Code (e.g. 7%, 23%, 35%), not to exceed 1.35, the maximum density  
9 bonus available by this Section.

10 **Step two: Calculate Permitted Envelope (PE).** Buildable envelope available under  
11 existing height and bulk controls.

12 PE equals lot area multiplied by permitted lot coverage, where lot coverage equals .75,  
13 or .8 if the developer elects to request a rear yard modification under Section 206.5(c)(4)(A), multiplied  
14 by existing height limit (measured in number of stories), minus one story for projects in districts where  
15 non-residential uses are required on the ground floor, and minus any square footage subject to bulk  
16 limitations (for parcels that do not have an X bulk designation).

17 **Step three: Calculate Bonus Envelope (BE)** Residential envelope necessary to  
18 accommodate additional density (“Bonus envelope” or “BE”)

19 BE equals Bonus Density multiplied by 1,000 gross square feet

20 **Step four: Calculate Additional Residential Floors.** Determine the number of stories  
21 required to accommodate bonus:

22 (A) If BE is less than or equal to PE, the project is not awarded height under  
23 this subsection (c)(5).

24 (B) If BE is greater than PE, the project is awarded height, as follows:

1 (i) If BE minus PE is less than the lot area multiplied by 0.75, project is  
2 allowed 1 extra story; total gross square footage of building not to exceed BE;

3 (ii) If BE minus PE is greater than the lot area multiplied by 0.75 (i.e. if  
4 the difference is greater than one story), project is allowed two extra stories; total gross square footage  
5 of building not to exceed BE.

6 (d) **Application.** An application for an Analyzed State Density Bonus Project under this  
7 Section 206.5 shall be submitted with the first application for approval of a Housing Project and shall  
8 be processed concurrently with all other applications required for the Housing Project. The  
9 application shall be on a form prescribed by the City and, in addition to any information required for  
10 other applications, shall include the following information:

11 (1) A description of the proposed Housing Project, including the total number of  
12 dwelling units, Restricted Affordable Units, and Density Bonus Units proposed;

13 (2) Any zoning district designation, Base Density, assessor's parcel number(s) of the  
14 project site, and a description of any Density Bonus, Concession or Incentive, or waiver requested;

15 (3) A list of the requested Concessions and Incentives from Section 206.5(c)(4);

16 (4) If a waiver or modification of height is requested under Section 206.5(c)(5), a  
17 calculation demonstrating how the project qualifies for such waiver under the formula;

18 (5) A full plan set including site plan, elevations, sections, and floor plans, number of  
19 market-rate units, Restricted Affordable Units, and Density Bonus units within the proposed Housing  
20 Project. The location of all units must be approved by the Planning Department before the issuance of  
21 the building permit;

22 (6) Level of affordability of the Restricted Affordable Units and a draft Regulatory  
23 Agreement;

24 (7) The number of rental dwelling units which are on the property, or if the dwelling  
25 units have been vacated or demolished in the five year period preceding the application, have been and

1 which were subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to  
2 persons and families of lower or very low income; subject to any other form of rent or price control  
3 through the City or other public entity's valid exercise of its police power; or occupied by lower or very  
4 low income households; and

5 (8) If the property includes a parcel or parcels in which dwelling units under subsection  
6 (7) are located or were located in the five year period preceding the application, the type and size of  
7 those units, and the incomes of the persons or families occupying those units.

8 (9) Documentation that the applicant has provided written notification to all existing  
9 commercial or residential tenants that the applicant intends to develop the property pursuant to this  
10 section. Any affected commercial tenants shall be given priority processing similar to the  
11 Department's Community Business Priority Processing Program, as adopted by the San Francisco  
12 Commission on February 12, 2015 under Resolution Number 19323 to support relocation of such  
13 business in concert with access to relevant local business support programs.

14 (e) **Review Procedures.** An application for an Analyzed State Density Bonus Project, shall be  
15 acted upon concurrently with the application for other permits related to the Housing Project.

16 (1) Before approving an application for an Analyzed Project, the Planning Department  
17 or Commission shall make written findings that the Housing Project is qualified as an Analyzed State  
18 Density Bonus Project.

19 (2) The review procedures for an Analyzed Project, including notice, hearings, and  
20 appeal, shall be the procedures applicable to the Housing Project regardless of whether it is applying  
21 for a State Density Bonus under this Section 206.5. However, any notice shall specify that the Housing  
22 Project is seeking a Development Bonus and shall provide a description of the Development Bonuses  
23 requested. Analyzed Projects shall also be reviewed for consistency with the Affordable Housing Bonus  
24 Program Design Guidelines.

1           (f) Regulatory Agreements. Recipients of a Density Bonus, Incentive, Concession, waiver, or  
2 modification shall enter into a Regulatory Agreement with the City, as follows.

3           (1) The terms of the agreement shall be acceptable in form and content to the Planning  
4 Director, the Director of MOHCD, and the City Attorney. The Planning Director shall have the  
5 authority to execute such agreements.

6           (2) Following execution of the agreement by all parties, the completed Density Bonus  
7 Regulatory Agreement, or memorandum thereof, shall be recorded and the conditions filed and  
8 recorded on the Housing Project.

9           (3) The approval and recordation of the Regulatory Agreement shall take place prior to  
10 the issuance of the First Construction Document. The Regulatory Agreement shall be binding to all  
11 future owners and successors in interest.

