

1 [Planning Code - Inclusionary Affordable Housing Program, Updates, and Clarifications]

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3 **Ordinance amending the Planning Code, Section 401, and provisions of the**  
4 **Inclusionary Affordable Housing Ordinance, Sections 415 et seq., to update and clarify**  
5 **provisions of the Inclusionary Affordable Housing Program (Program) by reducing**  
6 **certain on-site requirements under Charter, Section 16.110; providing a cap on rent**  
7 **increases; clarifying the timing of off-site developments; requiring rental units that**  
8 **convert to ownership to sell at less than the price for ownership units under certain**  
9 **circumstance; establishing pricing for affordable Single Room Occupancy units;**  
10 **changing the status of projects using California Debt Limit Allocation Committee tax**  
11 **exempt bonds so that such projects are subject to the Program, but that units may**  
12 **qualify as on- or off-site units under certain circumstances; allowing income levels of**  
13 **qualifying households to exceed those specified in certain situations; clarifying that**  
14 **the threshold application of the Program to projects of 10 units or more applies to the**  
15 **South of Market Youth and Family Special Use District and all other areas of the City;**  
16 **making technical clarifications and corrections; and making environmental findings**  
17 **and findings of consistency with the General Plan.**

18 NOTE: Additions are *single-underline italics Times New Roman*;  
19 deletions are ~~*strike-through italics Times New Roman*~~.  
20 Board amendment additions are double-underlined;  
21 Board amendment deletions are ~~strike-through normal~~.

21

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

23 Section 1. The Planning Department has determined that the actions contemplated in  
24 this ordinance comply with the California Environmental Quality Act (California Public  
25

1 Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the  
2 Board of Supervisors in File No. 121162 and is incorporated herein by reference.

3 (b) On December 13, 2012, the Planning Commission, in Resolution No. 18771  
4 approved and recommended for adoption by the Board this legislation and adopted findings  
5 that it is consistent, on balance, with the City's General Plan and eight priority policies of  
6 Planning Code Section 101.1. On December 13, 2012, the Planning Commission, in  
7 Resolution No. 18771 approved and recommended for adoption by the Board amendments to  
8 this legislation and adopted findings that it is consistent, on balance, with the City's General  
9 Plan and eight priority policies of Planning Code Section 101.1. The Board adopts these  
10 findings as its own. A copy of said Resolution is on file with the Clerk of the Board of  
11 Supervisors in File No. 121162, and is incorporated by reference herein.

12 (c) Pursuant to Planning Code Section 302, this Board of Supervisors finds  
13 that this legislation will serve the public necessity, convenience, and welfare for the reasons  
14 set forth in Planning Commission Resolutions Nos. 18771 and \_\_\_\_\_, and  
15 incorporates such reasons by reference herein.

16 Section 2. The San Francisco Planning Code is hereby amended by amending  
17 selected definitions in Section 401, to read as follows:

18 **SEC. 401. DEFINITIONS.**

19 In addition to the specific definitions set forth elsewhere in this Article, the following  
20 definitions shall govern interpretation of this Article:

21 . . .

22 "Affordable to qualifying households."

23 (A) With respect to owned units, the average purchase price on the initial sale of all  
24 affordable owned units in a housing project shall not exceed the allowable average purchase  
25 price. Each unit shall be sold:

1 (i) Only to first-time homebuyer households, as defined in this Section;

2 (ii) Only to households with an annual gross income equal to or less than the qualifying  
3 income limits for a household of moderate income, adjusted for household size, except for the  
4 exceptions set forth in Section 415.8 (a)(4) (C), (D) and (E);

5 (iii) Only to households that meet the household size requirements, as defined in the  
6 Procedures Manual;

7 (iv) On the initial sale, at or below the maximum purchase price, as defined in this  
8 Section;

9 (v) On subsequent sales at or below the prices to be determined according to the  
10 formula specified in the Procedures Manual in place at the time of the affordable unit owner's  
11 purchase, as amended from time to time, such that the units remain affordable to qualifying  
12 households. The formula in the Procedures Manual shall permit the seller to include certain  
13 allowable capital improvements in the new maximum purchase price. The formula shall  
14 include a per unit cap on capital improvements of 10% of the resale price in order to maintain  
15 affordability. Special Assessments shall be added to the resale price at an uncapped rate.  
16 Capital improvement requests shall be evaluated by the Mayor's Office of Housing according  
17 to the formula specified in the Procedures Manual.

18 (B) With respect to rental units in an affordable housing project, the average annual  
19 rent shall not exceed the allowable average annual rent. Each unit shall be rented:

20 (i) Only to households with an annual gross income equal to or less than qualifying  
21 limits for a household of lower income adjusted for household size, as defined in this Section,  
22 except for the exceptions set forth in Section 415.8(a) (4) (A) and (B);

23 (ii) Only to households that meet the household size requirements, as defined in the  
24 Procedures Manual;

25 (iii) At or less than the maximum annual rent.

1 "Allowable average purchase price." A price for all affordable owned units of the size  
 2 indicated below that are affordable to a household of median income as defined in this  
 3 Section, adjusted for the household size indicated below as of the date of the close of escrow,  
 4 except for Single Room Occupancy units (as defined in Section 890.88), which shall be 75% of the  
 5 maximum purchase price level for studio units, and, where applicable, adjusted to reflect the  
 6 Department's policy on unbundled parking for affordable housing units as specified in the  
 7 Procedures Manual and 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 1,100 square feet)	3
3 (1,101 to 1,300 square feet)	4
4 (More than 1,300 square feet)	5

18 "Allowable average annual rent." Annual rent for an affordable rental unit of the size  
 19 indicated below that is 30 percent of the annual gross income of a household of low income  
 20 as defined in this Section, adjusted for the household size indicated below except for Single  
 21 Room Occupancy units (as defined in Section 890.88), which shall be 75% of the maximum rent level  
 22 for studio units, and, where applicable, adjusted to reflect the Department's policy on  
 23 unbundled parking for affordable housing units as specified in the Procedures Manual and  
 24 amended from time to time:

Number of Bedrooms (or, for live/work	Number of
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units square foot equivalency)	Persons in Household
0 (Less than 600 square feet)	1
1 (601 to 850 square feet)	2
2 (851 to 1,100 square feet)	3
3 (1,101 to 1,300 square feet)	4
4 (More than 1,300 square feet)	5

At no time can a rent increase, or can multiple rent increases within one year, exceed the percentage change in Maximum Monthly Rent levels as published by MOH from the previous calendar year to the current calendar year.

...

"Maximum annual rent." The maximum rent that a housing developer may charge any tenant occupying an affordable unit for the calendar year. The maximum annual rent for an affordable housing unit of the size indicated below shall be no more than 30 percent of the annual gross income for a household of low income as defined in this Section, as adjusted for the household size indicated below, except in the case of Single Room Occupancy units (as defined in Section 890.88), which shall be 75% of the maximum rent level for studio units, as of the first date of the tenancy:

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 1,100 square feet)	3

3 (1,101 to 1,300 square feet)	4
4 (More than 1,300 square feet)	5

At no time can a rent increase, or can multiple rent increases within one year, exceed the percentage change in Maximum Monthly Rent levels as published by MOH from the previous calendar year to the current calendar year.

"Maximum purchase price." The maximum purchase price for an affordable owned unit of the size indicated below except in the case of Single Room Occupancy units (as defined in Section 890.88), which shall be 75% of the maximum purchase price level for studio units, that is affordable to a household of moderate income, adjusted for the household size indicated below, assuming an annual payment for all housing costs of 33 percent of the combined household annual gross income, a 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 1,100 square feet)	3
3 (1,101 to 1,300 square feet)	4
4 (More than 1,300 square feet)	5

...

Section 3. The San Francisco Planning Code is hereby amended by amending selected portions of Section 415.3, to read as follows:

1 **SEC. 415.3. APPLICATION.**

2 (a) Notwithstanding any other provision to the contrary in this Code, Section 415.1 *et seq.*  
3 shall apply to any housing project that consists of ten or more units where an individual project  
4 or a phased project is to be undertaken and where the total undertaking comprises a project  
5 with ten or more units, even if the development is on separate but adjacent lots; and

6 (1) Does not require Commission approval as a Conditional Use Authorization or  
7 Planned Unit Development;

8 (2) Requires Commission approval as a Conditional Use Authorization or Planned Unit  
9 Development;

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

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

15 (b) The effective date of these requirements shall be either April 5, 2002, which is the  
16 date that the requirements originally became effective, or the date a subsequent modification,  
17 if any, became operative. The following table is designed to summarize the most significant  
18 subsequent modifications to this Program and the dates those modifications went into effect.  
19 The Planning Department and the Mayor's Office of Housing shall maintain a record for the  
20 public summarizing various amendments to this Program and their effective or operative  
21 dates. To the extent there is a conflict between the following table or any summary produced  
22 by the Department or MOH and the provisions of the original implementing ordinances, the  
23 implementing ordinances shall prevail.

