

BOARD of SUPERVISORS



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MEMORANDUM

TO: John Arntz, Director, Department of Elections
Jon Givner, Office of the City Attorney
Nicole Elliot, Mayor's Office

FROM: Derek Evans, Assistant Clerk, Rules Committee
Board of Supervisors

DATE: January 15, 2016

SUBJECT: CHARTER AMENDMENT INTRODUCED
June 7, 2016, Election

The Board of Supervisors Rules Committee has received the following Charter Amendment for the June 7, 2016, Election, introduced by Supervisor Kim on January 12, 2016. This matter is being referred to you in accordance with Rules of Order 2.22.4.

File No. 151274 Charter Amendment - Authorizing Board of Supervisors to Update Inclusionary or Affordable Housing Requirements and Providing Increased Interim Requirements

Charter Amendment (First Draft) to amend the Charter of the City and County of San Francisco to authorize the Board of Supervisors to update the inclusionary or affordable housing obligations for housing development projects, and setting forth increased interim requirements; and affirming the Planning Department's determination under the California Environmental Quality Act, at an election to be held on June 7, 2016.

Please review and submit any reports or comments you wish to be included with the legislative file.

If you have any questions or concerns please call me at (415) 554-7702 or email derek.evans@sfgov.org. To submit documentation, please forward to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

1 [Charter Amendment - Authorizing Board of Supervisors to Update Inclusionary or Affordable
2 Housing Requirements and Providing Increased Interim Requirements]

3
4 **Describing and setting forth a proposal to the voters to amend the Charter of the City and**
5 **County of San Francisco at an election to be held on June 7, 2016, to authorize the Board of**
6 **Supervisors to update the inclusionary or affordable housing obligations for housing**
7 **development projects and setting forth increased interim requirements; and affirming the**
8 **Planning Department's determination under the California Environmental Quality Act.**

9
10 Section 1. The Planning Department has determined that the actions contemplated in this
11 proposed Charter Amendment comply with the California Environmental Quality Act (California
12 Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of
13 the Board of Supervisors in File No. ___ and is incorporated herein by reference. The Board
14 affirms this determination.

15 Section 2. The Board of Supervisors hereby submits to the qualified voters of the City
16 and County, at an election to be held on June 7, 2016, a proposal to amend the Charter of the
17 City and County as follows:

18 NOTE: **Unchanged Charter text and uncodified text** are in plain font.
19 **Additions** are *single-underline italics Times New Roman font*.
20 **Deletions** are *strike-through italics Times New Roman font*.
21 **Asterisks (* * * *)** indicate the omission of unchanged Charter
subsections.

22 (a) The People of the City and County of San Francisco hereby find as follows:

23 1. San Francisco voters overwhelmingly passed the Affordable Housing Goals
24 Policy Declaration (Proposition K) in 2014 and an Affordable Housing Bond (Proposition A) in
25 2015 in a proactive response to a worsening housing crisis that requires a broad spectrum of land

1 use and financing tools to both preserve existing and create new affordable housing.

2 2. San Francisco currently has the largest income gap in the country, rents are three times
3 higher than the national average and evictions have increased by 170% in a lucrative
4 development market that has incentivized widespread speculation.

5 3. While San Francisco has built 4,300 units of affordable housing over the past ten
6 years, it has simultaneously lost 3,200 units of existing affordable housing stock as a direct result
7 of Ellis Act evictions and short term rental speculation during the same ten year window.

8 4. With San Francisco's median rent for a 1 bedroom unit continuing to climb past
9 \$3,500 a month, most San Franciscans are finding that they cannot afford to pay rental prices.

10 5. Over the last decade, 5,000 children and youth have left the City due to evictions and
11 economic displacement, while families are the fastest-growing demographic of homeless
12 residents.

13 6. All new residential development should include a mix of market rate housing and
14 affordable housing. In addition, development of new market rate housing creates additional
15 demand for affordable housing. As one of the many ways to address the need for affordable
16 housing, the inclusionary requirements should be updated to reflect more appropriately the link
17 between creation of new market rate housing and demand for affordable housing.