12           (4) The Regulatory Agreement shall be consistent with the guidelines of the City's  
13 Inclusionary Housing Program and shall include at a minimum the following:

14           (A) The total number of dwelling units approved for the Housing Project,  
15 including the number of Restricted Affordable Units, Inclusionary Units, Middle Income Units or  
16 other restricted units;

17           (B) A description of the household income group to be accommodated by the  
18 Restricted Affordable Units, and the standards for determining the corresponding Affordable Rent or  
19 Affordable Sales Price;

20           (C) The location, dwelling unit sizes (in square feet), and number of bedrooms  
21 of the Restricted Affordable Units;

22           (D) Term of use restrictions for Restricted Affordable Units of at least 55 years  
23 for Moderate Income units and at least 55 years for Low and Very Low units;

24           (E) A schedule for completion and occupancy of Restricted Affordable Units;



1 (F) A description of any Concession, Incentive, waiver, or modification, if any,  
2 being provided by the City;

3 (G) A description of remedies for breach of the agreement (the City may identify  
4 tenants or qualified purchasers as third party beneficiaries under the agreement); and

5 (H) Other provisions to ensure implementation and compliance with this  
6 Section.

7 **SEC. 206.6. STATE DENSITY BONUS PROGRAM: INDIVIDUALLY REQUESTED.**

8 (a) Purpose and Findings: This Section 206.6 details the review, analysis and approval  
9 process for any project seeking a density bonus that is consistent with State Law, Government Code  
10 section 65915 et seq., but is not consistent with the pre-vetted menu of concessions, incentives or  
11 waivers, or other requirements established in Section 206.5 as analyzed by the Planning Department in  
12 coordination with David Baker and Seifel Consulting, and shall be known as the Individually Requested  
13 State Density Bonus Program.

14 California State Density Bonus Law allows a housing developer to request parking ratios not to  
15 exceed the ratios set forth in Government Code section 65915(p)(1), which may further be reduced as  
16 an incentive or concession. Because in most cases San Francisco regulates parking by dwelling unit as  
17 described in Article 1.5 of this Code, the minimum parking ratios set forth in the Government Code are  
18 greater than those allowed in San Francisco. Given that San Francisco's parking ratios are already  
19 less than the State ratios, the City finds that the State's minimum parking ratio requirement does not  
20 apply.

21 (b) Applicability. A Housing Project that does not meet any one or more of the criteria of  
22 Section 206.5(b) under the Analyzed State Density Bonus Program, but meets the following  
23 requirements, may apply for a Development Bonus under this Section 206.6 as an "Individually  
24 Requested State Density Bonus Project" or "Individually Requested Project" if it meets all of the  
25 following criteria:

1 (1) contains five or more residential units, as defined in Section 102;

2 (2) is not seeking and receiving a density or development bonus under Section 207; the  
3 Local Affordable Housing Bonus Program, Section 206.3; the 100 Percent Affordable Housing Bonus  
4 Program, Section 206.4; Section 304, or any other local or state bonus program that provides  
5 development bonuses.

6 (3) provides Restricted Affordable Housing Units, including but not limited to  
7 Inclusionary Housing Units, at minimum levels as provided in Table 206.6A; and,

8 (4) provides replacement units for any units demolished or removed that are subject to  
9 the San Francisco Rent Stabilization and Arbitration Ordinance, San Francisco Administrative Code  
10 Section 37, or are units qualifying for replacement as units being occupied by households of low or  
11 very low income, consistent with the requirements of Government Code section 65915(c)(3).

12 (5) Is in any zoning district except for RH-1 or RH-2, unless the Code permits the  
13 development of a project of 5 units or more on a site or sites.

14 (c) **Development Bonuses.** Any Individually Requested Density Bonus Project shall, at the  
15 project sponsor's request, receive any or all of the following:

16 (1) **Density Bonus.** Individually Requested Projects that provide On-site Inclusionary  
17 Housing Units or Restricted Affordable Units shall receive a density bonus as described in Table  
18 206.6A as follows:

19 Table 206.6 A

20 Density Bonus Summary – Individually Requested Project

<u>Restricted Affordable Units or Category</u>	<u>Minimum Percentage of Restricted Affordable Units</u>	<u>Percentage of Density Bonus Granted</u>	<u>Additional Bonus for Each 1% Increase In Restricted Affordable Units</u>	<u>Percentage of Restricted Units Required for Maximum 35% Density Bonus</u>
<u>Very Low Income</u>	<u>5%</u>	<u>20%</u>	<u>2.50%</u>	<u>11%</u>

1	<u>Lower Income</u>	<u>10%</u>	<u>20%</u>	<u>1.50%</u>	<u>20%</u>
2	<u>Moderate Income</u>	<u>10%</u>	<u>5%</u>	<u>1%</u>	<u>40%</u>
3	<u>Senior Citizen Housing</u>	<u>100%</u>	<u>20%</u>	<u>-----</u>	<u>-----</u>

4 Note: A density bonus may be selected from only one category up to a maximum of 35% of the  
5 Maximum Allowable Residential Density.

6 In calculating density bonuses under this subsection 206.6(c)(1) the following shall

7 apply:

8 (A) When calculating the number of permitted Density Bonus Units or Restricted  
9 Affordable Units, any fractions of units shall be rounded to the next highest number.

10 (B) An applicant may elect to receive a Density Bonus that is less than the  
11 amount permitted by this Section; however, the City shall not be required to similarly reduce the  
12 number of Restricted Affordable Units required to be dedicated pursuant to this Section and  
13 Government Code Section 65915(b).

