

1 [Amending the requirements of the Inclusionary Affordable Housing Program.]

2  
3 **Ordinance amending Planning Code Sections 315.2, 315.3, 315.4, 315.5, 315.6, and**  
4 **315.8 related to the Inclusionary Affordable Housing Program to provide that the**  
5 **amendments apply to any housing project that has not received a first site or building**  
6 **permit by the effective date of this legislation; to provide for mandatory lotteries to**  
7 **market new inclusionary units and the maintenance of a list generated from a lottery**  
8 **for units that become available; to require a project sponsor that elects an alternative**  
9 **to providing on-site inclusionary housing to make its election at the time of project**  
10 **approval; to allow project sponsors to use California Debt Limit Allocation Committee**  
11 **(CDLAC) tax-exempt bonds to finance inclusionary units under certain circumstances;**  
12 **to build all off-site inclusionary units within one mile of the principal project and to**  
13 **offer those units as rental housing or as ownership housing affordable to households**  
14 **earning no more than 80% of median income; requiring the Mayor's Office of Housing**  
15 **to adjust the in lieu fee annually and no later than July 1 and to report the adjustment**  
16 **to the Board of Supervisors; requiring the Mayor's Office of Housing to evaluate its**  
17 **monitoring procedures and those of the San Francisco Redevelopment Agency with**  
18 **the goal of establishing one monitoring system for all inclusionary units in the City and**  
19 **County of San Francisco; requiring the Planning Department to submit a completed**  
20 **impact study to the Board of Supervisors and Planning Commission no later than July**  
21 **1, 2006, requiring that the Planning Department form a Technical Advisory Committee**  
22 **to assist in the impact study; and making findings including environmental findings**  
23 **and findings of consistency with the priority policies of Planning Code Section 101.1**  
24 **and the General Plan.**

1                   Note:           Additions are *single-underline italics Times New Roman*;  
2                                   deletions are ~~*strikethrough italics Times New Roman*~~.  
3                                   Board amendment additions are double underlined.  
4                                   Board amendment deletions are ~~strikethrough normal~~.

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

6                   Section 1.    Findings.  The Board of Supervisors of the City and County of San  
7                   Francisco hereby finds and determines:

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

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

17                   (c)    The Planning Department has determined that the actions contemplated in this  
18                   ordinance are in compliance with the California Environmental Quality Act (California Public  
19                   Resources Code sections 21000 et seq.).  Said determination is on file with the Clerk of the  
20                   Board of Supervisors in File No. \_\_\_\_\_ and is incorporated herein by  
21                   reference.

22                   Section 2.  The San Francisco Planning Code is hereby amended by amending  
23                   Sections 315.2, 315.4, 315.5, and 315.8 to read as follows:

24                   **SEC. 315.2.  FINDINGS.**

25                   *The Board of Supervisors hereby finds and declares as follows:*

1 Affordable Housing: The findings in Planning Code Section 315.2 of the Inclusionary

2 Affordable Housing Ordinance are hereby readopted and updated as follows:

3 1. Affordable housing is a paramount statewide concern. In 1980, the Legislature declared  
4 in Government Code Section 65580:

5 (a) The availability of housing is of vital statewide importance, and the early attainment of  
6 decent housing and a suitable living environment for every California family is a priority of the highest  
7 order.

8 (b) The early attainment of this goal requires the cooperative participation of government  
9 and the private sector in an effort to expand housing opportunities and accommodate the housing needs  
10 of Californians of all economic levels.

11 (c) The provision of housing affordable to low-and moderate- income households requires  
12 the cooperation of all levels of government.

13 (d) Local and state governments have a responsibility to use the powers vested in them to  
14 facilitate the improvement and development of housing to make adequate provision for the housing  
15 needs of all economic segments of the community...

16 The Legislature further stated in Government Code Section 65581 that:

17 It is the intent of the Legislature in enacting this article:

18 (a) To assure that counties and cities recognize their responsibilities in contributing to the  
19 attainment of the state housing goal.

20 (b) To assure that counties and cities will prepare and implement housing elements  
21 which...will move toward attainment of the state housing goal.

22 (c) To recognize that each locality is best capable of determining what efforts are required  
23 by it to contribute to the attainment of the state housing goal...

1           The California Legislature requires each local government agency to develop a comprehensive  
2 long-term general plan establishing policies for future development. As specified in the Government  
3 Code (at Sections 65300, 65302(c), and 65583(c)), the plan must (1) "encourage the development of a  
4 variety of types of housing for all income levels, including multifamily rental housing"; (2) "[a]ssist in  
5 the development of adequate housing to meet the needs of low- and moderate-income households"; and  
6 (3) "conserve and improve the condition of the existing affordable housing stock, which may include  
7 addressing ways to mitigate the loss of dwelling units demolished by public or private action."

8           2. San Francisco faces a continuing shortage of affordable housing for very low and low-  
9 income residents. The San Francisco Planning Department reported that for the four year period  
10 between 2000 and 2004, 8,389 total new housing units were built in San Francisco. This number  
11 includes 1,933 units for low and very low-income households out of a total need of 3,930 low and very  
12 low-income housing units for the same period. According to the state Department of Housing and  
13 Community Development, there will be a regional need for 230,743 new housing units in the nine Bay  
14 Area counties from 1999—2006. Of that amount, at least 58 percent, or 133,164 units, are needed for  
15 moderate, low and very low-income households. The Association of Bay Area Governments (ABAG) is  
16 responsible for dividing the total regional need numbers among its member governments which  
17 includes both counties and cities. ABAG estimates that San Francisco's low and very low-income  
18 housing production need from 1999 through 2006 is 7,370 units out of a total new housing need of  
19 20,372 units, or 36% of all units built. Within the past four years, only 23% of all housing built, or  
20 49% of the previously projected housing need for low and very low-income housing for the same  
21 period, was produced in San Francisco. The production of moderate income rental units also fell short  
22 of the ABAG goal. Only 351 moderate income units were produced over the previous four years, or 4%  
23 of all units built, compared to ABAG's call for 28% of all units to be affordable to households of

1 moderate income. Given the need for 3,007 moderate income units over the 4-year period, only 12% of  
2 the projected need for moderate income units was built.

3 3. In response to the above mandate from the California Legislature and the projections of  
4 housing needs for San Francisco, San Francisco has instituted several strategies for producing new  
5 affordable housing units. The 2004 Housing Element of the General Plan recognizes the need to  
6 support affordable housing production by increasing site availability and capacity for permanently  
7 affordable housing through the inclusion of affordable units in larger housing projects. Further, the  
8 City, as established in the General Plan, seeks to encourage the distribution of affordable housing  
9 throughout all neighborhoods and, thereby, offer diverse housing choices and promote economic and  
10 social integration. The 2004 Housing Element calls for an increase in the production of new affordable  
11 housing and for the development of mixed income housing to achieve social and cultural diversity. This  
12 legislation furthers the goals of the State Legislature and the General Plan.

