

BOARD of SUPERVISORS



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March 7, 2017

**File No. 170208**

Lisa Gibson  
Acting Environmental Review Officer  
Planning Department  
1650 Mission Street, Ste. 400  
San Francisco, CA 94103

Dear Ms. Gibson:


On February 28, 2017, Supervisor Safai introduced the following proposed legislation:

**File No. 170208**

**Ordinance amending the Planning Code to revise the amount of the Inclusionary Affordable Housing Fee and the On-Site and Off-Site Affordable Housing Alternatives and other Inclusionary Housing requirements; to require minimum dwelling unit mix in all residential districts; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of public necessity, convenience, and welfare under Planning Code Section 302; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

*for* By:  Alisa Somera, Legislative Deputy Director  
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning  
Jeanie Poling, Environmental Planning

1 [Planning Code - Inclusionary Affordable Housing Fee and Dwelling Unit Mix Requirements]

2  
3 **Ordinance amending the Planning Code to revise the amount of the Inclusionary**  
4 **Affordable Housing Fee and the On-Site and Off-Site Affordable Housing Alternatives**  
5 **and other Inclusionary Housing requirements; to require minimum dwelling unit mix in**  
6 **all residential districts; affirming the Planning Department's determination under the**  
7 **California Environmental Quality Act; making findings of public necessity,**  
8 **convenience, and welfare under Planning Code Section 302; and making findings of**  
9 **consistency with the General Plan, and the eight priority policies of Planning Code,**  
10 **Section 101.1.**

11 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
12 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
13 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
14 **Board amendment additions** are in double-underlined Arial font.  
15 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
16 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
17 subsections or parts of tables.

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

19 Section 1. General Findings.

20 (a) The Planning Department has determined that the actions contemplated in this  
21 ordinance comply with the California Environmental Quality Act (California Public Resources  
22 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
23 Supervisors in File No. \_\_\_\_\_ and is incorporated herein by reference. The Board affirms this  
24 determination.

25 (b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_, adopted  
findings that the actions contemplated in this ordinance are consistent, on balance, with the

1 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board  
2 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the  
3 Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.

4 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code  
5 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth  
6 in Planning Commission Resolution No. \_\_\_\_\_ and the Board incorporates such reasons  
7 herein by reference. A copy of Planning Commission Resolution No. \_\_\_\_\_ is on file with the  
8 Board of Supervisors in File No. \_\_\_\_\_.

9  
10 Section 2. Findings About Inclusionary Affordable Housing Requirements.

11 (a) The purpose of this ordinance is to adopt new inclusionary or affordable housing  
12 obligations following the process set forth in Section 415.10 of the Planning Code, and  
13 elaborated upon in Ordinance No. 76-16, which required that the City study how to set  
14 inclusionary housing obligations in San Francisco at the maximum economically feasible  
15 amount in market rate housing development to create affordable housing. The inclusionary  
16 affordable housing obligations set forth in this ordinance will supersede and replace any  
17 previous requirements.

18 (b) The City's Inclusionary Affordable Housing Program is intended to share the need  
19 to meet the demonstrated need for affordable housing in the City with private development  
20 and to ensure that all housing needs are addressed as part of the City's land use controls.  
21 However, setting the requirements at the right level is critical to increasing housing  
22 opportunities, especially affordable opportunities. If inclusionary levels are set too low, the City  
23 does not maximize new affordable housing units; if they are set too high, housing will not be  
24 economically feasible for private development, and will not be built at all.

1 (c) From June 2016 from February 2017, the Controller's Office undertook a study that  
2 recommended levels of inclusionary requirements that could be borne by market rate  
3 development without impeding its feasibility. This process was guided by a Technical Advisory  
4 Committee, and was open to the public. On February 13, 2017, the Controller's Office  
5 published the Inclusionary Housing Working Group Final Report, a study that provided final  
6 recommendations, which form the basis of the amendments proposed by this ordinance.

7 (d) As rents and sales prices outpace what is affordable to the typical San Francisco  
8 family, the City faces a continuing shortage of affordable housing for not only very low and  
9 low-income residents, but also for moderate and middle income families. To date, the majority  
10 of the City's affordable housing production, including the majority of units produced through  
11 the inclusionary housing program, has served primarily very low and low income households,  
12 at or below 60% of area median income.

13 (e) In order to maximize the benefit of state and federal funds supporting affordable  
14 housing construction, which are typically restricted to very low and low income households,  
15 and to maximize the amount of affordable units constructed, the majority of the City's new  
16 affordable housing production is likely to continue to focus on households at or below 60% of  
17 area median income. However, new units produced through the City's Inclusionary Housing  
18 Program do not typically avail themselves of state and federal funds, and therefore provide  
19 the most cost-effective way to produce units for moderate and middle income families.

20 (f) The Board of Supervisors recognizes that this Inclusionary Housing Program is only  
21 one small part of the City's overall strategy for providing affordable housing to very low, low,  
22 moderate and middle income households. The City will continue to acquire, rehabilitate and  
23 produce units through the Mayor's Office of Housing and Community Development, provide  
24 rental subsidies, and provide homeownership assistance to continue to expand its reach to  
25 households in need of affordable housing.

1 (g) The City will also continue to pursue innovative solutions to provide and stabilize  
2 affordable housing in San Francisco, including programs such as HOME-SF which enhance  
3 the existing Inclusionary Housing program by incentivizing projects that set aside 30% of on-  
4 site units as permanently affordable, and 40% of units as family-friendly multiple bedroom  
5 units.

6 (h) The City, through the Mayor's Office of Housing and Community Development, will  
7 also continue to acquire, rehabilitate and produce units, provide rental subsidies, provide  
8 homeownership assistance, and expand its reach to households in need of affordable  
9 housing.

10 (i) In an effort to support a mix of both ownership project and rental projects, the City is  
11 providing a direct financial contribution to project sponsors who agree to rent units for a period  
12 of 30 years. The direct financial contribution is in the form of a reduction in the applicable  
13 affordable housing requirement.

14 Section 3. The Planning Code is hereby amended by revising Sections 415.2, 415.3,  
15 415.5, 415.6, and 415.7, and adding Section 415.11 to read as follows:

16 **SEC. 415.2. DEFINITIONS.**

17 In addition to the definitions set forth in See Section 401 of this Article, the following  
18 definitions shall apply to Sections 415.1 et seq. "Owned Unit" shall mean a condominium, stock  
19 cooperative, community apartment or detached single family home, and the owner or owners of an  
20 owned unit must occupy the unit as their primary residence. "Rental Housing Project" shall mean a  
21 housing project consisting solely of Rental Units, as defined in Section 401, that meets all of the  
22 following requirements: (a) the units shall be rental housing for not less than 30 years from the  
23 issuance of the certificate of occupancy pursuant to an agreement between the developer and the City,  
24 in accordance with applicable State law governing rental housing, which is reviewed and approved by  
25 the Planning Director and the City Attorney's Office and executed by the Planning Director; and (b)

1 the agreement described in subsection (a) shall be recorded against the property prior to issuance of  
2 the certificate of occupancy.

3 ~~For purposes of Sections 415.3 et seq., "low income" households shall be defined as households~~  
4 ~~whose total household income does not exceed 55% of Area Median Income for purposes of renting an~~  
5 ~~affordable unit, or 80% of Area Median Income for purposes of purchasing an affordable unit, and~~  
6 ~~"moderate income" and "middle income" households shall mean households whose total household~~  
7 ~~income does not exceed 100% of Area Median Income for purposes of renting an affordable unit, or~~  
8 ~~120% of Area Median Income for purposes of purchasing an affordable unit. The Small Sites Fund,~~  
9 ~~defined in Section 415.5(f)(2), and the Small Sites Program may use Affordable Housing Fees to~~  
10 ~~acquire sites and buildings consistent with the income parameters of the Programs, as periodically~~  
11 ~~updated and administered by MOHCD.~~

12 **SEC. 415.3. APPLICATION.**

13 \* \* \* \*

14 (b) Any development project that has submitted a complete Environmental Evaluation  
15 application prior to January 1, 2013 shall comply with the Affordable Housing Fee  
16 requirements, the on-site affordable housing requirements or the off-site affordable housing  
17 requirements, as applicable, in effect on January 12, 2016. ~~For development projects that have~~  
18 ~~submitted a complete Environmental Evaluation application on or after January 1, 2013, the~~  
19 ~~requirements set forth in Planning Code Sections 415.5, 415.6, and 415.7 shall apply to certain~~  
20 ~~development projects consisting of 25 dwelling units or more during a limited period of time as follows.~~

21 (c) Any development project that has submitted a complete Environmental Evaluation  
22 application after January 12, 2016, shall comply with the requirements set forth in Planning Code  
23 Sections 415.5, 415.6 and 415.7, as applicable. The applicable amount of the inclusionary housing fee  
24 or percentage required for the on-site or off-site alternatives shall be determined based upon the date  
25 that the project sponsor has submitted a complete Environmental Evaluation application, provided that

1 a First Construction Document is issued within three years of the date the Development Application  
2 procures a first discretionary development entitlement approval, which shall mean approval following  
3 any administrative appeal to the relevant City board. In the event the project sponsor does not procure  
4 a First Construction Document within three years of the date the development procured a first  
5 development entitlement approval, including any administrative appeal to the relevant City board, the  
6 development project shall comply with the inclusionary affordable housing requirements set forth in  
7 Sections 415.5, 415.6, and 415.7 in effect at the time the First Construction Document is issued. Such  
8 deadline shall be extended in the event of any litigation seeking to invalidate the City's approval of such  
9 project, for the duration of the litigation.