24 Table 415.3  
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Program Modification	Effective or Operative Date
All projects with 5 or more units must participate in the Inclusionary Housing Program Section 415 (changed from a threshold of 10 units).	All projects that submitted a first application on or after July 18, 2006
Threshold changed back to 10 units or more such that the Section 415 <i>et seq.</i> no longer applies to buildings of 5-9 units.	Any 5-9 unit project, regardless of when it submitted a first application, that has not received a first construction document as of January 15, 2013.
Affordable Housing Percentages: 20% Fee <del>15</del> 12% on-site* 20% off-site* *Of total number of units <u>(Percentages may vary in specific Area Plans or Special Use Districts. Please refer to those applicable Code Sections.)</u>	All projects that submitted a first application on or after July 18, 2006 <i>(For off-site and fee: except buildings of over 120 feet in height that meet the requirements of Section 415.6(a)(1)(C) or 415.7(a)(1)(C)-projects which require a rezoning to increase buildable residential units or square footage)</i>
On-Site units must be priced and sold at 90% of AMI and rented at 55% of AMI	All projects that receive a first site or building permit on or after September 9, 2006
Project sponsor must select Program	All projects that received Planning

1 2 3	compliance option upon project approval and cannot alter their compliance option	Commission or Planning Department approval on or after September 9, 2006
4 5 6 7	All off-site units must be located within 1 mile of the principal project and Off-site units must be priced and sold at 70% of AMI	All Projects that receive Planning Commission or Planning Department approval after September 9, 2006
8 9 10	Lottery preference for applicants living or working in San Francisco	All projects that are marketed on or after June 4, 2007
11 12 13	Lottery preference for applicants holding a Certificate of Preference from the Redevelopment Agency	All projects that are marketed on or after December 30, 2008
14 15 16	Lottery required for all new and resale units	All projects that are marketed on or after September 9, 2006
17 18 19	Must provide on-site units as owner-occupied only unless specifically exempted pursuant to Section 415	All projects beginning February 11, 2010
20 21 22	All off-site units must follow standards set out in Procedures Manual	Projects that receive Planning Commission or Planning Department approval on or after June 4, 2007

(c) Section 415.1 *et seq.*, the Inclusionary Housing Program, shall not apply to:

(1) That portion of a housing project located on property owned by the United States or any of its agencies or leased by the United States or any of its agencies for a period in excess

1 of 50 years, with the exception of such property not used exclusively for a governmental  
2 purpose;

3 (2) That portion of a housing project located on property owned by the State of  
4 California or any of its agencies, with the exception of such property not used exclusively for a  
5 governmental or educational purpose; or

6 (3) That portion of a housing project located on property under the jurisdiction of the  
7 San Francisco Redevelopment Agency or the Port of San Francisco where the application of  
8 Section 415.1 *et seq.* is prohibited by California or local law.

9 (4) ~~Selected projects that are otherwise providing affordable units comparable to or exceeding  
10 the requirements of this program as follows:~~

11 ~~(A) Qualifying Projects. Projects that meet either of the requirements of subsection (i) or (ii)  
12 below for as long as they meet all of the requirements and conditions of this subsection.~~

13 ~~(i) A project using California Debt Limit Allocation Committee (CDLAC) tax exempt bond  
14 financing as long as the project provides 20 percent of the units as affordable at 50 percent of area  
15 median income for on-site housing or 25 percent of the units as affordable at 50 percent of area median  
16 income for off-site housing.~~

17 ~~(ii) A 100% affordable housing project in which rents are controlled or regulated by any  
18 government unit, agency or authority, excepting those unsubsidized and/or unassisted units  
19 which are insured by the United States Department of Housing and Urban Development. The  
20 Mayor's Office of Housing must represent to the Planning Commission or Planning  
21 Department that the project meets this requirement.~~

22 **(AB) Restrictions.** If a project sponsor takes advantage of this subsection, all of the  
23 rules and regulations of the programs or recorded documents guaranteeing the affordability of  
24 the units shall govern the units and the requirements of this Program shall not apply.

1            ~~(B)~~ **Conditions.** In order to qualify for this provision, the project sponsor must record  
2 an NSR against the property that provides that, in the event of foreclosure or for any other  
3 reason, the project no longer qualifies as a project meeting the requirements of subsection  
4 ~~(4)(A)(i) or (ii)~~ the project will either:

5            (i) pay the Affordable Housing Fee plus interest from the date the project received its  
6 first construction document for the project if no affordable units were ever provided or, if  
7 affordable units were provided and occupied, then the Affordable Housing Fee with no interest  
8 is due on the date the units were no longer occupied by qualifying households; or

9            (ii) provide the required number of on-site affordable units required at time of original  
10 project approval and that those units shall be subject to all of the requirements of this  
11 Program.

12            ~~(C)~~ In the event that there is a foreclosure or other event triggering the requirements  
13 of subsection ~~(B)~~ above, the project sponsor shall record a new NSR specifying the manner  
14 in which it complies with this Program, including but not limited to any specific units restricted  
15 as affordable under ~~(B)~~(ii). The new NSR shall provide that the units must comply with all of  
16 the requirements of this Program.

17            . . .

18            (e) In November, 2012 the voters amended the Charter by adopting Proposition C “The  
19 Affordable Housing Trust Fund and Housing Production Incentives” which is, in part, codified as  
20 Charter Section 16.110 (“Proposition C”). To the extent that there is any inconsistency between the  
21 provisions of Proposition C and Sections 415 et seq. or any other Planning Code provisions, the  
22 provisions of Proposition C shall control.

23  
24            Section 4: The San Francisco Planning Code is hereby amended by amending  
25 selected portions of Section 415.5, to read as follows:

1 **SEC. 415.5. AFFORDABLE HOUSING FEE.**

2 Except as provided in Section 415.5(g), all development projects subject to this  
3 Program shall be required to pay an Affordable Housing Fee subject to the following  
4 requirements:

5 (a) **Payment of a Fee.** Payment of a fee to the Development Collection Unit at DBI for  
6 deposit into the Citywide Affordable Housing Fund for the purposes of that Fund.

7 (b) **Amount of Fee.** The amount of the fee which may be paid by the project sponsor  
8 subject to this Program shall be determined by MOH utilizing the following factors:

9 (1) The number of units equivalent to the applicable *off-site* percentage of the number  
10 of units in the principal project. The applicable percentage shall be 20 percent or the  
11 percentage that applied to the project if the project is subject to the requirements of an earlier  
12 version of this Program due to the date it submitted its application or that percentage required in  
13 certain Special Use Districts or Area Plans. For the purposes of this Section, the City shall  
14 calculate the fee using the direct fractional result of the total number of units multiplied by the  
15 applicable percentage, rather than rounding up the resulting figure as required by Section  
16 415.6(a).

17 (2) The affordability gap using data on the cost of construction of residential housing  
18 and the Maximum Purchase Price for the equivalent unit size. from the "San Francisco Sensitivity  
19 Analysis Summary Report: Inclusionary Housing Program" prepared by Keyser Marston Associates,  
20 Inc. in August 2006 for the Maximum Annual Rent or Maximum Purchase Price for the equivalent unit  
21 sizes. As of the effective date of this Ordinance No. \_\_\_\_\_, MOH shall use construction cost data  
22 from the "San Francisco Inclusionary Housing Program Financial Analysis 2012" prepared by Seifel  
23 Consulting. The Department and MOH shall update the technical report from time to time as  
24 they deem appropriate in order to ensure that the affordability gap remains current.  
25

1 (3) ~~Commencing on January 1, 2012, no~~ No later than January 1 of each year following the  
2 effective date of this Ordinance No. \_\_\_\_\_, MOH shall adjust the fee. No later than  
3 ~~November~~December 1 following the effective date of this Ordinance No. \_\_\_\_\_ of each year,  
4 MOH shall provide the Planning Department, DBI, and the Controller with information on the  
5 adjustment to the fee so that it can be included in the Planning Department's and DBI's  
6 website notice of the fee adjustments and the Controller's Annual Citywide Development Fee  
7 and Development Impact Requirements Report described in Section 409(b). MOH is  
8 authorized to develop an appropriate methodology for indexing the fee, based on adjustments  
9 in the costs of constructing housing and the Maximum Purchase Price for the equivalent unit size~~in~~  
10 ~~the price of housing in San Francisco~~. The method of indexing shall be published in the  
11 Procedures Manual.

12 . . .

13 (e) If a housing project is located in an Area Plan with an additional or specific  
14 affordable housing requirements such as those set forth in a special use district or section 416,  
15 ~~and~~ 417, and 419 or elsewhere in this code, the more specific provisions shall apply in lieu of or  
16 in addition to those provided in this Program, as applicable.

17 . . .

18 (g) **Alternatives to Payment of Affordable Housing Fee.**

19 (1) **Eligibility:** A project sponsor must pay the Affordable Housing Fee unless it  
20 qualifies for and chooses to meet the requirements of the Program through an Alternative  
21 provided in this Subsection. The project sponsor may choose one of the following  
22 Alternatives:

23 (A) **Alternative #1: On-Site Units.** Project sponsors may elect to construct units  
24 affordable to qualifying households on-site of the principal project pursuant to the  
25 requirements of Section 415.6.

