

Amendment of the Whole  
January 31, 2007

FILE NO. 061529

ORDINANCE NO.

1 [Residential Inclusionary Affordable Housing Requirements.]

2

3 **Ordinance approving changes to the Residential Inclusionary Affordable Housing**  
4 **Requirements by amending Section 315 to clarify the regulations in effect for particular**  
5 **projects; amending Section 315.1 to modify certain definitions related to income and**  
6 **sale price calculation; amending Section 315.2 to add update findings; amending**  
7 **Section 315.3 to conform the legislation to the requirement that the ordinance apply to**  
8 **all projects of 5 units or more; amending Sections 315.4 and 315.5 to establish separate**  
9 **requirements for buildings of 120 feet in height or greater, to clarify the requirements**  
10 **related to the type of on- and off-site housing required, and to establish a preference in**  
11 **the lottery for on- and off-site units for people who live and work in San Francisco;**  
12 **amending Section 315.6 to provide updated guidelines for the calculation of the in lieu**  
13 **fee and to allow MOH to expend funds for a study to periodically update the fee;**  
14 **amending Section 315.7 to change the amount of time an ownership unit shall remain**  
15 **affordable; amending Section 315.8 to amend certain monitoring and study obligations;**  
16 **and making a related change to the Jobs-Housing Linkage Program by amending**  
17 **Section 313.6 to make annual adjustments in the in lieu fee for that program**  
18 **correspond to the method used for the Residential Inclusionary Affordable Housing**  
19 **Program; and making findings, including findings under the California Environmental**  
20 **Quality Act.**

21 Note: Additions are *single-underline italics Times New Roman*;  
22 deletions are *strikethrough italics Times New Roman*.  
23 Board amendment additions are double underlined.  
24 Board amendment deletions are ~~strikethrough normal~~.

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

25 Section 1. Findings

1 (a) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this  
2 ordinance will serve the public necessity, convenience, and welfare for the reasons set forth in  
3 Planning Commission Resolution No. \_\_\_\_\_, and incorporates such reasons  
4 herein by reference. A copy of said Planning Commission Resolution is on file with the Clerk  
5 of the Board of Supervisors in File No. \_\_\_\_\_.

6 (b) The Board of Supervisors finds that this ordinance is in conformity with the  
7 General Plan, amended in the companion legislation, and the Priority Policies of Planning  
8 Code Section 101.1 for the reasons set forth in Planning Commission Resolution No.  
9 \_\_\_\_\_, and hereby incorporates those reasons by reference.

10 (c) The Planning Department has determined that the actions contemplated in this  
11 ordinance are in compliance with the California Environmental Quality Act (California Public  
12 Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the  
13 Board of Supervisors in File No. \_\_\_\_\_ and is incorporated herein by  
14 reference.

15 Section 42. The San Francisco Planning Code is hereby amended by amending  
16 Sections 315, 315.1, 315.2, 315.3, 315.4, 315.5, 315.6, 315.7, and 315.8 of the Residential  
17 Inclusionary Affordable Housing Program, to read as follows:

18 **SEC. 315. HOUSING REQUIREMENTS FOR RESIDENTIAL AND LIVE/WORK**  
19 **DEVELOPMENT PROJECTS.**

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

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

16 **SEC. 315.1. DEFINITIONS.**

17 The following definitions shall govern interpretation of this ordinance:

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

20 (2) "Affordable to a household" shall mean a purchase price that a household can  
21 afford to pay based on an annual payment for all housing costs, as defined in California  
22 Code of Regulations ("CCR") Title 25, Section 6920, as amended from time to time, of  
23 33 percent of the combined household annual ~~net~~ gross income, assuming a ~~10 percent~~  
24 down payment recommended by the Mayor's Office of Housing in the Procedures Manual,  
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1 and available financing, or a rent that does not exceed 30 percent of a household's  
2 combined annual ~~net~~ gross income. Where applicable, the purchase price or rent may be  
3 adjusted to reflect the absence or existence of a parking space(s), subject to the Department's  
4 policy on unbundled parking for affordable housing units as specified in the Procedures Manual  
5 and amended from time to time.

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

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

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

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

16 (iii) On subsequent sales at or below the prices to be determined by the Director  
17 Mayor's Office of Housing in the Conditions of Approval or Notice of Special Restrictions  
18 according to the formula specified in the Procedures Manual, as amended from time to  
19 time, such that the units remain affordable to qualifying households. The formula in the  
20 Procedures Manual may permit the seller to include certain allowable capital improvements in  
21 the sales price.

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

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

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

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

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

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

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

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

17 (7) "Average annual rent" shall mean the total annual rent for the calendar year  
 18 charged by a housing project for all affordable rental units in the project of an equal  
 19 number of bedrooms divided by the total number of affordable units in the project with  
 20 that number of bedrooms.

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

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

3 (9a) "Conditional use" for purposes of this Ordinance means a conditional use  
4 authorization which, pursuant to the Planning Code, is required for the residential  
5 component of a project.

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

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

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

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

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

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

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

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

11 (17A) "Household of moderate income" shall mean a household who is not a low- or median-  
12 income household whose combined annual gross income for all members does not exceed one  
13 hundred (120) percent of the median income for the City and County of San Francisco, as  
14 calculated by the Mayor's Office of Housing using data from the United States Department of  
15 Housing and Urban Development (HUD) and adjusted for household size or, if data from HUD  
16 is unavailable, calculated by the Mayor's Office of Housing using other publicly available and  
17 credible data and adjusted for household size.

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

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

5 (20) "Live/work unit" shall be as defined in San Francisco Planning Code Section  
6 102.13.

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

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

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

13 (24) "Maximum annual rent" shall mean the maximum rent that a housing developer  
14 may charge any tenant occupying an affordable unit for the calendar year. The  
15 maximum annual rent for an affordable housing unit of the size indicated below shall be  
16 no more than 30 percent of the annual ~~net~~ gross income for a household of low income  
17 as defined in this Section, as adjusted for the household size indicated below as of the  
18 first date of the tenancy:

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

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3 (1101 to 1300 square feet)	4
4 (More than 1300 square feet)	5

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

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

(25A) "Mayor's Office of Housing" shall mean the Mayor's Office of Housing or its successor.