10 (d) For development projects consisting of 25 dwelling units or more that have submitted a  
11 complete Environmental Evaluation application on or after January 1, 2013 and prior to or on January  
12 12, 2016, the requirements set forth in Planning Code Sections 415.5, 415.6, and 415.7 shall apply;  
13 provided, however, that during the limited periods of times set forth in this subsection (d), the following  
14 amounts of on-site affordable housing shall apply to development projects that are eligible and elect to  
15 provide on-site affordable housing under Section 415.6.

16 ~~(1) If a development project is eligible and elects to provide on-site affordable housing,~~  
17 ~~the development project shall provide the following amounts of on-site affordable housing. All other~~  
18 ~~requirements of Planning Code Sections 415.1 et seq. shall apply.~~

19 (A1) Any development project that has submitted a complete  
20 Environmental Evaluation application prior to January 1, 2014 shall provide affordable units in  
21 the amount of 13% of the number of units constructed on-site.

22 (B2) Any development project that has submitted a complete  
23 Environmental Evaluation application prior to January 1, 2015 shall provide affordable units in  
24 the amount of 13.5% of the number of units constructed on-site.

1                   (€3) Any development project that has submitted a complete  
2 Environmental Evaluation application on or prior to January 12, 2016 shall provide affordable  
3 units in the amount of 14.5% of the number of units constructed on-site.

4                   ~~(D) Any development project that submits an Environmental Evaluation~~  
5 ~~application after January 12, 2016, shall comply with the requirements set forth in Planning Code~~  
6 ~~Sections 415.5, 415.6 and 415.7, as applicable.~~

7                   ~~(E) Notwithstanding the provisions set forth in subsections (b)(1)(A), (B) and~~  
8 ~~(C) of this section 415.3, if a development project is located in a UMU Zoning District or in the South~~  
9 ~~of Market Youth and Family Zoning District, and is eligible and elects to provide on-site units pursuant~~  
10 ~~to Section 415.5(g), such development project shall comply with the on-site requirements applicable~~  
11 ~~within such Zoning Districts, as they existed on January 12, 2016, plus the following additional~~  
12 ~~amounts of on-site affordable units: (i) if the development project has submitted a complete~~  
13 ~~Environmental Evaluation application prior to January 1, 2014, the Project Sponsor shall provide~~  
14 ~~additional affordable units in the amount of 1% of the number of units constructed on-site; (ii) if the~~  
15 ~~development project has submitted a complete Environmental Evaluation application prior to January~~  
16 ~~1, 2015, the Project Sponsor shall provide additional affordable units in the amount of 1.5% of the~~  
17 ~~number of units constructed on-site; or (iii) if the development project has submitted a complete~~  
18 ~~Environmental Evaluation application on or prior to January 12, 2016, the Project Sponsor shall~~  
19 ~~provide additional affordable units in the amount of 2% of the number of units constructed on-site.~~

20                   ~~(F) Any development project that has submitted a complete Environmental~~  
21 ~~Evaluation application on or before January 12, 2016 and seeks to utilize a density bonus under State~~  
22 ~~Law shall use its best efforts to provide on-site affordable units in the amount of 25% of the number of~~  
23 ~~units constructed on-site and shall consult with the Planning Department about how to achieve this~~  
24 ~~amount of inclusionary affordable housing. An applicant seeking a density bonus under the provisions~~  
25



1 of State Law shall prepare a report analyzing how the concessions and incentives requested are  
2 necessary in order to provide the required on-site affordable housing.

3 ~~(2) If a development project pays the Affordable Housing Fee or is eligible and elects to~~  
4 ~~provide off-site affordable housing, the development project shall provide the following fee amount or~~  
5 ~~amounts of off-site affordable housing during the limited periods of time set forth below. All other~~  
6 ~~requirements of Planning Code Sections 415.1 et seq. shall apply.~~

7 ~~(A) Any development project that has submitted a complete Environmental~~  
8 ~~Evaluation application prior to January 1, 2014, shall pay a fee or provide off-site housing in an~~  
9 ~~amount equivalent to 25% of the number of units constructed on-site.~~

10 ~~(B) Any development project that has submitted a complete Environmental~~  
11 ~~Evaluation application prior to January 1, 2015, shall pay a fee or provide off-site housing in an~~  
12 ~~amount equivalent to 27.5% of the number of units constructed on-site.~~

13 ~~(C) Any development project that has submitted a complete Environmental~~  
14 ~~Evaluation application on or prior to January 12, 2016 shall pay a fee or provide off-site housing in an~~  
15 ~~amount equivalent to 30% of the number of units constructed on-site.~~

16 ~~(D) Any development project that submits an Environmental Evaluation~~  
17 ~~application after January 12, 2016 shall comply with the requirements set forth in Sections 415.5,~~  
18 ~~415.6, and 415.7, as applicable.~~

19 ~~(E) Notwithstanding the provisions set forth in subsections (b)(2)(A), (B) and~~  
20 ~~(C) of this Section 415.3, for development projects proposing buildings over 120 feet in height, as~~  
21 ~~measured under the requirements set forth in the Planning Code, except for buildings up to 130 feet in~~  
22 ~~height located both within a special use district and within a height and bulk district that allows a~~  
23 ~~maximum building height of 130 feet, such development projects shall pay a fee or provide off-site~~  
24 ~~housing in an amount equivalent to 33% of the number of units constructed on-site. Any buildings up to~~  
25 ~~130 feet in height located both within a special use district and within a height and bulk district that~~

1 *allows a maximum building height of 130 feet shall comply with the provisions of subsections (b)(2)(A),*  
2 *(B) and (C) of this Section 415.3 during the limited periods of time set forth therein.*

3 *(F) Notwithstanding the provisions set forth in subsections (d)(1), (2), and (3)*  
4 *(b)(2)(A), (B) and (C) of this section 415.3, if a development project is located in a UMU Zoning*  
5 *District or in the South of Market Youth and Family Zoning District, and pays the Affordable Housing*  
6 *Fee or is eligible and elects to provide off-site affordable housing pursuant to Section 415.5(g), or*  
7 *elects to comply with a land dedication alternative, such development project shall comply with the fee,*  
8 *off-site or land dedication requirements applicable within such Zoning Districts, as they existed on*  
9 *January 12, 2016, plus the following additional amounts for the Affordable Housing Fee or for land*  
10 *dedication or off-site affordable units: (i) if the development project has submitted a complete*  
11 *Environmental Evaluation application prior to January 1, 2014, the Project Sponsor shall pay an*  
12 *additional fee, or provide additional land dedication or off-site affordable units, in an amount*  
13 *equivalent to 5% of the number of units constructed on-site; (ii) if the development project has*  
14 *submitted a complete Environmental Evaluation application prior to January 1, 2015, the Project*  
15 *Sponsor shall pay an additional fee, or provide additional land dedication or off-site affordable units,*  
16 *in an amount equivalent to 7.5% of the number of units constructed on-site; or (iii) if the development*  
17 *project has submitted a complete Environmental Evaluation application on or prior to January 12,*  
18 *2016, the Project Sponsor shall pay an additional fee, or provide additional land dedication or off-site*  
19 *affordable units, in an amount equivalent to 10% of the number of units constructed on-site.*  
20 *Notwithstanding the foregoing, a development project shall not pay a fee or provide off-site units in a*  
21 *total amount greater than the equivalent of 33% of the number of units constructed on-site.*