18 (b) The Charter is hereby amended by revising Section 16.110, to read as follows:

19 **SEC. 16.110. HOUSING TRUST FUND.**

20 * * * *

21 (b) **Definitions.** For purposes of this Section:

22 *(1) "Affordable Housing Fee" shall mean a fee calculated by the Mayor's Office of*
23 *Housing as the difference between the affordable sales price of a housing unit of a certain*
24 *bedroom size and the cost of developing a comparable housing unit. The Mayor's Office of*
25 *Housing shall index the fee annually based on the annual percent change in the Construction*

1 ~~Cost Index for San Francisco as published by Engineering News-Record or a similar index~~
2 ~~selected by the Mayor's Office of Housing.~~

3 ~~(2) "Area Median Income" or "AMI" shall mean the unadjusted area median income~~
4 ~~levels as calculated by the Mayor's Office of Housing using data from the Department of~~
5 ~~Housing and Urban Development on an annual basis for the San Francisco area, adjusted solely~~
6 ~~for Household size, but not high housing cost area.~~

7 ~~(3) "Basic On-Site Inclusionary Requirement" shall mean 12% of the units in the~~
8 ~~principal project, affordable to a Household whose initial household income does not exceed~~
9 ~~90% of Area Median Income for ownership units and 55% for rental units or an on-site~~
10 ~~requirement with an equivalent Inclusionary Housing Cost Obligation.~~

11 (4) "First Responder" shall mean a City employee who responds first in cases of natural
12 disaster or emergencies, including, but not limited to, all active uniformed, sworn members of
13 the San Francisco Police and Fire Departments.

14 (5) "General Fund Discretionary Revenues" shall mean revenues that the City receives
15 and deposits in its treasury, that are unrestricted, and that the City may appropriate for any lawful
16 City purpose.

17 ~~(6) "Gross floor area" shall have the meaning in Planning Code Section 102.9, or any~~
18 ~~successor section, as amended from time to time.~~

19 (7) "Household" shall mean any person or persons who reside or intend to reside in the
20 same housing unit.

21 (8) "Mayor's Office of Housing" shall mean the Mayor's Office of Housing and
22 Community Development or any successor City agency.

23 ~~(9) "Other Affordable Housing Fees" shall mean any fee imposed on residential~~
24 ~~development by the City as a condition of a development approval related to affordable housing,~~
25 ~~which fee shall be adjusted annually by the City using an index selected by the City, or any~~

1 ~~exactions on residential development related to affordable housing imposed by the City,~~
2 ~~excluding fees imposed under Planning Code Section 415.~~

3 ~~(10) "Planning Code Section 415" shall mean San Francisco Planning Code Section~~
4 ~~415 as of July 1, 2012, together with the defined terms in Section 401 as of that same date, and~~
5 ~~any successor legislation adopted consistent with this Section 16.110. Notwithstanding the~~
6 ~~foregoing, the calculation of the applicable affordable housing fee for "buildings of over 120 feet~~
7 ~~in height" shall be as set forth in Planning Code Sections 315(a)(1)(B) & (C) and 315.6(b)(1) in~~
8 ~~Ordinance No. 101-07, Board of Supervisors File No. 061529.~~

9 ~~(11) "Inclusionary Housing Cost Obligation" shall mean an obligation equal to the~~
10 ~~applicable percentage of below market rate housing units required under Planning Code~~
11 ~~Sections 415.5, 415.6 or 415.7 multiplied by the then-current Affordable Housing Fee required~~
12 ~~per unit. For purposes of calculating the cost burden of any legislative change, the Mayor's~~
13 ~~Office of Housing shall use the average citywide unit mix for projects subject to Planning Code~~
14 ~~Section 415 within the past five years as applied to a hypothetical project of 100 units. For~~
15 ~~purposes of calculating the cost burden imposed by a condition of approval for a particular~~
16 ~~project, the Mayor's Office of Housing shall use the actual unit mix and unit count proposed in~~
17 ~~the development project subject to the condition of approval.~~

18 * * * *

19 ~~(g) On-Site Inclusionary Affordable Housing Requirements.~~

20 ~~(1) Application. This subsection (g) shall not apply to: any residential projects subject~~
21 ~~to a development agreement approved by the City under California Government Code Section~~
22 ~~65864 et seq.; any project exempt from the provisions of Section 415 et seq. under Section 415.3~~
23 ~~as it existed on July 1, 2012; the requirements of a redevelopment plan for a redevelopment~~
24 ~~project area; or any project in which the City has a proprietary interest.~~