1 (B) **Alternative #2: Off-Site Units.** Project sponsors may elect to construct units  
2 affordable to qualifying households at an alternative site within the City and County of San  
3 Francisco pursuant to the requirements of Section 415.7.

4 (C) **Alternative #3: Combination.** Project sponsors may elect any combination of  
5 payment of the Affordable Housing Fee as provided in Section 415.5, construction of on-site  
6 units as provided in Section 415.6, or construction of off-site units as provided in Section  
7 415.7, provided that the project applicant constructs or pays the fee at the appropriate  
8 percentage or fee level required for that option.

9 (2) **Qualifications:** If a project sponsor wishes to comply with the Program through one  
10 of the Alternatives described in (1) rather than pay the Affordable Housing Fee, they must  
11 demonstrate that they qualify for the Alternative to the satisfaction of the Department and  
12 MOH. A project sponsor may qualify for an Alternative by the following methods:

13 (i) **Method #1 - Ownership Units.** All affordable units provided under this Program  
14 shall be sold as ownership units and will remain ownership units for the life of the project.  
15 Project sponsors must submit the 'Affidavit *of Compliance with the Inclusionary Affordable*  
16 *Housing Program to Establish Eligibility for an Alternative to Affordable Housing Fee*' to the  
17 Planning Department prior to project approval by the Department or the Commission; or

18 (ii) **Method #2 - Government Financial Contribution.** Submit to the Department a  
19 contract demonstrating that the project's on- or off-site units are not subject to the Costa  
20 Hawkins Rental Housing Act, California Civil Code Section 1954.50 because, under Section  
21 1954.52(b), it has entered into an agreement with a public entity in consideration for a direct  
22 financial contribution or any other form of assistance specified in California Government Code  
23 Sections 65915 et seq. and it submits an Affidavit of such to the Department. All such  
24 contracts entered into with the City and County of San Francisco must be reviewed and  
25 approved by the Mayor's Office Housing and the City Attorney's Office. All contracts that

1 involve 100% affordable housing projects in the residential portion may be executed by the  
2 Mayor or the Director of the Mayor's Office of Housing. Any contract that involves less than  
3 100% affordable housing in the residential portion, may be executed by either the Mayor, the  
4 Director of the Mayor's Office of Housing or, after review and comment by the Mayor's Office  
5 of Housing, the Planning Director; ~~or~~. A Development Agreement under California Government  
6 Code Section 65864 et seq. and Chapter 56 of the San Francisco Administrative Code entered into  
7 between a project sponsor and the City and County of San Francisco may, but does not necessarily,  
8 qualify as such a contract.

9 (iii) ~~Method #3 – Development Agreement. A project sponsor may apply to enter into a~~  
10 ~~Development Agreement with the City and County of San Francisco under California Government~~  
11 ~~Code Section 65864 et seq. and Chapter 56 of the San Francisco Administrative Code, permitting the~~  
12 ~~project to be eligible for on-site units as an alternative to payment of the Affordable Housing Fee to~~  
13 ~~satisfy the requirements of the Program and obligating the project sponsor to provide the affordable~~  
14 ~~units on-site.~~

15 (3) The Planning Commission or the Department may not require a project sponsor to  
16 select a specific Alternative. If a project sponsor elects to meet the Program requirements  
17 through one of the Alternatives described in (1), they must choose it and demonstrate that  
18 they qualify prior to any project approvals from the Planning Commission or Department. The  
19 Alternative will be a condition of project approval and recorded against the property in an  
20 NSR. Notwithstanding the foregoing, if a project sponsor qualifies for an Alternative described  
21 in (1) and elects to construct the affordable units on- or off-site, they must submit the 'Affidavit  
22 of Compliance With The Inclusionary Housing Program' ~~to Establish Eligibility for an Alternative to~~  
23 ~~Affordable Housing Fee'~~ based on the fact that the units will be sold as ownership units. A ~~The~~  
24 project sponsor who has elected to construct affordable ownership units on- or off-site may  
25 only elect to pay the Affordable Housing Fee up to the issuance of the first construction

1 document if the project sponsor submits a new Affidavit establishing that the units will not be  
2 sold as ownership units. If a project sponsor fails to choose an Alternative before project  
3 approval by the Planning Commission or Planning Department or if a project becomes  
4 ineligible for an Alternative, the provisions of Section 415.5 shall apply.

5 (4) If at any time, the project sponsor eliminates the on-site or off-site affordable  
6 ownership-only units, then the project sponsor must immediately inform the Department and  
7 MOH and pay the applicable Affordable Housing Fee plus interest and any applicable  
8 penalties provided for under this Code. If a project sponsor requests a modification to its  
9 conditions of approval for the sole purpose of complying with this Section, the Planning  
10 Commission shall be limited to considering issues related to Section 415 et seq. in  
11 considering the request for modification.

12  
13 Section 5: The San Francisco Planning Code is hereby amended by amending  
14 selected portions of Section 415.6, to read as follows:

15 **SEC. 415.6. ON-SITE AFFORDABLE HOUSING ALTERNATIVE**

16 If a project sponsor is eligible and selects to provide on-site units pursuant to Section  
17 415.5(g), the development project shall meet the following requirements:

18 (a) **Number of Units:** The number of units constructed on-site shall be as follows:

19 (1) The number of units constructed on-site shall generally be 12% of all units constructed  
20 on the project site. is determined by which of the following categories a project is in as follows: The  
21 Department shall require for housing projects covered by Section 415.3(a)(1), as a condition of  
22 Department approval of a project's building permit, or by Section 415.3(a)(2), (3) and (4), as a  
23 condition of approval of a Conditional Use Authorization or Planned Unit Development or as a  
24 condition of Department approval of a live/work project, that 12 percent of all units constructed on the  
25 project site shall be affordable to qualifying households so that a project sponsor must construct .12

1 times the total number of units produced in the principal project. If the total number of units is not a  
2 whole number, the project sponsor shall round up to the nearest whole number for any portion of .5 or  
3 above.

4 (2A) **Specific Geographic Areas.** For any housing development ~~of any height~~ that is  
5 located in an area with a specific affordable housing requirement set forth in a Special Use  
6 District or in any other section of the Code such as Section 416, and 417, or 419, the more specific  
7 housing requirement shall apply as long as it is consistent with Charter Section 16.110; ~~or~~

8 (B) ~~Buildings 120 feet in height and under or buildings of over 120 feet in height that do not~~  
9 ~~meet the criteria in subsection (C) below. Except as provided in Subsection (C) below, the Department~~  
10 ~~shall require for housing projects covered by Section 415.3(a)(1), as a condition of Department~~  
11 ~~approval of a project's building permit, and by Section 415.3(a)(2), (3) and (4), as a condition of~~  
12 ~~approval of a Conditional Use Authorization or Planned Unit Development or as a condition of~~  
13 ~~Department approval of a live/work project, that 15 percent of all units constructed on the project site~~  
14 ~~shall be affordable to qualifying households so that a project sponsor must construct .15 times the total~~  
15 ~~number of units produced in the principal project. If the total number of units is not a whole number,~~  
16 ~~the project sponsor shall round up to the nearest whole number for any portion of .5 or above.~~

17 (C) ~~Buildings of over 120 feet in height. Except as provided in subsection (A) above, the~~  
18 ~~requirements of this Subsection shall apply to any project that is over 120 feet in height and does not~~  
19 ~~require a Zoning Map amendment or Planning Code text amendment related to its project approvals~~  
20 ~~which (i) results in a net increase in the number of permissible residential units, or (ii) results in a~~  
21 ~~material increase in the net permissible residential square footage as defined in Section 415.3(b)(2) or~~  
22 ~~has not received or will not receive a Zoning Map amendment or Planning Code text amendment as~~  
23 ~~part of an Area Plan adopted after January 1, 2006 which (i) results in a net increase in the number of~~  
24 ~~permissible residential units, or (ii) results in a material increase in the net permissible residential~~  
25 ~~square footage as defined in Section 415.3(b)(2). The Department shall require for housing projects~~

1 ~~covered by this Subsection and Section 415.3(a)(1), as a condition of Department approval of a~~  
2 ~~project's building permit, or by this Subsection and by Section 415.3(a)(2), (3) and (4), as a condition~~  
3 ~~of approval of a Conditional Use Authorization or Planned Unit Development or as a condition of~~  
4 ~~Department approval of a live/work project, that 12 percent of all units constructed on the project site~~  
5 ~~shall be affordable to qualifying households so that a project sponsor must construct .12 times the total~~  
6 ~~number of units produced in the principal project. If the total number of units is not a whole number,~~  
7 ~~the project sponsor shall round up to the nearest whole number for any portion of .5 or above.~~  
8 ~~Consistent with the conclusions of the MOH study authorized in Section 415.9(e), MOH shall~~  
9 ~~recommend and the Board of Supervisors shall consider whether the requirements of this Subsection~~  
10 ~~for buildings of over 120 feet in height shall continue or expire after approximately five years from~~  
11 ~~April 24, 2007.~~

12 (23) If the principal project has resulted in demolition, conversion, or removal of  
13 affordable housing units renting or selling to households at income levels and/or for a rental  
14 rate or sales price below corresponding income thresholds for units affordable to qualifying  
15 households, the Commission or the Department shall require that the project sponsor replace  
16 the number of affordable units removed with units of a comparable number of bedrooms or  
17 provide that ~~15~~ 12 percent of all units constructed as part of the new project shall be affordable  
18 to qualifying households, whichever is greater.

