



SAN FRANCISCO PLANNING DEPARTMENT

July 12, 2016

Ms. Angela Calvillo, Clerk of the Board
Honorable Supervisor Yee
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

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**Re: Transmittal of Planning Department Case Number 2015-016599PCA
Change in Affordable Housing Fee or Units in Rezoned Divisadero and
Fillmore NCTDs
Planning Commission Recommendation: Approval with Modifications**

Dear Ms. Calvillo and Supervisor Breed:

On June 30, 2016 the Planning Commission conducted a duly noticed public hearing at regularly scheduled meetings to consider the proposed Ordinance that would amend Planning Code Sections 415 introduced by Supervisor Breed. At the hearing the Planning Commission recommended approval with modifications.

The Commission's proposed modifications were as follows:

Adopted a Recommendation for Approval with Modifications as amended, recommending:

1. Further financial analysis on development potential for soft-sites before and after the zoning change, adding the value to inclusionary requirement for future projects, at the baseline or current inclusionary rates;
2. Use the same methodology as Proposition C, passed by voters on June 7, 2016 to determine an increase in the inclusionary rates; and
3. Delete the reference to fee deferral.

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) (2) and 15378 because they do not result in a physical change in the environment.

Supervisors Breed, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission.

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron D. Starr". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Aaron D. Starr
Manager of Legislative Affairs

cc:

Conor Johnston, Aide to Supervisor Breed
Kate Stacey, Deputy City Attorney
Alisa Somera, Office of the Clerk of the Board

Attachments:

Planning Commission Resolution
Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 19679

HEARING DATE: JUNE 30, 2016

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Project Name: Change in Inclusionary Rates in Divisadero and Fillmore NCTDs
Case Number: 2015-016599PCA [Board File No. 151258]
Initiated by: Supervisor Breed / Introduced December 8, 2015 and April 5, 2016
Staff Contact: Menaka Mohan, Legislative Affairs
menaka.mohan@sfgov.org; 415-575-9141
Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org; 415-558-6362
Recommendation: **Recommend Approval with Modifications**

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT WITH MODIFICATIONS A PROPOSED ORDINANCE AMENDING THE PLANNING CODE TO REQUIRE ADDITIONAL AFFORDABLE HOUSING OR PAYMENT OF A FEE FOR CERTAIN SITES THAT OBTAINED HIGHER RESIDENTIAL DEVELOPMENT POTENTIAL AS A RESULT OF THE REZONING OF THE DIVISADERO STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT AND THE FILLMORE STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT; AFFIRMING THE PLANNING DEPARTMENT'S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; AND MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, PLANNING CODE, SECTION 302, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1.

WHEREAS, on December 8, 2015 and April 5, 2016 Supervisor Breed introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 151258, which would amend the Planning Code to require additional affordable housing or payment of a fee for certain sites that obtained higher residential development potential as a result of the rezoning of the Divisadero street Neighborhood Commercial Transit (NCT) District and the Fillmore Street Neighborhood Commercial Transit (NCT) District; and

WHEREAS, If the project sponsor chooses to provide the units off-site from the principal project, the project sponsor shall construct or cause to be constructed 25% of all units constructed on the principal project as affordable units subject to the requirements of Section 415.7; and

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve with modifications** the proposed ordinance. Specifically, the Commission recommends the following modification*:

*Note the Commission is recommending the modifications to the Ordinance (BOS File No. 151258) introduced on June 28, 2016

1. Further financial analysis on development potential for soft-sites before and after the zoning change, adding the value to inclusionary requirement for future projects, at the baseline or current inclusionary rates;
2. Use the same methodology as Proposition C, passed by voters on June 7, 2016 to determine an increase in the inclusionary rates; and
3. Delete the reference to fee deferral.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The City adopted legislation rezoning the area along Divisadero Street between Haight and O'Farrell Streets to become the Divisadero Neighborhood Commercial Transit District ("NCT") in Ordinance No. 127-15 in August 2015, and the area along Fillmore Street between Bush and McAllister Streets to become the Fillmore NCT in Ordinance No. 126-15 in August 2015. The rezoning for both NCTs removed any residential density limits based on lot area, and instead restricted residential uses by physical envelope controls like height, bulk, and setback requirements for each site. This removal of density limits based on lot areas should afford for greater development on certain sites within each NCT.
2. On November 6, 2012, the voters adopted Proposition C ("Prop C"), The Housing Trust Fund, which is set forth in San Francisco Charter Section 16.110. Prop C established a limitation on the Inclusionary Housing Cost Obligation that the City could impose on residential development projects. Prop C set forth certain exceptions to this limitation, including but not limited to circumstances in which a project receives a 20% or greater increase in developable residential uses, as measured by a change in height limits, Floor Area Ratio limits, or use, over prior zoning, or a 50% or greater increase in residential densities over prior zoning, through a special use district or other local legislation adopted after November 6, 2012. The Divisadero Street NCT and the Fillmore Street NCT rezonings were adopted after this date.
3. The City conducted a Nexus Study in 2007, performed by Keyser Marston and Associates, in support of the Inclusionary Affordable Housing Program, or an analysis of the impact of development of market rate housing on affordable housing supply and demand. The Board of Supervisors reviewed the Nexus Study and staff analysis and report of the Study and, on that basis, found that the Study supported the inclusionary affordable housing requirements combined with the additional affordable housing fee set forth in Planning Code Sections 415 et seq., prior to enactment of Prop C. The City is now in the process of updating this nexus analysis.
4. The 2015 rezoning of the Divisadero and Fillmore NCTs will allow a 20% or greater increase in residential densities over prior zoning, or a 50% increase in residential density, through a special use district, or other local legislation adopted after November 6, 2012, on certain sites contained within the two NCTs. Current Charter Section 16.110 contains exemptions that would allow imposition of a higher Inclusionary Housing Cost Obligation because the Divisadero and Fillmore NCT rezonings took place after November 6, 2012 and result in higher development potential for certain sites located within both NCTs.

5. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are, *on balance*, consistent with the Objectives and Policies of the General Plan (Staff discussion is added in *italic font* below):

HOUSING ELEMENT

OBJECTIVE 4

FOSTER A HOUSING STOCK THAT MEETS THE NEEDS OF ALL RESIDENTS ACROSS LIFECYCLES.

Policy 4.4

Encourage sufficient and suitable rental housing opportunities, emphasizing permanently affordable rental units wherever possible.

The proposed ordinance will require more inclusionary units than is currently required in the Planning Code. Inclusionary units can be rental and are permanently affordable housing.

OBJECTIVE 7

SECURE FUNDING AND RESOURCES FOR PERMANENTLY AFFORDABLE HOUSING, INCLUDING INNOVATIVE PROGRAMS THAT ARE NOT SOLELY RELIANT ON TRADITIONAL MECHANISMS OR CAPITAL.

Policy 7.1

Expand the financial resources available for permanently affordable housing, especially permanent sources.

The proposed ordinance will increase the amount of money that individual developers would have to pay into the City's Housing Trust Fund. This money would then be used to pay for permanently affordable housing.

OBJECTIVE 8

BUILD PUBLIC AND PRIVATE SECTOR CAPACITY TO SUPPORT, FACILITATE, PROVIDE AND MAINTAIN AFFORDABLE HOUSING.

Policy 8.1

Support the production and management of permanently affordable housing.

This ordinance supports the production of permanently affordable housing by increasing the inclusionary housing requirement for individual projects.

6. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future

opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance will not have a negative effect on existing neighborhood serving retail uses as it only addresses the City's inclusionary housing program.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance will help maintain a diversity of housing types and income types in the City's various neighborhoods; helping to preserving the cultural and economic diversity of the City's neighborhoods.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance will have a positive effect on the City's supply of affordable housing by increasing the inclusionary requirement for individual projects with 25 units or more.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking as it only addresses the City's inclusionary housing program.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance will not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance will not have an adverse effect on City's preparedness against injury and loss of life in an earthquake because the Ordinance modifies the City's inclusionary housing requirements.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance will not have an adverse effect on the City's Landmarks and historic buildings because the Ordinance only addresses the City's inclusionary housing requirements.


8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance will not have an adverse effect on the City's parks and open space and their access to sunlight and vistas because it only addresses the City's inclusionary housing requirements.

7. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance with the modification as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on June 30, 2016.



Jonas P. Ionin
Commission Secretary

AYES: Antonini, Hillis, Moore, Richards

NOES: Wu

ABSENT: Fong, Johnson

ADOPTED: June 30, 2016



SAN FRANCISCO PLANNING DEPARTMENT

Memo to the Planning Commission

HEARING DATE: JUNE 30, 2016
Continued from the May 19, 2016 Hearing
90 DAY DEADLINE: JULY 4, 2016

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Date: June 30, 2016
Project Name: **Change in Affordable Housing Fee or Units in Rezoned Divisadero and Fillmore NCTDs**
Case Number: 2015-016599PCA [Board File No. 151258]
Initiated by: Supervisor Breed / Introduced December 8, 2015 and April 5, 2016
Staff Contact: Menaka Mohan, Legislative Affairs
menaka.mohan@sfgov.org; 415-575-9141
Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org; 415-558-6362
Recommendation: **Recommend Approval with Modifications**

PLANNING CODE AMENDMENT

The Way It Is Now:

1. Properties along Divisadero Street and Fillmore Street Neighborhood Commercial Transit District are subject to the rules of Section 415, which require that any housing project of ten or more units is subject to the inclusionary housing ordinance.

For Projects with 10-24 units:

- a. **Fee.** Planning Code Section 415.7 typically requires the following of Project Sponsors who electing the In-Lieu Fee to pay a fee equivalent to 20% of the total number of units produced in the principal project. The fee is deposited into the Housing Trust Fund and is generally required to be used to increase the supply of housing affordable to qualifying households.
- b. **Onsite Housing.** If the project sponsor chooses to provide affordable units on-site of the principal project, the project sponsor should provide 12% of all units constructed as inclusionary units.
- c. **Off-Site Housing.** Code Section 415.7 typically requires Project Sponsors electing the Off-Site alternative to construct off-site units equivalent to 20% of the total number of units produced in the principal project. These units are dedicated to low and very low-income households.

For Projects with 25 units or more:

- a. **Fee.** Planning Code Section 415.7 typically requires the following of Project Sponsors who electing the In-Lieu Fee to pay a fee equivalent to 33% of the total number of units produced in the principal project. The fee is deposited into the Housing Trust Fund and

is generally required to be used to increase the supply of housing affordable to qualifying households.

Projects that are currently in the pipeline may be subject to a lower inclusionary rate, depending on when their EE application was submitted and where they are located. Application dates for the grandfathering of existing projects would be established by the dates of a completed EE application that was submitted as follows:

- prior to 1/1/2013, the inclusionary rates existing on January 12, 2016.
- prior to 1/1/2014, the inclusionary rate is 25%
- prior to 1/1/2015, the inclusionary rate is 27.5%
- on or prior to 1/12/2016, the inclusionary rate is 30%

- b. **Onsite Housing.** If the project sponsor chooses to provide affordable units on-site of the principal project, the project sponsor should provide 25% of all units constructed as inclusionary units with a minimum of 15% of the units affordable to low and very low-income households and another 10% of the units affordable to very low, low- or middle income households.