(26) "Notice of Special Restrictions" shall mean a document recorded with the San Francisco Recorder's Office for any unit subject to this Program detailing the sale and resale or rental restrictions and any restrictions on purchaser or tenant income levels included as a Condition of Approval of the principal project relating to the unit.

(27) "Off-site unit" shall mean a unit affordable to qualifying households constructed pursuant to this Ordinance on a site other than the site of the principal project.

1 (28) "On-site unit" shall mean a unit affordable to qualifying households constructed  
2 pursuant to this Ordinance on the site of the principal project.

3 (29) "Ordinance" shall mean Planning Code Sections 315.1 through 315.9.

4 (30) "Owned unit" shall mean a unit affordable to qualifying households which is a  
5 condominium, stock cooperative, community apartment, or detached single-family  
6 home. The owner or owners of an owned unit must occupy the unit as their primary  
7 residence.

8 (31) "Owner" shall mean the record owner of the fee or a vendee in possession.

9 (32) "Principal project" shall mean a housing development on which a requirement to  
10 provide affordable housing units is imposed.

11 (33) "Procedures Manual" shall mean the City and County of San Francisco Affordable  
12 Housing Monitoring Procedures Manual issued by the San Francisco Department of  
13 City Planning, as amended.

14 (34) "Program" shall mean the Residential Inclusionary Affordable Housing Program.

15 (35) "Project applicant" shall mean an applicant for a building permit or a site permit or  
16 an applicant for a conditional use permit or planned unit development permit, seeking  
17 approval from the Planning Commission or Planning Department for construction of a  
18 housing project subject to this Section, such applicant's successors and assigns.

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

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

23 **SEC. 315.2. FINDINGS.**

24 The Board of Supervisors hereby finds and declares as follows:

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1 Affordable Housing: The findings in Planning Code Section 315.2 of the Inclusionary  
2 Affordable Housing Ordinance are hereby readopted and updated as follows:

3 1. Affordable housing is a paramount statewide concern. In 1980, the Legislature declared in  
4 Government Code Section 65580:

5 (a) The availability of housing is of vital statewide importance, and the early attainment of  
6 decent housing and a suitable living environment for every California family is a priority of the  
7 highest order.

8 (b) The early attainment of this goal requires the cooperative participation of government and  
9 the private sector in an effort to expand housing opportunities and accommodate the housing  
10 needs of Californians of all economic levels.

11 (c) The provision of housing affordable to low-and moderate-income households requires the  
12 cooperation of all levels of government.

13 (d) Local and state governments have a responsibility to use the powers vested in them to  
14 facilitate the improvement and development of housing to make adequate provision for the  
15 housing needs of all economic segments of the community.

16 The Legislature further stated in Government Code Section 65581 that:

17 It is the intent of the Legislature in enacting this article:

18 (a) To assure that counties and cities recognize their responsibilities in contributing to the  
19 attainment of the state housing goal.

20 (b) To assure that counties and cities will prepare and implement housing elements which  
21 will move toward attainment of the state housing goal.

22 (c) To recognize that each locality is best capable of determining what efforts are required by  
23 it to contribute to the attainment of the state housing goal.

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1 The California Legislature requires each local government agency to develop a  
2 comprehensive long-term general plan establishing policies for future development. As  
3 specified in the Government Code (at Sections 65300, 65302(c), and 65583(c)), the plan must  
4 (1) "encourage the development of a variety of types of housing for all income levels,  
5 including multifamily rental housing"; (2) "[a]ssist in the development of adequate housing to  
6 meet the needs of low- and moderate-income households"; and (3) "conserve and improve  
7 the condition of the existing affordable housing stock, which may include addressing ways to  
8 mitigate the loss of dwelling units demolished by public or private action."

9 2. San Francisco faces a continuing shortage of affordable housing for very low and low-  
10 income residents. The San Francisco Planning Department reported that for the four-year  
11 period between 2000 and 2004, 8,389 total new housing units were built in San Francisco.  
12 This number includes 1,933 units for low and very low-income households out of a total need  
13 of 3,930 low and very low-income housing units for the same period. According to the state  
14 Department of Housing and Community Development, there will be a regional need for  
15 230,743 new housing units in the nine Bay Area counties from 1999--2006. Of that amount, at  
16 least 58 percent, or 133,164 units, are needed for moderate, low and very low-income  
17 households. The Association of Bay Area Governments (ABAG) is responsible for dividing the  
18 total regional need numbers among its member governments which includes both counties  
19 and cities. ABAG estimates that San Francisco's low and very low-income housing production  
20 need from 1999 through 2006 is 7,370 units out of a total new housing need of 20,372 units, or  
21 36% of all units built. Within the past four years, only 23% of all housing built, or 49% of the  
22 previously projected housing need for low and very low-income housing for the same period,  
23 was produced in San Francisco. The production of moderate income rental units also fell short  
24 of the ABAG goal. Only 351 moderate income units were produced over the previous four  
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1 years, or 4% of all units built, compared to ABAG's call for 28% of all units to be affordable to  
2 households of moderate income. Given the need for 3,007 moderate income units over the 4-  
3 year period, only 12% of the projected need for moderate income units was built.

4 3. In response to the above mandate from the California Legislature and the projections of  
5 housing needs for San Francisco, San Francisco has instituted several strategies for  
6 producing new affordable housing units. The 2004 Housing Element of the General Plan  
7 recognizes the need to support affordable housing production by increasing site availability  
8 and capacity for permanently affordable housing through the inclusion of affordable units in  
9 larger housing projects. Further, the City, as established in the General Plan, seeks to  
10 encourage the distribution of affordable housing throughout all neighborhoods and, thereby,  
11 offer diverse housing choices and promote economic and social integration. The 2004  
12 Housing Element calls for an increase in the production of new affordable housing and for the  
13 development of mixed income housing to achieve social and cultural diversity. This legislation  
14 furthers the goals of the State Legislature and the General Plan.