13 4. The 2005 Consolidated Plan for July 1, 2000 - June 30, 2005, issued by the Mayor's  
14 Office of Community Development and the Mayor's Office of Housing, establishes that extreme housing  
15 pressures face San Francisco, particularly in regard to low- and moderate-income residents. Many  
16 elements constrain housing production in the City. This is especially true of affordable housing. As  
17 discussed in the 2004 Housing Element published by the City Planning Department, San Francisco is  
18 largely built out, with very few large open tracts of land to develop. As noted in the 2000 Consolidated  
19 Plan, its geographical location at the northern end of a peninsula inherently prevents substantial new  
20 development. There is no available adjacent land to be annexed, as the cities located on San  
21 Francisco's southern border are also dense urban areas. Thus new construction of housing is limited  
22 to areas of the City not previously designated as residential areas, infill sites, or to areas with  
23 increased density. New market-rate housing absorbs a significant amount of the remaining supply of  
24 land and other resources available for development and thus limits the supply of affordable housing.

1           There is a great need for affordable rental and owner-occupied housing in the City. Housing  
2 cost burden is one of the major standards for determining whether a locality is experiencing inadequate  
3 housing conditions, defined as households that expend 30% or more of gross income for rent or 35% or  
4 more of household income for owner costs. The 2000 Census indicates that 64,400 renter households  
5 earning up to 80% of the area median income are cost burdened. Of these, about 25,000 households  
6 earn less than 50% AMI and pay more than 50% of their income to rent. According to more recent  
7 data from the American Housing Survey, 80,662 total renter households, or 41%, are cost burdened in  
8 2003. A significant number of owners are also cost burdened. According to 2000 Census data, 18,237  
9 of owners are cost-burdened, or 23% of all owner households. The 2003 American Housing Survey  
10 indicates that this level has risen to 29%.

11           The San Francisco residential real estate market is one of the most expensive in the United  
12 States. In May 2005, the California Association of Realtors reported that the median priced home in  
13 San Francisco was \$755,000. This is 18% higher than the median priced home one year earlier, 44%  
14 higher than the State of California median, and 365% higher than the nation average. While the  
15 national homeownership rate is approximately 69%, only approximately 35% of San Franciscans own  
16 their own home. The majority of market-rate homes for sale in San Francisco are priced out of the  
17 reach of low and moderate income households. In May 2005, the average rent for a 2-bedroom  
18 apartment was \$1,821, which is affordable to households earning over \$74,000.

19           These factors contribute to a heavy demand for affordable housing in the City that the private  
20 market cannot meet. Each year the number of market rate units that are affordable to low income  
21 households is reduced by rising market rate rents and sales prices. The number of households  
22 benefiting from rental assistance programs is far below the need established by the 2000 Census.  
23 Because the shortage of affordable housing in the City can be expected to continue for many years, it is  
24 necessary to maintain the affordability of the housing units constructed by housing developers under  
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1 this Program. The 2004 Housing Element of the General Plan recognizes this need. Objective 1 of the  
2 Housing Element is to provide new housing, especially permanently affordable housing, in appropriate  
3 locations which meets identified housing needs and takes into account the demand for affordable  
4 housing created by employment demand. Objective 6 is to protect the affordability of existing housing,  
5 and to ensure that housing developed to be affordable be kept affordable for 50 – 75 year terms, or  
6 even longer if possible.

7 In 2004 the National Housing Conference issued a survey entitled "Inclusionary Zoning: The  
8 California Experience." The survey found that as of March 2003, there were 107 cities and counties  
9 using inclusionary housing in California, one-fifth of all localities in the state. Overall, the  
10 inclusionary requirements were generating large numbers of affordable units. Only six percent of  
11 jurisdictions reported voluntary programs, and the voluntary nature appears to compromise the local  
12 ability to guarantee affordable housing production. While there was a wide range in the affordability  
13 percentage-requirements for inclusionary housing, the average requirement for affordability in rental  
14 developments is 13%. Approximately half of all jurisdictions require at least 15% to be affordable, and  
15 one-quarter require 20% or more to be affordable.

16 5. Development of new market-rate housing makes it possible for new residents to move to  
17 the City. These new residents place demands on services provided by both public and private sectors.  
18 Some of the public and private sector employees needed to meet the needs of the new residents earn  
19 incomes only adequate to pay for affordable housing. Because affordable housing is in short supply  
20 within the City, such employees may be forced to live in less than adequate housing within the City, pay  
21 a disproportionate share of their incomes to live in adequate housing within the City, or commute ever-  
22 increasing distances to their jobs from housing located outside the City. These circumstances harm the  
23 City's ability to attain goals articulated in the City's General Plan and place strains on the City's ability  
24 to accept and service new market-rate housing development.

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1       6.       The development of affordable housing on the same site as market-rate housing  
2 increases social and economic integration vis-à-vis housing in the City and has corresponding social  
3 and economic benefits to the City. Inclusionary housing provides a healthy job and housing balance.  
4 Inclusionary housing provides more affordable housing close to employment centers which in turn may  
5 have a positive economic impact by reducing such costs as commuting and labor costs. However, there  
6 may also be trade-offs where constructing affordable units at a different site than the site of the  
7 principle project may produce a greater number of affordable units without additional costs to the  
8 project applicant. If a project applicant may produce a significantly greater number of affordable units  
9 off-site then it is in the best interest of the City to permit the development of affordable units at a  
10 different location than that of the principle project.

11       7.       Provided project applicants can take these requirements into consideration when  
12 negotiating to purchase land for a housing project, the requirements of this Section are generally  
13 financially feasible for project applicants to meet, particularly because of the benefits being conferred  
14 by the City to housing projects under this ordinance. This ordinance provides a means by which a  
15 project applicant may seek a reduction or waiver of the requirements of this ordinance if the project  
16 applicant can show that imposition of these requirements would create an unlawful financial burden.

17       8.       Conditional Use and Planned Unit Development Permits permit the development of  
18 certain uses not permitted as of right in specific districts or greater density of permitted residential  
19 uses. As the General Plan recognizes, through the conditional use and planned unit development  
20 process, applicants for housing projects generally receive material economic benefits. Such applicants  
21 are generally permitted to build in excess of the generally applicable black letter requirements of the  
22 Planning Code for housing projects resulting in increased density, bulk, or lot coverage or a reduction  
23 in parking or other requirements or an approval of a more intensive use over that permitted without the  
24 conditional use permit or planned unit development permit. Through the conditional use and planned

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1 unit development process, building standards can be relaxed in order to promote lower cost home  
2 construction. An additional portion of San Francisco's affordable housing needs can be supplied (with  
3 no public subsidies or financing) by private sector housing developers developing inclusionary  
4 affordable units in their large market-rate projects in exchange for the density and other bonuses  
5 conferred by conditional use or planned unit development approvals, provided it is financially  
6 attractive for private sector housing developers to seek such conditional use and/or planned unit  
7 development approvals.

