

1 [Inclusionary Housing Program – New Alternative to Meet Requirements.]

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3 **Ordinance amending Section 315.4 to provide for a new alternative to meeting the**

4 **requirements of the Residential Inclusionary Affordable Housing Ordinance; adding**

5 **Section 315.6A. to provide that a project sponsor may pay the amount of the in lieu fee**

6 **to a qualifying nonprofit entity to acquire and rehabilitate units as permanently**

7 **affordable rental housing if the number of resulting units will be 25% higher than the**

8 **amount provided under the existing off-site alternative; and making findings, including**

9 **findings under the California Environmental Quality Act.**

10 Note: Additions are *single-underline italics Times New Roman*;  
11 deletions are ~~strikethrough italics Times New Roman~~.  
12 Board amendment additions are double underlined.  
13 Board amendment deletions are ~~strikethrough normal~~.

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

15 Section 1. Findings

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

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

25 (c) The Planning Department has determined that the actions contemplated in this  
ordinance are in compliance with the California Environmental Quality Act (California Public

1       Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the  
2       Board of Supervisors in File No. \_\_\_\_\_ and is incorporated herein by  
3       reference.

4           Section 2. The San Francisco Planning Code is hereby amended by amending Section  
5       315.4, to read as follows:

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

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

10       (a) Number of Units:

11       (1) The Planning Department shall require for housing projects covered by Section  
12       315.3(a)(1), as a condition of Planning Department approval of a project's building permit, and  
13       by Section 315.3(a)(2), (3) and (4), as a Condition of Approval of a conditional use or planned  
14       unit development permit or as a condition of Planning Department approval of a live/work  
15       project, that 15% of all units constructed on the project site shall be affordable to qualifying  
16       households so that a project applicant must construct .15 times the total number of units  
17       produced in the principal project beginning with the construction of the tenth unit. If the total  
18       number of units is not a whole number, the project applicant shall round up to the nearest  
19       whole number for any portion of .5 or above.

20       Notwithstanding any other provision of this section, any inclusionary affordable requirement  
21       imposed on housing projects covered by Section 315.3(a)(1) in connection with an application  
22       filed with the Department of Building Inspection from the effective date of this legislation and  
23       180 days thereafter shall be 5% so that a project applicant must construct .05 times the total  
24       number of units produced in the principal project beginning with the construction of the tenth  
25

1 unit. If the total number of units is not a whole number, the project applicant shall round up to  
2 the nearest whole number for any portion of .5 or above.

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

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

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

16 (c) Type of Housing: The type of affordable housing needed in San Francisco is documented  
17 in the City's Consolidated Plan and the Residence Element of the General Plan. In general,  
18 affordable units constructed under this Section 315.4 shall be comparable in number of  
19 bedrooms, exterior appearance and overall quality of construction to market rate units in the  
20 principal project. The Notice of Special Restrictions or Conditions of Approval shall include a  
21 specific number of units at specified unit sizes for affordable units. The square footage of  
22 affordable units and interior features in affordable units do not need to be same as or  
23 equivalent to those in market rate units in the principal project, so long as they are of good  
24 quality and are consistent with then-current standards for new housing.

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1       (d) Marketing the Units: The Mayor's Office of Housing or its successor shall be responsible  
2       for overseeing and monitoring the marketing of affordable units under this Section. In general,  
3       the marketing requirements and procedures shall be contained in the Procedures Manual as  
4       amended from time to time and shall apply to the affordable units in the project. The Notice of  
5       Special Restrictions or Conditions of Approval shall specify that the marketing requirements  
6       and procedures contained in the Procedures Manual as amended from time to time, shall  
7       apply to the affordable units in the project.

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

16       (2) Preferences: The Mayor's Office of Housing or its successor shall consider appropriate  
17      preferences for the allocation of inclusionary units to qualifying households and shall, within  
18      90 days, present amendments of the Procedures Manual to the Planning Department for  
19      Commission review that require that certain preferences be given in the lottery process. In  
20      determining the appropriate preferences, the Mayor's Office of Housing shall hold at least one  
21      meeting open to members of the public and shall, as appropriate, consult with other City  
22      departments and interested nonprofit organizations.

23       (e) Alternatives: The project sponsor may elect to satisfy the requirements of Section  
24      315.4 by one of the alternatives specified in this Section. The project sponsor must elect an  
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1 alternative before it receives project approvals from the Planning Commission or Planning  
2 Department and that alternative will be a condition of project approval. If a project sponsor  
3 fails to elect an alternative before project approval by the Planning Commission or Planning  
4 Department, the on-site provisions of Section 315.4 shall apply. Notwithstanding the foregoing, a  
5 project sponsor may elect alternative (e)(5) at any time prior to receipt of a first site or building permit  
6 for the principle project. The alternatives are as follows:

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

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

11 (3) Any combination of construction of on-site units as provided in Section 315.4, off-  
12 site units as provided in Section 315.5, or payment of an in lieu fee as provided in Section  
13 315.6, provided that the project applicant constructs or pays the fee at the appropriate  
14 percentage or fee level required for that option.

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

17 (5) Paying an amount equivalent to the in lieu fee directly to a Qualifying Nonprofit Entity to  
18 create permanently affordable rental housing under the requirements of Section 315.6A.

19 Section 3. The San Francisco Planning Code is hereby amended by adding Section  
20 315.6A, to read as follows:

21 If the project applicant elects, pursuant to Section 315.4(e), that the project applicant will  
22 contribute an in lieu fee directly to a Qualifying Nonprofit Entity (QNE) to satisfy the requirements of  
23 this Program, the project applicant and QNE shall meet the following requirements:

1                   (a) Number of Units: The project applicant shall demonstrate to the Mayor's Office of Housing  
2                   that the number of units provided as affordable under this Alternative shall in no event be less than the  
3                   number required by the off-site alternative in Section 315.5 and shall be at least 25% more than the  
4                   number of affordable units required by Section 315.5. The Mayor's Office of Housing shall review and  
5                   approve the proposed number of new units and, if there are extraordinary circumstances, may lower  
6                   the requirement to 20% more than the number of affordable units required by Section 315.5.