Projects that are currently in the pipeline may be subject to a lower inclusionary rate, depending on when their Environmental Evaluation (EE) application was submitted and where they are located (See Exhibit A). Application dates for the grandfathering of existing projects would be established by the dates of a completed EE application that was submitted as follows:

- prior to 1/1/2013, the inclusionary rates existing on January 12, 2016.
- prior to 1/1/2014, the inclusionary rate is 13%
- prior to 1/1/2015, the inclusionary rate is 13.5%
- on or prior to 1/12/2016, the inclusionary rate is 14.5%

- c. **Off-Site Housing.** Code Section 415.7 typically requires Project Sponsors electing the Off-Site alternative to construct off-site units equivalent to 33% of the total number of units produced in the principal project. These units are dedicated to low and very low-income households.

Projects that are currently in the pipeline may be subject to a lower inclusionary rate, depending on when their EE application was submitted and where they are located. Application dates for the grandfathering of existing projects would be established by the dates of a completed EE application that was submitted as follows:

- prior to 1/1/2013, the inclusionary rates existing on January 12, 2016.
- prior to 1/1/2014, the inclusionary rate is 25%
- prior to 1/1/2015, the inclusionary rate is 27.5%
- on or prior to 1/12/2016, the inclusionary rate is 30%

The Way It Would Be:

Please note that the proposed ordinance intends to incorporate all of the changes as outlined under the current proposal; however, the legislation was not introduced prior to the publication of this case report.

Staff anticipates the recommendations will be incorporated into legislation that will be introduced prior to the June 30th Planning Commission hearing.

1. Developments that are proposed along the Divisadero Street and or the Fillmore Neighborhood Commercial Transit District that have increased residential potential due to the rezoning would be subject to the following:

For Projects with more than 10 units-there are no separate provisions for projects with greater than 25 units.

- a. **Fee.** The project shall pay an affordable housing fee equivalent to a requirement to provide 25% of the units in the principal project as affordable units as calculated in Section 415.5
- b. **On-Site Housing.** If the project sponsor chooses to provide affordable units on-site of the principal project, the project sponsor should provide 23% of all units constructed on the project site as affordable housing.
- c. **Off-Site Housing.** If the project sponsor chooses to provide the units off-site from the principal project, the project sponsor shall construct or cause to be constructed 25% of all units constructed on the principal project as affordable units subject to the requirements of Section 415.7
- d. **Grandfathering.** There are no grandfathering provisions, however the ordinance states that if the voters approve the proposed Charter Amendment on June 7, 2016 and the Board adopts permanent inclusionary affordable housing requirements that are higher than those set forth in this ordinance, the higher requirement shall apply.

BACKGROUND

The Planning Commission considered the establishment of the Divisadero Street and Fillmore NCT District on April 2, 2015 (Board File No. 150081, 150082, and Case No. 2015-001388PCA, 2015-001268PCA), and the new districts became effective on August 16, 2015. The rezoning of Divisadero and Fillmore Neighborhood Commercial Districts kept the underlying land use controls but changed the residential density to be governed by height/bulk limitations, open space, rear yard setbacks, and exposure requirements, as opposed to a lot area ratio.

The Planning Commission [Commission] held an adoption hearing for the proposed Ordinance on May 19, 2016. At the hearing, the Commission directed staff to look at the development potential along the corridors and consider the impact of the new inclusionary ordinance, or trailing legislation. In general, the proposed legislation increases the fee amounts for the recently rezoned Neighborhood Commercial Districts.

ISSUES AND CONSIDERATIONS

Inclusionary Affordable Housing Fees

At the last Planning Commission hearing it was unknown whether the trailing legislation for the new inclusionary rates would become effective as the ordinance was dependent on Proposition C passing on the June 7, 2016 election. Proposition C passed with over 67% of the vote, which instituted the new inclusionary rates. At the last hearing, the rates for the Divisadero and Fillmore NCT Districts and the

inclusionary rates differed. The rates for recently passed Citywide Inclusionary Program and those proposed by this Ordinance were based on 2007 Nexus Study completed by Keyser Marston Associates (KMA).¹ The Divisadero and Fillmore NCT rates were slightly lower as it is generally best practice to set an impact fee lower than the full nexus. The Project Sponsor, however, has agreed to make the on-site, off-site, and fees consistent with the inclusionary rates. This ensures that sites within that have similar zoning to the Divisadero and Fillmore corridors are treated the same. In addition, the proposed fees for the Divisadero and Fillmore Corridor were not a significantly higher percentage (25%) than the proposed on-site (23%) which could encourage project sponsors to “fee out” instead of provide units on-site. The Project Sponsor has also agreed that the fees generated through Divisadero and Fillmore Affordable Housing Fee should be deposited into the Citywide Affordable Housing Fund.

Table 1: Inclusionary Affordable Housing Fee and Proposed Affordable Housing Fee for Divisadero and Fillmore NCT

Program	Inclusionary Rates	Divisadero/Fillmore NCT-as proposed
Fee (10-24 units)	20%	25%
Fee (≥25 units)	33%	25%
On-Site (10-24 units)	12%	23%
On-Site (≥25 units)	25% (15% VL), and LI 10%(VLI, LI, MI)	23%
Off-site (10-24 units)	20%	25%
Off-site (≥25 units)	33% (20% to VLI and LI), 13% (MI)	25%

Proposed Trailing Legislation Grandfathering Provisions

The proposed trailing legislation for the Charter amendment being voted on this June provides a lower inclusionary rate for projects in the pipeline depending on when the project submitted an Environmental Evaluation (EE), namely if the EE application was submitted, the new inclusionary rate would be as follows for projects providing affordable housing on-site:

- prior to 1/1/2014, the inclusionary rate would be 13%
- prior to 1/1/2015, the inclusionary rate would be 13.5%
- on or prior to 1/12/2016, the inclusionary rate would be 14.5%
- After 1/12/2016, 25% of units would subject to the new inclusionary rates, 15% for low and very low income households and 10% affordable to middle income households.