15 4. The 2005 Consolidated Plan for July 1, 2000--June 30, 2005, issued by the Mayor's Office  
16 of Community Development and the Mayor's Office of Housing, establishes that extreme  
17 housing pressures face San Francisco, particularly in regard to low- and moderate-income  
18 residents. Many elements constrain housing production in the City. This is especially true of  
19 affordable housing. As discussed in the 2004 Housing Element published by the City Planning  
20 Department. San Francisco is largely built out, with very few large open tracts of land to  
21 develop. As noted in the 2000 Consolidated Plan, its geographical location at the northern end  
22 of a peninsula inherently prevents substantial new development. There is no available  
23 adjacent land to be annexed, as the cities located on San Francisco's southern border are  
24 also dense urban areas. Thus new construction of housing is limited to areas of the City not  
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1 previously designated as residential areas, infill sites, or to areas with increased density. New  
2 market-rate housing absorbs a significant amount of the remaining supply of land and other  
3 resources available for development and thus limits the supply of affordable housing.

4 There is a great need for affordable rental and owner-occupied housing in the City. Housing  
5 cost burden is one of the major standards for determining whether a locality is experiencing  
6 inadequate housing conditions, defined as households that expend 30% or more of gross  
7 income for rent or 35% or more of household income for owner costs. The 2000 Census  
8 indicates that 64,400 renter households earning up to 80% of the area median income are  
9 cost burdened. Of these, about 25,000 households earn less than 50% AMI and pay more  
10 than 50% of their income to rent. According to more recent data from the American Housing  
11 Survey, 80,662 total renter households, or 41%, are cost burdened in 2003. A significant  
12 number of owners are also cost burdened. According to 2000 Census data, 18,237 of owners  
13 are cost-burdened, or 23% of all owner households. The 2003 American Housing Survey  
14 indicates that this level has risen to 29%.

15 The San Francisco residential real estate market is one of the most expensive in the United  
16 States. In May 2005, the California Association of Realtors reported that the median priced  
17 home in San Francisco was \$755,000. This is 18% higher than the median priced home one  
18 year earlier, 44% higher than the State of California median, and 365% higher than the nation  
19 average. While the national homeownership rate is approximately 69%, only approximately  
20 35% of San Franciscans own their own home. The majority of market-rate homes for sale in  
21 San Francisco are priced out of the reach of low and moderate income households. In May  
22 2005, the average rent for a 2-bedroom apartment was \$1821, which is affordable to  
23 households earning over \$74,000.

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1 These factors contribute to a heavy demand for affordable housing in the City that the private  
2 market cannot meet. Each year the number of market rate units that are affordable to low  
3 income households is reduced by rising market rate rents and sales prices. The number of  
4 households benefiting from rental assistance programs is far below the need established by  
5 the 2000 Census. Because the shortage of affordable housing in the City can be expected to  
6 continue for many years, it is necessary to maintain the affordability of the housing units  
7 constructed by housing developers under this Program. The 2004 Housing Element of the  
8 General Plan recognizes this need. Objective 1 of the Housing Element is to provide new  
9 housing, especially permanently affordable housing, in appropriate locations which meets  
10 identified housing needs and takes into account the demand for affordable housing created by  
11 employment demand. Objective 6 is to protect the affordability of existing housing, and to  
12 ensure that housing developed to be affordable be kept affordable for 50 -- 75 year terms, or  
13 even longer if possible.

14 In 2004 the National Housing Conference issued a survey entitled "Inclusionary Zoning: The  
15 California Experience." The survey found that as of March 2003, there were 107 cities and  
16 counties using inclusionary housing in California, one-fifth of all localities in the state. Overall,  
17 the inclusionary requirements were generating large numbers of affordable units. Only six  
18 percent of jurisdictions reported voluntary programs, and the voluntary nature appears to  
19 compromise the local ability to guarantee affordable housing production. While there was a  
20 wide range in the affordability percentage-requirements for inclusionary housing, the average  
21 requirement for affordability in rental developments is 13%. Approximately half of all  
22 jurisdictions require at least 15% to be affordable, and one-quarter require 20% or more to be  
23 affordable.

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1 5. Development of new market-rate housing makes it possible for new residents to move to  
2 the City. These new residents place demands on services provided by both public and private  
3 sectors. Some of the public and private sector employees needed to meet the needs of the  
4 new residents earn incomes only adequate to pay for affordable housing. Because affordable  
5 housing is in short supply within the City, such employees may be forced to live in less than  
6 adequate housing within the City, pay a disproportionate share of their incomes to live in  
7 adequate housing within the City, or commute ever-increasing distances to their jobs from  
8 housing located outside the City. These circumstances harm the City's ability to attain goals  
9 articulated in the City's General Plan and place strains on the City's ability to accept and  
10 service new market-rate housing development.

11 6. The development of affordable housing on the same site as market-rate housing  
12 increases social and economic integration vis-a-vis housing in the City and has corresponding  
13 social and economic benefits to the City. Inclusionary housing provides a healthy job and  
14 housing balance. Inclusionary housing provides more affordable housing close to employment  
15 centers which in turn may have a positive economic impact by reducing such costs as  
16 commuting and labor costs. However, there may also be trade-offs where constructing  
17 affordable units at a different site than the site of the principle project may produce a greater  
18 number of affordable units without additional costs to the project applicant. If a project  
19 applicant may produce a significantly greater number of affordable units off-site then it is in  
20 the best interest of the City to permit the development of affordable units at a different location  
21 than that of the principle project.

22 7. Provided project applicants can take these requirements into consideration when  
23 negotiating to purchase land for a housing project, the requirements of this Section are  
24 generally financially feasible for project applicants to meet, particularly because of the benefits  
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1 being conferred by the City to housing projects under this ordinance. This Ordinance provides  
2 a means by which a project applicant may seek a reduction or waiver of the requirements of  
3 this mitigation fees if the project applicant can show that imposition of these requirements  
4 would create an unlawful financial burden.

5 8. Conditional Use and Planned Unit Development Permits permit the development of certain  
6 uses not permitted as of right in specific districts or greater density of permitted residential  
7 uses. As the General Plan recognizes, through the conditional use and planned unit  
8 development process, applicants for housing projects generally receive material economic  
9 benefits. Such applicants are generally permitted to build in excess of the generally applicable  
10 black letter requirements of the Planning Code for housing projects resulting in increased  
11 density, bulk, or lot coverage or a reduction in parking or other requirements or an approval of  
12 a more intensive use over that permitted without the conditional use permit or planned unit  
13 development permit. Through the conditional use and planned unit development process,  
14 building standards can be relaxed in order to promote lower cost home construction. An  
15 additional portion of San Francisco's affordable housing needs can be supplied (with no public  
16 subsidies or financing) by private sector housing developers developing inclusionary affordable  
17 units in their large market-rate projects in exchange for the density and other bonuses  
18 conferred by conditional use or planned unit development approvals, provided it is financially  
19 attractive for private sector housing developers to seek such conditional use and/or planned  
20 unit development approvals.