14 (C) Each Housing Project is entitled to only one Density Bonus, which shall be  
15 selected by the applicant based on the percentage of Very Low Income Restricted Affordable Units,  
16 Lower Income Restricted Affordable Units, or Moderate Income Restricted Affordable Units, or the  
17 Housing Project's status as a Senior Citizen Housing Development. Density bonuses from more than  
18 one category may not be combined. In no case shall a Housing Project be entitled to a Density Bonus  
19 of more than thirty-five percent (35%), unless it is a Senior Housing Project meeting the requirements  
20 of Section 202.2(f).

21 (D) The Density Bonus Units shall not be included when determining the  
22 number of Restricted Affordable Units required to qualify for a Density Bonus. Density bonuses shall  
23 be calculated as a percentage of the Maximum Allowable Residential Density.

24 (E) Any Restricted Affordable Unit provided pursuant to the on-site  
25 requirements of the Inclusionary Affordable Housing Program, Section 415 et seq., shall be included  
when determining the number of Restricted Affordable Units required to qualify for a Development

1 Bonus under this Section 206.6. The payment of the Affordable Housing Fee shall not qualify for a  
2 Development Bonus under this Section. The provision of Off-site Units shall not qualify the Principal  
3 Project for a Density Bonus under this Section; however an Off-site Unit may qualify as a Restricted  
4 Affordable Unit to obtain a density bonus for the Off-site Project.

5 (F) In accordance with state law, neither the granting of a Concession,  
6 Incentive, waiver, or modification, nor the granting of a Density Bonus, shall be interpreted, in and of  
7 itself, to require a general plan amendment, zoning change, variance, or other discretionary approval.

8 (G) No additional Density Bonus shall be authorized for a Senior Citizen  
9 Development beyond the Density Bonus authorized by subsection (1) of this Section.

10 (H) Certain other types of development activities are specifically eligible for a  
11 development bonuses pursuant to State law, including land donation under Government Code Section  
12 65915(g), condominium conversions under Government Code section 65915.5 and qualifying mobile  
13 home parks under Government Code section 65915(b)(1)(C). Such projects shall be considered  
14 Individually Requested State Density Bonus Projects.

15 (2) **Concessions and Incentives.** This Section includes provisions for providing  
16 Concessions or Incentives pursuant to Government Code Section 65915 et seq, as set forth in Table  
17 206.6B. For purposes of this Section 206.6, Concessions and Incentives as used interchangeably shall  
18 mean such regulatory concessions as specified in Government Code Section 65915(k) to include:

19 (A) A reduction of site Development Standards or architectural design  
20 requirements which exceed the minimum applicable building standards approved by the State  
21 Building Standards Commission pursuant to Part 2.5 (commencing with Section 18901) of Division 13  
22 of the Health and Safety Code, including, but not limited to, a reduction in setback, coverage, and/or  
23 parking requirements which result in identifiable, financially sufficient and actual cost reductions;

24 (B) Allowing mixed use development in conjunction with the proposed  
25 residential development, if nonresidential land uses will reduce the cost of the residential project and

1 the nonresidential land uses are compatible with the residential project and existing or planned  
2 development in the area where the Housing Project will be located; and

3 (C) Other regulatory incentives or concessions proposed by the developer or the  
4 City that result in identifiable, financially sufficient, and actual cost reductions.

5 Table 206.6B

6 Concessions and Incentives Summary – Individually Requested Project

<u>Target Group</u>	<u>Restricted Affordable Units</u>		
<u>Very Low Income</u>	<u>5%</u>	<u>10%</u>	<u>15%</u>
<u>Lower Income</u>	<u>10%</u>	<u>20%</u>	<u>30%</u>
<u>Moderate Income (Common Interest Development)</u>	<u>10%</u>	<u>20%</u>	<u>30%</u>
<u>Maximum Incentive(s)/Concession(s)</u>	<u>1</u>	<u>2</u>	<u>3</u>

7  
8  
9  
10  
11  
12 Notes: 1. Concessions or Incentives may be selected from only one category (very low, lower, or moderate). 2. Common Interest Development is defined in California Civil Code Section 4100.

13 (3) Request for Concessions and Incentives. In submitting a request for Concessions  
14 or Incentives that are not specified in Section 206.5(c)(4), an applicant for an Individually Requested  
15 Density Bonus Project must provide documentation described in subsection (d) below in its application.  
16 The Planning Commission shall hold a hearing and shall approve the Concession or Incentive  
17 requested unless it makes written findings, based on substantial evidence that:

18 (A) The Concession or Incentive is not required in order to provide for  
19 affordable housing costs, as defined in Section 50052.5 of the California Health and Safety Code, or for  
20 rents for the Restricted Affordable Units to be as specified in this Section 206.6; or

21 (B) The Concession or Incentive would have a specific adverse impact, as  
22 defined in Government Code Section 65589.5(d)(2) upon public health and safety or the physical  
23 environment or any real property that is listed in the California Register of Historical Resources and  
24 for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact  
25 without rendering the Housing Project unaffordable to low- and moderate-income households.

1                    (C) The Concession or Incentive would be contrary to state or federal law.