19 (4) **Already Approved Projects.** Charter Section 16.110(g)(3) contains procedures for certain  
20 projects that have been approved but that have not received their first construction document as  
21 defined in Section 107A.13.1 of the San Francisco Building Code by January 1, 2013 to modify their  
22 conditions of approval under limited circumstances.

23 . . .

24 (c) **Type of Housing:** All on-site units constructed under this Section must be provided  
25 as ownership units unless the project sponsor meets the eligibility requirement of Section

1 415.5(g). All on-site units must be Affordable to Qualifying Households. In general, affordable  
2 units constructed under this Section 415.6 shall be comparable in number of bedrooms,  
3 exterior appearance and overall quality of construction to market rate units in the principal  
4 project. A Notice of Special Restrictions shall be recorded prior to issuance of the first  
5 construction document and shall specify the number, location and sizes for all affordable units  
6 required under this Subsection. The interior features in affordable units should be generally  
7 the same as those of the market rate units in the principal project, but need not be the same  
8 make, model or type of such item as long as they are of good and new quality and are  
9 consistent with then-current standards for new housing. The square footage of affordable  
10 units do not need to be same as or equivalent to those in market rate units in the principal  
11 project, so long as it is consistent with then-current standards for new housing. Where  
12 applicable, parking shall be offered to the affordable units subject to the terms and conditions  
13 of the Department's policy on unbundled parking for affordable housing units as specified in  
14 the Procedures Manual and amended from time to time. On-site affordable units shall be  
15 ownership units unless the project applicant meets the eligibility requirement of Section  
16 415.5(g).

17 . . .

18 (e) Individual affordable units constructed under Section ~~415.6~~ 415.5 as part of an on-  
19 site project shall not have received development subsidies from any Federal, State or local  
20 program established for the purpose of providing affordable housing, and shall not be counted  
21 to satisfy any affordable housing requirement. Other units in the same on-site project may  
22 have received such subsidies. In addition, subsidies may be used, only with the express written  
23 permission by MOH, to deepen the affordability of an affordable unit beyond the level of  
24 affordability required by this Program.

1           (f) Notwithstanding the provisions of Section 415.6(e) above, a project may use California Debt  
2 Limit Allocation Committee (CDLAC) tax-exempt bond financing and 4% tax credits under the Tax  
3 Credit Allocation Committee (TCAC) to help fund its obligations under this ordinance as long as the  
4 project provides 20 percent of the units as affordable to households at 50 percent of Area Median  
5 Income for on-site housing. The income table to be used for such projects when the units are priced at  
6 50 percent of Area Median Income is the income table used by MOH for the Inclusionary Affordable  
7 Housing Program, not that used by TCAC or CDLAC. Except as provided in this subsection, all units  
8 provided under this Section must meet all of the requirements of this ordinance and the Procedures  
9 Manual for on-site housing.

10           (gf) **Benefits:** If the project sponsor is eligible for and elects to satisfy the affordable  
11 housing requirements through the production of on-site affordable housing in this Section  
12 415.6, the project sponsor shall be eligible to receive a refund for only that portion of the  
13 housing project which is affordable for the following fees: a Conditional Use Authorization or  
14 other fee required by Section 352 of this Code, if applicable; an environmental review fee  
15 required by Administrative Code Section 31.46B, if applicable; a building permit fee required  
16 by the Building Code and by Section 355 of this Code for the portion of the housing project  
17 that is affordable. The project sponsor shall pay the building fee for the portion of the project  
18 that is market-rate.

19           The Controller shall refund fees from any appropriated funds to the project sponsor on  
20 application by the project sponsor. The application must include a copy of the Certificate of  
21 Occupancy for all units affordable to a qualifying household required by the Inclusionary  
22 Housing Program. It is the policy of the Board of Supervisors to appropriate money for this  
23 purpose from the General Fund.

1 Section 6: The San Francisco Planning Code is hereby amended by amending  
2 selected portions of Section 415.7, to read as follows:

3 **SEC. 415.7. OFF-SITE AFFORDABLE HOUSING ALTERNATIVE.**

4 If the project sponsor is eligible and selects pursuant to Section 415.5(gf) to provide off-  
5 site units to satisfy the requirements of Section 415.1 et seq., the project sponsor shall notify the  
6 Planning Department and MOH of its intent as early as possible. The Planning Department and MOH  
7 shall provide an evaluation of the project's compliance with this Section prior to approval by the  
8 Planning Commission or Planning Department. The development project shall meet the following  
9 requirements:

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

11 (1) (A) For any housing development of any height that is located in an area with a  
12 specific affordable housing requirement, set forth in Sections ~~416, 417, 419,~~ or elsewhere in this  
13 Code, the more specific off-site housing requirement shall apply.

14 (B) Buildings of 120 feet and under in height or buildings of over 120 feet in height that  
15 do not meet the criteria in Subsection (C) below: Except as provided in Subsection (A), the  
16 Department shall require for housing projects described in Section 415.3(a)(1), (2), (3), and  
17 (4) 20 percent so that a project applicant must construct .20 times the total number of units  
18 produced in the principal project. If the total number of units is not a whole number, the project  
19 applicant shall round up to the nearest whole number for any portion of .5 or above.

20 (C) Buildings of over 120 feet in height. Except as provided in subsection (A) above,  
21 the requirements of this Subsection shall apply to any project that is over 120 feet in height  
22 and does not require a Zoning Map amendment or Planning Code text amendment related to  
23 its project approvals which (i) results in a net increase in the number of permissible residential  
24 units, or (ii) results in a material increase in the net permissible residential square footage as  
25 defined in Section 415.3(b)(2); or has not received or will not receive a Zoning Map

1 amendment or Planning Code text amendment as part of an Area Plan adopted after January  
2 1, 2006 which (i) results in a net increase in the number of permissible residential units, or (ii)  
3 results in a material increase in the net permissible residential square footage as defined in  
4 Section 415.3(b)(2). The Department shall require for housing projects covered by this  
5 Subsection and Section 415.3(a)(1), as a condition of Planning Department approval of a  
6 project's building permit, or by this Subsection and by Section 415.3(a)(2), (3) and (4), as a  
7 condition of approval of a Conditional Use Authorization or Planned Unit Development or as a  
8 condition of Department approval of a live/work project, that 17 percent of all units constructed  
9 on the project site shall be affordable to qualifying households so that a project sponsor must  
10 construct .17 times the total number of units produced in the principal project. If the total  
11 number of units is not a whole number, the project sponsor shall round up to the nearest  
12 whole number for any portion of .5 or above. Consistent with the conclusions of the MOH  
13 study authorized in Section 415.9(e), MOH shall recommend and the Board of Supervisors  
14 shall consider whether the requirements of this Subsection for buildings of over 120 feet in  
15 height shall continue or expire after approximately five years from April 24, 2007.

16 (b) **Timing of Construction:** The project sponsor shall insure that the off-site units are  
17 constructed, completed, ready for occupancy, and marketed no later than the market rate  
18 units in the principal project. In no case shall the Principal Project receive its first certificate of  
19 occupancy until the off-site project has received its first certificate of occupancy.

20 (c) **Location of off-site housing:** The project sponsor must insure that off-site units  
21 are located within one mile of the principal project.

22 (d) **Type of Housing:** All off-site units constructed under this Section must be provided  
23 as ownership housing for the life of the project unless the project applicant meets the eligibility  
24 requirement of Section 415.5(g). ~~and~~ If offered for ownership, all off-site units-must be affordable  
25 to households earning no more than 70 percent of the AMI, or if offered for rent, Affordable to

1 Qualifying Households at the rental level. Nothing in this Section shall limit a project sponsor  
2 from meeting the requirements of this Section through the construction of units in a limited  
3 equity or land trust form of ownership if such units otherwise meet all of the requirements for  
4 off-site housing. In general, affordable units constructed under Section 415.7 shall be  
5 comparable in number of bedrooms, exterior appearance and overall quality of construction to  
6 market rate units in the principal project. The total square footage of the off-site affordable  
7 units constructed under Section 415.7 shall be no less than the calculation of the total square  
8 footage of the on-site market-rate units in the principal project multiplied by the relevant on-  
9 site percentage requirement for the project specified in Section 415.7. The Notice of Special  
10 Restrictions or conditions of approval shall include a specific number of units at specified unit  
11 sizes - including number of bedrooms and minimum square footage - for affordable units. The  
12 interior features in affordable units should generally be the same as those of the market rate  
13 units in the principal project but need not be the same make model or type of such item as  
14 long as they are of new and good quality and are consistent with then-current standards for  
15 new housing and so long as they are consistent with the "Quality Standards for Off-Site  
16 Affordable Housing Units" found in the Procedures Manual. Where applicable, parking shall  
17 be offered to the affordable units subject to the terms and conditions of the Department's  
18 policy on unbundled parking for affordable housing units as specified in the Procedures  
19 Manual and amended from time to time. If the residential units in the principal project are  
20 live/work units which do not contain bedrooms or are other types of units which do not contain  
21 bedrooms separated from the living space, the off-site units shall be comparable in size  
22 according to the following equivalency calculation between live/work and units with bedrooms:

23 24 25	Number of Bedrooms (or, for live/work units	Number of Persons in
----------------	--	-------------------------

square foot equivalency)	Household
0 (Less than 600 square feet)	1
1 (601 to 850 square feet)	2
2 (851 to 1,100 square feet)	3
3 (1,101 to 1,300 square feet)	4
4 (More than 1,300 square feet)	5

...