1 ~~(2) Reduction of Current On-Site Inclusionary Affordable Housing Requirement.~~

2 ~~Beginning on January 1, 2013, the City shall reduce by 20% the on-site inclusionary housing~~
3 ~~obligation for all projects subject to the on-site Inclusionary affordable housing requirements of~~
4 ~~Planning Code Section 415et seq., including any onsite requirements found in other sections of~~
5 ~~the Planning Code including, but not limited to, Planning Code Sections 415.6, 419, 424, 249.33,~~
6 ~~827(b)(1) and any other Municipal Code sections that refer to Planning Code Section 415et seq.~~
7 ~~or its predecessor, from the requirements of Section 415 and other related sections as they exist~~
8 ~~as of July 1, 2012. Notwithstanding the foregoing, in no event shall the on-site inclusionary~~
9 ~~housing obligation for any project be reduced below the Basic Inclusionary Housing~~
10 ~~Requirement.~~

11 ~~(3) Application to Previously Approved Projects.~~

12 ~~(A) This subsection (g)(3) does not apply to projects that received a reduction in on-site~~
13 ~~inclusionary housing requirements through subsection (g)(2) above.~~

14 ~~(B) Sponsors of projects that already have received their first construction document as~~
15 ~~defined in Section 107A.13.1 of the San Francisco Building Code as of January 1, 2013 may not~~
16 ~~receive a reduction in any on-site below market rate requirement applicable to the subject~~
17 ~~property under this subsection (g).~~

18 ~~(C) Sponsors of projects that have not received their first construction document as~~
19 ~~defined in Section 107A.13.1 of the San Francisco Building Code by January 1, 2013 may apply~~
20 ~~once to the Planning Commission for a modification of their existing conditions of approval to~~
21 ~~reduce any on-site below market rate inclusionary requirements by 20% consistent with~~
22 ~~subsection (g)(2), or change their election so that they will provide on-site rather than off-site~~
23 ~~below market rate units or Affordable Housing Fee payments. Project sponsors seeking to amend~~
24 ~~their conditions of approval to benefit from the 20% reduction must demonstrate to the Planning~~
25 ~~Commission that the proposed reduction will enable the project to obtain financing and~~

1 ~~commence construction within a one year time period following Planning Commission's~~
2 ~~approval of the proposed reduction. The Planning Commission shall include a condition of~~
3 ~~approval to require that the project sponsor obtain its first construction document within one~~
4 ~~year of the approval. If the project sponsor does not obtain its first construction document within~~
5 ~~one year, then the conditions of approval existing before the modification shall apply unless the~~
6 ~~Zoning Administrator, after a duly noticed hearing, determines that the project sponsor has~~
7 ~~made good faith efforts to obtain its first construction document but for reasons beyond the~~
8 ~~project sponsor's control including, but not limited to, the filing of a lawsuit or delay on the part~~
9 ~~of the City or another public entity, has been unable to obtain its first construction document. In~~
10 ~~such a case, the Zoning Administrator may extend the time once, and for up to 1 year, for~~
11 ~~obtaining the first construction document. Any further extensions of time may only be granted by~~
12 ~~the Planning Commission using the same inquiry as to whether the project sponsor has made~~
13 ~~good faith efforts to obtain its first construction document. The Planning Commission may not~~
14 ~~make modifications under this subsection (g)(3)(C) after January 1, 2016.~~

15 ~~(h) Stabilizing the Cost Obligation of Future Inclusionary or Affordable Housing~~
16 ~~Requirements.~~

17 ~~(1) Application. This subsection (h) shall apply as follows:~~

18 ~~(A) This subsection shall apply only to private residential projects or the private~~
19 ~~residential portion of a mixed-use project, and not commercial projects; and~~

20 ~~(B) This subsection shall not apply to any of the following:~~

21 ~~—— (i) A project located in an area subject to a development agreement under~~
22 ~~California Government Code Sections 65864 et seq., as amended, or any successor legislation;~~

23 ~~—— (ii) A project located in a redevelopment project area, an infrastructure~~
24 ~~financing district, or any other area that the City designates under State law in which property~~
25 ~~tax increment is allocated to fund affordable housing;~~

