

1 [Inclusionary In Lieu Fees For Small Site Acquisition and Rehabilitation.]

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3 **Ordinance amending Planning Code Section 315.6 of the Residential Inclusionary**
4 **Affordable Housing Program to provide that ten percent (10%) of in lieu fees paid under**
5 **Section 315.6, not to exceed a maximum of \$15 million at any one time, be designated**
6 **exclusively for the acquisition and/or rehabilitation of affordable housing sites**
7 **consisting of less than 25 units, and making findings including findings under CEQA.**

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

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

12 Section 1. Findings.

13 (a) Under Planning Code Section 302, the Board of Supervisors finds that this
14 ordinance will serve the public necessity, convenience and welfare for the reasons set forth in
15 Planning Commission Resolution No. 17837 recommending the approval of this Planning
16 Code Amendment, and incorporates such reasons by this reference thereto. A copy of said
17 resolution is on file with the Clerk of the Board of Supervisors in File No. _____.

18 (b) Under Planning Code Section 101.1, the Board of Supervisors finds that this
19 ordinance is consistent with the Priority Policies of Planning Code Section 101.1(b) of the
20 Planning Code and with the General Plan as proposed to be amended in companion
21 legislation and hereby adopts the findings of the Planning Commission, as set forth in
22 Planning Commission Resolution No. 17837, and incorporates said findings by this reference
23 thereto.

24 (c) The Planning Department conducted environmental review of the proposed
25 ordinance and, as set forth in Planning Commission Resolution No. 17837, the Department

1 determined that the ordinance is categorically exempt from environmental review under the
2 California Environmental Quality Act (California Public Resources Code sections 21000 et
3 seq.) under Guidelines Section 15060(c)(2). A copy of said Resolution is on file with the Clerk
4 of the Board of Supervisors in File No. _____ and is incorporated by reference herein.

5 Section 2. The San Francisco Planning Code is hereby amended by amending Section
6 315.6, to read as follows:

7 SEC. 315.6. COMPLIANCE THROUGH IN-LIEU FEE.

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

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

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

17 (1) The number of units required by Section 315.5 if the project applicant were to elect to
18 meet the requirements of this section by off-site housing development. For the purposes of
19 this section, the City shall calculate the fee using the direct fractional result of the total number
20 of units multiplied by the percentage of off-site housing required, rather than rounding up the
21 resulting figure as required by Section 315.5(a).

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

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

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

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

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

20 (2) "Small Sites Funds":

21 (A) Designation of funds: MOH shall designate and separately account for 10% of all in lieu fees
22 that it receives under Section 315 et seq., excluding in lieu fees that are geographically targeted such
23 as those in Sections 315.4(a)(1) and 827(b)(5)(C), to support acquisition and rehabilitation of Small
24 Sites ("Small Sites Funds"). MOH shall continue to divert 10% of all in lieu fees for this purpose until

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1 the Small Sites Funds reach a total of \$15 million at which point, MOH will stop designating funds for
2 this purpose. At such time as designated Small Sites Funds are expended and dip below \$15 million,
3 MOH shall start designating funds again for this purpose, such that at no time the Small Sites Funds
4 shall exceed \$15 million. When the total amount of in lieu fees paid to the City under Section
5 315 et seq totals less than \$10 million over the preceding 12 month period, the Mayor's Office
6 of Housing is authorized to temporarily divert funds from the Small Sites Fund for other
7 purposes. The Mayor's Office of Housing must keep track of the diverted funds, however,
8 such that when the amount of in lieu fees paid to the City under Section 315 et seq meets or
9 exceeds \$10 million over the preceding 12 month period, the Mayor's Office of Housing shall
10 commit all of the previously diverted funds and 10% any new funds, subject to the cap above,
11 to the Small Sites Fund.

12 (B) Use of Small Sites Funds. The funds shall be used exclusively to acquire or rehabilitate "Small
13 Sites" defined as properties consisting of less than 25 units. Units supported by monies from the fund
14 shall be designated as housing affordable to qualifying households as defined in Section 315.1 for no
15 less than 55 years. Properties supported by the Small Sites Funds must be either (i) rental properties
16 that will be maintained as rental properties; (ii) vacant properties that were formerly rental properties
17 as long as those properties have been vacant for a minimum of two years prior to the effective date of
18 this legislation, ~~or~~ (iii) properties that have been the subject of foreclosure; or (iv) a Limited Equity
19 Housing Cooperative as defined in Subdivision Code Sections 1399.1 et seq. or a property
20 owned or leased by a non-profit entity modelled as a Community Land Trust.

21 (C) Initial Funds: If, within 18 months from the date of adoption of this ordinance, the
22 Mayor's Office of Housing dedicates an initial one-time contribution of other eligible funds to
23 be used initially as Small Sites Funds, the Mayor's Office of Housing may use the equivalent
24 amount of Small Sites Funds received from in lieu fees for other purposes permitted by the

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1 Citywide Affordable Housing Fund until the amount of the initial one-time contribution is
2 reached.

3 (D) **Annual Report:** At the end of each fiscal year, the Mayor's Office of Housing shall
4 issue a report to the Board of Supervisors regarding the amount of Small Sites Funds
5 received from in lieu fees under this legislation, and a report of how those funds were used.

6 (E) **Intent:** In adopting this ordinance regarding Small Sites Funds, the Board of
7 Supervisors does not intend to preclude the Mayor's Office of Housing from expending other
8 eligible sources of funding on Small Sites as described in this Section, or from allocating or
9 expending more than \$15 million of other eligible funds on Small Sites.

10 (f) Lien Proceedings.

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

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

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

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

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

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

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8 By: Susan Cleveland-Knowles
9 Deputy City Attorney

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