¹ Study can be found online at: http://sf-planning.org/sites/default/files/FileCenter/Documents/8380-FINAL%20Resid%20Nexus_04-4-07.pdf

Note that these rates are dependent on the amendments to the Charter being approved by voters at the June 7, 2016 election. The ordinance being considered under this report does not grandfather any projects; therefore, in the case of a project that has an EE filed that *triggers* a lower inclusionary rate, the Divisadero and Fillmore fee rate would apply.

As of Q1 2016, there are no new pipeline projects (including PPAs) in the Fillmore NCT, but there are a few projects in the Divisadero NCT.

- PL FILED: 400-444 Divisadero Street & 1048-1064 Oak Street 154 units residential building with commercial (PPA letter issued 9/17/15, ENV application submitted 11/24/15)
- PL FILED: 650 Divisadero Street 9 unit residential condominium (ENV submitted 1/21/14 – project is now 60 units over parking and commercial)
- BP ISSUED: 834 Divisadero Street change of use from auto body repair shop to retail
- ON HOLD: 1003 Page Street convert 1 residential unit to commercial tourist hotel

Determination of Residential Potential

Soft Site Analysis

Typically the Department analyzes development potential through a soft site analysis. The soft site analysis includes parcels which exceed 5% but not 30% of potential development by square footage as *potential* candidates for development.

Potential development is counted as residential units and in commercial gross square feet. A parcel may have residential, commercial, or residential and commercial development capacity depending on the specific combination of zoning and height district. The development potential may also be controlled by open space and set back requirements. Once the development potential for residential and commercial space is calculated, information on existing housing units and commercial square footage can be used to calculate the net potential for each parcel. For example, for a parking lot or a one-story building in an 80-foot height zoning district, most of the potential capacity remains unused or underdeveloped; for two-story homes in most residential neighborhoods, however, the potential capacity would be considered built out.

To calculate the development potential for the Divisadero and Fillmore NCT Corridor the soft site analysis assumed that sites that were 30% developed were potential candidates for redevelopment. The analysis was further refined by removing sites with residential units, historic resources, community resources, and irregular shaped lots. To account for open space requirements, lots less than 2,500 square feet were multiplied by a factor of 0.75 while sites with larger areas were multiplied by 0.5 assuming that larger sites need more circulation. Unit size was assumed to be 1,000 gross square feet and the ground floor was assumed to be commercial. Finally, this analysis includes both pipeline projects along the Divisadero Corridor on 400-444 Divisadero Street/1048-1064 Oak Street and 650 Divisadero Street. Generally, pipeline projects are not included in the analysis of development potential. The two projects were included in this analysis as they are projects that have submitted EEs and would be subject to a higher fee inclusionary rate.

Under the old zoning regulations (NCD), the maximum number of units that could potential be built would be around 113² units and under the new NCT zoning the most that could be built would be 293 units. This is an increase of 158%. Note that the older NCD zoning is restrictive and may not have made

² Note that this is an estimate based on best available data

sites feasible to develop. For example, a site may be zoned to allow a maximum of 50 units, but the unit size would be too large to make development feasible, therefore leaving a site vacant or underdeveloped.

The ordinance states the Planning Department will determine the development potential of a site as it relates to a specific provision in the Charter, namely section in the 16.110(h)(1)(B)(iii)³ which describes the Housing Trust Fund. Although the language in the Charter has changed, the specific language should be still be included to determine the residential potential in the ordinance that references the new charter language as well as the old zoning for the Divisadero and Fillmore Commercial Districts.

Feasibility Analysis

The Board of Supervisors passed a resolution in March of 2016 establishing a City policy to maximizing a feasible inclusionary affordable housing requirement. The resolution directs the Controller's office with the assistance of independent analysts to complete an economic feasibility analysis of the City's Inclusionary Housing fees and off-site alternatives. To date, the study has yet to be completed but is anticipated to be available at the end of July.

Although the study is not available, the NCT zoning on the Divisadero and Fillmore corridors is not new to the City. Several corridors, including, Mission, Hayes-Gough, and Valencia are also zoned NCT with their residential density determined by height/bulk limitations, open space, rear yard setbacks, and exposure requirements, as opposed to a lot area ratio. A new development project on any of these corridors is subject to the new inclusionary rates without additional analysis to ensure that the inclusionary rates are sufficient.

REQUIRED COMMISSION ACTION

The proposed Resolution is before the Commission so that it may recommend approval or disapproval to the Board of Supervisors.

PROPOSED RECOMMENDATION

The Department recommends that the Commission recommend approval with modifications of the proposed Ordinance to the Board of Supervisors.

The project sponsor plans to incorporate the following recommendations which were discussed at the May 19th, 2016 Planning Commission Hearing. The sixth recommendation acknowledges that if the inclusionary rates were to change in similar NCT corridors, the rates in Divisadero and Fillmore NCT would also change and has been accepted by the project sponsor:

1. Create Consistency with Varying Inclusionary Affordable Housing Fees
2. Affordable housing fees generated through development on the Divisadero Street NCT and Fillmore Street NCT will be deposited into the Citywide Affordable Housing Fund

³The exact language of the Charter amendment is as follows: A project that, through a Special Use District or other local legislation adopted after November 6, 2012, receives (1) a 20% or greater increase in developable residential gross floor area, as measured by a change in height limits, Floor Area Ratio limits, or use, over prior zoning, or (2) a 50% or greater increase in residential densities over prior zoning. Notwithstanding the foregoing, should a project sponsor seek to develop a project in accordance with zoning in place immediately before the establishment of the Special Use District, this subsection (h) shall apply.