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

8 ~~—— (iv) An area subject to a change in zoning enacted after November 6, 2012 that~~
9 ~~affects 40 or more acres or greater and results in a significant increase in residential~~
10 ~~development potential, where the area is not also encompassed by a Special Use District~~
11 ~~adopted after November 6, 2012. The City shall adopt a standard for determining what~~
12 ~~constitutes "a significant increase in residential development potential" for these purposes as~~
13 ~~follows: There shall be a Housing Review Committee comprised of the Directors of the Mayor's~~
14 ~~Office of Housing, the Planning Department, and the Office of Economic and Workforce~~
15 ~~Development, or their successor agencies. No later than March 1, 2013, the Housing Review~~
16 ~~Committee, after at least one public hearing, shall recommend a standard to the Board of~~
17 ~~Supervisors in the form of a proposed ordinance. Thereafter, the Housing Review Committee, at~~
18 ~~regular intervals determined by the Committee, shall review the standard and recommend any~~
19 ~~necessary updates or modifications to the Board. The Board of Supervisors may reject a~~
20 ~~proposed ordinance submitted by the Housing Review Committee by a majority vote. If the~~
21 ~~Board fails to reject the proposed ordinance within 60 days of receiving it from the Housing~~
22 ~~Review Committee, the proposed ordinance shall be deemed adopted. In subsequently applying~~
23 ~~the standard established in the ordinance and determining whether to increase affordable~~
24 ~~housing fees or exactions in the area subject to the change in zoning, the Board of Supervisors~~

1 ~~shall consider any analysis approved by the Controller's Office regarding the financial~~
2 ~~feasibility of development subject to the proposed fee or exaction.~~

3 ~~—— (v) A project that receives public financing or financial incentives for affordable~~
4 ~~housing from the California Debt Limit Allocation Committee tax-exempt bond financing or~~
5 ~~other similar public source; or~~

6 ~~—— (vi) A project that receives a density bonus for the development of affordable~~
7 ~~housing through the State Density Bonus Law or other similar State legislation;~~

8 ~~—— (vii) A project in which the City has a proprietary interest.~~

9 ~~(2) Inclusionary Housing Cost Obligation. As of January 1, 2013, the City may not~~
10 ~~adopt any new land use legislation or administrative regulation, including a Planning Code~~
11 ~~amendment, or impose any new condition of approval on the issuance of a discretionary permit,~~
12 ~~that would require an increase in the project sponsor's Inclusionary Housing Cost Obligation~~
13 ~~beyond that required as of January 1, 2013, including and incorporating the reductions effected~~
14 ~~by subsection (g).~~

15 ~~(3) Other Fees Related to Affordable Housing Fee. As of January 1, 2013, the City may~~
16 ~~not adopt any new land use legislation or administrative regulation, including a Planning Code~~
17 ~~amendment, or impose any new condition of approval on the issuance of a discretionary permit,~~
18 ~~that would increase any Other Affordable Housing Fees beyond that required as of July 1, 2012.~~

19 ~~(4) Remedy. Any challenge to the validity of any legislation or final administrative order~~
20 ~~or decision on the grounds that such legislation, order or decision increases the project~~
21 ~~sponsor's Inclusionary Housing Cost Obligation or imposes Other Affordable Housing Fees will~~
22 ~~be subject to the requirements of California Code of Civil Procedure Sections 1085 and 1094.5,~~
23 ~~respectively. Any such challenge may be brought only after a project sponsor has exhausted all~~
24 ~~available administrative remedies, and shall be subject to all applicable statutes of limitations,~~
25

1 ~~including without limitation those set forth in California Code of Civil Procedure Section 1094.5~~
2 ~~and California Government Code Sections 65009 and 66499.37.~~

3 ~~(i-g) **Legislation.** The City shall enact any legislation necessary to implement~~
4 ~~subsections (g) and (h) as soon as practicable after the effective date of this Section, but no later~~
5 ~~than January 1, 2014. Before the adoption of such legislation, the Mayor's Office of Housing,~~
6 ~~with consultation as necessary with the Planning Department, shall implement the provisions of~~
7 ~~subsections (g) and (h) administratively and shall issue any necessary guidance.~~

8 (1) The City may enact an ordinance adopting inclusionary or affordable housing
9 obligations, including definitions that differ from those set forth in subsection (b) of this Section
10 16.110. After any such ordinance becomes effective, the City Attorney shall cause to be removed
11 from the Charter this subsection (g) of Section 16.110, and shall cause the subsequent
12 subsections to be renumbered accordingly. Thereafter, the City may by ordinance set and
13 change the minimum or maximum inclusionary or affordable housing obligations, and may
14 adopt definitions for inclusionary and affordable housing programs. In doing so, the City shall
15 endeavor to meet affordable housing needs across a broad range of household incomes, family
16 sizes and neighborhood conditions and may update the method of fee calculation based on
17 different building types and sizes, and may set policies controlling conversion of rental units to
18 ownership units, among other programmatic changes.