22 *(G) Any development project consisting of 25 dwelling units or more that has*  
23 *submitted a complete Environmental Evaluation application on or prior to January 12, 2016, and is*  
24 *eligible and elects to provide off-site affordable housing, may provide off-site affordable housing by*  
25 *acquiring an existing building to fulfill all or part of the requirements set forth in this Section 415.3 and*

1 ~~in Section 415.7 with an equivalent amount of units as specified in this Section 415.3(b)(2), as reviewed~~  
2 ~~and approved by the Mayor's Office of Housing and Community Development and consistent with the~~  
3 ~~parameters of its Small Sites Acquisition and Rehabilitation Program, in conformance with the income~~  
4 ~~limits for the Small Sites Program.~~

5 ~~(3) During the limited period of time in which the provisions of Section 415.3(b) apply,~~  
6 ~~for any housing development that is located in an area with a specific affordable housing requirement~~  
7 ~~set forth in an Area Plan or a Special Use District, or in any other section of the Code such as Section~~  
8 ~~419, with the exception of the UMU Zoning District or in the South of Market Youth and Family Zoning~~  
9 ~~District, the higher of the affordable housing requirement set forth in such Area Plan or Special Use~~  
10 ~~District or in Section 415.3(b) shall apply. Any affordable housing impact fee paid pursuant to an Area~~  
11 ~~Plan or Special Use District shall be counted as part of the calculation of the inclusionary housing~~  
12 ~~requirements contained in Planning Code Sections 415.1 et seq.~~

13 (45) Any development project that constructs on-site ~~or off-site~~ affordable  
14 housing units as set forth in subsection (bd) of this Section 415.3 shall diligently pursue  
15 completion of such units. In the event the project sponsor does not procure a building permit  
16 or site permit for construction of the affordable housing units by December 7, 2018, the  
17 development project shall comply with the inclusionary affordable housing requirements set  
18 forth in Sections 415.5, 415.6, ~~and 415.7, as applicable~~. Such deadline shall be extended in the  
19 event of any litigation seeking to invalidate the City's approval of such project, for the duration  
20 of the litigation.

21 (ee) The new inclusionary affordable housing requirements contained in Sections  
22 415.5, 415.6, and 415.7, as well as the provisions contained in Section 415.3(bd), shall not  
23 apply to ~~(1) any mixed use project that is located in a special use district for which a height limit~~  
24 ~~increase has been approved by the voters prior to January 12, 2016 to satisfy the requirements of~~  
25 ~~Administrative Code Section 61.5.1, or (2) any mixed use project that has entered into a development~~

1 ~~agreement or other similar binding agreement with the City on or before January 12, 2016, or (3) any~~  
2 housing development project that has procured a final first discretionary development  
3 entitlement approval, which shall mean approval following any administrative appeal to the  
4 relevant City board, on or before January 12, 2016. The inclusionary housing requirements for  
5 these projects shall be those requirements contained in the projects' existing approvals.

6 (d) The City may continue to enter into development agreements or other similar  
7 binding agreements for projects that provide inclusionary affordable housing at levels that may  
8 be different from the levels set forth in Sections 415.1 et seq.

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

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

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

17 (3) That portion of a housing project located on property under the jurisdiction of  
18 the San Francisco Office of Community Investment and Infrastructure or the Port of San  
19 Francisco where the application of Section 415.1 et seq. is prohibited by California or local  
20 law.

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

1 \* \* \* \*

2 (5) A Student Housing project that meets all of the following criteria:

3 \* \* \* \*

4 (C) The Mayor’s Office of Housing and Community Development (MOHCD) is  
5 authorized to monitor this program. MOHCD shall develop a monitoring form and annual  
6 monitoring fee to be paid by the owner of the real property or the Post-Secondary Educational  
7 Institution or Religious Institutions, as defined in Section 102 of this Code. The owner of the  
8 real property and each Post-Secondary Educational Institution or Institutions shall agree to  
9 submit annual documentation to MOHCD and the Planning Department, on or before  
10 December 31 of each year, that addresses the following:

11 \* \* \* \*

12 (iii) The owner of the real property records a Notice of Special  
13 Restrictions (NSR) against fee title to the real property on which the Student Housing is  
14 located that states the following:

15 \* \* \* \*

16 d. The Post-Secondary Educational Institution is required to  
17 report annually as required in Subsection (g)(5)(C) above;

18 \* \* \* \*

19  
20 **SEC. 415.5. AFFORDABLE HOUSING FEE.**

21 *The fees set forth in this Section 415.5 will be reviewed when the City completes an Economic*  
22 *Feasibility Study.* Except as provided in Section 415.5(g), all development projects subject to  
23 this Program shall be required to pay an Affordable Housing Fee subject to the following  
24 requirements:  
25

1 (a) Payment of a Fee. The fee is due and payable to the Development Fee Collection  
2 Unit at DBI for deposit into the Citywide Affordable Housing Fund at the time of and in no  
3 event later than issuance of the first construction document, with an option for the project  
4 sponsor to defer payment to prior to issuance of the first certificate of occupancy upon  
5 agreeing to pay a deferral surcharge that would be deposited into the Citywide Affordable  
6 Housing Fund, in accordance with Section 107A.13.15 of the San Francisco Building Code.

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

9 (1) The number of units equivalent to the applicable off-site percentage of the  
10 number of units in the principal *housing* project.

11 (A) The applicable percentage shall be 20% for housing development  
12 projects consisting of 10 dwelling units or more, but less than 25 dwelling units.

13 (B) The applicable percentage for development projects consisting of 25  
14 dwelling units or more shall be ~~33%~~ *28% if such units are Owned Units.*

15 (C) *The applicable percentage for development projects consisting of 25*  
16 *dwelling units or more shall be 23% if such units are Rental Units in a Rental Housing Project.*

17 (D) *For housing developments consisting of 25 or more dwelling units, starting*  
18 *on January 1, 2019, and no later than January 1 of each year thereafter, MOHCD shall increase the*  
19 *applicable percentages set forth in 415.5(b)(1)(B) and 415.5(b)(1)(C) in increments of 0.5% each year,*  
20 *until such requirements are 33% and 28%, respectively. In any year that the increase would result in a*  
21 *fee percentage that exceeds the maximum fee percentage in the City's most recently completed Nexus*  
22 *Analysis, the annual increase shall not be applied. MOHCD shall provide the Planning Department,*  
23 *DBI, and the Controller with information on the adjustment to the on-site percentage so that it can be*  
24 *included in the Planning Department's and DBI's website notice of the fee adjustments and the*  
25

1 Controller's Citywide Development Fee and Development Impact Requirements Report described in  
2 Section 409(a).

3 ~~For the purposes of this Section 415.5, the City shall calculate the fee using the~~  
4 ~~direct fractional result of the total number of units multiplied by the applicable percentage, rather than~~  
5 ~~rounding up the resulting figure as required by Section 415.6(a).~~

6 (2) The affordability gap using data on ~~the MOHCD's~~ cost of construction of  
7 residential housing ~~and the Maximum Purchase Price for the equivalent unit size~~. The Department  
8 and MOHCD shall update the technical report from time to time as they deem appropriate in  
9 order to ensure that the affordability gap remains current.

10 (3) For all housing development projects, no ~~Not~~ later than January 1 of each year,  
11 MOHCD shall adjust the fee based on adjustments in the cost of constructing housing. MOHCD  
12 shall provide the Planning Department, DBI, and the Controller with information on the  
13 adjustment to the fee so that it can be included in the Planning Department's and DBI's  
14 website notice of the fee adjustments and the Controller's Citywide Development Fee and  
15 Development Impact Requirements Report described in Section 409(a). MOHCD is  
16 authorized to develop an appropriate methodology for indexing the fee, ~~based on adjustments in~~  
17 ~~the cost of constructing housing and the Maximum Purchase Price for the equivalent unit size~~. The  
18 method of indexing shall be published in the Procedures Manual.

19 ~~(4) For any housing development that is located in an area with a specific affordable~~  
20 ~~housing requirement set forth in a Special Use District, or in any other section of the Code such as~~  
21 ~~Section 419, the higher affordable housing requirement shall apply.~~

22 (4) MOHCD shall calculate, and the Planning Department shall impose the fee as a  
23 dollar per square foot equivalency based on the total number of gross residential square feet in the  
24 project. MOHCD shall publish the methodology for calculating gross residential square feet in its  
25 Procedures Manual.

1                   (5) The fee shall be imposed on any additional units or square footage authorized and  
2 developed under California Government Code Sections 65915 et seq.

