

FILE NO. 061529

ORDINANCE NO.

101-07

1 [Residential Inclusionary Affordable Housing Requirements.]

2
3 Ordinance approving changes to the Residential Inclusionary Affordable Housing
4 Requirements by amending Section 315 to clarify the regulations in effect for particular
5 projects; amending Section 315.1 to modify certain definitions related to income and
6 sale price calculation; amending Section 315.2 to update findings; amending Section
7 315.3 to conform the legislation to the requirement that the ordinance apply to all
8 projects of 5 units or more; amending Sections 315.4 and 315.5 to establish separate
9 requirements for buildings of 120 feet in height or greater, to clarify the requirements
10 related to the type of on- and off-site housing required, and to establish a preference in
11 the lottery for on- and off-site units for people who live and work in San Francisco;
12 amending Section 315.6 to provide updated guidelines for the calculation of the in lieu
13 fee and to allow MOH to expend funds for a study to periodically update the fee;
14 amending Section 315.7 to change the amount of time an ownership unit shall remain
15 affordable; amending Section 315.8 to amend certain monitoring and study obligations;
16 and making a related change to the Jobs-Housing Linkage Program by amending
17 Section 313.6 to make annual adjustments in the in lieu fee for that program
18 correspond to the method used for the Residential Inclusionary Affordable Housing
19 Program; and making findings, including findings under the California Environmental
20 Quality Act.

21 Note: Additions are single-underline italics Times New Roman;
22 deletions are strikethrough italics Times New Roman.
23 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

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

25 Section 1. Findings

1 (a) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this
2 ordinance will serve the public necessity, convenience, and welfare for the reasons set forth in
3 Planning Commission Resolution No. 17362, and incorporates such reasons
4 herein by reference. A copy of said Planning Commission Resolution is on file with the Clerk
5 of the Board of Supervisors in File No. 061529.

6 (b) The Board of Supervisors finds that this ordinance is in conformity with the
7 General Plan, amended in the companion legislation, and the Priority Policies of Planning
8 Code Section 101.1 for the reasons set forth in Planning Commission Resolution No.
9 17362, and hereby incorporates those reasons by reference.

10 (c) The Planning Department has determined that the actions contemplated in this
11 ordinance are in compliance with the California Environmental Quality Act (California Public
12 Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the
13 Board of Supervisors in File No. 061529 and is incorporated herein by
14 reference.

15 Section 42. The San Francisco Planning Code is hereby amended by amending
16 Sections 315, 315.1, 315.2, 315.3, 315.4, 315.5, 315.6, 315.7, and 315.8 of the Residential
17 Inclusionary Affordable Housing Program, to read as follows:

18 **SEC. 315. HOUSING REQUIREMENTS FOR RESIDENTIAL AND LIVE/WORK**
19 **DEVELOPMENT PROJECTS.**

20 Sections 315.1– 315.9 set forth the requirements and procedures for the Residential
21 Inclusionary Affordable Housing Program ("Program"). The Department of City
22 Planning and the Mayor's Office of Housing shall periodically publish a Procedures
23 Manual containing procedures for monitoring and enforcement of the policies and
24 procedures for implementation of this Program. The Procedures Manual must be made
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1 available at the Zoning Counter of the Planning Department and on the Planning
2 Department's web site. The Procedures Manual shall not be amended, except for an
3 annual update of the affordability housing guidelines, which reflect updated income
4 limits, prices, and rents, without approval of the Planning Commission or as otherwise
5 specified herein.

6 The Procedures Manual in effect at the time of initial purchase or initial rental of a unit
7 shall govern the regulation of that unit until it is sold or re-rented unless an owner or current
8 tenant chooses to be governed by all of the more up-to-date provisions of the then-current
9 Procedures Manual. In that case, the owner or tenant must agree to be governed by the totality
10 of the new regulations – an owner or tenant may not pick some provisions from the Procedures
11 Manual in effect at the time of initial purchase or initial rental and some in effect in the then-
12 current Procedures Manual. If the owner or tenant chooses to be governed by the then-current
13 Procedures Manual he or she shall sign an agreement with the City to that effect, and the
14 Planning Department and Mayor's Office of Housing shall apply all of the rules and regulations
15 in the then-current Procedures Manual to the unit.

16 **SEC. 315.1. DEFINITIONS.**

17 The following definitions shall govern interpretation of this ordinance:

18 (1) "Affordable housing project" shall mean a housing project containing units
19 constructed to satisfy the requirements of Sections 315.4 or 315.5.