2                    (4) Waiver or Modification. An applicant may apply for a waiver or modification of  
3 Development Standards that will have the effect of physically precluding the construction of a Housing  
4 Project at the densities or with the Concessions or Incentives permitted by this Section 206.6. The  
5 Planning Commission will not grant a waiver or modification under this Section unless it is necessary  
6 to achieve the additional density or the Concessions or Incentives permitted by this Section 206.6. The  
7 developer must submit sufficient information as determined by the Planning Department demonstrating  
8 that Development Standards that are requested to be waived or modified will have the effect of  
9 physically precluding the construction of a Housing Project meeting the criteria of this Section 206.6 at  
10 the densities or with the Concessions or Incentives permitted. The Planning Commission shall hold a  
11 hearing to determine if the project sponsor has demonstrated that the waiver is necessary. The  
12 Planning Commission may deny a waiver if it finds on the basis of substantial evidence that:

13                    (A) It is not required to permit the construction of a Housing Project meeting the  
14 density permitted or with the Concessions and Incentives permitted under this Section 206.6;

15                    (B) The Waiver is not required in order to provide for affordable housing costs,  
16 as defined in Section 50052.5 of the California Health and Safety Code, or for rents for the Restricted  
17 Affordable Units to be as specified in this Section 206.6;

18                    (C) The Waiver would have a specific adverse impact, as defined in Government  
19 Code Section 65589.5(d)(2) upon public health and safety or the physical environment or any real  
20 property that is listed in the California Register of Historical Resources and for which there is no  
21 feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the  
22 Housing Project unaffordable to low- and moderate-income households; or,

23                    (D) The Waiver would be contrary to state or federal law.

1                   (5) Nothing in this Section shall be construed to require the provision of direct financial  
2 incentives for the Project, including the provision of publicly owned land by the City or the waiver of  
3 fees or dedication requirements.

4                   (d) Application. An application for a Density Bonus, Incentive, Concession, or waiver under  
5 this Section 206.6 shall be submitted with the first application for approval of a Housing Project and  
6 shall be processed concurrently with all other applications required for the Housing Project. The  
7 application shall be on a form prescribed by the City and, in addition to any information required for  
8 other applications, shall include the following information:

9                   (1) A description of the proposed Project, and a full plan set, including a site plan,  
10 elevations, section and floor plans, with the total number and location of dwelling units, Restricted  
11 Affordable Units, and Density Bonus Units proposed;

12                   (2) A plan set sufficient for the Planning Department to determine the project site's  
13 Maximum Allowable Residential Density. The project sponsor shall submit plans for a base project  
14 that demonstrates a Code complying project on the Housing Project site without use of a modification,  
15 Conditional Use Authorization, Variance, Planned Unit Development, or other exception from the  
16 Planning Code. Such plans shall include similar detail to the proposed Housing Project. The project  
17 sponsor shall demonstrate that site constraints do not limit the Maximum Allowable Residential Density  
18 for the base project in practice. If the project sponsor cannot make such a showing, the Zoning  
19 Administrator shall determine whether the Maximum Allowable Residential Density shall be adjusted  
20 for purposes of this Section.

21                   (3) The zoning district designations, Maximum Allowable Residential Density,  
22 assessor's parcel number(s) of the project site, and a description of any Density Bonus, Concession or  
23 Incentive, or waiver requested;

24                   (4) If a Concession or Incentive is requested that is not included within the menu of  
25 Incentives/Concessions set forth in subsection 206.5(c), a submittal including financial information or

1 other information providing evidence that the requested Concessions and Incentives result in  
2 identifiable, financially sufficient, and actual cost reductions required in order to provide for  
3 affordable housing costs as defined in Health and Safety Code Section 50052.5, or for rents for the  
4 Restricted Affordable Units to be provided as required under this Program. The cost of reviewing any  
5 required financial information, including, but not limited to, the cost to the City of hiring a consultant  
6 to review the financial data, shall be borne by the applicant. The financial information shall include all  
7 of the following items:

8 (A) The actual cost reduction achieved through the Concession or Incentive;

9 (B) Evidence that the cost reduction allows the applicant to provide affordable  
10 rents or affordable sales prices; and

11 (C) Any other information requested by the Planning Director. The Planning  
12 Director may require any financial information including information regarding capital costs, equity  
13 investment, debt service, projected revenues, operating expenses, and such other information as is  
14 required to evaluate the financial information;

15 (5) If a waiver or modification is requested, a submittal containing the following  
16 information. The cost of reviewing any required information supporting the request for a waiver,  
17 including, but not limited to, the cost to the City of hiring a consultant to review the architectural  
18 information, shall be borne by the applicant.

19 (A) Why the Development Standard would physically preclude the construction  
20 of the Development with the Density Bonus, Incentives, and Concessions requested.

21 (B) Any other information requested by the Planning Director as is required to  
22 evaluate the request;

23 (6) Level of affordability of the Restricted Affordable Units and a draft Regulatory  
24 Agreement;



1                   (7) The number of residential units which are on the property, or if the residential units  
2 have been vacated or demolished in the five year period preceding the application, have been and  
3 which were subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to  
4 persons and families of lower or very low income; subject to any other form of rent or price control  
5 through the City or other public entity's valid exercise of its police power; or occupied by lower or very  
6 low income households;

7                   (8) If the property includes a parcel or parcels in which dwelling units under (6) are  
8 located or were located in the five year period preceding the application, the type and size of those  
9 units, the incomes of the persons or families occupying those units.

10                   (9) Documentation that the applicant has provided written notification to all existing  
11 commercial or residential tenants that the applicant intends to develop the property pursuant to this  
12 section. Any affected commercial tenants shall be given priority processing similar to the  
13 Department's Community Business Priority Processing Program, as adopted by the San Francisco  
14 Commission on February 12, 2015 under Resolution Number 19323 to support relocation of such  
15 business in concert with access to relevant local business support programs.