3           (c) Notice to Development Fee Collection Unit of Amount Owed. Prior to issuance of  
4 the first construction document for a development project subject to Section 415.5, ~~MOH~~ the  
5 Planning Department shall notify the Development Fee Collection Unit at DBI electronically or in  
6 writing of its calculation of the amount of the fee owed.

7           (d) Lien Proceedings. If, for any reason, the Affordable Housing Fee imposed pursuant  
8 to Section 415.5 remains unpaid following issuance of the first Certificate of Occupancy, the  
9 Development Fee Collection Unit at DBI shall institute lien proceedings to make the entire  
10 unpaid balance of the fee, plus interest and any deferral surcharge, a lien against all parcels  
11 used for the development project in accordance with Section 408 of this Article and Section  
12 107A.13.15 of the San Francisco Building Code.

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

17           (f) Use of Fees. All monies contributed pursuant to the Inclusionary Affordable Housing  
18 Program shall be deposited in the Citywide Affordable Housing Fund ("the Fund"), established  
19 in Administrative Code Section 10.100-49. The Mayor's Office of Housing and Community  
20 Development ("MOHCD") shall use the funds collected under this Section in the following  
21 manner:

22                   (1) Except as provided in subsection (2) below, the funds collected under this  
23 Section shall be used to:

24                           (A) increase the supply of housing affordable to qualifying households  
25 subject to the conditions of this Section; and



1 (B) provide assistance to low and moderate income homebuyers; and

2 (C) pay the expenses of MOHCD in connection with monitoring and  
3 administering compliance with the requirements of the Program. MOHCD is authorized to use  
4 funds in an amount not to exceed \$200,000 every 5 years to conduct follow-up studies under  
5 Section 415.9(e) and to update the affordable housing fee amounts as described above in  
6 Section 415.5(b). All other monitoring and administrative expenses shall be appropriated  
7 through the annual budget process or supplemental appropriation for MOHCD.

8 (2) "Small Sites Funds."

9 (A) Designation of Funds. MOHCD shall designate and separately  
10 account for 10% percent of all fees that it receives under Section 415.1et seq. that are  
11 deposited into the Citywide Affordable Housing Fund, established in Administrative Code  
12 Section 10.100-49, excluding fees that are geographically targeted such as those referred to  
13 in Sections 415.5(b)(1) and 827(b)(1), to support acquisition and rehabilitation of Small Sites  
14 ("Small Sites Funds"). MOHCD shall continue to divert 10% *percent* of all fees for this purpose  
15 until the Small Sites Funds reach a total of \$15 million at which point, MOHCD will stop  
16 designating funds for this purpose. At such time as designated Small Sites Funds are  
17 expended and dip below \$15 million, MOHCD shall start designating funds again for this  
18 purpose, such that at no time the Small Sites Funds shall exceed \$15 million. When the total  
19 amount of fees paid to the City under Section 415.1et seq. totals less than \$10 million over  
20 the preceding 12 month period, MOHCD is authorized to temporarily divert funds from the  
21 Small Sites Fund for other purposes. MOHCD must keep track of the diverted funds, however,  
22 such that when the amount of fees paid to the City under Section 415.1et seq. meets or  
23 exceeds \$10 million over the preceding 12 month period, MOHCD shall commit all of the  
24 previously diverted funds and 10% *percent* of any new funds, subject to the cap above, to the  
25 Small Sites Fund.

1 (B) Use of Small Sites Funds. The funds shall be used exclusively to  
2 acquire or rehabilitate "Small Sites" defined as properties consisting of 2-25 units. Units  
3 supported by monies from the fund shall be designated as housing affordable to qualified  
4 households consistent with the income qualifications of the Small Sites Acquisition and Rehabilitation  
5 Program, as periodically updated and administered by MOHCD, as set forth in Section 415.2 for no  
6 less than 55 years. Properties supported by the Small Sites Funds must be:

7 (i) rental properties that will be maintained as rental properties;  
8 (ii) vacant properties that were formerly rental properties as long  
9 as those properties have been vacant for a minimum of two years prior to the effective date of  
10 this legislation;

11 (iii) properties that have been the subject of foreclosure; or  
12 (iv) a Limited Equity Housing Cooperative as defined in  
13 Subdivision Code Sections 1399.1et seq. or a property owned or leased by a non-profit entity  
14 modeled as a Community Land Trust.

15 (C) Initial Funds. If, within 18 months from April 23, 2009, MOHCD  
16 dedicates an initial one-time contribution of other eligible funds to be used initially as Small  
17 Sites Funds, MOHCD may use the equivalent amount of Small Sites Funds received from  
18 fees for other purposes permitted by the Citywide Affordable Housing Fund until the amount of  
19 the initial one-time contribution is reached.

20 (D) Annual Report. At the end of each fiscal year, MOHCD shall issue a  
21 report to the Board of Supervisors regarding the amount of Small Sites Funds received from  
22 fees under this legislation, and a report of how those funds were used.

23 (E) Intent. In establishing guidelines for Small Sites Funds, the Board of  
24 Supervisors does not intend to preclude MOHCD from expending other eligible sources of  
25

1 funding on Small Sites as described in this Section, or from allocating or expending more than  
2 \$15 million of other eligible funds on Small Sites.

3 (3) For all projects funded by the Citywide Affordable Housing Fund, MOHCD  
4 requires the project sponsor or its successor in interest to give preference as provided in  
5 Administrative Code Chapter 47.

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

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

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

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

17 (C) **Alternative #3: Small Sites.** Qualifying project sponsors may elect  
18 to fund buildings as set forth in Section 415.7-1.

19 (D) **Alternative #4: Combination.** Project sponsors may elect any  
20 combination of payment of the Affordable Housing Fee as provided in Section 415.5,  
21 construction of on-site units as provided in Section 415.6, or construction of off-site units as  
22 provided in Section 415.7, provided that the project applicant constructs or pays the fee at the  
23 appropriate percentage or fee level required for that option. Projects providing on-site units  
24 under Section 415.6 and that qualify for and receive additional density under California Government  
25

1 Code Section 65915 et seq. shall use Alternative #4 to pay the Affordable Housing Fee on any  
2 additional square footage authorized under Section 65915.

3 (2) **Qualifications:** If a project sponsor wishes to comply with the Program  
4 through one of the Alternatives described in subsections (g)(1) rather than pay the Affordable  
5 Housing Fee, they must demonstrate that they qualify for the Alternative to the satisfaction of  
6 the Department and MOHCD. A project sponsor may qualify for an Alternative by the following  
7 methods:

8 (i) Method #1 - Ownership Units. All affordable units provided under this  
9 Program shall be sold as ownership units and will remain ownership units for the life of the  
10 project. Project sponsors must submit the 'Affidavit of Compliance with the Inclusionary  
11 Affordable Housing Program' to the Planning Department prior to project approval by the  
12 Department or the Commission; or

13 (ii) Method #2 - Government Financial Contribution. Submit to the  
14 Department a contract demonstrating that the project's on- or off-site units are not subject to  
15 the Costa Hawkins Rental Housing Act, California Civil Code Section 1954.50 because, under  
16 Section 1954.52(b), it has entered into an agreement with a public entity in consideration for a  
17 direct financial contribution or any other form of assistance specified in California Government  
18 Code Sections 65915 et seq. and it submits an Affidavit of such to the Department. All such  
19 contracts entered into with the City and County of San Francisco must be reviewed and  
20 approved by ~~the Mayor's Office Housing~~ MOHCD and the City Attorney's Office. All contracts  
21 that involve 100% affordable housing projects in the residential portion may be executed by  
22 the Mayor or the Director of ~~the Mayor's Office of Housing~~ MOHCD. Any contract that involves  
23 less than 100% affordable housing in the residential portion, may be executed by either the  
24 Mayor, the Director of ~~the Mayor's Office of Housing~~ MOHCD or, after review and comment by  
25 ~~the Mayor's Office of Housing~~ MOHCD, the Planning Director. A Development Agreement under

1 California Government Code Section 65864 et seq. and Chapter 56 of the *San Francisco*  
2 Administrative Code entered into between a project sponsor and the City and County of San  
3 Francisco may, but does not necessarily, qualify as such a contract.