20 (2) "Affordable to a household" shall mean a purchase price that a household can
21 afford to pay based on an annual payment for all housing costs, as defined in California
22 Code of Regulations ("CCR") Title 25, Section 6920, as amended from time to time, of
23 33 percent of the combined household annual net gross income, assuming a ~~10 percent~~
24 down payment recommended by the Mayor's Office of Housing in the Procedures Manual,
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1 and available financing, or a rent that does not exceed 30 percent of a household's
2 combined annual net gross income. Where applicable, the purchase price or rent may be
3 adjusted to reflect the absence or existence of a parking space(s), subject to the Department's
4 policy on unbundled parking for affordable housing units as specified in the Procedures Manual
5 and amended from time to time.

6 (3) "Affordable to qualifying households" shall mean:

7 (A) With respect to owned units, the average purchase price on the initial sale of all
8 affordable owned units in an affordable housing project shall not exceed the allowable
9 average purchase price and all units must be sold only to households with annual gross
10 incomes between 80% and up to and including 120% of median income for the City and
11 County of San Francisco. In addition, each ~~Each~~ unit shall be sold:

12 (i) Only to households with an annual net gross income equal to or less than the
13 qualifying limits for a household of median moderate income, adjusted for household
14 size;

15 (ii) On the initial sale, at or below the maximum purchase price; and

16 (iii) On subsequent sales at or below the prices to be determined by the Director
17 Mayor's Office of Housing in the Conditions of Approval or Notice of Special Restrictions
18 according to the formula specified in the Procedures Manual, as amended from time to
19 time, such that the units remain affordable to qualifying households. The formula in the
20 Procedures Manual may permit the seller to include certain allowable capital improvements in
21 the sales price.

22 (B) With respect to rental units in an affordable housing project, the average annual
23 rent, including the cost utilities paid by the tenant according to HUD utility allowance
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1 established by the San Francisco Housing Authority, shall not exceed the allowable
2 average annual rent. Each unit shall be rented:

3 (i) Only to households with an annual net gross income equal to or less than the
4 qualifying limits for a household of low income as defined in this Section;

5 (ii) At or less than the maximum annual rent.

6 (4) "Allowable average purchase price" shall mean a price for all affordable owned units
7 of the size indicated below that ~~is~~ are affordable to a household of median income as
8 defined in this Section, adjusted for the household size indicated below as of the date
9 of the close of escrow, and, where applicable, adjusted to reflect the Department's policy on
10 unbundled parking for affordable housing units as specified in the Procedures Manual and
11 amended from time to time:

| Number of Bedrooms (or, for live/work units square foot equivalency) | Number of Persons in Household |
|---|-----------------------------------|
| 0 (Less than 600 square feet) | 1 |
| 1 (601 to 850 square feet) | 2 |
| 2 (851 to 1100 square feet) | 3 |
| 3 (1101 to 1300 square feet) | 4 |
| 4 (More than 1300 square feet) | 5 |

20 (5) "Allowable average annual rent" shall mean annual rent for an affordable rental unit
21 of the size indicated below that is ~~1830~~ -percent of the annual net gross income of a
22 household of median income as defined in this Section, adjusted for the household size
23 indicated below, and, where applicable, adjusted to reflect the Department's policy on
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1 unbundled parking for affordable housing units as specified in the Procedures Manual and
 2 amended from time to time:

| Number of Bedrooms (or, for live/work units square foot equivalency) | Number of Persons in Household |
|--|--------------------------------|
| 0 (Less than 600 square feet) | 1 |
| 1 (601 to 850 square feet) | 2 |
| 2 (851 to 1100 square feet) | 3 |
| 3 (1101 to 1300 square feet) | 4 |
| 4 (More than 1300 square feet) | 5 |

11 (6) "Annual net income" shall mean net income as defined in CCR Title 25, Section 6916, as
 12 amended from time to time. "Annual gross income" shall mean gross income as defined in CCR
 13 Title 25, Section 6914, as amended from time to time, except that the Mayor's Office of Housing
 14 may, in order to promote consistency with the procedures of the San Francisco Redevelopment
 15 Agency, develop an asset test that differs from the State definition if it publishes that test in the
 16 Procedures Manual.

17 (7) "Average annual rent" shall mean the total annual rent for the calendar year
 18 charged by a housing project for all affordable rental units in the project of an equal
 19 number of bedrooms divided by the total number of affordable units in the project with
 20 that number of bedrooms.

21 (8) "Average purchase price" shall mean the purchase price for all affordable owned
 22 units in an affordable housing project of an equal number of bedrooms divided by the
 23 total number of affordable units in the project with that number of bedrooms.