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

11                  (b) Timing of Construction: The project applicant shall insure, through a recorded agreement  
12                  with a QNE as set forth below, that the off-site units have been acquired, renovated as required, and  
13                  ready for occupancy within 30 months of the date the project sponsor pays the fee under this  
14                  Alternative.

15                  (c) Location of off-site housing: Housing rehabilitated or purchased to fulfill this alternative  
16                  may be located anywhere within the City and County of San Francisco.

17                  (d) Type of Housing: Housing purchased to meet the requirements of this section shall be  
18                  existing housing and shall be rehabilitated as permanently affordable rental housing affordable to  
19                  households at 60% of the San Francisco median income or less as required for rental housing  
20                  constructed under the provisions of this ordinance. Any existing tenant, regardless of income level,  
21                  residing in a building acquired under this Alternative shall be permitted to remain in his or her unit  
22                  subject to other applicable City laws.

23                  (e) Marketing and Monitoring: Units acquired and rehabilitated under this Alternative shall  
24                  be rented subject to the same marketing requirements as other rental units subject to this ordinance

1 and shall be subject to the same monitoring requirements. To the extent feasible, no existing tenants  
2 shall be displaced for any period of time due to the implementation of this Alternative and no  
3 renovations shall be made to occupied units until the unit becomes vacant. If any tenant is displaced  
4 due to the need for renovation of his or her unit, that tenant shall have a right to return to that unit  
5 subject to applicable provisions of the Rent Ordinance and subject to the review and approval of the  
6 Mayor's Office of Housing of a relocation plan for those tenants.

7       (f) Affordable units rehabilitated under Section 315.6A shall not have received development  
8 subsidies from any Federal, State or local program established for the purpose of providing affordable  
9 housing, or already be permanently restricted as affordable housing. Units may be subject to rent  
10 control to be eligible. If the QNE can demonstrate to the Mayor's Office of Housing that it will  
11 leverage Federal, State, or local subsidies solely and directly to deepen the affordability of the rental  
12 levels, then the Mayor's Office of Housing shall approve the use of the additional subsidy.

13       (g) Project Applicant's responsibilities: The project applicant must, before the project  
14 applicant receives a first site permit for the principle project do the following:

15       (1) Pay an in lieu fee in the amount equal to the fee required by Section 315.6 to a Qualifying  
16 Nonprofit Entity (QNE); and

17       (2) Enter into an agreement acceptable in substance and in form to the City Attorney's Office  
18 with the City and the Qualifying Nonprofit Entity providing that: (i) the parties represent that the QNE  
19 meets the requirements of Section 315.6A(h); (ii) the QNE will produce affordable units as required by  
20 this Section using funds received by the Project Applicant for this purpose; (iii) the City is a third party  
21 beneficiary to the Agreement and can enforce the requirements of this Section against the QNE; (iv) the  
22 QNE agrees to keep all funds received under the Agreement in a separate, segregated account to be  
23 used solely for the purposes of fulfilling the requirements of this Section and to provide an annual  
24 accounting of the Funds to the Mayor's Office of Housing; (v) the QNE agrees to form a special 5-

1        person Advisory Board with discretion over these Funds that consists of persons qualified to achieve  
2        the objectives of this Section including, but not limited to, the Director of the Mayor's Office of Housing  
3        or his or her designee; the Director of the Department of Real Estate or his or her designee; an  
4        experienced real estate developer; an experienced nonprofit housing developer; and a person  
5        experienced in real estate financing; and (vi) the QNE agrees that no Funds may be expended without  
6        the approval of a majority of the Advisory Board. This Agreement must be approved in substance and  
7        in form by the City Attorney's Office and released by Resolution of the Finance Committee of the Board  
8        of Supervisors.

9                (h) Qualifying Nonprofit entity ("QNE"): Before Funds are transferred from the Project  
10        Sponsor to a QNE under this Section:

11                (1) The Mayor's Office of Housing must certify that the nonprofit entity is either (A) An existing  
12        nonprofit housing developer acceptable to the City that has a track record of acquiring and managing  
13        small-scale rental housing projects; or (B) a newly formed nonprofit entity acceptable to the City, that  
14        may be its own nonprofit entity or an entity with a nonprofit fiscal sponsor, formed specifically for the  
15        purpose of acquiring and managing residential units to fulfill the purposes of this Section.

16                (2) The QNE must enter into an Agreement that meets all of the requirements of subsection  
17        (g)(2).

18                (I) This Section is intended as a pilot program to evaluate whether more affordable housing  
19        units can be provided under the inclusionary housing program more quickly if a Project Sponsor may  
20        contract with a private nonprofit entity directly to rehabilitate existing housing, as opposed to paying a  
21        fee to the City to contract with housing developers to construct new affordable housing. For this  
22        reason, a project sponsor's ability to elect the Alternative provided by this Section shall expire unless  
23        re-authorized by the Board of Supervisors, one year from the effective date of this ordinance, or when  
24        \$10 million has been paid to QNE's under this Section, whichever happens first. The Mayor's Office of

1     *Housing shall prepare a report to the Board of Supervisors within one year of the effective date of this*  
2     *legislation evaluating whether this alternative should be continued.*

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4     APPROVED AS TO FORM:  
5     DENNIS J. HERRERA, City Attorney

6     By:                    \_\_\_\_\_  
7                            ATTORNEY'S NAME  
8                            Deputy City Attorney