21 9. Live/work as defined in the Planning Code recognizes that "residential living space" is an  
22 integral part of a live/work unit. A substantial portion of new housing development in San  
23 Francisco has been live/work units in Mixed Use Districts South of Market and in industrially  
24 zoned areas of San Francisco where residential development has not traditionally been  
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1 permitted as of right. Live/work development projects are subject to less stringent  
2 development standards than other types of housing projects in certain Mixed Use Districts and  
3 industrially zoned areas. Live/work developments are conferred an equivalent benefit as  
4 projects going through the conditional use or planned unit development permit process by  
5 virtue of the fact that (1) live/work developments are not required to get a conditional use  
6 permit for housing development in some Mixed Use Districts and in all industrially zoned  
7 districts where other residential uses are required to get a conditional use permit; (2) live/work  
8 developments receive a five foot height bonus above prevailing height limits for specific  
9 neighborhoods; (3) live/work units are permitted to cover 100% of a lot rather than the stricter  
10 lot coverage requirements that apply to other residential development, typically requiring rear  
11 yards equal to 15 feet in length or 25% of the lot, whichever is greater. Given these benefits  
12 conferred by statute which allow live/work developments to exceed the limitations on other  
13 housing development in the City, the Board of Supervisors finds that, for purposes of this  
14 Program, live/work developments are conferred a private benefit equal to or in excess of  
15 housing projects which require a conditional use or planned unit development permit. The  
16 relaxed building standards applied to live/work projects promote the ability to include lower  
17 cost home production in live/work projects. A unit meets the definition of California Civil Code  
18 Section 1940(c) as a "dwelling unit" because it "is used as a home, residence or sleeping  
19 place by one person who maintains a household or by two or more persons who maintain a  
20 common household." Live/work units shall not be considered "commercial real property" for  
21 purposes of Civil Code Section 1954.25 et seq.

22 10. The City wants to balance the burden on private property owners with the demonstrated  
23 need for affordable housing in the City. For the reasons stated above, the Board of  
24 Supervisors thus intends to increase the inclusionary housing requirements for all residential  
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1 projects. In order to balance the burden on property owners, the Board intends to limit the  
2 application of an inclusionary housing requirement to 15% for housing projects that do not  
3 receive any of the benefits described above through the conditional use or planned unit  
4 development process, or in live/work projects. A slightly higher percentage will be applied to  
5 projects which generally receive benefits through the conditional use or planned unit  
6 development process, or in live/work projects. The Housing Element (Policy 4.2) states:  
7 Include affordable units in larger housing developments. It also calls for the City to review its  
8 inclusionary housing program regularly to ensure fair burden and not constrain new housing  
9 production. The Board of Supervisors has reviewed the inclusionary affordable housing  
10 program and finds that, for purposes of the Housing Element of the General Plan, increasing  
11 the inclusionary housing requirements ensures more fair burden on all housing development  
12 and will not constrain new housing production. The Board of Supervisors has reviewed the  
13 inclusionary affordable housing program and finds that, for purposes of the Housing Element  
14 of the General Plan, a housing project of five units or more is a larger housing project.  
15 Expanding the inclusionary housing requirements to buildings of five units or more ensures  
16 more fair burden on all housing development and will not constrain new housing production.  
17 11. The findings of Planning Code Section 313.2 for the Jobs-Housing Linkage Program,  
18 Planning Code Sections 313 et seq., relating to the shortage of affordable housing, the low  
19 vacancy rate of housing affordable to persons of lower and moderate income, and the  
20 decrease in construction of affordable housing in the City are hereby readopted.  
21 12. The Land Use and Economic Development Committee of the Board of Supervisors held  
22 hearings on this legislation on July 12 and 19, 2006. At those hearings, the Committee heard  
23 testimony from Planning Department staff and consultant Kate Funk of Keyser Marston and  
24 Associates regarding a study undertaken at the direction of the Planning Department by the  
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1 consultant Keyser Marston and Associates. The study was entitled Inclusionary Housing  
2 Program Sensitivity Analysis, dated July 7, 2006, and was undertaken to examine the  
3 economic impacts of adjusted inclusionary requirements on market-rate housing projects  
4 ("Sensitivity Analysis"). The study can be found in Board File No. 651685 and is incorporated  
5 herein by reference. The study was guided by the Planning Department and Mayor's Office of  
6 Housing and informed by a Technical Advisory Committee comprised of a variety of experts  
7 from the San Francisco Housing Development and Affordable Housing Advocacy  
8 Communities. Planning Department staff presented a report summarizing the findings of the  
9 Sensitivity Analysis and the recommendations of the Technical Advisory Committee. That  
10 report, dated July 10, 2006, is found in Board File No. 051685 and is incorporated herein by  
11 reference.

12 After considering the Sensitivity Analysis and staff report and hearing the recommendations  
13 and testimony of the Planning Department, Mayor's Office of Housing, members of the  
14 Technical Advisory Committee, and members of the public including representatives of  
15 housing developers, community members, and affordable housing advocates, the Land Use  
16 and Economic Development Committee considered various amendments to the legislation.  
17 The Committee found, among other things, that it was in the public interest to increase the  
18 percentage requirements of the ordinance, but not by as much as originally proposed; to  
19 modify the application dates of the ordinance to grandfather more existing projects from the  
20 increased percentage requirements, but to make most projects subject to the other  
21 requirements of the ordinance; and to require further study on some issues by the Planning  
22 Department and Mayor's Office of Housing.

23 13. The City of San Francisco, under the direction of the Office of the Controller, is  
24 undertaking a comprehensive program of analyses to update its programs and supporting

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1 documentation for many types of fees, including updating nexus analyses in support of  
2 development impact fees. At the direction of the Board of Supervisors and as part of this  
3 larger analysis, the City contracted with Keyser Marston Associates to prepare a nexus  
4 analysis in support of the Inclusionary Housing Program, or an analysis of the impact of  
5 development of market rate housing on affordable housing supply and demand. The Planning  
6 Department and Mayor's Office of Housing worked closely with the consultant and also  
7 consulted with the Technical Advisory Committee, noted above, comprised of a variety of  
8 experts from the San Francisco Housing Development and Affordable Housing Advocacy  
9 Communities.