3. Include a subsection in Section 415 that Describes the New Affordable Housing Fee for the Divisadero and Fillmore NCT Districts
4. If the Economic Feasibility Study that is required as part of the Inclusionary Ordinance indicates that Corridors with NCT Zoning should have rates that are higher than the rest of the City, the Divisadero and Fillmore NCT Inclusionary rates should also be higher

BASIS FOR RECOMMENDATION

The Department supports a higher fee rate and a higher percentage of onsite inclusionary for the Divisadero and Fillmore Neighborhood Transit Districts because of the recent rezoning of the Districts and the possibility of producing more affordable units, however modifications described below will ensure that the proposed inclusionary rates are not lower than the City wide rates and they will add greater clarity making the ordinance easier to implement.

Recommendation 1: Create Consistency with Varying Inclusionary Affordable Housing Fees

The Department recommends that the ordinance mirror the Inclusionary Affordable Housing Fee regarding on-site, off-site, and size of the project. That would mean that projects under a 24 units would be subject to the current rate of 12%, and project with 25 units or more would be subject to the new inclusionary rates. As currently written the proposed rates are lower and higher than the Citywide rates. The Department is concerned that setting a higher rate for projects with less than 25 units could make these projects less attractive in the Divisadero and Fillmore Districts than in other areas with similar zoning. For example, if the proposed inclusionary ordinance were to become effective, a project with less than 25 units in Mission NCT would be subject to the 12% inclusionary rate while a project in the Divisadero NCT would be subject to 23% on-site inclusionary requirement. The new fees would be described as below:

Table 2: Inclusionary Affordable Housing Fee and Proposed Affordable Housing Fee for Divisadero and Fillmore NCT

Program	Citywide Inclusionary Rates	Proposed Divisadero/Fillmore NCT Rates
Fee	33%	33%
Fee (10-24 units)	20%	20%
On-Site (10-24 units)	12%	12%
On-Site (≥25 units)	25% (15% VL and LI and 10% VLI, LI, MI)	25%(15% VL and LI and 10% VLI, LI, MI)
Off-site	33% (20% to VLI and LI, 13% VLI, LI, MI)	33% (20% to VLI and LI, 13% VLI, LI, MI)

Note that the adopted City rates are still lower than what is described in the Divisadero Community Plan, drafted by Affordable Divisadero, which states that “developments over 10 units should have 50% of the units affordable to households under the San Francisco median income and one half of those affordable units must be affordable to households earning below or up to 50% of the SF AMI, one fourth must be affordable to households earning between 50%-80% of the SF AMI and the remaining affordable units

must be affordable to households earning between 80-100% of the AMI.⁴ The Department does not want institute requirements in Divisadero and Fillmore NCT that are above and beyond other parts of the City as it may have the consequence of making development along the corridors infeasible or unattractive as compared to other parts of the City.

Recommendation 2: Affordable housing fees generated through development on the Divisadero Street NCT and Fillmore Street NCT should be deposited into the Citywide Affordable Housing Fund

To date, all affordable housing fees generated through the Inclusionary Program are deposited in the Citywide Affordable Housing Fund. This allows the City to maximize funds generated throughout the City to increase the affordable housing supply; if the funds are restricted to one specific zoning district it limits the ability of the City to access those funds for affordable housing in other areas of the City. Furthermore, this would set a new precedent for the Citywide Inclusionary program and could lower the total amount of money available in the Citywide Fund by siphoning off one particular zoning district. Therefore, the Department recommends amending the language in the ordinance to have the same criteria for the use of funds as the Citywide Inclusionary Program.

Recommendation 3: Clarify Determination of Residential Potential and Grandfathering for Divisadero and Fillmore NCT Pipeline Projects.

The ordinance leaves the determination of residential potential to the Planning Department. To determine the residential potential the Department recommends adding the old Divisadero and Fillmore Neighborhood Commercial District density requirement directly into the ordinance. For reference, the density for Divisadero NCD was one unit per 800 square feet of lot area and Fillmore NCD was 1 unit to 600 square feet of lot area with one parcel of RH-3 (three units per lot), RM-4 (one unit per 200 square feet of lot area) and RM-3 (one unit per 400 square feet of lot area)⁵.

The City Charter now gives the Board of Supervisors the ability to change the inclusionary rate through legislation and no longer needs a calculation based on residential potential. At the same time, projects in the Divisadero and Fillmore NCT Districts are benefiting from the recent rezoning that increased the development potential for some projects. Given that, the Department recommends that projects receiving a 50% increase or more in residential density as compared to the old NCD zoning should be exempt from the grandfathering provisions in the trailing legislation. In other words, projects that have already filled an EE application and have a 50% increase in residential density compared to the old NCD zoning would be subject to the full on-site inclusionary rate, fee, and off-site requirement. If a project with an EE application already submitted has a proposed residential density that is not a 50% increase from old NCD zoning, the grandfathering rates outlined in the inclusionary program would apply. Without this ordinance, projects in the Divisadero and Fillmore pipeline are subject to the Grandfathering rates in the inclusionary ordinance which are lower than what is proposed in this Ordinance:

⁴ The full plan can be found in Exhibit C.

⁵ The specific Block and Lots are as follows: 0798/001, 0779/031, 0702/038

Table 3: Pipeline Projects in Divisadero NCT as of Q1 2016

Program	400-444 Divisadero Street & 1048-1064 Oak Street-EE-11/24/15	650 Divisadero Street-EE1/21/14s
Fee	30%	27.5%
On-Site (≥25 units)	14.5%	13.5%
Off-site	30%	27.5%

Recommendation 4: Include a Subsection in Section 415 that Describes the New Affordable Housing Fee for the Divisadero and Fillmore NCT Districts

Currently, the ordinance creates a new code section (section 428) to implement the new affordable housing fee in the Divisadero and Fillmore NCT Districts. Given that this fee follows the same procedures for the Inclusionary Affordable Housing Program-described in detail in section 415-a new subsection rather than a new code section could describe the different fee rates and direct the public to one consistent code section.