(f) Individual affordable units constructed as part of a larger off-site project under Section 415.7 shall not receive development subsidies from any Federal, State or local program established for the purpose of providing affordable housing, and shall not be counted to satisfy any affordable housing requirement for the off-site development. Other units in the same off-site project may receive such subsidies. In addition, subsidies may be used, only with the express written permission by MOH, to deepen the affordability of an affordable unit beyond the level of affordability required by this Program.

(g) Notwithstanding the provisions of Section 415.7(f) above, a project may use California Debt Limit Allocation Committee (CDLAC) tax-exempt bond financing and 4% credits under the Tax Credit Allocation Committee (TCAC) to help fund its obligations under this ordinance as long as the project provides 25 percent of the units as affordable at 50 percent of area median income for off-site housing. The income table to be used for such projects when the units are priced at 50 percent of area median income is the income table used by MOH for the Inclusionary Housing Program, not that used by TCAC or CDLAC. Except as provided in this subsection, all units provided under this Section must meet all of the requirements of this ordinance and the Procedures Manual for off-site housing.

1 Section 7: The San Francisco Planning Code is hereby amended by amending  
2 selected portions of Section 415.8, to read as follows:

3 **SEC. 415.8. DURATION AND MONITORING OF AFFORDABILITY.**

4 (a) For any units permitted under the Program:

5 (1) All units constructed pursuant to Sections 415.6 (on-site alternative) and 415.7 (off-  
6 site alternative) must be owner-occupied, as defined in the Procedures Manual, in the case of  
7 ownership units or occupied by qualified households in the case of rental units.

8 (2) Units shall not remain vacant for a period exceeding 60 days without the written  
9 consent of MOH.

10 (3) All units constructed pursuant to Sections 415.6 and 415.7 must remain affordable  
11 to qualifying households for the life of the project.

12 (4) The income levels specified in the Notice of Special Restrictions and/or conditions  
13 of approval for the project shall be the required income percentages for the life of the project.

14 Notwithstanding the foregoing, if approved by MOH and as provided in the Procedures Manual, an  
15 exception to the required income percentage may be made in the following cases:

16 (A) a rental unit that converts to an ownership unit, up to a maximum of 120% of AMI;

17 (B) where there is an existing tenant, the household income may increase by up to 200% of the  
18 levels specified in the Notice of Special Restrictions or conditions of approval;

19 (C) new ownership units where the project sponsor has used good faith efforts to secure a  
20 contract with a qualified buyer but is unable to secure such a contract in a timely manner from the  
21 initiation of marketing;

22 (D) resale ownership units where the owner has used good faith efforts to secure a contract  
23 with a qualified buyer but is unable to secure a buyer contract at a maximum resale price specified by  
24 MOH in a timely manner; or

1           (E) the qualifying income level for new ownership units may be set at 10% above the income  
2           level stated in the Notice of Special Restrictions or conditions of approval.

3           (5) The Commission or the Department shall require all housing projects subject to  
4           Section 415.1 et seq. to record a Notice of Special Restrictions with the Recorder of the City  
5           and County of San Francisco. The Notice of Special Restrictions must incorporate the  
6           affordability restrictions. All projects described in Section 415.3(a)(1) and 415.3(a)(3) must  
7           incorporate all of the requirements of this Section 415.8 into the Notice for Special  
8           Restrictions, including any provisions required to be in the conditions of approval for housing  
9           projects described in Section 415.3(a)(2). These Section 415.3(a)(2) projects which are  
10          housing projects which go through the conditional use or planned unit development process  
11          shall have conditions of approval. The conditions of approval shall specify that project  
12          applicants shall adhere to the marketing, monitoring, and enforcement procedures outlined in  
13          the Procedures Manual, as amended from time to time, in effect at the time of project  
14          approval. The Commission shall file the Procedures Manual in the case file for each project  
15          requiring inclusionary housing pursuant to this Program. The Procedures Manual will be  
16          referenced in the Notice of Special Restrictions for each project.

17          (b) For any units permitted to be ownership units under the Program, the Mayor's  
18          Office of Housing shall:

19                 (1) establish and implement a process for reselling an affordable unit in the Procedures  
20          Manual;

21                 (2) provide that owners may not change title on the unit without review and approval by  
22          MOH and according to guidelines published in the Procedures Manual.

23                 (3) provide that owners must comply with refinancing procedures and limitations as  
24          published in the Procedures Manual.

1 (4) provide that, in order to retain all units restricted as affordable under this Program  
2 within the City's affordable housing stock, the specific procedures for passing an affordable  
3 unit through inheritance are contained in the Procedures Manual. All transfers through  
4 inheritance must be reviewed and approved by MOH and, in all cases, the heir must  
5 acknowledge and agree to the provisions of the Program. The following households may  
6 inherit the ability to occupy a unit restricted under this Program: (1) a spouse or registered  
7 domestic partner, regardless of income; or (2) a child of the owner if the child is a qualifying  
8 household for the unit. If the heir qualifies under one of these categories, the heir must occupy  
9 the unit or the heir must market and sell the unit at the restricted price through a public lottery  
10 process and retain the proceeds from the sale. If the heir does not qualify to occupy the unit,  
11 the heir must market and sell the unit at the restricted price to a qualified buyer through a  
12 public lottery process. The heir would retain the proceeds of such sale.

13 (5) Require that~~Any~~ affordable rental units permitted by the Commission to be converted  
14 to ownership units must satisfy the requirements of the Procedures Manual, as amended from  
15 time to time, including that the units shall be sold at restricted sales prices to households  
16 meeting the income qualifications specified in the Notice of Special Restrictions or conditions  
17 of approval, with a right of first refusal for the occupant(s) of such units at the time of  
18 conversion. If the current tenant qualifies for and purchases the unit, the unit shall be sold at a sales  
19 price corresponding to the affordability level required for rental units or to the affordability level for  
20 the specific tenant household, whichever is higher, with a maximum allowable qualifying income level  
21 up to 120% of AMI. If the unit is sold to anyone else, the sales price shall correspond to the  
22 affordability level required for ownership units. Upon conversion to ownership, the units are  
23 subject to the resale and other restrictions of this Program for the life of the project, as defined  
24 in the Notice of Special Restrictions or conditions of approval for the Project.

25

1 (6) For ownership units approved pursuant to Sections 415.6 or 415.7, the Notice of  
2 Special Restrictions or conditions of approval will include provisions restricting resale prices  
3 and purchaser income levels according to the formula specified in the Procedures Manual, as  
4 amended from time to time. In the case that subordination of the Affordability Conditions  
5 contained in a recorded Notice of Special Restrictions may be necessary to ensure the Project  
6 Applicant's receipt of adequate construction and/or permanent financing for the project, or to  
7 enable first time home buyers to qualify for mortgages, the project applicant may follow the  
8 procedures for subordination of affordability restrictions as described in the principal project's  
9 conditions of approval or in the Procedures Manual. A release following foreclosure or other  
10 transfer in lieu of foreclosure may be authorized if required as a condition to financing  
11 pursuant to the procedures set forth in the Procedures Manual.