10 The City's current position is that the City's Inclusionary Housing Program including the  
11 in lieu fee provision which is offered as an alternative to building units within market rate  
12 projects, is not subject to the requirements of the Mitigation Fee Act, Government Code  
13 Sections 66000 et seq. While the City does not expect to alter its position on this matter, due  
14 to past legislative actions supporting such a study, the Citywide study being undertaken, and  
15 a general interest in determining whether the Inclusionary Program can be supported by a  
16 nexus type analysis as an additional support measure, the City contracted to undertake the  
17 preparation of a nexus analysis at this time.

18 The final study can be found in Board of Supervisors File No. \_\_\_\_\_ and is  
19 incorporated by reference herein. The Board of Supervisors has reviewed the study and staff  
20 analysis and report of the study and, on that basis finds that the study supports the current  
21 inclusionary housing requirements.

22 **SEC. 315.3. APPLICATION.**

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

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

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

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

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

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

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

21 (2) The amendments to the percentage-requirements of this Ordinance that govern the  
22 number of affordable units a housing project is required to provide in Section 315.4(a) and  
23 315.5(a) apply only to housing projects that submit their first application, including an  
24 environmental evaluation application or any other Planning Department or Building  
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1 Department application, on or after July 18, 2006. Notwithstanding the foregoing, the  
2 amendments to the percentage-requirements of this Ordinance also apply to any project that  
3 has not received its final Planning Commission or Department approvals before July 18,  
4 2006 for housing projects that receive a Zoning Map amendment or Planning Code text  
5 amendment related to their project approvals that (A) results in a net increase in the number  
6 of permissible residential units, or (B) results in a material increase in the net permissible  
7 residential square footage. For purposes of subsection B above a material increase shall  
8 mean an increase of 5 percent or more, or an increase in 10,000 square feet or more,  
9 whichever is less.

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

15 (c) This Ordinance shall not apply to:

16 (1) That portion of a housing project located on property owned by the United States or any  
17 of its agencies or leased by the United States or any of its agencies for a period in excess of  
18 50 years, with the exception of such property not used exclusively for a governmental  
19 purpose;

20 (2) That portion of a housing project located on property owned by the State of California or  
21 any of its agencies, with the exception of such property not used exclusively for a  
22 governmental or educational purpose; or  
23  
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1 (3) That portion of a housing project located on property under the jurisdiction of the San  
2 Francisco Redevelopment Agency or the Port of San Francisco where the application of this  
3 Ordinance is prohibited by California or local law;

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

7 (d) Waiver or Reduction:

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

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

18 (3) Any such appeal shall be made in writing and filed with the Clerk of the Board no later  
19 than 15 days after the date the Planning Department sends notice to the project applicant of  
20 the number of affordable units required as provided in Section 315.4(a) and 315.5(a). The  
21 appeal shall set forth in detail the factual and legal basis for the claim of waiver, reduction, or  
22 adjustment. The Board of Supervisors shall consider the appeal at the hearing within 60 days  
23 after the filing of the appeal. The appellant shall bear the burden of presenting substantial  
24 evidence to support the appeal, including comparable technical information to support  
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1 appellant's position. The decision of the Board shall be by a simple majority vote and shall be  
2 final. If a reduction, adjustment, or waiver is granted, any change in use within the project  
3 shall invalidate the waiver, adjustment, or reduction of the fee or inclusionary requirement. If  
4 the Board grants a reduction, adjustment or waiver, the Clerk of the Board shall promptly  
5 transmit the nature and extent of the reduction, adjustment or waiver to the Treasurer.

6 (e) For projects that have received a first site or building permit prior to the effective date of  
7 this legislation, the requirements in effect prior to the effective date of this Ordinance shall  
8 apply.

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

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

13 (a) Number of Units:

14 (1)

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

17 (B) Buildings 120 feet in height and under or buildings of over 120 feet in height that do not meet the  
18 criteria in subsection (C) below: Except as provided in Subsection (C) below, the ~~The~~ Planning

19 Department shall require for housing projects covered by Section 315.3(a)(1), as a condition  
20 of Planning Department approval of a project's building permit, and by Section 315.3(a)(2),  
21 (3) and (4), as a Condition of Approval of a conditional use or planned unit development  
22 permit or as a condition of Planning Department approval of a live/work project, that 15% of  
23 all units constructed on the project site shall be affordable to qualifying households so that a  
24 project applicant must construct .15 times the total number of units produced in the principal  
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1 project beginning with the construction of the ~~tenth~~ fifth unit. If the total number of units is not  
2 a whole number, the project applicant shall round up to the nearest whole number for any  
3 portion of .5 or above.

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

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

14 (C) Buildings of over 120 feet in height. Except as provided in subsection (A) above, the  
15 requirements of this Subsection shall apply to any project that is over 120 feet in height and does not  
16 require a Zoning Map amendment or Planning Code text amendment related to its project approvals  
17 which (i) results in a net increase in the number of permissible residential units, or (ii) results in a  
18 material increase in the net permissible residential square footage as defined in Section 315.3(b)(2) or  
19 has not received or will not receive a zoning map amendment or Planning Code text amendment as  
20 part of an Area Plan adopted after January 1, 2006 which (i) results in a net increase in the number of  
21 permissible residential units, or (ii) results in a material increase in the net permissible residential  
22 square footage as defined in Section 315.3(b)(2). The Planning Department shall require for housing  
23 projects covered by this Subsection and Section 315.3(a)(1), as a condition of Planning Department  
24 approval of a project's building permit, or by this Subsection and by Section 315.3(a)(2), (3) and (4),

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1 as a Condition of Approval of a conditional use or planned unit development permit or as a condition  
2 of Planning Department approval of a live/work project, that 12% of all units constructed on the  
3 project site shall be affordable to qualifying households so that a project applicant must construct .12  
4 times the total number of units produced in the principal project beginning with the construction of the  
5 fifth unit. If the total number of units is not a whole number, the project applicant shall round up to the  
6 nearest whole number for any portion of .5 or above. Consistent with the conclusions of the Mayor's  
7 Office of Housing study authorized in Section 315.8(e), the Mayor's Office of Housing shall  
8 recommend and the Board of Supervisors shall consider whether the requirements of this Subsection  
9 for buildings of over 120 feet in height shall continue or expire after approximately 5 years.  
10 The Planning Department shall provide written notice by mail to the project applicant of the number  
11 of affordable units which shall be required within 30 days of approval by the Planning Department or  
12 Planning Commission. This notice shall also be sent to project applicants who elect to pay an in-lieu  
13 fee.