8 9. Live/work as defined in the Planning Code recognizes that "residential living space" is  
9 an integral part of a live/work unit. A substantial portion of new housing development in San  
10 Francisco has been live/work units in Mixed Use Districts South of Market and in industrially zoned  
11 areas of San Francisco where residential development has not traditionally been permitted as of right.  
12 Live/work development projects are subject to less stringent development standards than other types of  
13 housing projects in certain Mixed Use Districts and industrially zoned areas. Live/work developments  
14 are conferred an equivalent benefit as projects going through the conditional use or planned unit  
15 development permit process by virtue of the fact that (1) live/work developments are not required to get  
16 a conditional use permit for housing development in some Mixed Use Districts and in all industrially  
17 zoned districts where other residential uses are required to get a conditional use permit; (2) live/work  
18 developments receive a five foot height bonus above prevailing height limits for specific  
19 neighborhoods; (3) live/work units are permitted to cover 100% of a lot rather than the stricter lot  
20 coverage requirements that apply to other residential development, typically requiring rear yards equal  
21 to 15 feet in length or 25% of the lot, whichever is greater. Given these benefits conferred by statute  
22 which allow live/work developments to exceed the limitations on other housing development in the City,  
23 the Board of Supervisors finds that, for purposes of this Program, live/work developments are  
24 conferred a private benefit equal to or in excess of housing projects which require a conditional use or  
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1 planned unit development permit. The relaxed building standards applied to live/work projects  
2 promote the ability to include lower cost home production in live/work projects. A unit meets the  
3 definition of California Civil Code Section 1940(c) as a "dwelling unit" because it "is used as a home,  
4 residence or sleeping place by one person who maintains a household or by two or more persons who  
5 maintain a common household." Live/work units shall not be considered "commercial real property"  
6 for purposes of Civil Code Section 1954.25 et seq.

7 10. The City wants to balance the burden on private property owners with the demonstrated  
8 need for affordable housing in the City. In order to balance the burden on property owners, the Board  
9 intends to limit the application of an inclusionary housing requirement to 10% for housing projects that  
10 do not receive any of the benefits described above through the conditional use or planned unit  
11 development process, or in live/work projects. A slightly higher percentage will be applied to projects  
12 which generally receive benefits through the conditional use or planned unit development process, or in  
13 live/work projects. The Housing Element (Policy 4.2) states: Include affordable units in larger  
14 housing developments. It also calls for the City to review its inclusionary housing program regularly to  
15 ensure fair burden and not constrain new housing production. The Board of Supervisors has reviewed  
16 the inclusionary affordable housing program and finds that, for purposes of the Housing Element of the  
17 General Plan, amending the inclusionary housing requirements as provided in this ordinance ensures  
18 more fair burden on all housing development and will not constrain new housing production.

19 K. The findings of Planning Code Section 313.2 for the Jobs-Housing Linkage  
20 Program, Planning Code Sections 313 et seq., relating to the shortage of affordable housing, the low  
21 vacancy rate of housing affordable to persons of lower and moderate income, and the decrease in  
22 construction of affordable housing in the City are hereby readopted.

23 ~~SEC. 315.2. FINDINGS.~~

24 ~~———— The Board of Supervisors hereby finds and declares as follows:~~

25

1           ~~———— A. ——— Affordable housing is a paramount statewide concern. In 1980, the Legislature~~  
2 ~~declared in Government Code Section 65580:~~

3           ~~———— (a) ——— The availability of housing is of vital statewide importance, and the early~~  
4 ~~attainment of decent housing and a suitable living environment for every California family is a priority~~  
5 ~~of the highest order.~~

6           ~~———— (b) ——— The early attainment of this goal requires the cooperative participation of~~  
7 ~~government and the private sector in an effort to expand housing opportunities and accommodate the~~  
8 ~~housing needs of Californians of all economic levels.~~

9           ~~———— (c) ——— The provision of housing affordable to low and moderate income households~~  
10 ~~requires the cooperation of all levels of government.~~

11           ~~———— (d) ——— Local and state governments have a responsibility to use the powers vested in~~  
12 ~~them to facilitate the improvement and development of housing to make adequate provision for the~~  
13 ~~housing needs of all economic segments of the community....~~

14           ~~———— The Legislature further stated in Government Code Section 65581 that:~~

15           ~~———— It is the intent of the Legislature in enacting this article:~~

16           ~~———— (a) ——— To assure that counties and cities recognize their responsibilities in contributing~~  
17 ~~to the attainment of the state housing goal.~~

18           ~~———— (b) ——— To assure that counties and cities will prepare and implement housing elements~~  
19 ~~which...will move toward attainment of the state housing goal.~~

20           ~~———— (c) ——— To recognize that each locality is best capable of determining what efforts are~~  
21 ~~required by it to contribute to the attainment of the state housing goal....~~

22           ~~———— The California Legislature requires each local government agency to develop a~~  
23 ~~comprehensive long term general plan establishing policies for future development. As specified in the~~  
24 ~~Government Code (at Sections 65300, 65302(c), and 65583(c)), the plan must (1) "encourage the~~

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1 *development of a variety of types of housing for all income levels, including multifamily rental*  
2 *housing"; (2) "[a]ssist in the development of adequate housing to meet the needs of low and moderate-*  
3 *income households"; and (3) "conserve and improve the condition of the existing affordable housing*  
4 *stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or*  
5 *private action."*

6 *——— B. ——— San Francisco faces a continuing shortage of affordable housing for very low*  
7 *and low income residents. The San Francisco Planning Department reported that for the past ten*  
8 *years, 3,199 units of low and very low income housing were built in San Francisco out of a total need*  
9 *of 15,103 units for the same period. According to the state Department of Housing and Community*  
10 *Development, there will be a regional need for 230,743 new housing units in the nine Bay Area*  
11 *counties from 1999 — 2006. Of that amount, at least 58 percent, or 133,164 units, are needed for*  
12 *moderate, low and very low income house holds. The Association of Bay Area Governments (ABAG) is*  
13 *responsible for dividing the total regional need numbers among its member governments which*  
14 *includes both counties and cities. ABAG estimates that San Francisco's low and very low income*  
15 *housing production need through 2006 is 7,370 units out of a total new housing need of 20,372 units.*  
16 *Within the past ten years, less than 25% of the previously projected housing need was produced in San*  
17 *Francisco. The new ABAG housing goals will require that San Francisco produce more than twice the*  
18 *amount of low and very low income housing within half the time.*

19 *——— C. ——— In response to the above mandate from the California Legislature and the*  
20 *projections of housing needs for San Francisco, San Francisco has instituted several strategies for*  
21 *producing new affordable housing units. The General Plan Residential Element recognizes the need to*  
22 *increase the amount of land available and improve building resources for permanently affordable*  
23 *housing through the inclusion of affordable units in larger market rate housing projects. Further, the*  
24 *City, as established in the General Plan, seeks to encourage the distribution of affordable housing*