Recommendation 5: If the Economic Feasibility Study that is required as part of the Inclusionary Ordinance indicates that Corridors with NCT Zoning should have rates that are higher than the rest of the City, the Divisadero and Fillmore NCT Inclusionary rates should also be higher.

The City is currently waiting on the Economic Feasibility study [Study]. The purpose of this Study is to determine how to set the inclusionary housing obligations in San Francisco at the maximum economically feasible amount in market rate housing development to create housing for lower-, moderate- and middle-income households, with guidance from the City’s Nexus Study. The Controller, in consultation with relevant City Departments and the Inclusionary Housing Technical Advisory Committee, is responsible for conducting the Study every three years. If the Study, ever indicates that a higher rate can be accommodated in other NCT Districts, such as but not limited to Mission, Valencia, or Hayes Gough, the inclusionary rates in Divisadero and Fillmore would also apply.

ENVIRONMENTAL REVIEW

The proposed Ordinance is not defined as a project under CEQA Guidelines Section 15378 and 15060(c) (2) because it does not result in a physical change in the environment.

PUBLIC COMMENT

To date the Planning Department has received public comment from Gus Hernandez, who represents Affordable Divisadero.

RECOMMENDATION: Approve with Recommendations

Attachments:

- Exhibit A: Draft Resolution
- Exhibit B: BOS File No. 150622
- Exhibit C: Public Comment



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment

HEARING DATE: MAY 19, 2016

90 DAY DEADLINE: JULY 4, 2016

Date: May 12, 2016
Project Name: **Change in Affordable Housing Fee or Units in Rezoned Divisadero and Fillmore NCTDs**
Case Number: 2015-016599PCA [Board File No. 151258]
Initiated by: Supervisor Breed / Introduced December 8, 2015 and April 5, 2016
Staff Contact: Menaka Mohan, Legislative Affairs
menaka.mohan@sfgov.org; 415-575-9141
Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org; 415-558-6362
Recommendation: **Recommend Approval with Modifications**

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PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code to establish a higher payment of the affordable housing fee or provide additional affordable housing for certain sites that obtained higher residential potential as a result of the rezoning of Divisadero and Fillmore Neighborhood Commercial Transit Districts. The ordinance also states that if the voters approve the proposed Charter Amendment on June 7, 2016 and the Board adopts permanent inclusionary affordable housing requirements that are higher than those set forth in this ordinance, the higher requirement shall apply.

The Way It Is Now:

1. Properties along Divisadero Street and Fillmore Street Neighborhood Commercial Transit District are subject to the rules of Section 415, which require that any housing project of ten or more units is subject to the inclusionary housing ordinance.
 - a. **Fee.** Planning Code Section 415.7 typically requires Project Sponsors electing the In-Lieu Fee to pay a fee equivalent to 17-20% of the total number of units produced in the principal project. The fee is deposited into the Housing Trust Fund and is generally required to be used to increase the supply of housing affordable to qualifying households.
 - b. **Onsite Housing.** If the project sponsor chooses to provide affordable units on-site of the principal project, the project sponsor should provide 12% of all units constructed as inclusionary units.
 - c. **Off-Site Housing.** Code Section 415.7 typically requires Project Sponsors electing the Off-Site alternative to construct off-site units equivalent to 17-20% of the total number of units produced in the principal project. These units are dedicated to low and very low-income households.

The Way It Would Be:

1. Developments that are proposed along the Divisadero Street and or the Fillmore Neighborhood Commercial Transit District that have increased residential potential due to the rezoning would be subject to the following:
 - a. **Fee.** The project shall pay an affordable housing fee equivalent to a requirement to provide 25% of the units in the principal project as affordable units as calculated in Section 415.5
 - b. **On-Site Housing.** If the project sponsor chooses to provide affordable units on-site of the principal project, the project sponsor should provide 23% of all units constructed on the project site as affordable housing.
 - c. **Off-Site Housing.** If the project sponsor chooses to provide the units off-site from the principal project, the project sponsor shall construct or cause to be constructed 25% of all units constructed on the principal project as affordable units subject to the requirements of Section 415.7

BACKGROUND

The Planning Commission considered the establishment of the Divisadero Street and Fillmore NCT District on April 2, 2015 (Board File No. 150081, 150082, and Case No. 2015-001388PCA, 2015-001268PCA), and the new districts became effective on August 16, 2015. The rezoning of Divisadero and Fillmore Neighborhood Commercial Districts kept the underlying land use controls but changed the residential density to be governed by height/bulk limitations, open space, rear yard setbacks, and exposure requirements, as opposed to a lot area ratio.

Proposition C passed by voter in November of 2012 established the Housing Trust Fund. Proposition C established a limitation on the Inclusionary Housing Cost Obligation that the City could impose residential development projects. The establishment of Prop C set forth specific limitations on the Inclusionary Housing Cost Obligation that the City could impose on residential projects; however, Prop C set forth some exceptions. One exception states that in circumstance in which a project receives a 20% or greater increase in developable residential area as a result of a rezoning, height limit, Floor Area Ratio, limits, or use over prior zoning, or a 50% or greater increase in residential densities over prior zoning, the City can impose a higher Inclusionary Housing Cost Obligation. Given that the Divisadero and Fillmore NCT rezoning could constitute a 50% or greater increase in residential density over the previous zoning, for some projects a higher Inclusionary Rate can be imposed.

This June, San Francisco voters will be asked to vote on another charter amendment, also named Proposition C, that will increase the inclusionary rates for project to 25 percent for the on-site unit option, and 33 percent for the off-site and in-lieu fee options. The proposed charter amendment will also allow the Board of Supervisors to remove the Inclusionary Rates from the Charter and place them in the Planning Code so that they can be adjusted periodically based on market conditions. The proposed charter amendment does not have provision that grandfather's existing projects.