4 (3) The Planning Commission or the Department may not require a  
5 project sponsor to select a specific Alternative. If a project sponsor elects to meet the Program  
6 requirements through one of the Alternatives described in *subsection (g)(1)*, they must choose  
7 it and demonstrate that they qualify prior to any project approvals from the Planning  
8 Commission or Department. The Alternative will be a condition of project approval and  
9 recorded against the property in an NSR. Notwithstanding the foregoing, if a project sponsor  
10 qualifies for an Alternative described in *subsection (g)(1)* and elects to construct the affordable  
11 units on- or off-site, they must submit the 'Affidavit of Compliance with the Inclusionary  
12 Housing Program' based on the fact that the units will be sold as ownership units. A project  
13 sponsor who has elected to construct affordable ownership units on- or off-site may only elect  
14 to pay the Affordable Housing Fee up to the issuance of the first construction document if the  
15 project sponsor submits a new Affidavit establishing that the units will not be sold as  
16 ownership units. If a project sponsor fails to choose an Alternative before project approval by  
17 the Planning Commission or Planning Department or if a project becomes ineligible for an  
18 Alternative, the provisions of Section 415.5 shall apply.

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

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

2           ~~The requirements set forth in this Section 415.6 will be reviewed when the City completes an~~  
3 ~~Economic Feasibility Study.~~ If a project sponsor is eligible and elects to provide on-site units  
4 pursuant to Section 415.5(g), the development project shall meet the following requirements:

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

6                   (1) For any housing development project consisting of 10 dwelling units or more, but  
7 less than 25 dwelling units, the ~~The~~ number of units constructed on-site shall generally be 12% of  
8 all units constructed on the project site. Sales prices for ownership units shall be set such that they  
9 are affordable to households earning 120% of Area Median Income. Rents for qualified rental housing  
10 units shall be affordable to households earning 80% of Area Median Income. ~~for housing development~~  
11 ~~projects consisting of 10 dwelling units or more, but less than 25 dwelling units. The affordable units~~  
12 ~~shall be affordable to low-income households. The number of units constructed on-site shall generally~~  
13 ~~be 25% of all units constructed on the project site for housing development projects consisting of 25~~  
14 ~~dwelling units or more., with a minimum of 15% of the units affordable to low-income households and~~  
15 ~~10% of the units affordable to low- or moderate/middle-income households. The Department shall~~  
16 ~~require as a condition of Department approval of a project's building permit, or as a condition of~~  
17 ~~approval of a Conditional Use Authorization or Planned Unit Development or as a condition of~~  
18 ~~Department approval of a live/work project, that 12% or 25%, as applicable, of all units constructed on~~  
19 ~~the project site shall be affordable to qualifying households so that a project sponsor must construct .12~~  
20 ~~or .25 times, as applicable, the total number of units produced in the principal project. If the total~~  
21 ~~number of units is not a whole number, the project sponsor shall round up to the nearest whole number~~  
22 ~~for any portion of .5 or above.~~

23                   (2) For any housing development project consisting of 25 or more Owned Units, the  
24 number of affordable units constructed on-site shall generally be 20% of all units constructed on the  
25 project site. Ownership housing units shall have an average affordable sales price set at 120% of Area

1 Median Income or less, with units equally distributed at 90% of Area Median Income, 120% of Area  
2 Median Income and 140% of Area Median Income. MOHCD shall set forth in the Procedures Manual  
3 the administration of ownership units at these affordability levels and the process for determining  
4 applicant eligibility. MOHCD may also reduce the Area Median Income range required to maintain  
5 pricing that is below-market in that neighborhood or at the request of the project sponsor.

6 (3) For any Rental Housing Project consisting of 25 or more Rental Units, the number  
7 of affordable units constructed on-site shall generally be 18% of all units constructed on the project  
8 site. Qualified rental housing units shall have an average affordable rent set at 80% or less of Area  
9 Median Income, with units equally distributed among households earning 55% of Area Median Income,  
10 80% of Area Median Income, and 110% of Area Median Income. MOHCD shall set forth in the  
11 Procedures Manual the administration of rental units at these affordability levels and the process for  
12 determining applicant eligibility. MOHCD may also reduce the Area Median Income range in order to  
13 maintain pricing that is below market in that neighborhood or at the request of the project sponsor.

14 (4) Starting on January 1, 2019, and no later than January 1 of each year thereafter,  
15 MOHCD shall increase the on-site requirements set forth in Sections 415.6(a)(2) and 415.6(a)(3) by  
16 increments of 0.5% each year, until such requirements are 25% and 23%, respectively. MOHCD shall  
17 provide the Planning Department, DBI, and the Controller with information on the adjustment to the  
18 on-site percentage so that it can be included in the Planning Department's and DBI's website notice of  
19 the fee adjustments and the Controller's Citywide Development Fee and Development Impact  
20 Requirements Report described in Section 409(a).

21 (5) The Department shall require as a condition of Department approval of a project's  
22 building permit, or as a condition of approval of a Conditional Use Authorization or Planned Unit  
23 Development or as a condition of Department approval of a live/work project, that 12%, 18%, or 20%,  
24 as applicable, or such current percentage that has been adjusted annually by MOHCD, of all units  
25 constructed on the project site shall be affordable to qualifying households so that a project sponsor

1 must construct .12, .18, or .20 times, or such current number as adjusted annually by MOHCD as  
2 applicable, the total number of units produced in the principal project. If the total number of units is  
3 not a whole number, the project sponsor shall round up to the nearest whole number for any portion of  
4 .5 or above.

5 (2) Specific Geographic Areas. For any housing development that is located in  
6 an area with a specific affordable housing requirement set forth in a Special Use District or in  
7 any other section of the Code such as Section 419, the higher housing requirement shall  
8 apply.

9 (3) (7) If the principal project has resulted in demolition, conversion, or removal  
10 of affordable housing units renting or selling to households at income levels and/or for a rental  
11 rate or sales price below corresponding income thresholds for units affordable to low income  
12 households, the Commission or the Department shall require that the project sponsor replace  
13 the number of affordable units removed with units of a comparable number of bedrooms or  
14 provide that ~~25%~~ 20% of all units constructed as part of the new project shall have sales prices  
15 as set forth in 415.6(a)(2) for ownership projects, or rents as set forth in 415.6(a)(3) for rental projects,  
16 ~~be affordable to low income or moderate/middle income households,~~ whichever is greater.

17 (b) Any On-site units provided through this Section 415.6 may be used to qualify for a density  
18 bonus under California Government Code Section 65915, any ordinance implementing Government  
19 Code Section 65915, or one of the Affordable Housing Bonus Programs currently proposed in an  
20 ordinance in Board of Supervisors File No. 150969 or its equivalent if such ordinance is adopted.

21 (c) In the event the project sponsor is eligible for and elects to receive additional density under  
22 California Government Code Section 65915, the Sponsor shall pay the Affordable Housing Fee on any  
23 additional units or square footage authorized under that section in accordance with the provisions in  
24 Section 415.5(g)(1)(D).



1           (bd) Timing of Construction. On-site affordable housing required by this Section 415.6  
2 shall be constructed, completed, ready for occupancy, and marketed no later than the market  
3 rate units in the principal project.

4           (ee) Type of Housing. All on-site units constructed under this Section 415.6 shall be  
5 provided as ownership units unless the project sponsor meets the eligibility requirement of  
6 Section 415.5(g). ~~All on-site units must be affordable to low income households.~~ In general,  
7 affordable units constructed under this Section 415.6 shall be comparable in number of  
8 bedrooms, exterior appearance and overall quality of construction to market rate units in the  
9 principal project. A Notice of Special Restrictions shall be recorded prior to issuance of the  
10 first construction document and shall specify the number, location and sizes for all affordable  
11 units required under this subsection ~~(e)~~(e). The affordable units shall be evenly distributed  
12 throughout the building. For buildings over 120 feet in height, as measured under the  
13 requirements set forth in the Planning Code, the affordable units may be distributed  
14 throughout the lower 2/3 of the building, as measured by the number of floors. The interior  
15 features in affordable units should be generally the same as those of the market rate units in  
16 the principal project, but need not be the same make, model or type of such item as long as  
17 they are of good and new quality and are consistent with then-current standards for new  
18 housing. The square footage of affordable units does not need to be the same as or  
19 equivalent to that in market rate units in the principal project, so long as it is consistent with  
20 then-current standards for new housing. The affordable units are not required to be the same  
21 size as the market rate units, and may be 90% of the average size of the specific unit type.  
22 For buildings over 120 feet in height, as measured under the requirements set forth in the  
23 Planning Code, the average size of the unit type may be calculated for the lower 2/3 of the  
24 building, as measured by the number of floors. Where applicable, parking shall be offered to  
25 the affordable units subject to the terms and conditions of the Department's policy on