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1 ~~throughout all neighborhoods and, thereby, offer diverse housing choices and promote economic and~~  
2 ~~social integration. The General Plan calls for an increase in the production of new affordable housing~~  
3 ~~and for the development of mixed income housing to achieve social and cultural diversity. As one~~  
4 ~~strategy to achieve these goals, the General Plan states that "[i]nclusion of affordable housing should~~  
5 ~~be required as a condition of approval of housing projects containing 10 or more units which seek~~  
6 ~~Planning Commission approval as conditional uses or planned unit developments." This legislation~~  
7 ~~furtheres the goals of the State Legislature and the General Plan. For housing projects to which this~~  
8 ~~legislation applies it is intended to replace the Planning Commission Guidelines for Application of San~~  
9 ~~Francisco's Inclusionary Affordable Housing Policy. For housing projects to which this legislation~~  
10 ~~does not apply because of the application date, it is intended that the Planning Commission Guidelines~~  
11 ~~in effect at the time of project approval, where applicable, will apply.~~

12 ~~———— D. ——— The 2000 Consolidated Plan for July 1, 2000 — June 30, 2005, issued by the~~  
13 ~~Mayor's Office of Community Development and the Mayor's Office of Housing establishes that extreme~~  
14 ~~housing pressures face San Francisco, particularly in regard to low and moderate income residents.~~  
15 ~~Many elements constrain housing production in the City. This is especially true of affordable housing.~~  
16 ~~San Francisco is largely built out, and its geographical location at the northern end of a peninsula~~  
17 ~~inherently prevents substantial new development. There is no available adjacent land to be annexed, as~~  
18 ~~the cities located on San Francisco's southern border are also dense urban areas. Thus new~~  
19 ~~construction of housing is limited to areas of the City not previously designated as residential areas,~~  
20 ~~infill sites, or to areas with increased density. New market rate housing absorbs a significant amount~~  
21 ~~of the remaining supply of land and other resources available for development and thus limits the~~  
22 ~~supply of affordable housing.~~

23 ~~———— There is a great need for affordable rental and owner occupied housing in the City. The~~  
24 ~~vacancy rate for residential rental property has dropped significantly since 1989-90 when the~~

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1 *Residence Element 1992 Annual Evaluation Report reported a 4.2 percent citywide vacancy rate (for*  
2 *1989), and the U.S. Census showed a 6.9 percent vacancy rate (as of 1990). Data from the San*  
3 *Francisco rental market from RealFacts for 2000 indicates a vacancy rate of 1.9 percent. Rents on*  
4 *newly occupied residential units have risen dramatically. Housing cost burden is one of the major*  
5 *standards for determining whether a locality is experiencing inadequate housing conditions; the*  
6 *Consolidated Plan defines a household expending 30 percent or more of its gross income for housing*  
7 *costs as experiencing a cost burden. According to the 1990 Census, 38.1 percent of San Franciscans*  
8 *experienced a cost burden in 1990 and, according to more recent data from the American Housing*  
9 *Survey, this level had risen to 45 percent in 1993.*

10 *———— The San Francisco residential real estate market is one of the most expensive in the*  
11 *United States. A February 1999 report from the National Association of Realtors found that San*  
12 *Francisco had the highest median price of existing homes in the United States. In the 1980's average*  
13 *home prices in San Francisco rose nearly three times as fast as the overall cost of living in San*  
14 *Francisco according to data from the Bay Area Council and 1990 Census. An analysis of sales data*  
15 *from a three month period in 1999 gathered by American Real Estate Solutions showed that of 1,420*  
16 *full, confirmed, and verified sales, the median sales price was \$390,000. This study, among others,*  
17 *demonstrates that the majority of market rate homes for sale in San Francisco are priced out of the*  
18 *reach of low and moderate income households.*

19 *———— These factors contribute to a heavy demand for affordable housing in the City that the*  
20 *private market cannot meet. Each year the number of market rate units that are affordable to low*  
21 *income households is reduced by rising market rate rents and sales prices. The number of households*  
22 *benefiting from rental assistance programs is far below the need established by the 1990 Census.*  
23 *Because the shortage of affordable housing in the City can be expected to continue for many years, it is*  
24 *necessary to maintain the affordability of the housing units constructed by housing developers under*  
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1 ~~this Program. The Residential Element of the General Plan (Objective 9, Policy 2) recognizes this~~  
2 ~~need and provides that affordable units should be required to remain affordable for at least 50 years~~  
3 ~~and, where possible, for longer.~~

4 ~~————— In 1994 the California Coalition for Rural Housing Project issued a study entitled~~  
5 ~~"Creating Affordable Communities: Inclusionary Housing Programs in California." The study found~~  
6 ~~that at least 64 jurisdictions in California had inclusionary housing programs and that, overall, the~~  
7 ~~inclusionary requirements were generating large numbers of affordable units. Sixty six percent of the~~  
8 ~~inclusionary programs studied were mandatory programs and the mandatory programs were proven to~~  
9 ~~be more effective by a number of measures than the voluntary programs. While there was a wide range~~  
10 ~~in the percentage requirements for inclusionary housing, a 10% requirement is the most common,~~  
11 ~~occurring in 39% of the jurisdictions studied, followed by a 15% requirement that was the second most~~  
12 ~~common.~~

13 ~~————— E. ——— Development of new market rate housing makes it possible for new residents to~~  
14 ~~move to the City. These new residents place demands on services provided by both public and private~~  
15 ~~sectors. Some of the public and private sector employees needed to meet the needs of the new residents~~  
16 ~~earn incomes only adequate to pay for affordable housing. Because affordable housing is in short~~  
17 ~~supply within the City, such employees may be forced to live in less than adequate housing within the~~  
18 ~~City, pay a disproportionate share of their incomes to live in adequate housing within the City, or~~  
19 ~~commute ever increasing distances to their jobs from housing located outside the City. These~~  
20 ~~circumstances harm the City's ability to attain goals articulated in the City's General Plan and place~~  
21 ~~strains on the City's ability to accept and service new market rate housing development.~~

22 ~~————— F. ——— The development of affordable housing on the same site as market rate housing~~  
23 ~~increases social and economic integration vis à vis housing in the City and has corresponding social~~  
24 ~~and economic benefits to the City. Inclusionary housing provides a healthy job and housing balance.~~

1 ~~Inclusionary housing provides more affordable housing close to employment centers which in turn may~~  
2 ~~have a positive economic impact by reducing such costs as commuting and labor costs. However, there~~  
3 ~~may also be trade offs where constructing affordable units at a different site than the site of the~~  
4 ~~principle project may produce a greater number of affordable units without additional costs to the~~  
5 ~~project applicant. If a project applicant may produce a significantly greater number of affordable units~~  
6 ~~off site then it is in the best interest of the City to permit the development of affordable units at a~~  
7 ~~different location than that of the principle project.~~

8 ~~————G.———— Provided project applicants can take these requirements into consideration when~~  
9 ~~negotiating to purchase land for a housing project, the requirements of this Section are generally~~  
10 ~~financially feasible for project applicants to meet, particularly because of the benefits being offered by~~  
11 ~~the City to housing projects that comply with this Section. Some of the requirements of this Section are~~  
12 ~~being phased in over a period of one year, so that project applicants will have adequate notice of these~~  
13 ~~requirements and can take them into consideration when negotiating to purchase land for a project.~~  
14 ~~This Section provides a means by which a project applicant may seek a reduction or waiver of the~~  
15 ~~requirements of this Section if the project applicant can show that imposition of these requirements~~  
16 ~~would create an unlawful financial burden.~~

