

1 [Planning Code – Modifying the fee refund provisions for inclusionary housing projects.]

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3 **Ordinance amending Planning Code Section 315.4 to limit refunds for environmental**  
4 **review, conditional use applications and fees covered in Planning Code Section 352 to**  
5 **only that portion of the housing project which is affordable and to clarify that the**  
6 **refund provision is only available to projects that filed on or after June 18, 2001; and**  
7 **making environmental findings and findings of consistency with the General Plan and**  
8 **priority policies of Planning Code Section 101.1.**

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

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

13 Section 1. Findings. (a) Pursuant to Planning Code Section 302, this Board of  
14 Supervisors finds that this ordinance will serve the public necessity, convenience and welfare  
15 for the reasons set forth in Planning Commission Resolution No. \_\_\_\_\_, and  
16 incorporates those reasons herein by reference. A copy of said Planning Commission  
17 resolution is on file with the Clerk of the Board of Supervisors in File No.  
18 \_\_\_\_\_.

19 (b) The Board of Supervisors finds that this ordinance is, on balance, consistent  
20 with the General Plan and the Priority Policies of Planning Code Section 101.1(b) for the  
21 reasons set forth in Planning Commission Resolution No. \_\_\_\_\_,  
22 and incorporates those reasons herein by reference.

23 (c) The Planning Department has completed environmental review of this ordinance  
24 pursuant to the California Environmental Quality Act ("CEQA"), the CEQA Guidelines, and  
25 Chapter 31 of the San Francisco Administrative Code. Documentation of that review is on file

1 with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and is  
2 incorporated herein by reference.

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

5 SEC. 315.4. ON-SITE HOUSING REQUIREMENT AND BENEFITS.

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

9 (a) *Number of Units:*

10 (1)

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

14 (B) Buildings 120 feet in height and under or buildings of over 120 feet in height that  
15 do not meet the criteria in subsection (C) below: Except as provided in Subsection (C) below,  
16 the Planning Department shall require for housing projects covered by Section 315.3(a)(1), as  
17 a condition of Planning Department approval of a project's building permit, and by Section  
18 315.3(a)(2), (3) and (4), as a Condition of Approval of a conditional use or planned unit  
19 development permit or as a condition of Planning Department approval of a live/work project,  
20 that 15 percent of all units constructed on the project site shall be affordable to qualifying  
21 households so that a project applicant must construct .15 times the total number of units  
22 produced in the principal project beginning with the construction of the fifth unit. If the total  
23 number of units is not a whole number, the project applicant shall round up to the nearest  
24 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.

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

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1 Supervisors shall consider whether the requirements of this Subsection for buildings of over  
2 120 feet in height shall continue or expire after approximately five years.

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. This notice shall also be sent to project applicants who  
6 elect to pay an in-lieu fee.

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

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

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

8 (d) Marketing the Units: The Mayor's Office of Housing shall be responsible for  
9 overseeing and monitoring the marketing of affordable units under this Section. In general, the  
10 marketing requirements and procedures shall be contained in the Procedures Manual as  
11 amended from time to time and shall apply to the affordable units in the project. The Mayor's  
12 Office of Housing may develop occupancy standards for units of different bedroom sizes in  
13 the Procedures Manual in order to promote an efficient allocation of affordable units. The  
14 Mayor's Office of Housing may require in the Procedures Manual that prospective purchasers  
15 complete homebuyer education training or fulfill other requirements. The Mayor's Office of  
16 Housing shall develop a list of minimum qualifications for marketing firms that market  
17 affordable units under this ordinance, referred to the Procedures Manual as Below Market  
18 Rate (BMR units). Within 3 months from the effective date of this legislation, the Mayor's  
19 Office of Housing shall recommend to the Planning Commission that these minimum  
20 qualifications be published in the Procedures Manual such that, upon approval of the  
21 qualifications by the Planning Commission, no developer marketing units under the  
22 Inclusionary Housing Program shall be able to market BMR units except through a firm  
23 meeting all of the minimum qualifications. For purposes of this ordinance, any developer that  
24 has not yet submitted a marketing plan to the Mayor's Office of Housing by the date of  
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1 Planning Commission approval of the qualifications shall be required to comply with this  
2 section. The Notice of Special Restrictions or Conditions of Approval shall specify that the  
3 marketing requirements and procedures contained in the Procedures Manual as amended  
4 from time to time, shall apply to the affordable units in the project.

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

13 (2) Preferences: The Mayor's Office of Housing shall create a lottery system that  
14 gives preference to people who live or work in San Francisco. MOH shall propose policies and  
15 procedures for implementing this preference to the Planning Commission for inclusion in the  
16 Procedures Manual. Otherwise, it is the policy of the Board of Supervisors to treat all  
17 households equally in allocating affordable units under this Program.

18 (e) Alternatives: The project sponsor may elect to satisfy the requirements of Section  
19 315.4 by one of the alternatives specified in this Section. The project sponsor has the choice  
20 between the alternatives and the Planning Commission may not require a specific alternative.  
21 The project sponsor must elect an alternative before it receives project approvals from the  
22 Planning Commission or Planning Department and that alternative will be a condition of  
23 project approval. Notwithstanding the foregoing, if a project sponsor elects an alternative other  
24 than the on-site alternative, the project sponsor still has the option to choose the on-site  
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1 alternative up to the issuance of the first site or building permit. If a project sponsor fails to  
2 elect an alternative before project approval by the Planning Commission or Planning  
3 Department, the provisions of Section 315.4 shall apply. The alternatives are as follows:

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

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

8 (3) Any combination of construction of on-site units as provided in Section 315.4, off-  
9 site units as provided in Section 315.5, or payment of an in lieu fee as provided in Section  
10 315.6, provided that the project applicant constructs or pays the fee at the appropriate  
11 percentage or fee level required for that option.

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

14 (f) Benefits: If the project applicant elects to satisfy the inclusionary housing  
15 requirements through the production of on-site inclusionary housing in this Section 315.4, the  
16 project applicant *who filed an application on or after June 18, 2001* shall at his or her option, be  
17 eligible to receive a refund *for only that portion of the housing project which is affordable for* ~~of~~ the  
18 following fees: a conditional use or other fee required by Planning Code Section 352, if  
19 applicable; an environmental review fee required by Administrative Code Section 31.46B, if  
20 applicable; a building permit fee required by the Building Code and by Planning Code Section  
21 355 for the portion of the housing project that is affordable. The project applicant shall pay the  
22 building fee for the portion of the project that is market-rate.

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1 APPROVED AS TO FORM:  
2 DENNIS J. HERRERA, City Attorney

3 By: \_\_\_\_\_  
4 John D. Malamut  
5 Deputy City Attorney

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