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

17 (8) **Procedures For Units Unable To Resell.** The Board of Supervisors finds that  
18 certain requirements of this Program and the Procedures Manual may create hardship for  
19 owners of affordable units restricted under this Program. However, the Board also recognizes  
20 that the requirements of this Program are important to preserve the long-term affordability of  
21 units restricted under the Program. In order to allow some relief for owners of affordable units  
22 during a time of economic downturn, but to provide the maximum protection for the long-term  
23 affordability of the units, the Board directs MOH to analyze the following ~~three~~ issues and, if it  
24 deems appropriate, to propose amendments to the Procedures Manual to address the issues:  
25

1            (1) Waiver of Re-Sale Requirements and Maximum Qualifying Income Level for New Buyers of  
2 Resale BMR Units. The Board recognizes that the risk to low and moderate income  
3 homeowners during times of economic downturn can increase the risk of default and  
4 foreclosure of units restricted under this Program. The Board directs MOH to study ways to  
5 reduce such risks in the below market rate unit context and, if it deems appropriate, to make  
6 recommendations to the Planning Commission to amend the Procedures Manual to allow  
7 MOH discretion, in certain limited circumstances, to waive requirements for owners of  
8 affordable units who have used good faith efforts to secure a contract with a qualified buyer but are  
9 unable to resell their unit in a timely manner. Such amendments to the Procedures Manual  
10 may include, but are not limited to, authorizing MOH to make one or more allowances for  
11 owners of affordable units unable to resell such as: (1) a one-time waiver of the first-time  
12 homebuyer rule for the purchasing household; (2) a one-time waiver of qualifying household  
13 size requirements for the purchasing household; (3) and a one-time waiver of owner  
14 occupancy rules to allow a temporary rental; ~~and~~ (4) a one-time modification of the asset test  
15 for the new buyer household and (5) allowing MOH discretion to increase the qualifying income  
16 level for the unit by up to 20% above the maximum income limit currently allowed by the Use  
17 Restrictions for the Unit but at no time higher than 120% of AMI. MOH and the Commission shall  
18 set forth criteria for granting such allowances such as establishing a minimum time that the  
19 units must have been advertised by MOH without selling; ~~or~~ establishing criteria related to  
20 unusual economic or personal circumstances of the owner; providing a maximum percentage for  
21 the increase above the maximum income limit currently allowed; providing that the increase may only  
22 be granted on a one-time basis; and requiring the owner to clearly establish that the BMR unit is being  
23 resold at the original purchase price plus the current repricing mechanism under the Program which  
24 calculates the percentage change in AMI from the time of purchase to resale plus the commission and  
25 any eligible capital improvements or special assessments.

1           (2) Waiver of Maximum Qualifying Income Level For New Buyers of Initial Sale BMR Units:  
2           The Board of Supervisors recognizes that the current Program provides that the income of a new buyer  
3           of a below market rate household cannot exceed the maximum income stated in the Planning Approval  
4           or Notice of Special Restrictions for the BMR Unit. Due to a less desirable developments or  
5           geographic areas, a Project Sponsor is sometimes unable to find a buyer for a BMR Unit within the  
6           maximum income stated in the Planning Approval or Notice of Special Restrictions for the Unit. This  
7           situation makes it difficult, if not impossible, for certain current owners of below market rate units to  
8           sell their units. In order to minimize this situation, the Board of Supervisors directs the Mayor's Office  
9           of Housing to study ways to address this issue and, if it deems appropriate, to make recommendations  
10           to the Planning Commission to amend the Procedures Manual to allow MOH to assist Project Sponsors  
11           who have used good faith efforts to secure a contract with a qualified buyer but who are unable to  
12           secure such a contract in a timely manner from the initiation of marketing. Such amendments may  
13           include allowing MOH discretion to increase the qualifying income level for the unit by up to 20%  
14           above the maximum income limit currently allowed by the Use Restrictions for the Unit but at no time  
15           higher than 120% of AMI. MOH and the Planning Commission shall establish limits to this or a  
16           similar proposal such as: providing a maximum percentage for the increase above the maximum  
17           income limit currently allowed; requiring that a certain period without securing a buyer would pass  
18           before such an allowance would be made; providing that the increase may only be granted on a one-  
19           time basis.

20           (c) For any units permitted to be rental units under the Program, ~~the~~ MOH shall  
21           establish:

22           (1) restrictions on lease changes and propose such restrictions to the Commission for  
23           inclusion in the Procedures Manual.

24           (2) additional eligibility criteria for subleasing and propose such restrictions to the  
25           Commission for inclusion in the Procedures Manual.

1 (3) criteria for continued eligibility for occupied rental units and propose such  
2 restrictions to the Commission for inclusion in the Procedures Manual.

3 (4) criteria for homeownership status and propose such restrictions to the Commission  
4 for inclusion in the Procedures Manual.

5 (5) criteria for granting affordable rental households the right of first refusal in  
6 purchasing an affordable unit that is converted from rental to ownership and propose such  
7 restrictions to the Commission for inclusion in the Procedures Manual.

8 (6) that at no time shall an annual increase exceed the actual allowable increase for that year.  
9 In cases where the rent has decreased, the tenant’s rent must be decreased. In cases where the annual  
10 adjustments have not been applied year to year, the Project Owner may not take advantage of any  
11 increases that were not applied until the Unit is vacant and re-rented.

12  
13 Section 8: The San Francisco Planning Code is hereby amended by amending  
14 selected portions of Section 415.9, to read as follows:

15 **SEC. 415.9. ENFORCEMENT PROVISIONS AND MONITORING OF PROGRAM.**

16 . . .

17 ~~(f) MOH shall evaluate its monitoring system for affordable units created under this Section and~~  
18 ~~shall compare its system with that of the San Francisco Redevelopment Agency with the goal of~~  
19 ~~establishing, to the extent feasible, a single monitoring system for all inclusionary affordable housing~~  
20 ~~units located in the City and County of San Francisco. MOH shall make any changes to its monitoring~~  
21 ~~system necessary to bring its monitoring system into conformity with the system of the Redevelopment~~  
22 ~~Agency, or, if necessary, MOH shall make recommendations to the Board of Supervisors to amend~~  
23 ~~Section 415.1 et seq. in order to implement improvements to the monitoring system. If it is necessary to~~  
24 ~~amend the Procedures Manual to change its monitoring system to comply with this Section, MOH may~~  
25 ~~make any changes necessary to the Procedures Manual to comply with this Section 415.9(f). For~~

1 *purposes of this Section 415.9(f) only and on a one-time basis, MOH may amend the Procedures*  
2 *Manual without obtaining approval from the Commission. If MOH determines that some or all of the*  
3 *aspects of its system are more effective than the Redevelopment Agency's system, it shall inform the*  
4 *Board of Supervisors and recommend that the Board urge the Redevelopment Agency to conform its*  
5 *procedures to the City's.*

6 . . .

7 Section 9. The San Francisco Planning Code is hereby amended by amending  
8 selected portions of Section 419.3.

9 **SEC. 419.3. APPLICATION OF UMU AFFORDABLE HOUSING REQUIREMENTS.**

10 (a) Section 419.1 et seq. shall apply to any housing project located in the UMU Zoning  
11 District of the Eastern Neighborhoods, that is subject to the requirements of Sections 415 et  
12 seq.

13 (b) **Additional UMU Affordable Housing Requirements to the Section 415**  
14 **Inclusionary Affordable Housing Program Requirements.** The requirements of Section  
15 415 through 415.9 shall apply subject to the following exceptions:

16 (1) For all projects sites designated as Tier A, a minimum of ~~18~~ 14.4% percent of the  
17 total units constructed shall be affordable to and occupied by qualifying persons and families  
18 as defined elsewhere in this Code, so that a project sponsor must construct ~~0.14418~~ times the  
19 total number of units produced in the principal project beginning with the construction of the  
20 tenth unit. If the total number of units is not a whole number, the sponsor shall round up to the  
21 nearest whole number for any portion of .5 or above.

22 (A) If the project sponsor is eligible for and elects pursuant to Section 415.5(g) to build  
23 off-site units to satisfy the requirements of this program, the sponsor shall construct 23  
24 percent so that a sponsor must construct .23 times the total number of units produced in the  
25 principal project beginning with the construction of the tenth unit. If the total number of units is

1 not a whole number, the sponsor shall round up to the nearest whole number for any portion  
2 of .5 or above.

3 (B) If the project sponsor elects pursuant to Section 415.5 to pay the fee to satisfy the  
4 requirements of this program, the sponsor shall meet the requirements of Section 415  
5 according to the number of units required above if the project applicant were to elect to meet  
6 the requirements of this Section by off-site housing development. For the purposes of this  
7 Section, the City shall calculate the fee using the direct fractional result of the total number of  
8 units multiplied by the percentage of off-site housing required, rather than rounding up the  
9 resulting figure.

10 (2) For all project sites designated Tier B, a minimum of ~~1620~~ percent of the total units  
11 constructed shall be affordable to and occupied by qualifying persons and families as defined  
12 elsewhere in this Code, so that a project sponsor must construct ~~0.16-20~~ times the total  
13 number of units produced in the principal project beginning with the construction of the tenth  
14 unit. If the total number of units is not a whole number, the sponsor shall round up to the  
15 nearest whole number for any portion of .5 or above.

16 (A) If the project sponsor is eligible for and elects pursuant to Section 415.5(g) to build  
17 off-site units to satisfy the requirements of this program, the sponsor shall construct 25  
18 percent so that a sponsor must construct .25 times the total number of units produced in the  
19 principal project beginning with the construction of the tenth unit. If the total number of units is  
20 not a whole number, the sponsor shall round up to the nearest whole number for any portion  
21 of .5 or above.

22 (B) If the project sponsor elects pursuant to Section 415.5(g) to pay the fee to satisfy  
23 the requirements of this program, the sponsor shall meet the requirements of Section 415  
24 according to the number of units required above if the sponsor were to elect to meet the  
25 requirements of this Section by off-site housing development. For the purposes of this

1 Section, the City shall calculate the fee using the direct fractional result of the total number of  
2 units multiplied by the percentage of off-site housing required, rather than rounding up the  
3 resulting figure.