16                   (10) If a Density Bonus or Concession is requested for a land donation under  
17 Government Code Section 65915(g), the application shall show the location of the land to be dedicated,  
18 provide proof of site control, and provide evidence that all of the requirements and each of the findings  
19 included in Government Code Section 65915(g) can be made;

20                   (11) If a density bonus or Concession is requested for a Child Care Facility under  
21 Section 206.7, the application shall show the location and square footage of the child care facilities  
22 and provide evidence that all of the requirements and each of the findings included in Government  
23 Code Section 65915(h) can be made;

1                   (12) If a Density Bonus or Concession is requested for a condominium conversion, the  
2 applicant shall provide evidence that all of the requirements found in Government Code Section  
3 65915.5 can be met.

4                   (e) **Review Procedures.** An application for a Density Bonus, Incentive, Concession, or waiver  
5 shall be acted upon concurrently with the application other permits related to the Housing Project.

6                   (1) Before approving an application for a Density Bonus, Incentive, Concession, or  
7 waiver, for any Individually Requested Density Bonus Project, the Planning Commission shall make the  
8 following findings as applicable.

9                   (A) The Housing Project is eligible for the Affordable Housing Bonus Program.

10                   (B) The Housing Project has demonstrated that any Concessions or Incentives  
11 are required in order to provide for affordable housing costs, as defined in Section 50052.5 of the  
12 California Health and Safety Code, or for rents for the targeted units, based upon the financial analysis  
13 and documentation provided.

14                   (C) If a waiver or modification is requested, a finding that the Development  
15 Standards for which the waiver is requested would have the effect of physically precluding the  
16 construction of the Housing Project with the Density Bonus or Concessions and Incentives permitted.

17                   (D) If the Density Bonus is based all or in part on donation of land, a finding  
18 that all the requirements included in Government Code Section 65915(g) have been met.

19                   (E) If the Density Bonus, Concession or Incentive is based all or in part on the  
20 inclusion of a Child Care Facility, a finding that all the requirements included in Government Code  
21 Section 65915(h) have been met.

22                   (F) If the Concession or Incentive includes mixed-use development, a finding  
23 that all the requirements included in Government Code Section 65915(k)(2) have been met.

1                   (2) If the findings required by subsection (a) of this Section cannot be made, the  
2 Planning Commission may deny an application for a Concession, Incentive, waiver or modification  
3 only if it makes one of the following written findings, supported by substantial evidence:

4                   (A) The Concession, Incentive, waiver or modification is not required to provide  
5 for the affordability levels required for Restricted Affordable Units;

6                   (B) The Concession, Incentive, waiver or modification would have a specific,  
7 adverse impact upon public health or safety or the physical environment or on real property listed in  
8 the California Register of Historic Resources, and there is no feasible method to satisfactorily mitigate  
9 or avoid the specific adverse impact without rendering the Housing Project unaffordable to Low and  
10 Moderate Income households. For the purpose of this subsection, "specific adverse impact" means a  
11 significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public  
12 health or safety standards, policies, or conditions as they existed on the date that the application for the  
13 Housing Project was deemed complete; or

14                   (C) The Concession, Incentive, waiver or modification is contrary to state or  
15 federal law.

16                   (3) The review procedures for an Individually Requested Density Bonus Project,  
17 including notice, hearings, and appeal, shall be the procedures applicable to the Housing Project  
18 regardless of whether it is applying for a State Density Bonus under this Section 206.6. However, any  
19 notice shall specify that the Housing Project is seeking a Development Bonus and shall provide a  
20 description of the development bonuses requested. Individually Requested Projects shall also be  
21 reviewed for consistency with the Affordable Housing Bonus Program Design Guidelines.

22                   (4) In accordance with state law, neither the granting of a Concession, Incentive,  
23 waiver, or modification, nor the granting of a Density Bonus, shall be interpreted, in and of itself, to  
24 require a general plan amendment, zoning change, variance, or other discretionary approval.

1           (f) **Regulatory Agreements.** Recipients of a Density Bonus, Incentive, Concession, waiver, or  
2 modification shall enter into a Regulatory Agreement with the City, as follows.

3           (1) The terms of the agreement shall be acceptable in form and content to the Planning  
4 Director, the Director of MOHCD, and the City Attorney. The Planning Director shall have the  
5 authority to execute such agreements.

6           (2) Following execution of the agreement by all parties, the completed Density Bonus  
7 Regulatory Agreement, or memorandum thereof, shall be recorded and the conditions filed and  
8 recorded on the Housing Project.

9           (3) The approval and recordation of the Regulatory Agreement shall take place prior to  
10 the issuance of the First Construction Document. The Regulatory Agreement shall be binding to all  
11 future owners and successors in interest.

12           (4) The Regulatory Agreement shall be consistent with the guidelines of the City's  
13 Inclusionary Housing Program and shall include at a minimum the following:

14           (A) The total number of dwelling units approved for the Housing Project,  
15 including the number of Restricted Affordable Units, Inclusionary Units, Middle Income Units or  
16 other restricted units;

17           (B) A description of the household income group to be accommodated by the  
18 Restricted Affordable Units, and the standards for determining the corresponding Affordable Rent or  
19 Affordable Sales Price;

20           (C) The location, dwelling unit sizes (in square feet), and number of bedrooms  
21 of the Restricted Affordable Units;

22           (D) Term of use restrictions for Restricted Affordable Units of at least 55 years  
23 for Moderate Income units and at least 55 years for Low and Very Low units;

24           (E) A schedule for completion and occupancy of Restricted Affordable Units;

1 (F) A description of any Concession, Incentive, waiver, or modification, if any,  
2 being provided by the City;

3 (G) A description of remedies for breach of the agreement (the City may identify  
4 tenants or qualified purchasers as third party beneficiaries under the agreement); and

5 (H) Other provisions to ensure implementation and compliance with this  
6 Section.