ISSUES AND CONSIDERATIONS

Varying Inclusionary Affordable Housing Fee

On March 31, 2016, the Planning Commission reviewed trailing legislation (BOS File No. 160255) to the proposed Charter amendment (Prop C, 2016) that would increase the Inclusionary Affordable Housing Fee for the projects with 25 units or more to 25 percent, 15 percent for low and very low income households and 10 percent affordable to middle income households. The new rates for the rezoned Divisadero and Fillmore Neighborhood Commercial Corridor are different than the proposed inclusionary rates, see the Table 1 below.

Table 1: Proposed Inclusionary Affordable Housing Fee and Proposed Affordable Housing Fee for Divisadero and Fillmore NCT

Program	Current Rate	Proposed Inclusionary	Divisadero/Fillmore NCT
Fee	17-20%	30%	25%
On-Site (10-24 units)	12%	12%	23%
On-Site (≥25 units)	12%	25% (15% VL), and LI) 10%(VLI, LI, MI)	23%
Off-site	17-20%	33% (20% to VLI and LI), 13% (MI)	25%

Proposed Trailing Legislation Grandfathering Provisions

The proposed trailing legislation for the Charter amendment being voted on this June provides a lower inclusionary rate for projects in the pipeline depending on when the project submitted an Environmental Evaluation (EE), namely if the EE application was submitted, the new inclusionary rate would be as follows for projects providing affordable housing on-site:

- prior to 1/1/2014, the inclusionary rate would be 13%
- prior to 1/1/2015, the inclusionary rate would be 13.5%
- on or prior to 1/12/2016, the inclusionary rate would be 14.5%
- After 1/12/2016, 25% of units would subject to the new inclusionary rates, 15% for low and very low income households and 10% affordable to middle income households.

Note that these rates are dependent on the amendments to the Charter being approved by voters at the June 7, 2016 election. The ordinance being considered under this report does not grandfather any projects; therefore, in the case of a project that has an EE filed that would *trigger* a lower inclusionary rate *if* the new inclusionary rates become effective this June, the Divisadero and Fillmore fee rate would apply. See Table 2 below for the fee rate in this scenario for a project that has submitted an EE before January 12, 2016 for a project that chooses to provide affordable units on-site.

Table 2: Proposed Inclusionary Affordable Housing Fee Grandfathering for an EE Filed Before January 12, 2016 and the Proposed Affordable Housing Fee for Divisadero and Fillmore NCT

Program	Current Rate	Proposed Inclusionary	Proposed Inclusionary Grandfathered EE Rate	Proposed Divisadero/Fillmore Rate
Fee	17-20%	30%	30%	25%
On-Site	12%	25% (15% VL), and LI) 10%(VLI, LI, MI)	14.50%	23%
Off-site	17-20%	33% (20% to VLI and LI), 13% (MI)	30%	25%

As of Q1 2016, there are no new pipeline projects (including PPAs) in the Fillmore NCT, but there are a few projects in the Divisadero NCT.

- PL FILED: 400-444 Divisadero Street & 1048-1064 Oak Street 154 units residential building with commercial (PPA letter issued 9/17/15, ENV application submitted 11/24/15)
- PL FILED: 650 Divisadero Street 9 unit residential condominium (ENV submitted 1/21/14 – project is now 60 units over parking and commercial)
- BP ISSUED: 834 Divisadero Street change of use from auto body repair shop to retail
- ON HOLD: 1003 Page Street convert 1 residential unit to commercial tourist hotel

Determination of Residential Potential

The ordinance states the Planning Department will determine the development potential of a site as it relates to a specific provision in the Charter, namely section in the 16.110(h)(1)(B)(iii)¹ which describes the Housing Trust Fund. Given that the language in the Charter may change, the specific language should be in the ordinance that references the new charter language as well as the old zoning for the Divisadero and Fillmore Commercial Districts.

IMPLEMENTATION

The current legislation has a clause stating that for projects on the Divisadero and Fillmore NCT Districts the Planning Department shall determine that the residential development potential on a site has been increased through the rezoning. Without a direct reference in the ordinance to the previous zoning it is not clear to the public or the Department how to determine the increased residential density as it relates

¹The exact language of the Charter amendment is as follows: A project that, through a Special Use District or other local legislation adopted after November 6, 2012, receives (1) a 20% or greater increase in developable residential gross floor area, as measured by a change in height limits, Floor Area Ratio limits, or use, over prior zoning, or (2) a 50% or greater increase in residential densities over prior zoning. Notwithstanding the foregoing, should a project sponsor seek to develop a project in accordance with zoning in place immediately before the establishment of the Special Use District, this subsection (h) shall apply.

to the Charter. It also creates a new section of code for the new fee, which is confusing given that section 415 already governs housing requirements for residential projects.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. Create Consistency with Varying Inclusionary Affordable Housing Fees
2. Modify Grandfathering for Divisadero and Fillmore NCT Pipeline Projects
3. Clarify Determination of Residential Potential
4. Include a Subsection in Section 415 that Describes the New Affordable Housing Fee for the Divisadero and Fillmore NCT Districts

BASIS FOR RECOMMENDATION

The Department supports a higher fee rate and a higher percentage of onsite inclusionary for the Divisadero and Fillmore Neighborhood Transit Districts because of the recent rezoning of the Districts and the possibility of producing more affordable units, however modifications described below will ensure that the proposed inclusionary rates are not lower than the City wide rates should Prop C pass this June, and they will add greater clarity making the ordinance easier to implement.