4 (3) For all project sites designated Tier C, a minimum of 17.6 ~~22~~ percent of the total  
5 units constructed shall be affordable to and occupied by qualifying persons and families as  
6 defined elsewhere in this Code, so that a project sponsor must construct 0.176 ~~.22~~ times the  
7 total number of units produced in the principal project beginning with the construction of the  
8 tenth unit. If the total number of units is not a whole number, the sponsor shall round up to the  
9 nearest whole number for any portion of .5 or above.

10 (A) If the project sponsor is eligible for and elects pursuant to Section 415.5(g) to build  
11 off-site units to satisfy the requirements of this program, the sponsor shall construct 27  
12 percent so that a sponsor must construct .27 times the total number of units produced in the  
13 principal project beginning with the construction of the tenth unit. If the total number of units is  
14 not a whole number, the sponsor shall round up to the nearest whole number for any portion  
15 of .5 or above.

16 (B) If the project sponsor elects pursuant to Section 415.5 to pay the fee to satisfy the  
17 requirements of this program, the sponsor shall meet the requirements of Section 415  
18 according to the number of units required above if the sponsor were to elect to meet the  
19 requirements of this Section by off-site housing development. For the purposes of this  
20 Section, the City shall calculate the fee using the direct fractional result of the total number of  
21 units multiplied by the percentage of off-site housing required, rather than rounding up the  
22 resulting figure.

23 . . .  
24  
25

1 Section 10. The San Francisco Planning Code is hereby amended by amending Table  
 2 419.5 in Section 419.5.

3 TABLE 419.5  
 4 HOUSING REQUIREMENTS FOR THE UMU DISTRICT

Tier	On-Site Housing Requirement	Off-Site/In- Lieu Requirement	Middle Income Alternative*	Land Dedication Alternative for sites that have less than 30,000 square feet of developable area	Land Dedication Alternative for sites that have at least 30,000 square feet of developable area
A	<del>18%</del> <u>14.4%</u>	23%	30%	35%	30%
B	<del>20%</del> <u>16%</u>	25%	35%	40%	35%
C	<del>22%</del> <u>17.6%</u>	27%	40%	45%	40%

18 \*Requirement increases by 5% if dwelling unit mix required by Section 207.6 is waived.

19  
 20 Section 11. The San Francisco Planning Code is hereby amended by amending  
 21 selected portions of Section 249.33 as follows:

22 **SEC. 249.33 VAN NESS & MARKET DOWNTOWN RESIDENTIAL SPECIAL USE**  
 23 **DISTRICT.**

24 . . .

25 (b) **Use Controls.**

1           (1) **Non-residential uses.** For newly-constructed buildings or additions which exceed  
2 20 percent or more of an existing structure's gross floor area, non-residential uses are not  
3 permitted above the 4th story, and at least two occupied square feet of residential use shall be  
4 provided for each occupied square foot of non-residential use. In order to accommodate local  
5 government office uses near City Hall, publicly-owned or leased buildings or lots are  
6 exempted from the requirements of this subsection.

7           (2) **Residential Density.** There shall be no density limit for residential uses by lot area,  
8 but by the applicable requirements and limitations elsewhere in this Code, including but not  
9 limited to height, bulk, setbacks, open space, and exposure, as well as by the Market &  
10 Octavia Area Plan Fundamental Principals for Design, other applicable design guidelines,  
11 applicable elements and area plans of the General Plan, and design review by the Planning  
12 Department. The limitations of Section 215 shall not apply.

13           (3) **Residential Affordable Housing Program.** All projects in this district shall be  
14 subject to all the terms of Section 415 and following of the Inclusionary Affordable Housing  
15 Program. Notwithstanding the foregoing, projects within the Van Ness and Market Downtown  
16 Residential Special Use District shall at a minimum fulfill the requirements to the levels  
17 specified in this section. Should Section 415 require greater contributions to the affordable  
18 housing program, those requirements shall supercede this section. Proposed exceptions to  
19 these requirements due to hardships associated with construction type, specifically heights  
20 above 120 feet, are not applicable in this Special Use District because parcels are receiving  
21 an up zoning through increased density and benefits through the general transformation of the  
22 district to a transit oriented neighborhood with a mixed use character. Requirements and  
23 administration of this program shall follow the conditions outlined in Section 415 of the  
24 Planning Code unless otherwise specified in this section.

1           **(A) Payment of Affordable Housing Fee.** Except as provided in Section 415.5(g), all  
2 development projects subject to Section 415 et seq. in the Van Ness Market Special Use  
3 District shall be required to pay an Affordable Housing Fee under Section 415.5 equivalent to  
4 20 percent of the number of units in the principal project.

5           **(B) Alternatives to Payment of Affordable Housing Fee.** If a project sponsor both  
6 qualifies for and chooses to meet the requirements through an Alternative to the Program, the  
7 project sponsor may choose one of the Alternatives in Section 415.5(g).

8           **(i) On Site Housing Requirements and Benefits.** For projects that qualify for and  
9 choose to fulfill the requirements of Section 415 through the provision of onsite housing, the  
10 Planning Department shall require that ~~12.5~~12.5% of all units constructed on the project site shall  
11 be affordable to qualifying households so that a project applicant must construct ~~.12~~ .12 times  
12 the total number of units produced in the principal project. If the total number of units is not a  
13 whole number, the project applicant shall round up to the nearest whole number for any  
14 portion of .5 or above.

15           **(ii) Compliance Through Off-Site Housing Development.** For projects that qualify for  
16 and choose to fulfill the requirements of Section 415 through the provision of off-site housing,  
17 the Planning Department shall require that 20% of all units constructed on the project site  
18 shall be affordable to qualifying households so that a project applicant must construct .20  
19 times the total number of units produced in the principal project. If the total number of units is  
20 not a whole number, the project applicant shall round up to the nearest whole number for any  
21 portion of .5 or above.

22           **(4) Open Space Provider.** The off-site open space permitted by this Section may be  
23 provided individually by the project sponsor or jointly by the project sponsor and other project  
24 sponsors, provided that each square foot of jointly developed open space may count toward  
25 only one sponsor's requirement. With the approval of the Planning Commission, a public or

1 private agency may develop and maintain the open space, provided that (i) the project  
2 sponsor or sponsors pay for the cost of development of the number of square feet the project  
3 sponsor is required to provide, (ii) provision satisfactory to the Commission is made for the  
4 continued maintenance of the open space for the actual lifetime of the building giving rise to  
5 the open space requirement, and (iii) the Commission finds that there is reasonable  
6 assurance that the open space to be developed by such agency will be developed and open  
7 for use by the time the building, the open space requirement of which is being met by the  
8 payment, is ready for occupancy.

9 (A) **Off-Site Provision of Required Open Space.** Up to 40 percent of usable open  
10 space required by Sections 135 and 138 may be provided off-site if it is within the SUD or  
11 within 900 feet of the project site and meets the standards described below for publicly  
12 accessible open space described below.

13 (B) **Publicly-Accessible Open Space Standards.**

14 (C) Open space must be of one or more of the following types:

15 (i) An unenclosed park or garden at street grade or following the natural topography,  
16 including improvements to hillsides or other unimproved public areas according to the Market  
17 & Octavia Area Plan;

18 (ii) An unenclosed plaza at street grade, with seating areas and landscaping and no  
19 more than 10 percent of the floor area devoted to food or beverage service;

20 (iii) An unenclosed pedestrian pathway that meets the minimum standards described in  
21 Section 827(g)(3)(A) - (E);

22 (iv) A terrace or roof garden with landscaping;

23 (v) Streetscape improvements with landscaping and pedestrian amenities that result in  
24 additional space beyond the pre-existing sidewalk width and conform to the Market & Octavia  
25 Area Plan, such as sidewalk widening or building setbacks; and

1 (vi) Streetscape improvements with landscaping and pedestrian amenities on  
2 alleyways from building face to building face, beyond basic street tree planting or street  
3 lighting as otherwise required by this Code, in accordance with the Market & Octavia Area  
4 Plan.

5 (D) **Open space must meet the following standards:**

6 (i) Be in such locations and provide such ingress and egress as will make the area  
7 convenient, safe, secure and easily accessible to the general public;

8 (ii) Be appropriately landscaped;

9 (iii) Be protected from uncomfortable winds;

10 (iv) Incorporate ample seating and, if appropriate, access to limited amounts of food  
11 and beverage service, which will enhance public use of the area;

12 (v) Be well signed and accessible to the public during daylight hours;

13 (vi) Be well lighted if the area is of the type requiring artificial illumination;

14 (vii) Be designed to enhance user safety and security;

15 (viii) Be of sufficient size to be attractive and practical for its intended use; and

16 (ix) Have access to drinking water and toilets if feasible.

17 (E) **Maintenance.** Open spaces shall be maintained at no public expense, except as  
18 might be provided for by any community facilities district that may be formed. The owner of  
19 the property on which the open space is located shall maintain it by keeping the area clean  
20 and free of litter and keeping in a healthy state any plant material that is provided. Conditions  
21 intended to assure continued maintenance of the open space for the actual lifetime of the  
22 building giving rise to the open space requirement may be imposed in accordance with the  
23 provisions of Section 309.1.