19 (2) Until the City enacts an ordinance amending the Planning Code, including
20 but not limited to Section 415, adopting inclusionary or affordable housing obligations different
21 from those called for in previously existing Charter subsections (g) and (h), the following
22 requirements for inclusionary housing shall apply during such interim period for any housing
23 development project that has not procured a final first discretionary development entitlement
24 approval, which shall include approval following any administrative appeal to the relevant City
25

1 board, or has not entered into a development agreement or other binding agreement with the
2 City as of January 12, 2016:

3 (A) For housing development projects consisting of ten dwelling units or
4 more, but less than twenty-five dwelling units, the requirements of the Planning Code, including
5 but not limited to Section 415 et seq., in effect on the date this Charter Amendment is adopted by
6 the voters shall apply.

7 (B) For housing development projects consisting of twenty-five dwelling
8 units or more, the requirements of the Planning Code, including but not limited to Section 415 et
9 seq., in effect on the date this Charter Amendment is adopted by the voters shall apply, except
10 that the amounts of the inclusionary housing requirement shall be modified as follows:

11 (i) Fee. The development project shall pay an affordable housing
12 fee equivalent to a requirement to provide 33% of the units in the principal project as affordable
13 units, using the method of fee calculation set forth in Planning Code Section 415.5(b). In the
14 event the City's Nexus Analysis in support of the Inclusionary Affordable Housing Program
15 demonstrates that a lower affordable housing fee is lawfully applicable based on an analysis of
16 all relevant impacts, the City may utilize the method of fee calculation supported by the Nexus
17 Analysis in lieu of the 33% requirement set forth herein.

18 (ii) On-Site Housing. If the project sponsor elects and is eligible
19 to construct units affordable to qualifying households on-site of the principal project as set forth
20 in Planning Code Section 415.5(g), the project sponsor shall construct 25% of all units
21 constructed on the project site as affordable housing units, with 15% of the units affordable to
22 low- and very low-income households and 10% affordable to middle income households, and
23 shall comply with all otherwise applicable requirements of Section 415.6.

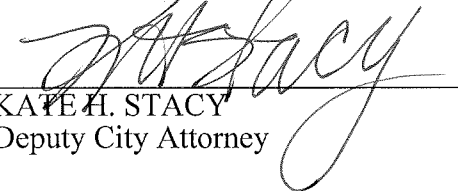
24 (iii) Off-Site Housing. If the project sponsor of a housing
25 development project elects and is eligible to provide units affordable to qualifying households

1 off-site of the principal project as set forth in Planning Code Section 415.5(g), the project
2 sponsor shall construct or cause to be constructed affordable housing units equal to 33% of all
3 units constructed on the principal project site as affordable housing, with 20% of the units
4 affordable to low- and very low-income households and 13% of the units affordable to middle-
5 income households, and shall comply with all otherwise applicable requirements of Section
6 415.7.

7 (C) Interim definitions of "Lower Income" and "Middle Income"
8 households. For purposes of the interim period before the City enacts an ordinance amending
9 the Planning Code, including but not limited to Section 415 et seq., "lower income" households
10 shall be defined as households whose total household income does not exceed 55% of Area
11 Median Income for purposes of renting an affordable unit, or 80% of Area Median Income for
12 purposes of purchasing an affordable unit, and "middle income" households shall mean
13 households whose total household income does not exceed 100% of Area Median Income for
14 purposes of renting an affordable unit, or 120% of Area Median Income for purposes of
15 purchasing an affordable unit.

16 * * * *

17
18 APPROVED AS TO FORM:
19 DENNIS J. HERRERA, City Attorney

20 By: 
21 KATE H. STACY
22 Deputy City Attorney

23 n:\egana\as2016\1600373\01073982.docx