17 ~~————H.———— Conditional Use and Planned Unit Development Permits permit the~~  
18 ~~development of certain uses not permitted as of right in specific districts or greater density of permitted~~  
19 ~~residential uses. As the General Plan recognizes, through the conditional use and planned unit~~  
20 ~~development process, applicants for housing projects generally receive material economic benefits.~~  
21 ~~Such applicants are generally permitted to build in excess of the generally applicable black letter~~  
22 ~~requirements of the Planning Code for housing projects resulting in increased density, bulk, or lot~~  
23 ~~coverage or a reduction in parking or other requirements or an approval of a more intensive use over~~  
24 ~~that permitted without the conditional use permit or planned unit development permit. Through the~~  
25



1 conditional use and planned unit development process, building standards can be relaxed in order to  
2 promote lower cost home construction. An additional portion of San Francisco's affordable housing  
3 needs can be supplied (with no public subsidies or financing) by private sector housing developers  
4 developing inclusionary affordable units in their large market rate projects in exchange for the density  
5 and other bonuses conferred by conditional use or planned unit development approvals, provided it is  
6 financially attractive for private sector housing developers to seek such conditional use and/or planned  
7 unit development approvals.

8 I. The Residential Element of the General Plan (Objective 7, Policy 1) provides  
9 that as land not previously used for residential space is developed for residential use, such development  
10 should also provide for a minimum of 10% permanently affordable units for all residential development  
11 containing more than 10 units. Live/work as defined in the Planning Code recognizes that "residential  
12 living space" is an integral part of a live/work unit. A substantial portion of new housing development  
13 in San Francisco has been live/work units in Mixed Use Districts South of Market and in industrially  
14 zoned areas of San Francisco where residential development has not traditionally been permitted as of  
15 right. Live/work development projects are subject to less stringent development standards than other  
16 types of housing projects in certain Mixed Use Districts and industrially zoned areas. Live/work  
17 developments are conferred an equivalent benefit as projects going through the conditional use or  
18 planned unit development permit process by virtue of the fact that (1) live/work developments are not  
19 required to get a conditional use permit for housing development in some Mixed Use Districts and in  
20 all industrially zoned districts where other residential uses are required to get a conditional use permit;  
21 (2) live/work developments receive a five foot height bonus above prevailing height limits for specific  
22 neighborhoods; (3) live/work units are permitted to cover 100% of a lot rather than the stricter lot  
23 coverage requirements that apply to other residential development, typically requiring rear yards equal  
24 to 15 feet in length or 25% of the lot, whichever is greater. Given these benefits conferred by statute

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1 ~~which allow live/work developments to exceed the limitations on other housing development in the City,~~  
2 ~~the Board of Supervisors finds that, for purposes of this Program, live/work developments are~~  
3 ~~conferred a private benefit equal to or in excess of housing projects which require a conditional use or~~  
4 ~~planned unit development permit. The relaxed building standards applied to live/work projects~~  
5 ~~promote the ability to include lower cost home production in live/work projects. A unit meets the~~  
6 ~~definition of California Civil Code Section 1940(c) as a "dwelling unit" because it "is used as a home,~~  
7 ~~residence or sleeping place by one person who maintains a household or by two or more persons who~~  
8 ~~maintain a common household." Live/work units shall not be considered "commercial real property"~~  
9 ~~for purposes of Civil Code Section 1954.25 et seq.~~

10 ~~—————J.———— The City wants to balance the burden on private property owners with the~~  
11 ~~demonstrated need for affordable housing in the City. For the reasons stated above, the Board of~~  
12 ~~Supervisors thus intends to apply an inclusionary housing requirement to all residential projects of 10~~  
13 ~~units or more. In order to balance the burden on property owners, the Board intends to limit the~~  
14 ~~application of an inclusionary housing requirement to 10% for housing projects that do not receive any~~  
15 ~~of the benefits described above through the conditional use or planned unit development process, or in~~  
16 ~~live/work projects. A slightly higher percentage will be applied to projects which generally receive~~  
17 ~~benefits through the conditional use or planned unit development process, or in live/work projects.~~

18 ~~—————K.———— The findings of Planning Code Section 313.2 for the Jobs Housing Linkage~~  
19 ~~Program, Planning Code Sections 313 et seq., relating to the shortage of affordable housing, the low~~  
20 ~~vacancy rate of housing affordable to persons of lower and moderate income, and the decrease in~~  
21 ~~construction of affordable housing in the City are hereby readopted.~~

22 **SEC. 315.3. APPLICATION.**

23 (a) This Ordinance shall apply to:  
24  
25

1 (1) All applications for a building permit or a site permit filed with the  
2 Department of Building Inspection or the Planning Department on or after June 18, 2001 for  
3 housing projects which: Any housing project that has not received a first site or building permit by  
4 the effective date of this legislation which:

5 (A) Consists of ten or more units; and

6 (B) Does not require Planning Commission approval as a conditional use or  
7 planned unit development; ~~and~~

8 ~~—— (C) — Has a project site which was optioned or acquired or an environmental~~  
9 ~~evaluation application that was filed after June 18, 2001.~~

10 (2) All applications for a conditional use or planned unit development permit  
11 filed with the Planning Department on or after June 18, 2001 for housing projects which Any  
12 housing project that has not received a first site or building permit by the effective date of this  
13 legislation which: :

14 (A) Consists of ten or more units; and

15 (B) Requires Planning Commission approval as a conditional use or planned  
16 unit development.

17 (3) All applications for a building permit or a site permit filed with the Planning  
18 Department or the Building Department on or after June 18, 2001 for housing projects which  
19 Any housing project that has not received a first site or building permit by the effective date of this  
20 legislation which:

21 (A) Consists of ten or more units; and

22 (B) Consists of live/work units as defined by Planning Code Section 102.13.

23 (4) Housing projects which require Planning Commission approval of replacement  
24 housing destroyed by earthquake, fire or natural disaster only where the destroyed housing  
25

1 included units restricted under the Residential Inclusionary Housing Program or the City's  
2 predecessor inclusionary housing policy, condominium conversion requirements, or other  
3 affordable housing program.

4 (b) This Ordinance shall not apply to:

5 (1) That portion of a housing project located on property owned by the United  
6 States or any of its agencies or leased by the United States or any of its agencies for a period  
7 in excess of 50 years, with the exception of such property not used exclusively for a  
8 governmental purpose;

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

12 (3) That portion of a housing project located on property under the jurisdiction of the  
13 San Francisco Redevelopment Agency or the Port of San Francisco where the application of  
14 this Ordinance is prohibited by California or local law;

15 (4) That portion of a housing project for which a project applicant can demonstrate  
16 that an impact fee under the Jobs-Housing Linkage Program, commencing with Planning  
17 Code Section 313, has been paid.