1 unbundled parking for affordable housing units as specified in the Procedures Manual and  
2 amended from time to time. ~~On-site affordable units shall be ownership units unless the project~~  
3 ~~applicant meets the eligibility requirement of Section 415.5(9).~~

4 (d)(f) Marketing the Units. The Mayor's Office of Housing and Community Development  
5 ("MOHCD") shall be responsible for overseeing and monitoring the marketing of affordable  
6 units under this Section 415.6. In general, the marketing requirements and procedures shall be  
7 contained in the Procedures Manual as amended from time to time and shall apply to the  
8 affordable units in the project. MOHCD may develop occupancy standards for units of  
9 different bedroom sizes in the Procedures Manual in order to promote an efficient allocation of  
10 affordable units. MOHCD may require in the Procedures Manual that prospective purchasers  
11 complete homebuyer education training or fulfill other requirements. MOHCD shall develop a  
12 list of minimum qualifications for marketing firms that market affordable units under Section  
13 415.6 ~~415.5~~-et seq., referred to in the Procedures Manual as Below Market Rate (BMR units).  
14 No developer marketing units under the Program shall be able to market affordable units  
15 except through a firm meeting all of the minimum qualifications. The Notice of Special  
16 Restrictions or conditions of approval shall specify that the marketing requirements and  
17 procedures contained in the Procedures Manual as amended from time to time, shall apply to  
18 the affordable units in the project.

19 (1) Lottery. At the initial offering of affordable units in a housing project  
20 and when ownership units become available for re-sale in any housing project subject to this  
21 Program after the initial offering, MOHCD must require the use of a public lottery approved by  
22 MOHCD to select purchasers or tenants.

23 (2) Preferences. MOHCD shall create a lottery system that gives  
24 preference according to the provisions of Administrative Code Chapter 47. MOHCD shall  
25 propose policies and procedures for implementing these preferences to the Planning

1 Commission for inclusion as an addendum to ~~in~~ the Procedures Manual. Otherwise, it is the  
2 policy of the City to treat all households equally in allocating affordable units under this  
3 Program.

4 ~~(e)~~ (g) Individual affordable units constructed under Section 415.6 as part of an on-site  
5 project shall not have received development subsidies from any Federal, State or local  
6 program established for the purpose of providing affordable housing, and shall not be counted  
7 to satisfy any affordable housing requirement. Other units in the same on-site project may  
8 have received such subsidies. In addition, subsidies may be used, only with the express  
9 written permission by MOHCD, to deepen the affordability of an affordable unit beyond the  
10 level of affordability required by this Program.

11 ~~(f)~~ (h) Notwithstanding the provisions of Section ~~415.6(e)~~ 415.6(g) above, a project may  
12 use California Debt Limit Allocation Committee (CDLAC) tax-exempt bond financing and 4%  
13 tax credits under the Tax Credit Allocation Committee (TCAC) to help fund its obligations  
14 under Section 415.1 et seq~~this ordinance~~ as long as the project provides 20 percent of the units  
15 as affordable to households at 50 percent of Area Median Income for on-site housing or 10%  
16 of the units as affordable to households at 50% of Area Median Income, and 30% of the units as  
17 affordable to households at 60% of Area Median Income for on-site housing. The income table to be  
18 used for such projects when the units are priced at 50% or 60% percent of Area Median  
19 Income is the income table used by MOHCD for the Inclusionary Affordable Housing Program,  
20 not that used by TCAC or CDLAC. Except as provided in this subsection (h), all units provided  
21 under this Section must meet all of the requirements of Section 415.1 et seq~~this ordinance~~ and  
22 the Procedures Manual for on-site housing.

23 ~~(g)~~ (i) Benefits. If the project sponsor is eligible for and elects to satisfy the affordable  
24 housing requirements through the production of on-site affordable housing in this Section  
25 415.6, the project sponsor shall be eligible to receive a refund for only that portion of the

1 housing project which is affordable for the following fees: a Conditional Use authorization or  
2 other fee required by Section 352 of this Code, if applicable; an environmental review fee  
3 required by Administrative Code Section ~~31.46B~~ 31.22, if applicable; a building permit fee  
4 required by Section 355 of this Code for the portion of the housing project that is affordable.  
5 The project sponsor shall pay the building fee for the portion of the project that is market-rate.  
6 An application for a refund must be made within six months from the issuance of the first  
7 certificate of occupancy.

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

#### 14 **SEC. 415.7. OFF-SITE AFFORDABLE HOUSING ALTERNATIVE.**

15 ~~The requirements set forth in this Section 415.7 will be reviewed when the City completes an~~  
16 ~~Economic Feasibility Study.~~ If the project sponsor is eligible and elects pursuant to Section  
17 415.5(g) to provide off-site units to satisfy the requirements of Section 415.1 et seq., the  
18 project sponsor shall notify the Planning Department and the Mayor's Office of Housing and  
19 Community Development ("MOHCD") of its intent as early as possible. The Planning  
20 Department and MOHCD shall provide an evaluation of the project's compliance with this  
21 Section 415.7 prior to approval by the Planning Commission or Planning Department. The  
22 development project shall meet the following requirements:

23 (a) Number of Units: The number of units constructed off-site shall be as follows:  
24  
25

1 (1) For any housing development that is located in an area with a specific  
2 affordable housing requirement, set forth in Section 419 or elsewhere in this Code, the higher  
3 off-site housing requirement shall apply.

4 (2) For housing development projects consisting of 10 dwelling units or more  
5 but less than 25 units, the number of units constructed off-site shall be 20%, so that a project  
6 applicant shall construct .20 times the total number of units produced in the principal project. If  
7 the total number of units is not a whole number, the project applicant shall round up to the  
8 nearest whole number for any portion of .5 or above. ~~The off-site affordable units shall be~~  
9 ~~affordable to low-income households. Sales prices for ownership housing units shall be affordable to~~  
10 ~~households earning 120% of Area Median Income. Rents for qualified rental housing units shall be~~  
11 ~~affordable to households earning 80% of Area Median Income.~~

12 (3) For ownership housing development projects consisting of 25 dwelling units  
13 or more, the number of units constructed off-site shall be ~~3328%~~ with 20% of the units affordable  
14 ~~to low-income households and 13% of the units affordable to low- or moderate/middle-income~~  
15 ~~households~~, so that a project applicant shall construct ~~.2833~~ times the total number of units  
16 produced in the Principal Project. ~~principal project.~~ If the total number of units is not a whole  
17 number, the project applicant shall round up to the nearest whole number for any portion of .5  
18 or above. Off-site ownership units shall have an average affordable sales price set at 120% of Area  
19 Median Income or less, with units equally distributed among households earning 90% of Area Median  
20 Income, 120% of Area Median Income, and 140% of Area Median Income. MOHCD shall set forth in  
21 the Procedures Manual the administration of sales prices at these income levels and the process for  
22 determining applicant eligibility. MOHCD may also reduce the Area Median Income range required to  
23 maintain pricing that is below market in that neighborhood or at the request of the project sponsor.

24 (4) For Rental Housing Projects consisting of 25 dwelling units or more, the number of  
25 units constructed off-site shall be 23%, so that a project applicant shall construct .23 times the total

1 number of units produced in the Principal Project. If the total number of units is not a whole number,  
2 the project applicant shall round up to the nearest whole number for any portion of .5 or above.  
3 Qualified rental housing units shall have an average affordable rent set at 85% or less of Area Median  
4 Income, with units equally distributed among households earning 55% of Area Median Income, 80% of  
5 Area Median Income, and 120% of Area Median Income. MOHCD shall set forth in the Procedures  
6 Manual the administration of rents at these affordability levels and the process for determining  
7 applicant eligibility. MOHCD may also reduce the Area Median Income range required to maintain  
8 pricing that is below market in that neighborhood, or at the request of the project sponsor.

9 (5) Starting on January 1, 2019, and no later than January 1 of each year thereafter,  
10 MOHCD shall increase the percentages set forth in Sections 415.7(a)(3) and 415.7(a)(4) in increments  
11 of 0.5% each year, to a maximum percentage of 33% for Owned Units and 28% for Rental Units. If the  
12 total number of units is not a whole number, the project applicant shall round up to the nearest whole  
13 number for any portion of .5 or above.

14 ~~(4) For any housing development that is located in an area with a specific affordable~~  
15 ~~housing requirement set forth in a Special Use District, or in any other section of the Code such as~~  
16 ~~Section 419, the higher affordable housing requirement shall apply.~~

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

21 (c) **Location of off-site housing:** The off-site units shall be located within one mile of  
22 the principal project.