14 (2) If the principal project has resulted in demolition, conversion, or removal of affordable  
15 housing units renting or selling to households at income levels and/or for a rental rate or  
16 sales price below corresponding income thresholds for units affordable to qualifying  
17 households, the Planning Commission shall require that the project applicant replace the  
18 number of affordable units removed with units of a comparable number of bedrooms or  
19 provide that 15% of all units constructed as part of the new project shall be affordable to  
20 qualifying households, whichever is greater.

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

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

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

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

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

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1 (e) Alternatives: The project sponsor may elect to satisfy the requirements of Section 315.4  
2 by one of the alternatives specified in this Section. The project sponsor has the choice between  
3 the alternatives and the Planning Commission may not require a specific alternative. The project  
4 sponsor must elect an alternative before it receives project approvals from the Planning  
5 Commission or Planning Department and that alternative will be a condition of project  
6 approval. Notwithstanding the foregoing, if a project sponsor elects an alternative other than  
7 the on-site alternative, the project sponsor still has the option to choose the on-site  
8 alternative up to the issuance of the first site or building permit. If a project sponsor fails to  
9 elect an alternative before project approval by the Planning Commission or Planning  
10 Department, the provisions of Section 315.4 shall apply. The alternatives are as follows:  
11 (1) Constructing units affordable to qualifying households at an alternative site within the City  
12 and County of San Francisco pursuant to the requirements of Section 315.5.  
13 (2) Paying an in lieu fee to the Mayor's Office of Housing pursuant to the requirements of  
14 Section 315.6.  
15 (3) Any combination of construction of on-site units as provided in Section 315.4, off-site  
16 units as provided in Section 315.5, or payment of an in lieu fee as provided in Section 315.6,  
17 provided that the project applicant constructs or pays the fee at the appropriate percentage  
18 or fee level required for that option.  
19 (4) Using California Debt Limit Allocation Committee (CDLAC) tax-exempt bonds under the  
20 requirements of Section 315.5(g).  
21 (f) Benefits: If the project applicant elects to satisfy the inclusionary housing requirements  
22 through the production of on-site inclusionary housing in this Section 315.4, the project  
23 applicant shall at his or her option, be eligible to receive a refund of the following fees: a  
24 conditional use or other fee required by Planning Code Section 352, if applicable; an  
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1 environmental review fee required by Administrative Code Section 31.46B, if applicable; a  
2 building permit fee required by the Building Code and by Planning Code Section 355 for the  
3 portion of the housing project that is affordable. The project applicant shall pay the building  
4 fee for the portion of the project that is market-rate.

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

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

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

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

15 (1)

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

18 (B) Buildings of 120 feet and under in height or buildings of over 120 feet in height that do not meet  
19 the criteria in subsection (C) below: Except as provided in Subsection (A), the ~~For~~for projects  
20 described in Section 315.3(a)(1), (2), (3), and (4) 20% so that a project applicant must  
21 construct .20 times the total number of units produced in the principal project beginning with  
22 the construction of the ~~tenth~~ fifth unit. If the total number of units is not a whole number, the  
23 project applicant shall round up to the nearest whole number for any portion of .5 or above.

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1 The Planning Department shall provide written notice by mail to the project applicant of the  
2 number of affordable units which shall be required within 30 days of approval by the Planning  
3 Department or Planning Commission. This notice shall also be sent to project applicants who  
4 elect to pay an in-lieu fee.

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

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1 The Planning Department shall provide written notice by mail to the project applicant of the number  
2 of affordable units which shall be required within 30 days of approval by the Planning Department or  
3 Planning Commission. This notice shall also be sent to project applicants who elect to pay an in-lieu  
4 fee.

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

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

10 (d) Type of Housing: The type of affordable housing needed in San Francisco is documented  
11 in the City's Consolidated Plan and the Residence Element of the General Plan. New  
12 affordable rental housing and ownership housing affordable to households earning less than  
13 the median income is greatly needed in San Francisco. The Planning Department shall  
14 develop Quality Standards for Off-Site Affordable Housing Units and recommend such  
15 standards to the Planning Commission for adoption as part of the Procedures Manual. All  
16 off-site units constructed under this Section must be provided as rental housing for the life of  
17 the project or, if they are ownership units, must be affordable to households earning no more  
18 than 80% of the median income for the City and County of San Francisco. Nothing in this  
19 section shall limit a developer from meeting the requirements of this Section through the  
20 construction of units in a limited equity or land trust form of ownership if such units otherwise  
21 meet all of the requirements for off-site housing. In general, affordable units constructed  
22 under this Section 315.5 shall be comparable in number of bedrooms, exterior appearance  
23 and overall quality of construction to market rate units in the principal project. The total  
24 square footage of the off-site affordable units constructed under this Section 315.5 shall be  
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1 no less than the calculation of the total square footage of the on-site market-rate units in the  
 2 principal project multiplied by the relevant on-site percentage requirement for the project  
 3 specified in Section 315.4 (~~.12 for conditional use, planned unit developments or live work projects,~~  
 4 ~~and .10 for all other housing projects~~). The Notice of Special Restrictions or Conditions of  
 5 Approval shall include a specific number of units at specified unit sizes - including number of  
 6 bedrooms and minimum square footage - for affordable units. The interior features in  
 7 affordable units need not be the same as or equivalent to those in market rate units in the  
 8 principal project, so long as they are of good quality and are consistent with then-current  
 9 standards for new housing consistent with the Planning Department's Quality Standards for  
 10 Off-Site Affordable Housing Units found in the Procedures Manual. Where applicable, parking  
 11 shall be offered to the affordable units subject to the terms and conditions of the Department's policy  
 12 on unbundled parking for affordable housing units as specified in the Procedures Manual and  
 13 amended from time to time. ~~In the case of life care or assisted living developments where~~  
 14 ~~amenities such as meals are provided as a mandatory part of the cost of living at the facility,~~  
 15 ~~such care and amenities shall be provided to the inhabitant of the affordable unit at a cost~~  
 16 ~~proportionate to the market rate rent compared to the affordable rent.~~ If the residential units  
 17 in the principal project are live/work units which do not contain bedrooms or are other types  
 18 of units which do not contain bedrooms separated from the living space, the off-site units  
 19 shall be comparable in size according to the following equivalency calculation between  
 20 live/work and units with bedrooms:

Number of Bedrooms (or, for live/work units square foot equivalency)	Number of Persons in Household
0 (Less than 600 square feet)	1
1 (601 to 850 square feet)	2

2 (851 to 1100 square feet)	3
3 (1101 to 1300 square feet)	4
4 (More than 1300 square feet)	5

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

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

(2) Preferences: ~~The Mayor's Office of Housing or its successor shall consider appropriate preferences for the allocation of inclusionary units to qualifying households and shall, within 90 days,~~

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

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

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

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

22 If the project applicant elects, pursuant to Section 315.4(e)(2) that the project applicant will  
23 pay an in lieu fee to satisfy the requirements of this Program, the project applicant shall meet  
24 the following requirements:  
25

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

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

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

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

20 (3) ~~Annual adjustments to the affordability gap based upon the percentage increase or decrease in the~~  
21 ~~Average Area Purchase Price Safe Harbor Limitations for New Single Family Residences for the San~~  
22 ~~Francisco Primary Metropolitan Statistical ("PMSA") established by the Internal Revenue Service~~  
23 ~~("IRS") since January 1st of the previous year; provided however, that in the event that said~~  
24 ~~percentage increase exceeds 20 percent, the in lieu fee shall be increased by 20 percent, and the~~  
25

1 *difference between the percentage increase in the Average Area Purchase Price and 20 percent shall*  
2 *be carried over and added to the in lieu fee adjustment for the following calendar year. In the event*  
3 *that the IRS does not adjust the above figure within 14 months, the Mayor's Office of Housing shall*  
4 *authorize and certify a study for adjusting the last published IRS figure to be effective until IRS revises*  
5 *the figure.*

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

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

20 (d) Upon payment of the fee in full to the Treasurer and upon request of the project applicant,  
21 the Treasurer shall issue a certification that the fee has been paid. The project applicant shall  
22 present such certification to the Planning Department, DBI and MOH prior to the issuance by  
23 DBI of the first site or building permit or certificate of occupancy for any development subject  
24 to this Section. Any failure of the Treasurer, DBI, or Planning Department to give any notice  
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1 under this Section shall not relieve a project applicant from compliance with this Section.  
2 Where DBI inadvertently issues a site or building permit without payment of the fee, DBI shall  
3 not issue any certificate of occupancy for the project without notification from the Treasurer  
4 that the fee required by this Section has been paid. The procedure set forth in this subsection  
5 is not intended to preclude enforcement of the provisions of this section pursuant to any other  
6 section of this Code, or other authority under the laws of the State of California.

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

19 (f) Lien Proceedings.

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

23 (2) If, for any reason, the fee imposed pursuant to this Ordinance remains unpaid following  
24 issuance of the permit, the Treasurer shall initiate proceedings to impose the lien in  
25



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

16 (3) Any notice required to be given to a sponsor or owner shall be sufficiently given or served  
17 upon the sponsor or owner or all purposes hereunder if personally served upon the sponsor  
18 or owner or if deposited, postage prepaid, in a post office letterbox addressed in the name of  
19 the sponsor or owner at the official address of the sponsor or owner maintained by the Tax  
20 Collector for the mailing of tax bills or, if no such address is available, to the sponsor at the  
21 address of the development project, and to the applicant for the site or building permit at the  
22 address on the permit application.

23 (g) In the event a building permit expires prior to completion of the work on and  
24 commencement of occupancy of a housing project so that it will be necessary to obtain a  
25

1 new permit to carry out any development, the obligation to comply with this Program shall be  
2 cancelled, and any in-lieu fee previously paid to the Treasurer shall be refunded. If and when  
3 the sponsor applies for a new permit, the procedures set forth in this Ordinance regarding  
4 construction of housing or payment of the in-lieu fee shall be followed.

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

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

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

16 All units constructed pursuant to Sections 315.4 and 315.5 must remain affordable to  
17 qualifying households for the life of the project, ~~to be defined as 50 years from the date of~~  
18 ~~issuance of the first certificate of temporary occupancy of a qualifying household. For ownership~~  
19 ~~units, the 50-year term shall be recalculated at the time of sale such that a new 50-year~~  
20 ~~restriction shall apply to any subsequent purchaser. If a purchaser owns and occupies a unit~~  
21 ~~for 50 years, the City shall lift the restriction on the unit imposed under this ordinance. For~~  
22 ~~rental units, the unit must remain affordable to qualifying households for 50 years from the~~  
23 ~~date of issuance of the first certificate of temporary occupancy. If an owner can provide proof~~  
24 ~~to the City that it has rented a unit for 50 years to qualifying households, the City shall lift the~~

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1 ~~restriction on the unit imposed by this ordinance.~~ The income levels specified in the Notice of  
2 Special Restrictions and/or Conditions of Approval for the project shall be the required income  
3 percentages for the ~~50-year~~ life of the project ~~restrictions.~~

4 (b) The Planning Commission or the Planning Department shall require all housing projects  
5 subject to this ordinance to record a Notice of Special Restrictions with the Recorder of the  
6 City and County of San Francisco. The Notice of Special Restrictions must incorporate the  
7 affordability restrictions. All projects described in Section 315.3(a)(1) and 315.3(a)(3) must  
8 incorporate all of the requirements of this Section 315.7 into the Notice for Special  
9 Restrictions, including any provisions required to be in the Conditions of Approval for housing  
10 projects described in Section 315.3(a)(2). These Section 315.3(a)(2) projects which are  
11 housing projects which go through the conditional use or planned unit development process  
12 shall have Conditions of Approval. The Conditions of Approval shall specify that project  
13 applicants shall adhere to the marketing, monitoring, and enforcement procedures outlined in  
14 the Procedures Manual, as amended from time to time, in effect at the time of project  
15 approval. The Planning Commission shall file the Procedures Manual in the case file for each  
16 project requiring inclusionary housing pursuant to this Program. The Procedures Manual will  
17 be referenced in the Notice of Special Restrictions for each project.