18 (c) Waiver or Reduction:

19 (1) A project applicant of any project subject to the requirements in this Program  
20 may appeal to the Board of Supervisors for a reduction, adjustment, or waiver of the  
21 requirements based upon the absence of any reasonable relationship or nexus between the  
22 impact of development and either the amount of the fee charged or the inclusionary  
23 requirement.

24

25

1           (2)    A project applicant subject to the requirements of this Program who has  
2 received an approved building permit, conditional use permit or similar discretionary approval  
3 and who submits a new or revised building permit, conditional use permit or similar  
4 discretionary approval for the same property may appeal for a reduction, adjustment or waiver  
5 of the requirements with respect to the number of lots or square footage of construction  
6 previously approved.

7           (3)    Any such appeal shall be made in writing and filed with the Clerk of the Board no  
8 later than 15 days after the date the Planning Department sends notice to the project  
9 applicant of the number of affordable units required as provided in Section 315.4(a) and  
10 315.5(a). The appeal shall set forth in detail the factual and legal basis for the claim of waiver,  
11 reduction, or adjustment. The Board of Supervisors shall consider the appeal at the hearing  
12 within 60 days after the filing of the appeal. The appellant shall bear the burden of presenting  
13 substantial evidence to support the appeal, including comparable technical information to  
14 support appellant's position. The decision of the Board shall be by a simple majority vote and  
15 shall be final. If a reduction, adjustment, or waiver is granted, any change in use within the  
16 project shall invalidate the waiver, adjustment, or reduction of the fee or inclusionary  
17 requirement. If the Board grants a reduction, adjustment or waiver, the Clerk of the Board  
18 shall promptly transmit the nature and extent of the reduction, adjustment or waiver to the  
19 Treasurer.

20           (d)    ~~Except for projects listed in subsection "b" of this Section 315.3, the Planning~~  
21 ~~Commission's Guidelines for Application of San Francisco's Inclusionary Affordable Housing~~  
22 ~~Policy shall apply, where applicable, to housing projects not otherwise covered by this~~  
23 ~~Ordinance because of the application dates set forth in Section 315.3(a), (b), and (c). For~~

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25

1 projects that have received a first site or building permit prior to the effective date of this  
2 legislation, the requirements in effect prior to the effective date of this ordinance shall apply.

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

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

7 (a) Number of Units:

8 (1) The Planning Department shall require for housing projects covered by Section  
9 315.3(a)(1), as a condition of Planning Department approval of a project's building permit, that  
10 10% of all units constructed on the project site shall be affordable to qualifying households so  
11 that a project applicant must construct .10 times the total number of units produced in the  
12 principal project beginning with the construction of the tenth unit. If the total number of units is  
13 not a whole number, the project applicant shall round up to the nearest whole number for any  
14 portion of .5 or above.

15 Notwithstanding any other provision of this section, any inclusionary affordable  
16 requirement imposed on housing projects covered by Section 315.3(a)(1) in connection with  
17 an application filed with the Department of Building Inspection from the effective date of this  
18 legislation and 180 days thereafter shall be 5% so that a project applicant must construct .05  
19 times the total number of units produced in the principal project beginning with the  
20 construction of the tenth unit. If the total number of units is not a whole number, the project  
21 applicant shall round up to the nearest whole number for any portion of .5 or above.

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

25

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

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

12           (2)     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 Planning Commission shall require that the project applicant replace the  
16 number of affordable units removed with units of a comparable number of bedrooms or  
17 provide that 12% of all units constructed as part of the new project shall be affordable to  
18 qualifying households, whichever is greater.

19           (b)     Timing of Construction: On-site inclusionary housing required by this Section  
20 315.4 must be constructed, completed, and ready for occupancy no later than the market rate  
21 units in the principal project.

22           (c)     Type of Housing: The type of affordable housing needed in San Francisco is  
23 documented in the City's Consolidated Plan and the Residence Element of the General Plan.  
24 In general, affordable units constructed under this Section 315.4 shall be com-parable in  
25

1 number of bedrooms, exterior appearance and overall quality of construction to market rate  
2 units in the principal project. The Notice of Special Restrictions or Conditions of Approval  
3 shall include a specific number of units at specified unit sizes for affordable units. The square  
4 footage of affordable units and interior features in affordable units do not need to be same as  
5 or equivalent to those in market rate units in the principal project, so long as they are of good  
6 quality and are consistent with then-current standards for new housing.

7 (d) Marketing the Units: The Mayor's Office of Housing or its successor shall be  
8 responsible for overseeing and monitoring the marketing of affordable units under this Section. In  
9 general, the marketing requirements and procedures shall be contained in the Procedures Manual as  
10 amended from time to time and shall apply to the affordable units in the project. The Notice of  
11 Special Restrictions or Conditions of Approval shall specify that the marketing requirements  
12 and procedures contained in the Procedures Manual as amended from time to time, shall  
13 apply to the affordable units in the project. At the initial offering of affordable units in a housing  
14 project, the Mayor's Office of Housing or its successor must require the use of a public lottery  
15 approved by MOH to select purchasers or tenants. The Mayor's Office of Housing or its successor  
16 shall also hold a general public lottery and maintain and utilize a list generated from this lottery to fill  
17 spaces in units that become available for re-sale or occupancy in any housing project subject to this  
18 ordinance after the initial offering. The list shall be updated from time to time but in no event less than  
19 annually to insure that it remains current.

20 (e) Alternatives: The project sponsor may elect to satisfy the requirements of Section  
21 315.4 by one of the alternatives specified in this Section. The project sponsor must elect an alternative  
22 before it receives project approvals from the Planning Commission or Planning Department and that  
23 alternative will be a condition of project approval. If a project sponsor fails to elect an alternative  
24 before project approval by the Planning Commission or Planning Department, the provisions of

25



1 Section 315.4 shall apply. At the project applicant's election, the project applicant may satisfy the  
2 requirement of Section 315.4 by: The alternatives are as follows:

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

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

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

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

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

21 The Controller shall refund fees from any appropriated funds to the project applicant on  
22 application by the project applicant. The application must include a copy of the certificate of  
23 occupancy for all units affordable to a qualifying household required by the Inclusionary  
24  
25

1 Affordable Housing Program. It is the policy of the Board of Supervisors to appropriate money  
2 for this purpose from the General Fund.

3 SEC. 315.5. COMPLIANCE THROUGH OFF-SITE HOUSING DEVELOPMENT.

4 If the project applicant elects, pursuant to Section 315.4(e), that the project applicant  
5 will build off-site units to satisfy the requirements of this Program, the project applicant shall  
6 meet the following requirements:

7 (a) Number of Units: The number of units constructed off-site shall be ~~1.5 times that~~  
8 *of the on-site requirement as follows:-*

9 For projects described in Section 315.3(a)(1), 15% so that a project applicant must  
10 construct .15 times the total number of units produced in the principal project beginning with  
11 the construction of the tenth unit. If the total number of units is not a whole number, the project  
12 applicant shall round up to the nearest whole number for any portion of .5 or above.