7 **SEC. 206.7. CHILD CARE FACILITIES.**

8 (a) For purposes of this Section 206.7, "Child Care Facility" means a child day care facility  
9 other than a family day care home, including, but not limited to, infant centers, preschools, extended  
10 day care facilities, and school age child care centers

11 (b) When an applicant proposes to construct a Housing Project that is eligible for a Density  
12 Bonus under Section 206.6 and includes a Child Care Facility that will be located on the premises of,  
13 as part of, or adjacent to, the Housing Project, all of the provisions of this Section 206.7 shall apply  
14 and all of the provisions of Section 206.6 shall apply, except as specifically provided in this Section  
15 206.7.

16 (c) When an applicant proposes to construct a Housing Project that is eligible for a Density  
17 Bonus under Section 206.6 and includes a Child Care Facility that will be located on the premises of,  
18 as part of, or adjacent to, the Housing Project, the City shall grant either:

19 (1) An additional density bonus that is an amount of square feet of residential space  
20 that is equal to or greater than the square footage of the Child Care Facility; or

21 (2) An additional Concession or Incentive that contributes significantly to the economic  
22 feasibility of the construction of the Child Care Facility.

23 (d) The City shall require, as a condition of approving the Housing Project, that the following  
24 occur:

1           (1) The Child Care Facility shall remain in operation for a period of time that is as long  
2 as or longer than the period of time during which the Affordable Units are required to remain  
3 affordable. In the event the childcare operations cease to exist, the Zoning Administrator may approve  
4 in writing an alternative community service use for the child care facility.

5           (2) Of the children who attend the Child Care Facility, the children of Very Low, Lower  
6 and Moderate Income households shall equal a percentage that is equal to or greater than the  
7 percentage of Restricted Affordable Units in the Housing Project that are required for Very Low,  
8 Lower and Moderate Income households pursuant to Section 206.6.

9           (e) Notwithstanding subsections (a) and (b) above, the City shall not be required to provide a  
10 density bonus or a Concession or Incentive for a child care facility if it finds, based upon substantial  
11 evidence, that the community has adequate child care facilities.

12           **SEC. 206.8. AFFORDABLE HOUSING BONUS PROGRAM EVALUATION.**

13           (a) Within one year from the effective date of Section 206 and following, the Planning  
14 Department shall provide an informational presentation to the Planning Commission, and any other  
15 City agency at their request, presenting an overview of all projects that request or receive development  
16 bonuses under the Local Affordable Housing Bonus Program, the 100 Percent Affordable Housing  
17 Bonus Program and the Analyzed and Individually Requested State Density Bonus Program (“the  
18 Bonus Programs”).

19           (b) Annual Reporting. The Planning Department shall include information on projects which  
20 request and receive development bonuses under the Bonus Programs in any relevant Department  
21 publications regarding the development of housing in San Francisco, including, but not limited to, the  
22 Quarterly Pipeline Report, the Housing Inventory and the Housing Balance Report.

23           - (c) Data Report. The Planning Department, in coordination with MOHCD, shall prepare a  
24 Data Report reviewing the Bonus Programs every five years, beginning five years from the Effective  
25 Date of Section 206 and following. This report shall include, but not be limited to, information on the:

- 1 - (1) number of projects utilizing the Bonus Programs;
- 2 - (2) number of units approved and constructed under the Bonus Programs and the AMI
- 3 levels of such units;
- 4 - (3) number of additional affordable units in excess of that otherwise required by Section
- 5 415;
- 6 - (4) geographic distribution of projects, including the total number of units in each
- 7 project, utilizing the Bonus Programs;
- 8 - (5) number of larger unit types, including the number of 3 bedroom units;
- 9 - (6) square feet of units by bedroom count;
- 10 - (7) number of projects with 9 or fewer units that participate; and
- 11 - (8) Number of appeals of projects in the Program and stated reason for appeal.

12 (d) Program Evaluation and Update:

13 (1) Purpose and Contents. In coordination with the Data Report, the Department shall

14 prepare a Program Evaluation and Update. The Program Evaluation and Update shall include an

15 analysis of the Bonus Programs effectiveness as it relates to City policy goals including, but not limited

16 to Proposition K (2014) and the Housing Element. The Program Evaluation and Update shall include

17 a review of all of the following:

18 (A) Target income levels for the Local Affordable Housing Bonus Program in

19 relation to market values and assessed affordable housing needs.

20 (B) Feasibility of the Local Affordable Housing Bonus Program, in relations to

21 housing policy goals, program production, and current market conditions.

22 (C) Requested and granted concessions and incentives, including consideration

23 of whether the menu of zoning modification or concessions and incentives set forth in Section

24 206.3(d)(4), 206.4(c)(5) and 206.5(c)(4) respond to the needs of projects seeking approvals under the

25 Bonus Programs; consideration of whether the elected zoning modifications or incentives and

1 concessions result in a residential project that responds to the surrounding neighborhood context; and  
2 review and recommendation for additions or modifications to the list of zoning modifications or  
3 concessions and incentives in 206.3(d)(4), 206.4(c)(5) and 206.5(c)(4).