18 (c) Any affordable rental units permitted by the Planning Commission to be converted to  
19 ownership units must satisfy the requirements of the Procedures Manual, as amended from  
20 time to time, including that the units shall be sold at restricted sales prices to households  
21 meeting the income qualifications specified in the Notice of Special Restrictions or Conditions  
22 of Approval, with a right of first refusal for the occupant(s) of such units at the time of  
23 conversion. Upon conversion to ownership, the units are subject to the 50-year rolling resale  
24 restrictions, as described in Section 315.7(a).

25

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

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

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

18 (a) A first certificate of occupancy shall not be issued by the Director of the Department  
19 of Building Inspection to any unit in the principal project until all of the on-site or off-site  
20 housing development requirements of Sections 315.4 or 315.5, if applicable, and  
21 Section 315.7 are met. A first site permit for the principal project shall not be issued by  
22 the Director of the Department of Building Inspection until the requirements of Sections  
23 315.4(e) and 315.6 regarding payment of the in-lieu fee, if applicable, have been met.

24

25

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

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

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

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

25

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

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

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

1 ~~*Housing shall determine the median and average profit margins for developers of for profit*~~  
2 ~~*housing. The Mayor's Office shall also make a determination whether levels of affordability can*~~  
3 ~~*be increased pursuant to Finding J, enumerated in Section 315.2. The Mayor's Office of*~~  
4 ~~*Housing shall specifically evaluate the different inclusionary housing requirements for*~~  
5 ~~*developments of over 120 feet approximately 5 years from the enactment of the requirement or*~~  
6 ~~*as deemed appropriate by the Mayor's Office of Housing.*~~

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

24 (g) Annual Monitoring:

25

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

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

7 Section 2: The San Francisco Planning Code is hereby amended by amending Section  
8 313.6 of the Jobs Housing Linkage Program, to read as follows:

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

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

15	Net Addition Gross Sq. Ft. Entertainment Space	× \$10.57 = Total Fee
16	Net Addition Gross Sq. Ft. Hotel Space	× \$8.50 = Total Fee
17	Net Addition Gross Sq. Ft. Office Space	× \$11.34 = Total Fee
18	Net Addition Gross Sq. Ft. Research and Development	× \$7.55 = Total Fee
19	Net Addition Gross Sq. Ft. Retail Space	× \$10.57 = Total Fee

20  
21 (b) Commencing on January 1, 2002, the amount of the fee which may be paid by the  
22 sponsor of a development project subject to this ordinance in lieu of developing and  
23 providing the housing required by Section 313.5 shall be determined by the following  
24  
25



1 formulas for each type of space proposed as part of the development project and  
 2 subject to this ordinance:

3	Net Addition Gross Sq. Ft. Entertainment Space	x \$13.95 = Total Fee
4		
5	Net Addition Gross Sq. Ft. Hotel Space	x \$11.21 = Total Fee
6		
7	Net Addition Gross Sq. Ft. Office Space	x \$14.96 = Total Fee
8		
9	Net Addition Gross Sq. Ft. R & D Space	x \$9.97 = Total Fee
10		
11	Net Addition Gross Sq. Ft. Retail Space	x \$13.95 = Total Fee
12		
13		

14 ~~Such in lieu fee shall be revised effective January 1st of each year thereafter by the percentage~~  
 15 ~~increase or decrease in the Average Area Purchase Price Safe Harbor Limitations for New~~  
 16 ~~Single Family Residences for the San Francisco Primary Metropolitan Statistical Area~~  
 17 ~~("PMSA") established by the Internal Revenue Service ("IRS") since January 1st of the previous~~  
 18 ~~year; provided, however, that in the event that said percentage increase exceeds 20 percent, the~~  
 19 ~~in lieu fee shall be increased by 20 percent, and the difference between the percentage increase~~  
 20 ~~in the Average Area Purchase Price and 20 percent shall be carried over and added to the in-~~  
 21 ~~lieu fee adjustment for the following calendar year. In the event that the IRS does not adjust the~~  
 22 ~~above figure within a 14 month period, the Commission shall authorize and certify a study for~~  
 23 ~~adjusting the last published IRS figure, to be effective until the IRS revises the figure. No later~~  
 24 ~~than July 1 of each year, the Mayor's Office of Housing shall adjust the in lieu fee payment~~  
 25

1 option and provide a report on its adjustment to the Board of Supervisors. The Mayor's Office  
2 of Housing shall provide notice of any fee adjustment on its website at least 30 days prior to the  
3 adjustment taking effect. The Mayor's Office of Housing is authorized to develop an  
4 appropriate methodology for indexing the fee, based on adjustments in the costs of constructing  
5 housing and in the price of housing in San Francisco consistent with the indexing for the  
6 Residential Inclusionary Affordable Housing Program in lieu fee set out in Planning Code  
7 Section 315.6. The method of indexing shall be published in the Procedures Manual for the  
8 Residential Inclusionary Affordable Housing Program. In making a determination as to the  
9 amount of the fee to be paid, the Planning Department shall credit to the sponsor any  
10 excess Interim Guideline credits or excess credits which the sponsor elects to apply  
11 against its housing requirement.

12 (c) Prior to the issuance by DBI of the first site or building permit for a development  
13 project subject to this ordinance, the sponsor must notify the Planning Department and  
14 MHO in writing that it has either (i) satisfied the conditions of Section 313.5(e) or (ii)  
15 paid in full the sum required by this Section to the Treasurer. If the sponsor fails by the  
16 applicable date to demonstrate to the Planning Department that the sponsor has  
17 satisfied the conditions of Section 313.5(e) or paid the applicable sum in full to the  
18 Treasurer, DBI shall deny any and all site or building permits or certificates of  
19 occupancy for the development project until the Treasurer notifies DBI and MOH that  
20 such payment has been made, and the Treasurer shall immediately initiate lien  
21 proceedings against the sponsor's property pursuant to Section 313.9 to recover the  
22 fee.

23 (d) Upon payment of the fee in full to the Treasurer and upon request of the sponsor,  
24 the Treasurer shall issue a certification that the fee has been paid. The sponsor shall  
25

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

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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