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

17 For projects described in Section 315.3(a)(2), (3), and (4), 17% so that a project  
18 applicant must construct .17 times the total number of units produced in the principal project  
19 beginning with the construction of the tenth unit. If the total number of units is not a whole  
20 number, the project applicant shall round up to the nearest whole number for any portion of .5  
21 or above.

22 The Planning Department shall provide written notice by mail to the project applicant of  
23 the number of affordable units which shall be required within 30 days of approval by the  
24  
25

1 Planning Department or Planning Commission. This notice shall also be sent to project  
2 applicants who elect to pay an in lieu fee.

3 (b) Timing of Construction: The project applicant shall insure that the off-site units  
4 are constructed, completed, and ready for occupancy no later than the market rate units in the  
5 principal project.

6 (c) Location of off-site housing: The project applicant must insure that off-site units  
7 are located within one mile of the principal project. in either (i) close proximity to the principal  
8 project, or (ii) a high need area or a project type identified as a high priority in the Residence Element  
9 of the General Plan or the Consolidated Plan published by the Mayor's Office of Housing and the  
10 Mayor's Office of Community Development or their successors.

11 (d) Type of Housing: The type of affordable housing needed in San Francisco is  
12 documented in the City's Consolidated Plan and the Residence Element of the General Plan.  
13 New affordable rental housing and ownership housing affordable to households earning less than the  
14 median income is greatly needed in San Francisco. All off-site units constructed under this Section  
15 must be provided as rental housing for the life of the project or, if they are ownership units, must be  
16 affordable to households earning no more than 80% of the Area Median Income (AMI). In general,  
17 affordable units constructed under this Section 315.5 shall be com-parable in number of  
18 bedrooms, exterior appearance and overall quality of construction to market rate units in the  
19 principal project. The total square footage of the off-site affordable units constructed under  
20 this Section 315.5 shall be no less than the calculation of the total square footage of the on-  
21 site market-rate units in the principal project multiplied by the relevant on-site percentage  
22 requirement for the project specified in Section 315.4 (.12 for conditional use, planned unit  
23 developments or live-work projects, and .10 for all other housing projects). The Notice of  
24 Special Restrictions or Conditions of Approval shall include a specific number of units at  
25

1 specified unit sizes - including number of bedrooms and minimum square footage - for  
 2 affordable units. The interior features in affordable units need not be the same as or  
 3 equivalent to those in market rate units in the principal project, so long as they are of good  
 4 quality and are consistent with then-current standards for new housing. If the residential units  
 5 in the principal project are live/work units which do not contain bedrooms or are other types of  
 6 units which do not contain bedrooms separated from the living space, the off-site units shall  
 7 be comparable in size according to the following equivalency calculation between live/work  
 8 and units with bedrooms:

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 1100 square feet)	3
3 (1101 to 1300 square feet)	4
4 (More than 1300 square feet)	5

16 (e) Marketing the Units: They Mayor’s Office of Housing or its successor shall be  
 17 responsible for overseeing and monitoring the marketing of affordable units under this Section. In  
 18 general, the marketing requirements and procedures shall be contained in the Procedures Manual as  
 19 amended from time to time and shall apply to the affordable units in the project. The Notice of  
 20 Special Restrictions or Conditions of Approval shall specify that the marketing requirements  
 21 and procedures contained in the Procedures Manual as amended from time to time, shall  
 22 apply to the affordable units in the project. At the initial offering of affordable units in a housing  
 23 project, the Mayor’s Office of Housing or its successor must require the use of a public lottery  
 24 approved by MOH to select purchasers or tenants. The Mayor's Office of Housing or its successor  
 25

1 shall also hold a general public lottery and maintain and utilize a list generated from this lottery to fill  
2 spaces in units that become available for re-sale or occupancy in any housing project subject to this  
3 ordinance after the initial offering. The list shall be updated from time to time but in no event less than  
4 annually to insure that it remains current.

5 (f) Affordable units constructed under Section 315.5 shall not have received  
6 development subsidies from any federal, state or local program established for the purpose of  
7 providing affordable housing, and should not be counted to satisfy the affordable housing  
8 requirement in the off-site development.

9 (g) Notwithstanding the provisions of Section 315.5(f) above, a developer may use  
10 California Debt Limit Allocation Committee (CDLAC) tax-exempt bonds to help fund its obligations  
11 under this ordinance as long as it provides 20% of the units as affordable at 50% of area median  
12 income for on-site housing or 25% of the units as affordable at 50% of area median income for off-site  
13 housing. Except as provided in this subsection, all units provided under this section must meet all of  
14 the requirements of this ordinance and the Procedures Manual for either on- or off-site housing.

15 SEC. 315.6. COMPLIANCE THROUGH IN LIEU FEE.

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

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

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

25

1 (1) The number of units required by Section 315.5 if the project applicant were to  
2 elect to meet the requirements of this section by off-site housing development.

3 (2) The affordability gap as identified in the "Jobs Housing Nexus Analysis"  
4 prepared by Keyser Marston Associates, Inc. in June 1997 for the Maximum Annual Rent or  
5 Maximum Purchase Price for the equivalent unit sizes.

6 (3) Annual adjustments to the affordability gap based upon the percentage increase  
7 or decrease in the Average Area Purchase Price Safe Harbor Limitations for New Single  
8 Family Residences for the San Francisco Primary Metropolitan Statistical ("PMSA")  
9 established by the Internal Revenue Service ("IRS") since January 1st of the previous year;  
10 provided however, that in the event that said percentage increase exceeds 20 percent, the in-  
11 lieu fee shall be increased by 20 percent, and the difference between the percentage increase  
12 in the Average Area Purchase Price and 20 percent shall be carried over and added to the in-  
13 lieu fee adjustment for the following calendar year. In the event that the IRS does not adjust  
14 the above figure within 14 months, the Mayor's Office of Housing shall authorize and certify a  
15 study for adjusting the last published IRS figure to be effective until IRS revises the figure.

16 (4) No later than July 1 of each year, the Mayor's Office of Housing shall adjust the in lieu  
17 fee payment option and provide a report on its adjustment to the Board of Supervisors.

18 (c) Within 30 days of determining the amount of the fee to be paid by the applicant,  
19 MOH shall transmit the amount of the fee to the Treasurer. Prior to the issuance by DBI of the  
20 first site or building permit for the project applicant, the project applicant must notify the  
21 Planning Department and MOH in writing that it has paid in full the sum required to the  
22 Treasurer. If the project applicant fails by the applicable date to demonstrate to the Planning  
23 Department that the project applicant has paid the applicable sum in full to the Treasurer, DBI  
24 shall deny any and all site or building permits or certificates of occupancy for the development  
25

1 project until the Planning Department notifies DBI and MOH that such payment has been  
2 made.