4 (D) Geography and neighborhood specific considerations. Review and analysis  
5 of where Bonus Program projects are proposed and approved, including an analysis of land values,  
6 zoning, height controls and neighborhood support.

7 (E) Review of the process for considering projects under the Program, including  
8 a review of Section 328, the appeal process, and other relevant process considerations.

9 (2) Public Hearing: The Program Evaluation and Update shall be prepared no less  
10 than every five years, beginning five years from the Effective Date of this Ordinance, and may be  
11 completed as a series of reports and in coordination with ongoing monitoring of affordable housing  
12 policies, or feasibility analyses. The Planning Commission shall hold a hearing on the Program  
13 Evaluation and Update and any recommendations for modification to any of the Bonus Programs.

14  
15 Section 3. The Planning Code is hereby amended by adding Sections 328, to read as  
16 follows:

17 **SEC. 328. LOCAL AND 100 PERCENT AFFORDABLE HOUSING BONUS PROJECT**  
18 **AUTHORIZATION**

19 (a) Purpose. The purpose of this Section is to ensure that all Local and 100 Percent Affordable  
20 Housing Bonus projects under Section 206.3 or 206.4 are reviewed in coordination with priority  
21 processing available for certain projects with greater levels of affordable housing. While most projects  
22 in the Program will likely be somewhat larger than their surroundings in order to facilitate higher  
23 levels of affordable housing, the Planning Commission and Department shall ensure that each project  
24 is consistent with the Affordable Housing Bonus Design Guidelines and any other applicable design  
25



1 guidelines, as adopted and periodically amended by the Planning Commission, so that projects respond  
2 to their surrounding context, while still meeting the City's affordable housing goals.

3 (b) **Applicability.** This section applies to all qualifying Local and 100 Percent Affordable  
4 Housing Bonus Projects that meet the requirements described in Planning Code Sections 206.3 or  
5 206.4.

6 (c) **Planning Commission Design Review:** The Planning Commission shall review and  
7 evaluate all physical aspects of a Local or 100 Percent Affordable Housing Bonus Project at a public  
8 hearing. The Planning Commission recognizes that most qualifying projects will need to be larger in  
9 height and mass than surrounding buildings in order to achieve the Affordable Housing Bonus  
10 Program's affordable housing goals. However, the Planning Commission may, consistent with the  
11 Affordable Housing Bonus Program Design Guidelines, and any other applicable design guidelines,  
12 and upon recommendation from the Planning Director, make minor modifications to a project to  
13 reduce the impacts of such differences in scale.

14 Additionally, as set forth in subsection (d) below, the Planning Commission may grant minor  
15 exceptions to the provisions of this Code. However, such exceptions should only be granted to allow  
16 building mass to appropriately shift to respond to surrounding context, and only when such  
17 modifications do not substantially reduce or increase the overall building envelope permitted by the  
18 Program under Section 206.3 or 206.4. All modifications and exceptions should be consistent with the  
19 Affordable Housing Bonus Program Design Guidelines and any other applicable design guidelines. In  
20 case of a conflict with other applicable design guidelines, the Affordable Housing Bonus Program  
21 Design Guidelines shall prevail.

22 The Planning Commission may require these or other modifications or conditions, or  
23 disapprove a project, in order to achieve the objectives and policies of the Affordable Housing Bonus  
24 Program or the purposes of this Code. This review shall limited to design issues including the  
25 following:

1                   (1) whether the bulk and massing of the building is consistent with the Affordable  
2 Housing Bonus Design Guidelines.

3                   (2) whether building design elements including, but not limited to architectural  
4 treatments, façade design, and building materials, are consistent with the Affordable Housing Bonus  
5 Program Design Guidelines and any other applicable design guidelines.

6                   (3) whether the design of lower floors, including building setback areas, commercial  
7 space, townhouses, entries, utilities, and parking and loading access is consistent with the Affordable  
8 Housing Bonus Program Design Guidelines, and any other applicable design guidelines.

9                   (4) whether the required streetscape and other public improvements such as tree  
10 planting, street furniture, and lighting are consistent with the Better Streets Plan, and any other  
11 applicable design guidelines.

12                   (d) Exceptions. As a component of the review process under this Section 328, the Planning  
13 Commission may grant minor exceptions to the provisions of this Code as provided for below, in  
14 addition to the development bonuses granted to the project in Section 206.3(d) or 206.4(c). Such  
15 exceptions, however, should only be granted to allow building mass to appropriately shift to respond to  
16 surrounding context, and only when the Planning Commission finds that such modifications: 1) do not  
17 substantially reduce or increase the overall building envelope permitted by the Program under Sections  
18 206.3 or 206.4; and 2) are consistent with the Affordable Housing Bonus Design Guidelines. These  
19 exceptions may include:

20                   (1) Exception from residential usable open space requirements per Section 135, or any  
21 applicable special use district.

22                   (2) Exception from satisfaction of loading requirements per Section 152.1, or any  
23 applicable special use district.

24                   (3) Exception from rear yards, pursuant to the requirements of Section 134, or any  
25 applicable special use district.

1                   (4) Exception from dwelling unit exposure requirements of Section 140, or any  
2 applicable special use district.

3                   (5) Exception from satisfaction of accessory parking requirements per Section 152.1, or  
4 any applicable special use district.

5                   (6) Where not specified elsewhere in this Subsection (d), modification of other Code  
6 requirements that could otherwise be modified as a Planned Unit Development (as set forth in Section  
7 304), irrespective of the zoning district in which the property is located.