24 (F) **Informational Plaque.** Prior to issuance of a permit of occupancy, a plaque of no  
25 less than 24 inches by 36 inches in size shall be placed in a publicly conspicuous location

1 outside the building at street level, or at the site of any publicly-accessible open space,  
2 identifying said open space feature and its location, stating the right of the public to use the  
3 space and the hours of use, describing its principal required features (e.g., number of seats,  
4 availability of food service) and stating the name and address of the owner or owner's agent  
5 responsible for maintenance.

6 (G) The Zoning Administrator shall have authority to require a property owner to hold  
7 harmless the City and County of San Francisco, its officers, agents and employees, from any  
8 damage or injury caused by the design, construction or maintenance of open space, and to  
9 require the owner or owners or subsequent owner or owners of the property to be solely liable  
10 for any damage or loss occasioned by any act or neglect in respect to the design, construction  
11 or maintenance of the open space.

12 (5) **Lot Coverage.** The rear yard requirements of Section 134 shall not apply. Lot  
13 coverage is limited to 80 percent at all residential levels except on levels in which all  
14 residential units face onto a public right-of-way. The unbuilt portion of the lot shall be open to  
15 the sky except for those obstructions permitted in yards per Section 136(c). Exceptions to the  
16 20 percent open area may be granted pursuant to the procedures of Section 309 for  
17 conversions of existing non-residential structures where it is determined that provision of 20  
18 percent open area would require partial demolition of the existing non-residential structure.

19 (6) **Floor Area Ratio.**

20 (A) The maximum FAR allowed, except as allowed in this Section, shall be that  
21 described in Section 123(C), provided that it shall not be greater than 9:1. The definition of  
22 Gross Floor Area shall be that in Section 102.9 as of the date of approval of this Ordinance,  
23 and shall include all residential uses. The provisions of Section 124(g) shall not apply in this  
24 special use district.

1 (B) **Floor Area Bonus Permitted for Public Improvements or In-lieu Contributions**  
2 **to the Van Ness and Market Neighborhood Infrastructure Fund and In lieu**  
3 **Contributions to the Citywide Affordable Housing Fund.**

4 (i) The gross floor area of a structure or structures on a lot may exceed the maximum  
5 ratio described in Section 123(c) through participation in the Van Ness and Market Affordable  
6 Housing and Neighborhood Infrastructure Program, according to the procedures described  
7 below in subsection (b)(7).

8 (ii) Notwithstanding the provisions of Sections 127 and 128 projects in this Special Use  
9 District are not eligible to acquire Transferable Development Rights from a Transfer Lot or  
10 Lots pursuant to the provisions of Sections 127- 128 for that increment of FAR above the base  
11 FAR limit in Section 124 up to the maximum FAR described in Section 123(c). Instead, a  
12 project may pay to the City's Citywide Affordable Housing Fund thirty dollars (\$30) per  
13 additional gross square foot for that increment of FAR above the base FAR limit in Section  
14 124 up to the maximum FAR described in Section 123(c). Any monies deposited into the  
15 Citywide Affordable Housing Fund shall be administered as provided for in Section ~~415315~~ et  
16 seq.

17  
18 Section 12. The San Francisco Planning Code is hereby amended by amending  
19 Section 249.40A, to read as follows:

20 **SEC. 249.40A. SOMA YOUTH AND FAMILY SPECIAL USE DISTRICT.**

21 (a) **Purpose.** The South of Market (SoMa) Youth and Family Special Use District is  
22 intended to expand the provision of affordable housing in the area defined below. In addition,  
23 this zoning is intended to protect and enhance the health and environment of youth and  
24 families by adopting policies that focus on certain lower density areas of this District for the  
25 expansion of affordable housing opportunities. The findings of Planning Code Section

1 ~~419.1319.1~~ concerning the provision of affordable housing are incorporated herein by  
2 reference.

3 (b) **Geography.** The general boundaries of the SoMa Youth and Family Special Use  
4 District are Natoma Street on the north, Harrison Street on the south, 4th Street on the east,  
5 and 7th Street on the west. The Special Use District is more particularly identified in the  
6 Zoning Map.

7 (c) **Controls.**

8 (1) For the entire Special Use District, all provisions of the Planning Code shall  
9 continue to apply, except for the following:

10 (A) The following uses shall require a Conditional Use authorization, pursuant to  
11 Section 303, unless the underlying zoning is more restrictive:

12 (i) Religious facilities, as defined in Sec. 890.50(d);

13 (ii) Bars, as defined in Sec. 790.22;

14 (iii) Liquor stores, as defined in Sec. 790.55;

15 (iv) Amusement arcades, as defined in Sec. 890.4;

16 (v) Restaurants, as defined in Sec. 790.91;

17 (vi) Adult entertainment, as defined in Sec. 890.36;

18 (vii) Other entertainment, as defined in Sec. 890.37;

19 (viii) Movie theatres, as defined in Sec. 890.64;

20 (ix) Parking lots, as defined in Sections 890.7, 890.9, and 890.11; and

21 (x) Parking garages, as defined in Sections 890.8, 890.10, and 890.12.

22 (B) The Land Dedication alternative is available for any project of 55 feet or more under  
23 the same terms and conditions as provided for in Section 419 et seq ~~319.4(b)(2)(A)-(J)~~.

1           (2C) In addition to the controls above, the following provisions shall apply to all  
2 properties that are not tangent to the following streets: Howard Street, Harrison Street.  
3 Folsom Street, 4th, 5th, 6th and 7th Streets:

4           (A) Any project ~~containing 5 or more dwelling units~~ subject to Section 415 et seq. ~~or~~ in excess  
5 of ~~4045~~ feet in height within this Special Use District shall be subject to the Tier C affordable  
6 housing requirements of Sections ~~419 319~~ et seq.

7  
8           Section 13. The San Francisco Planning Code is hereby amended by amending  
9 selected portions of Section 827, to read as follows:

10           SEC. 827. RINCON HILL DOWNTOWN RESIDENTIAL MIXED USE DISTRICT (RH-  
11 DTR).

12           The Rincon Hill Downtown Residential Mixed Use District (RH-DTR), the boundaries of  
13 which are shown in Section Map No. 1 of the Zoning Map, is established for the purposes set  
14 forth below.

15           . . .

16           (b) **Uses.**

17           (1) **Housing Requirement for Residential Developments.** The requirements of  
18 Sections 415 through 415.9 shall apply in the RH-DTR subject to the following exceptions:

19           (A) ~~If constructed on-site, a minimum of 12 percent of the total units constructed, and if~~  
20 ~~constructed off-site, a minimum of 17 percent of the total units constructed, shall be affordable to and~~  
21 ~~occupied by qualifying persons and families as defined elsewhere in this Code.~~

22           (B) Below-market-rate units as required by Sections 415 through 415.9 that are built  
23 off-site must be built within the area bounded by Market Street, the Embarcadero, King Street,  
24 Division Street, and South Van Ness Avenue.

1           (~~E~~B) No less than fifty percent (50%) of the fees that are paid due to development in  
2 the Rincon Hill Area Plan under Section 415 et seq. (formerly Section 315.4(e)(2) and 315.6)  
3 shall be paid into the Citywide Affordable Housing Fund, but the funds shall be separately  
4 accounted for and designated exclusively to increase the supply of affordable housing in the  
5 SOMA area.

6           (~~D~~C) The Mayor's Office of Housing must submit a resolution to the Board of  
7 Supervisors with a plan for the use of all Affordable Housing Fee payments generated from  
8 the Rincon Hill Area Plan prior to any expenditure of the Funds.

9  
10           Section 14. Code Corrections Related to Inclusionary Housing Ordinance.

11           The Planning Code currently includes outdated references to the Inclusionary  
12 Affordable Housing Program formerly found in Planning Code Sections 315 et seq. and  
13 currently located in Planning Code Sections 415 et seq. These outdated references to  
14 Planning Code Sections 315 et seq. are found in: Planning Code Sections 102.6.1, 121.7,  
15 167, 175.9, 207.6, 305, 317, and 803.9, and possibly elsewhere in the Municipal Code. The  
16 City Attorney shall direct the publisher of the San Francisco Municipal Code to correct all  
17 outdated references to the Inclusionary Affordable Housing Program to reflect the current  
18 location of the Program in Planning Code Sections 415 et seq.

19  
20           Section 15. Effective Date. This ordinance shall become effective 30 days from the  
21 date of passage.

22           Section 16. This section is uncodified. In enacting this Ordinance, the Board intends  
23 to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,  
24 punctuation, charts, diagrams, or any other constituent part of the Planning Code that are  
25 explicitly shown in this legislation as additions, deletions, Board amendment additions, and

1 Board amendment deletions in accordance with the "Note" that appears under the official title  
2 of the legislation.

3  
4 APPROVED AS TO FORM:  
5 DENNIS J. HERRERA, City Attorney

6 By: \_\_\_\_\_  
7 Susan Cleveland-Knowles  
8 Deputy City Attorney  
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