3 (d) Upon payment of the fee in full to the Treasurer and upon request of the project  
4 applicant, the Treasurer shall issue a certification that the fee has been paid. The project  
5 applicant shall present such certification to the Planning Department, DBI and MOH prior to  
6 the issuance by DBI of the first site or building permit or certificate of occupancy for any  
7 development subject to this Section. Any failure of the Treasurer, DBI, or Planning  
8 Department to give any notice under this Section shall not relieve a project applicant from  
9 compliance with this Section. Where DBI inadvertently issues a site or building permit without  
10 payment of the fee, DBI shall not issue any certificate of occupancy for the project without  
11 notification from the Treasurer that the fee required by this Section has been paid. The  
12 procedure set forth in this Subsection is not intended to preclude enforcement of the  
13 provisions of this section pursuant to any other section of this Code, or other authority under  
14 the laws of the State of California.

15 (e) All monies contributed pursuant to this section shall be deposited in the special  
16 fund maintained by the Controller called the Citywide Affordable Housing Fund. The receipts  
17 in the Fund are hereby appropriated in accordance with law to be used to (1) increase the  
18 supply of housing affordable to qualifying households subject to the conditions of this Section,  
19 and (2) pay the expenses of MOH in connection with monitoring and administering  
20 compliance with the requirements of the Program. Monitoring and administrative expenses  
21 shall be appropriated through the annual budget process or supplemental appropriation for  
22 MOH. The fund shall be administered and expended by MOH, which shall have the authority  
23 to prescribe rules and regulations governing the Fund which are consistent with this Section.

24 (f) Lien Proceedings.

25

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

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

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

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

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

17 **SEC. 315.8. ENFORCEMENT PROVISIONS AND MONITORING OF PROGRAM.**

18 (a) A first certificate of occupancy shall not be issued by the Director of the  
19 Department of Building Inspection to any unit in the principal project until all of the on-site or  
20 off-site housing development requirements of Sections 315.4 or 315.5, if applicable, and  
21 Section 315.7 are met. A first site permit for the principal project shall not be issued by the  
22 Director of the Department of Building Inspection until the requirements of Sections 315.4(e)  
23 and 315.6 regarding payment of the in lieu fee, if applicable, have been met.

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1 (b) If the Planning Commission or Planning Department determines that a  
2 project applicant has failed to comply with Sections 315.4 or 315.5 and the recording of  
3 reporting requirements of Section 315.7 as detailed in the Procedures Manual, or has violated  
4 the Conditions of Approval or terms of the Notice of Special Restrictions, the Planning  
5 Commission or Planning Department may, until the violation is cured, (a) revoke the certificate  
6 of occupancy for the principal project or required affordable units, (b) impose a penalty on the  
7 project pursuant to Section 176(c) of this Code, and/or (c) the Zoning Administrator may  
8 enforce the provisions of this Program through any means provided for in Section 176 of this  
9 Code.

10 (c) The Planning Commission or Planning Department shall notify the  
11 Mayor's Office of Housing of any housing project subject to this Program, including the name  
12 of the project applicant and the number and location of the affordable units, within 30 days of  
13 the Planning Commission's or the Planning Department's approval of a building, site,  
14 conditional use, planned unit development, or live/work permit application. The Mayor's Office  
15 of Housing shall provide all project applicants with information concerning the City's first time  
16 home-buyer assistance programs and any other related programs the Mayor's Office of  
17 Housing shall deem relevant to this Program.

18 (d) The Planning Commission shall, as part of the annual Housing Inventory,  
19 report to the Board of Supervisors on the results of this Program including, but not limited to, a  
20 report on the following items:

21 (1) The number of, location of, and project applicant for housing projects  
22 which came before the Planning Commission for a conditional use or planned unit  
23 development permit, and the number of, location of, and project applicant for housing projects  
24 which were subject to the requirements of this Ordinance;

25

1           (2)    The number of, location of, and project applicant for housing projects  
2 which applied for a waiver, adjustment, or reduction from the require-ments of this Ordinance  
3 pursuant to Section 315.3(c), and the number of, location of, and project applicant for housing  
4 projects which were granted such a waiver, adjustment, or reduction and, if a reduction, to  
5 what percentage;

6           (3)    The number of, location of, and project applicant for every housing project  
7 to which this Ordinance applied and the number of market rate units and the number of  
8 affordable on- and off-site units provided, including the location of all of the affordable units;  
9 and

10           (e)    A study is authorized to be undertaken under the direction of the Mayor's  
11 Office of Housing immediately and to be updated every 5 years thereafter to determine the  
12 relationship in nature and amount between the production of market-rate residential housing  
13 and the availability and demand for affordable housing in San Francisco. The Mayor's Office  
14 of Housing shall make recommendations to the Board of Supervisors and the Planning  
15 Commission regarding any legislative changes to requirements pertaining to housing  
16 development, including developments requiring conditional use permits and planned unit  
17 development permits and live/work projects. The Mayor's Office of Housing shall also study  
18 the relationship in nature and amount between the production of various types of market rate  
19 residential development including stick frame, steel frame, and concrete construction and the  
20 availability and demand for affordable housing in San Francisco and look at the relationship  
21 between the cost of construction of market-rate housing and the availability and demand for  
22 affordable housing. The Mayor's Office of Housing shall also study the cost of developing  
23 market-rate housing and the market price for sale and rental of such housing. Based on this  
24 data, the Mayor's Office of Housing shall determine the median and average profit margins for  
25

1 developers of for-profit housing. The Mayor's Office shall also make a determination whether  
2 levels of affordability can be increased pursuant to Finding J, enumerated in Section 315.2.

3 (f) The Mayor's Office of Housing shall evaluate its monitoring system for affordable units  
4 created under this Section and shall compare its system with that of the San Francisco Redevelopment  
5 Agency with the goal of establishing, to the extent feasible, a single monitoring system for all  
6 inclusionary affordable housing units located in the City and County of San Francisco. Within 6  
7 months of the effective date of this ordinance, MOH shall make any changes to its monitoring system  
8 necessary to bring its monitoring system into conformity with the system of the Redevelopment Agency,  
9 or, if necessary, MOH shall make recommendations to the Board of Supervisors to amend this  
10 ordinance in order to implement improvements to the monitoring system. If it is necessary to amend  
11 the Procedures Manual to change its monitoring system to comply with this Section, MOH may make  
12 any changes necessary to the Procedures Manual to comply with this Section 315.8(e). For purposes  
13 of this Section 315.8(e) only and on a one-time basis, MOH may amend the Procedures Manual without  
14 obtaining approval from the Planning Commission. If MOH determines that some or all of the aspects  
15 of its system are more effective than the Redevelopment Agency's system, it shall inform the Board of  
16 Supervisors and recommend that the Board urge the Redevelopment Agency to conform its procedures  
17 to the City's.

18 Section 3: The Planning Department shall submit a completed impact study analyzing  
19 the impact of the production of new market rate housing on affordable housing to the Board of  
20 Supervisors and the Planning Commission no later than July 1, 2006. The Planning  
21 Department shall establish a Technical Advisory Committee comprised of appropriate  
22 stakeholders to assist in the scoping and work of this study.

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

3 By: \_\_\_\_\_  
4 Susan Cleveland-Knowles  
5 Deputy City Attorney  
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