23 (d) **Type of Housing:** All off-site units constructed under this Section 415.7 shall be  
24 provided as ownership housing for the life of the project unless the project applicant meets the  
25 eligibility requirement of Section 415.5(g). Nothing in this Section shall limit a project sponsor

1 from meeting the requirements of this Section through the construction of units in a limited  
2 equity or land trust form of ownership if such units otherwise meet all of the requirements for  
3 off-site housing. In general, affordable units constructed or otherwise provided under this  
4 Section shall be comparable in number of bedrooms, exterior appearance and overall quality  
5 of construction to market rate units in the principal project. The total square footage of the off-  
6 site affordable units constructed or otherwise provided under this Section shall be no less than  
7 the calculation of the total square footage of the on-site market-rate units in the principal  
8 project multiplied by the relevant on-site percentage requirement for the project specified in  
9 this Section. The Notice of Special Restrictions or conditions of approval shall include a  
10 specific number of units at specified unit sizes – including number of bedrooms and minimum  
11 square footage – for affordable units. The interior features in affordable units should generally  
12 be the same as those of the market rate units in the principal project but need not be the  
13 same make, model, or type of such item as long as they are of new and good quality and are  
14 consistent with then-current standards for new housing and so long as they are consistent  
15 with the "Quality Standards for Off-Site Affordable Housing Units" found in the Procedures  
16 Manual. Where applicable, parking shall be offered to the affordable units subject to the terms  
17 and conditions of the Department's policy on unbundled parking for affordable housing units  
18 as specified in the Procedures Manual and amended from time to time. If the residential units  
19 in the principal project are live/work units which do not contain bedrooms or are other types of  
20 units which do not contain bedrooms separated from the living space, the off-site units shall  
21 be comparable in size according to the following equivalency calculation between live/work  
22 and units with bedrooms:

23  
24  
25

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

*(e) Any development project that is eligible and elects to provide off-site affordable housing may provide off-site affordable housing by acquiring an existing building to fulfill all or part of the requirements set forth in this Section 415.7, as reviewed and approved by MOHCD and consistent with the parameters of its Small Sites Acquisition and Rehabilitation Program, in conformance with the income limits for the Small Sites Program.*

*(ef) **Marketing the Units:** MOHCD shall be responsible for overseeing and monitoring the marketing of affordable units under this Section 415.7. In general, the marketing requirements and procedures shall be contained in the Procedures Manual as amended from time to time and shall apply to the affordable units in the project. MOHCD may develop occupancy standards for units of different bedroom sizes in the Procedures Manual in order to promote an efficient allocation of affordable units. MOHCD may require in the Procedures Manual that prospective purchasers complete homebuyer education training or fulfill other requirements. MOHCD shall develop a list of minimum qualifications for marketing firms that market affordable units under Section 415.1 et seq., referred to the Procedures Manual as Below Market Rate (BMR units). No project sponsor marketing units under the Program shall be able to market BMR units except through a firm meeting all of the minimum*



1 qualifications. The Notice of Special Restrictions or conditions of approval shall specify that  
2 the marketing requirements and procedures contained in the Procedures Manual as amended  
3 from time to time, shall apply to the affordable units in the project.

4 (1) **Lottery:** At the initial offering of affordable units in a housing project and  
5 when ownership units become available for resale in any housing project subject to this  
6 Program after the initial offering, MOHCD must require the use of a public lottery approved by  
7 MOHCD to select purchasers or tenants.

8 (2) **Preferences:** MOHCD shall create a lottery system that gives preference  
9 according to the provisions of Administrative Code Chapter 47. MOHCD shall propose policies  
10 and procedures for implementing these preferences to the Planning Commission for inclusion  
11 in the Procedures Manual. Otherwise, it is the policy of the City to treat all households equally  
12 in allocating affordable units under this Program.

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

20 (*gh*) Notwithstanding the provisions of Section 415.7(*fg*) above, a project may use  
21 California Debt Limit Allocation Committee (CDLAC) tax-exempt bond financing and 4%  
22 credits under the Tax Credit Allocation Committee (TCAC) to help fund its obligations under  
23 this ordinance as long as the project provides 25% percent of the units as affordable at 50%  
24 *percent* of area median income for off-site housing. The income table to be used for such  
25 projects when the units are priced at 50% percent of area median income is the income table

1 used by ~~MOH~~ MOHCD for the Inclusionary Housing Program, not that used by TCAC or  
2 CDLAC. Except as provided in this subsection, all units provided under this Section must  
3 meet all of the requirements of this ordinance and the Procedures Manual for off-site housing.

4 \* \* \* \*

5 **SEC. 415.11. Severability.**

6 If any subsection, sentence, clause, phrase, or word of this Section 415, or any application  
7 thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court  
8 of competent jurisdiction, such decision shall not affect the validity of the remaining portions or  
9 applications of the Section. The Board of Supervisors hereby declares that it would have passed  
10 Section 415 and each and every subsection, sentence, clause, phrase, and word not declared invalid or  
11 unconstitutional without regard to whether any other portion of this Section 415 or application thereof  
12 would be subsequently declared invalid or unconstitutional.

13  
14 Section 4. The Planning Code is hereby amended by adding Section 207.7 to read as  
15 follows:

16 **SEC. 207.7. REQUIRED MINIMUM DWELLING UNIT MIX.**

17 (a) Purpose. To ensure an adequate supply of family-sized units in new housing stock, new  
18 residential construction must include a minimum percentage of units of at least two and three  
19 bedrooms.

20 (b) Applicability.

21 (1) This Section 207.7 shall apply to housing projects consisting of 25 units or more in  
22 all districts that allow residential uses, except for the RTO, RCD, NCT, DTR, and Eastern  
23 Neighborhoods Mixed Use Districts.

24 (2) This Section 207.7 shall apply to all applications for building permits and/or  
25 Planning Commission entitlements that propose the creation of five or more Dwelling Units.

1                   (3) This Section 207.7 does not apply to buildings for which 100% of the residential  
2 uses are: Group Housing, Dwelling Units that are provided at below market rates pursuant to Section  
3 406(b)(1) of this Code, Single Room Occupancy (SRO) Units, Student Housing (all as defined in  
4 Section 102 of this Code), or housing specifically and permanently designated for seniors or persons  
5 with physical disabilities.

6                   (c) Controls. In all residential districts subject to this Section 207.7, one of the following two  
7 must apply:

8                   (1) No less than 25% of the total number of proposed dwelling units shall contain at  
9 least two bedrooms. Any fraction resulting from this calculation shall be rounded to the nearest whole  
10 number of dwelling units; or.

11                   (2) no less than 10% of the total number of proposed dwelling units shall contain at  
12 least three bedrooms. Any fraction resulting from this calculation shall be rounded to the nearest whole  
13 number of dwelling units.

14                   (d) Modifications. These requirements may be waived or modified with Conditional Use  
15 Authorization. In addition to those conditions set forth in Section 303, the Planning Commission shall  
16 consider the following criteria:

17                   (1) The project demonstrates a need or mission to serve unique populations, or

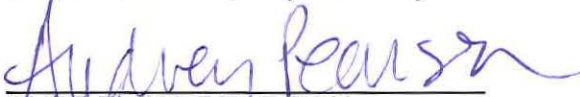
18                   (2) The project site or existing building(s), if any, feature physical constraints that make  
19 it unreasonable to fulfill these requirements.

20  
21                   Section 5. Effective Date. This ordinance shall become effective 30 days after  
22 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
23 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
24 of Supervisors overrides the Mayor's veto of the ordinance.

1           Section 6. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
5 additions, and Board amendment deletions in accordance with the "Note" that appears under  
6 the official title of the ordinance.