Recommendation 1: Create Consistency with Varying Inclusionary Affordable Housing Fees

The Department recommends that the ordinance mirror the proposed trailing legislation for the Inclusionary Affordable Housing Fee regarding on-site, off-site, and size of the project. That would mean that projects under a 24 units would be subject to the current rate of 12%, and project with 25 units or more would be subject to the proposed inclusionary rates in the proposed trailing legislation. The Department is recommending this change because as currently written the proposed rates would be lower than the citywide inclusionary rates should Proposition C pass this June. Further, the Department is concerned that setting a higher rate for projects with less than 25 units could make these projects less attractive in the Divisadero and Fillmore Districts than in other areas with similar zoning. For example, if the proposed inclusionary ordinance were to become effective, a project with less than 25 units in Mission NCT would be subject to the 12% inclusionary rate while a project in the Divisadero NCT would be subject to 23% on-site inclusionary requirement.

Table 3: Proposed Inclusionary Affordable Housing Fee and Proposed Changes to the Affordable Housing Fee for Divisadero and Fillmore NCT

Program	Current Rate	Proposed Inclusionary	Proposed Changes to Divisadero/Fillmore
Fee	17-20%	30%	30%

Fee (10-24 units)	17-20%	20%	20%
On-Site (10-24 units)	12%	12%	12%
On-Site (≥25 units)	12%	25% (15% VL), and LI 10%(VLI, LI, MI)	25%
Off-site	17-20%	33% (20% to VLI and LI), 13% (MI)	33%

Recommendation 2: Modify Grandfathering for Divisadero and Fillmore NCT Pipeline Projects

In the past, the Department has recommended that fair and uniform grandfathering practices be applied to projects in the pipeline. Projects in the Divisadero and Fillmore NCT Districts, however, are benefiting from the recent rezoning that significantly increased the development potential for some projects. Given that, the Department recommends that projects receiving a 50% increase or more in residential density as compared to the old NCD zoning should be exempt from the grandfathering provisions in the trailing legislation. In other words, projects that have already filled an EE application and have a 50% increase in residential density compared to the old NCD zoning would be subject to the full on-site inclusionary rate, fee, and off-site requirement. If a project with an EE application already submitted has a proposed residential density that is not a 50% increase from old NCD zoning, the grandfathering rates in the trailing inclusionary fee legislation would apply.

Recommendation 3: Clarify Determination of Residential Potential

The ordinance leaves the determination of residential potential to the Planning Department. To determine the residential potential the Department recommends adding the old Divisadero and Fillmore Neighborhood Commercial District density requirement directly into the ordinance. For reference, the density for Divisadero NCD was one unit per 800 square feet of lot area and Fillmore NCD was 1 unit to 600 square feet of lot area with one parcel of RH-3 (three units per lot), RM-4 (one unit per 200 square feet of lot area) and RM-3 (one unit per 400 square feet of lot area)². Additionally, the ordinance should reference the Charter section that states an increase in the inclusionary rate can be applied if a 50% or greater increase in residential densities exists over prior zoning.

Given that the charter language may change come June 7, 2016, a clause should be added to the proposed ordinance that states that if Section 116 were to change, the new charter language applies. The new charter language eliminates the calculation and gives the Board of Supervisors the ability to change the inclusionary rate through legislation. If the proposed inclusionary rate were to ever increase or decrease due to feasibility the rates should be consistent across the City.

Recommendation 4: Include a Subsection in Section 415 that Describes the New Affordable Housing Fee for the Divisadero and Fillmore NCT Districts

Currently, the ordinance creates a new code section (section 428) to implement the new affordable housing fee in the Divisadero and Fillmore NCT Districts. Given that this fee follows the same procedures for the Inclusionary Affordable Housing Program-described in detail in section 415-a new subsection rather than a new code section could describe the different fee rates and direct the public to one consistent code section.

² The specific Block and Lots are as follows: 0798/001, 0779/031, 0702/038

ENVIRONMENTAL REVIEW

The proposed Ordinance is not defined as a project under CEQA Guidelines Section 15378 and 15060(c) (2) because it does not result in a physical change in the environment.

PUBLIC COMMENT

To date the Planning Department has received no public comment on this legislation.

RECOMMENDATION: Recommendation of Approval with Modifications

Attachments:

Exhibit A: Draft Planning Commission Resolution
Exhibit B: Board of Supervisors File No. 151258

The ordinance proposes that the use of affordable housing fee funds generated from the Divisadero Street NCT and Fillmore NCT be spent according to the following priorities:

1. To increase the supply of housing affordable to qualifying households in the Divisadero Street NCT and the Fillmore Street NCT;
2. To increase the supply of affordable housing within one mile of the boundaries of the Divisadero Street NCT and Fillmore Street NCT, and
3. To increase the supply of housing affordable to qualifying households in the City.

The current Citywide Inclusionary Program and the trailing legislation fees are deposited into the Citywide Affordable Housing Fund, which are distributed by the Mayor's Office of Housing and Community Development (MOHCD) according to the following criteria:

1. To increase the supply of housing affordable to qualifying households;
2. To provide Assistance to low and moderate/middle income homebuyers;
3. To pay administrative fees to MOHCD associated with monitoring and administering compliance of the Inclusionary Program; and
4. To administer the Small Sites Program

Recommendation

1. Affordable housing fees generated through development on the Divisadero Street NCT and Fillmore Street NCT should be deposited into the Citywide Affordable Housing Fund.

Basis for Recommendation

To date, all affordable housing fees generated through the Inclusionary Program are deposited in the Citywide Affordable Housing Fund. This allows the City to maximize funds generated throughout the City to increase the affordable housing supply; if the funds are restricted to one specific zoning district it limits the ability of the City to access those funds for affordable housing in other areas of the City. Furthermore, this would set a new precedent for the Citywide Inclusionary program and could lower the total amount of money available in the Citywide Fund by siphoning off one particular zoning district. Therefore, the Department recommends amending the language in the ordinance to have the same criteria for the use of funds as the Citywide Inclusionary Program.