8                   (e) **Required Findings.** If a Local Affordable Housing Bonus Program Project or 100 Percent  
9 Affordable Housing Bonus Project otherwise requires a conditional use authorization due only to 1) a  
10 specific land use, 2) use size limit, or 3) requirement adopted by the voters, then the Planning  
11 Commission shall make all findings and consider all criteria required by this Code for such use or use  
12 size as part of this Local and 100 Percent Affordable Housing Bonus Project Authorization.

13                   (f) **Hearing and Decision.**

14                   (1) **Hearing.** The Planning Commission shall hold a public hearing for all projects that  
15 are subject to this Section.

16                   (2) **Notice of Hearing.** Notice of such hearing shall be provided pursuant to the same  
17 requirements for Conditional Use requests, as set forth in Section 306.3 and 306.8.

18                   (3) **Director's Recommendations on Modifications and Exceptions.** At the hearing,  
19 the Planning Director shall review for the Commission key issues related to the project based on the  
20 review of the project pursuant to Subsection (c) and recommend to the Commission modifications, if  
21 any, to the project and conditions for approval as necessary. The Director shall also make  
22 recommendations to the Commission on any proposed exceptions pursuant to Subsection (d).

23                   (4) **Decision and Imposition of Conditions.** The Commission, after public hearing and,  
24 after making appropriate findings, may approve, disapprove or approve subject to conditions, the  
25 project and any associated requests for exception. As part of its review and decision, the Planning

1 Commission may impose additional conditions, requirements, modifications, and limitations on a  
2 proposed project in order to achieve the objectives, policies, and intent of the General Plan or of this  
3 Code.

4 (5) Appeal. The decision of the Planning Commission may be appealed to the Board of  
5 Appeals by any person aggrieved within 15 days after the date of the decision by filing a written notice  
6 of appeal with that body, setting forth wherein it is alleged that there was an error in the interpretation  
7 of the provisions of this Code or abuse of discretion on the part of the Planning Commission.

8 (6) Discretionary Review. No requests for discretionary review shall be accepted by  
9 the Planning Department or heard by the Planning Commission for projects subject to this Section.

10 (7) Change of Conditions. Once a project is approved, authorization of a change in  
11 any condition previously imposed by the Planning Commission shall require approval by the Planning  
12 Commission subject to the procedures set forth in this Section.

13  
14 Section 4. The Planning Code is hereby amended by amending Sections 250, 260,  
15 and 352 to read as follows:

16 **SEC. 250. HEIGHT AND BULK DISTRICTS ESTABLISHED.**

17 (a) In order to carry out further the purposes of this Code, height and bulk districts are  
18 hereby established, subject to the provisions of this Article 2.5.

19 (b) No building or structure or part thereof shall be permitted to exceed, except as  
20 stated in Sections 172, ~~and~~ 188, and 206 of this Code, the height and bulk limits set forth in this  
21 Article for the district in which it is located, including the height limits for use districts set forth  
22 in Section 261.

23 \* \* \* \*

24  
25 **SEC. 260. HEIGHT LIMITS; MEASUREMENT.**

(a) **Method of Measurement.** The limits upon the height of buildings and structures shall be as specified on the Zoning Map, *except as permitted by Section 206*. In the measurement of height *for purposes of such limits*, the following rules shall be applicable:

\* \* \* \*

**SEC. 352. COMMISSION AND ZONING ADMINISTRATOR HEARING APPLICATIONS.**

\* \* \* \*

*(o) **Affordable Housing Bonus Program (Section 206 and following).** The initial fee amount is not to exceed 50% of the construction cost. A \$120 surcharge shall be added to the fees for a conditional use or planned unit development to compensate the City for the costs of appeals to the Board of Supervisors.*

<i>Estimated Construction Cost</i>	<i>Initial Fee</i>
<i>No construction cost, excluding extension of hours</i>	<i>\$1,012.00</i>
<i>No construction cost, extension of hours</i>	<i>\$724.00</i>
<i>Wireless Telecommunications Services (WTS)</i>	<i>\$5,061.00</i>
<i>\$1.00 to \$9,999.00</i>	<i>\$724.00</i>
<i>\$10,000.00 to \$999,999.00</i>	<i>\$724.00 plus 0.328% of cost over \$10,000.00</i>
<i>\$1,000,000.00 to \$4,999,999.00</i>	<i>\$4,033.00 plus 0.391% of cost over \$1,000,000.00</i>
<i>\$5,000,000.00 to \$9,999,999.00</i>	<i>\$19,986.00 plus 0.328% of cost over \$5,000,000.00</i>
<i>\$10,000,000.00 to \$19,999,999.00</i>	<i>\$36,701.00 plus 0.171% of cost over \$10,000,000.00</i>
<i>\$20,000,000.00 or more</i>	<i>\$54,120.00</i>

Section 5. Effective Date and Operative Effect. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor’s veto of the ordinance. This ordinance applies to projects that the Planning Department or Planning Commission have not approved

1 as of the effective date. For projects that have not yet submitted applications to the Planning  
2 Department or other City entity, all of the provisions of the ordinance apply. The Planning  
3 Department shall develop a policy to apply the provisions of this ordinance to projects that  
4 have already submitted applications, but have not obtained approvals, to permit such projects  
5 to amend their applications.  
6

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

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

16 By:   
17 Susan Cleveland-Knowles  
18 Deputy City Attorney

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