7

8 APPROVED AS TO FORM:  
9 DENNIS J. HERRERA, City Attorney

10 By:   
11 AUDREY W. PEARSON  
12 Deputy City Attorney

12

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## LEGISLATIVE DIGEST

[Planning Code - Inclusionary Affordable Housing Fee and Dwelling Unit Mix Requirements]

**Ordinance amending the Planning Code to revise the amount of the Inclusionary Affordable Housing Fee and the On-Site and Off-Site Affordable Housing Alternatives and other Inclusionary Housing requirements; to require minimum dwelling unit mix in all residential districts; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of public necessity, convenience, and welfare under Planning Code Section 302; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

### Existing Law

The City generally requires private developers of new market-rate housing to provide affordable housing ("Inclusionary Housing") by paying a fee to the City. The City's Inclusionary Affordable Housing Program, setting forth the fee and other requirements, are included in Planning Code Sections 415 *et seq.* A developer can also opt to comply with the Inclusionary Affordable Housing Program by providing below-market rate residential units on-site or off-site. Generally, the requirements are as follows:

1. Affordable Housing Fee. The development project pays a fee equivalent to the applicable off-site percentage of the number of units in the principal project. The fee is imposed on a per unit basis.
  - For development projects consisting of 10 dwelling units or more, but less than 25 dwelling units, the percentage is 20%.
  - For development projects consisting of 25 dwelling units or more, the percentage is 33%.
2. On-site Units. If a developer opts to provide affordable housing on-site, the requirements are as follows:
  - For housing development projects consisting of 10 dwelling units or more, but less than 25 dwelling units, the number of affordable units constructed on-site is generally 12% of all units constructed on the project site. The units must be affordable to low-income households.
  - For housing development projects consisting of 25 dwelling units or more, the number of affordable units constructed on-site is generally 25% of all units constructed on the

project site. A minimum of 15% of the units must be affordable to low-income households and 10% of the units must be affordable to low- or middle- income households.

3. Off-site Units. If a developer opts to provide affordable housing off-site, the requirements are as follows:

- For housing development projects consisting of 10 dwelling units or more but less than 25 units, the number of affordable units constructed off-site is 20% of the number of units in the principal project. The units must be affordable to low-income households.
- For housing development projects consisting of 25 dwelling units or more, the number of affordable units required to be constructed off-site is 33% of the number of units in the principal project. A minimum of 20% of the units must be affordable to low-income households and 13% affordable to low- or middle-income households.

The Planning Code includes several temporary requirements for projects that submitted environmental evaluation applications prior to January 12, 2016. For projects with completed applications after January 1, 2013, the fee and off-site requirements range from 25% to 30%; the on-site requirement from 13% to 14.5%. Units were required to be affordable to low-income households only. The requirements for projects that submitted an environmental evaluation application prior to January 1, 2013 were 17% to 20% for fee or off-site, and 12% for on-site.

If there is a higher Inclusionary Housing requirement in a specific zoning district, the higher requirement applies. The Planning Code includes specific Inclusionary Housing requirements for the UMU and SOMA Youth & Families Zoning Districts in Section 419. Planning Code section 415 contains temporary requirements for projects located in the UMU or SOMA Youth and Family zoning districts, generally 1% to 2% higher than the requirements set forth in Planning Code section 419.

The Planning Code also requires an applicant seeking a density bonus under State law to provide analysis to support any requested concessions and incentives under the State law.

The Planning Code requires the Controller to study the economic feasibility of the City's inclusionary housing requirements and produce a report in 2016 and every three years thereafter. The Board must consider the report within three months and consider legislative amendments to the City's Inclusionary Housing in-lieu fees, on-site, off-site, or other alternatives recommended by the Controller and/or the Planning Commission based on the feasibility analyses and with guidance from the City's Nexus Study, with the objective of maximizing affordable Inclusionary Housing in market rate housing production.

The Planning Code defines "low income" as affordable to households earning no more than 55% of Area Median Income ("AMI") for purposes of renting an affordable unit, or 80% of

Area Median Income for purposes of purchasing an affordable unit. The Planning Code defines “moderate income” and “middle income” households as households whose total income does not exceed 100% of Area Median Income for purposes of renting an affordable unit, or 120% of Area Median Income for purposes of purchasing an affordable unit.

Currently, there is no city-wide requirement that a residential development include dwelling units of any particular bedroom count. However, section 207.6 sets forth dwelling unit mix requirements in RTO, RCD, NCT, DTR, and Eastern Neighborhoods Mixed Use Districts.

#### Amendments to Current Law

This legislation amends the Inclusionary Affordable Housing Program, Section 415 et seq, and adds Section 207.7 as follows:

##### **1) New Inclusionary Requirements:**

New inclusionary Housing requirements will apply to any development project that submits a complete environmental evaluation application on or after January 12, 2016.

Affordable Housing Fee: The development project would pay a fee equivalent to the applicable off-site percentage of the number of units in the principal project.

- For development projects consisting of 10 dwelling units or more, but less than 25 units, the percentage is 20%.
- For development projects consisting of 25 units or more, the percentage is 23% for a rental project, and 28% for an ownership project.

On-site Affordable Housing: A developer may opt to provide a percentage of dwelling units on-site. If a developer opts to provide affordable housing on-site, the requirements are as follows

- For development projects consisting of 10 dwelling units or more, but less than 25 units, the percentage is 12%. Units in a rental housing project must be affordable to households earning no more than 80% of AMI; units in an ownership project must be affordable to households earning no more than 120% of AMI.
- For development projects consisting of 25 or more rental units, the percentage is 18%. Units in rental projects must be affordable to households earning an average of 80% AMI or less, with units equally distributed among households earning 55%, 80% and 110% of AMI. MOHCD may reduce these AMI ranges to maintain pricing that is below market in a particular neighborhood or at the request of the project sponsor.

- For development projects consisting of 25 or more ownership units, the percentage is 20%. Units in ownership projects must be affordable to households earning an average of 120% AMI, with units equally distributed among households earning 90%, 120% and 140% of AMI. MOHCD may reduce these AMI ranges to maintain pricing that is below market in a particular neighborhood or at the request of the project sponsor.

Off-site Affordable Housing: If a developer opts to provide affordable housing off-site, the requirements are as follows:

- For development projects consisting of 10 dwelling units or more, but less than 25 units, the percentage is 20%. Units must be affordable to households earning up to 80% of AMI for rental projects and 120% for ownership projects.
- For rental development projects consisting of 25 units or more, the percentage is 23%. The units must be affordable to an average of 85% AMI or less, with units equally distributed among households earning 55%, 80% and 120% of AMI. These AMI levels may be reduced to maintain pricing that is below market in a particular neighborhood or at the request of the project sponsor.
- For ownership development projects consisting of 25 units or more, the percentage is 28%. The units must be affordable to an average of 120% AMI or less, with units equally distributed among households earning between 90%, 120% and 140% of AMI. These AMI levels may be reduced to maintain pricing that is below market in a particular neighborhood or at the request of the project sponsor.

Projects that provide off-site affordable housing units may acquire an existing building consistent with the parameters of MOHCD's Small Sites Acquisition and Rehabilitation Program. Previously, only projects subject to the temporary requirements could do so.

## **2. Temporary requirements.**

The legislation retains the temporary requirements for projects with completed environmental evaluation applications submitted prior to January 1, 2013. For projects with completed environmental evaluation applications submitted between January 1, 2013 and January 1, 2016, the legislation retains the temporary on-site requirements, but eliminates the fee, off-site, UMU and SOMA Youth and Family Zone temporary requirements.

## **3. Definitions.**

The legislation defines a "rental housing project" as a housing project consisting solely of "rental units" (defined in Planning Code Section 401), and which agrees to remain rental for no less than 30 years. The project sponsor must enter into an agreement with the City, and the agreement is recorded against the property. "Owned Units" are condominiums, stock



cooperative, community apartment or detached single family home, where the owner or owners occupy the unit as their primary residence.

The legislation eliminates the definitions of low-income and moderate/middle-income in Section 415. Any remaining reference to these terms would be found in the definitions in Section 401.

#### **4. Other requirements.**

The legislation requires MOHCD to calculate, and the Planning Department to impose the fee on a dollar per square foot equivalency based on the total number of gross residential square feet in the project.

The legislation includes an automatic yearly increase of 0.5% in the fee/off-site and on-site requirements, starting on January 1, 2019, and continuing for 10 years, so long as the increase does not exceed the nexus requirements from the City's most recent nexus analysis.

The legislation imposes the Inclusionary Housing fee on any additional units constructed pursuant to the State Density Bonus Law, California Government Code section 65915 et seq.

The legislation adds a severability clause to the Inclusionary Housing Ordinance.

The legislation adds Section 207.7 to require a dwelling unit mix of either 25% two-bedroom or 10% three-bedroom units in all new residential buildings in all zoning districts, except in those zoning districts covered by the unit mix requirements in Section 207.6 (RTO, RCD, NCT, DTR and Eastern Neighborhoods Mixed Use districts). A developer may seek a modification of this requirement through the conditional use process.

#### Background Information

The City published the Residential Affordable Housing Nexus Analysis in November 2016. In February 2017, the Controller completed the feasibility analysis, the Inclusionary Housing Working Group Final Report, required by Planning Code Section 415.10. The legislation responds to the conclusions in the nexus analysis and the feasibility analysis.

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