1 (9) "Community apartment" shall be as defined in San Francisco Subdivision Code
2 Section 1308(b).

3 (9a) "Conditional use" for purposes of this Ordinance means a conditional use
4 authorization which, pursuant to the Planning Code, is required for the residential
5 component of a project.

6 (10) "Conditions of approval" shall be a set of written conditions imposed by the
7 Planning Commission or another permit-issuing City agency or appellate body to which
8 a project applicant agrees to adhere and fulfill when it receives a conditional use or
9 planned unit development permit for the construction of a principal project or other
10 housing project subject to this Program.

11 (11) "Condominium" shall be as defined in California Civil Code Section 783.

12 (12) "Director" shall mean the Director of City Planning or his or her designee, including
13 other City agencies or departments.

14 (13) "First certificate of occupancy" shall mean either a temporary certificate of
15 occupancy or a Certificate of Final Completion and Occupancy as defined in San
16 Francisco Building Code Section 109, whichever is issued first.

17 (14) ~~"High need area" will mean an area identified by the Mayor's Office of Housing, or its~~
18 ~~successor, as having a large percentage of low income households.~~ Intentionally Left Blank.

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

21 (16) "Household of low income" shall mean a household whose combined annual gross
22 income for all members does not exceed sixty (60) percent of median income for the
23 City and County of San Francisco, as calculated by the Mayor's Office of Housing
24 using data from the United States Department of Housing and Urban Development
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1 (HUD) and adjusted for household size or, if data from HUD is unavailable, calculated
2 by the Mayor's Office of Housing using other publicly available and credible data and
3 adjusted for household size.

4 (17) "Household of median income" shall mean a household whose combined annual
5 gross income for all members does not exceed one hundred (100) percent of the
6 median income for the City and County of San Francisco, as calculated by the Mayor's
7 Office of Housing using data from the United States Department of Housing and Urban
8 Development (HUD) and adjusted for household size or, if data from HUD is
9 unavailable, calculated by the Mayor's Office of Housing using other publicly available
10 and credible data and adjusted for household size.

11 (17A) "Household of moderate income" shall mean a household who is not a low- or median-
12 income household whose combined annual gross income for all members does not exceed one
13 hundred (120) percent of the median income for the City and County of San Francisco, as
14 calculated by the Mayor's Office of Housing using data from the United States Department of
15 Housing and Urban Development (HUD) and adjusted for household size or, if data from HUD
16 is unavailable, calculated by the Mayor's Office of Housing using other publicly available and
17 credible data and adjusted for household size.

18 (18) "Housing project" shall mean any development which has residential units as
19 defined in the Planning Code, including but not limited to dwellings, group housing, life
20 care or assisted living developments, independent living units, and other forms of
21 development which are intended to provide long-term housing to individuals and
22 households. "Housing project" shall not include that portion of a development that qualifies as
23 an Institutional Use under the Planning Code. "Housing project" for purposes of this
24 Program shall also include the development of live/work units as defined by Planning
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1 Code Section 102.13. Housing project for purposes of this Program shall mean all
2 phases or elements of a multi-phase or multiple lot residential development.

3 (19) "Housing unit" or "unit" shall mean a dwelling unit as defined in San Francisco
4 Housing Code Section 401.

5 (20) "Live/work unit" shall be as defined in San Francisco Planning Code Section
6 102.13.

7 (21) "Live/work project" shall mean a housing project containing more than one
8 live/work unit.

9 (22) "Long term housing" shall mean housing intended for occupancy by a person or
10 persons for 32 consecutive days or longer.

11 (23) "Market rate housing" shall mean housing constructed in the principal project that
12 is not subject to sales or rental restrictions.

13 (24) "Maximum annual rent" shall mean the maximum rent that a housing developer
14 may charge any tenant occupying an affordable unit for the calendar year. The
15 maximum annual rent for an affordable housing unit of the size indicated below shall be
16 no more than 30 percent of the annual ~~net~~ gross income for a household of low income
17 as defined in this Section, as adjusted for the household size indicated below as of the
18 first date of the tenancy:

| Number of Bedrooms (or, for live/work units square foot equivalency) | Number of Persons in Household |
|---|-----------------------------------|
| 0 (Less than 600 square feet) | 1 |
| 1 (601 to 850 square feet) | 2 |
| 2 (851 to 1100 square feet) | 3 |

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

(25) "Maximum purchase price" shall mean the maximum purchase price for an affordable owned unit of the size indicated below that is affordable to a household of median-moderate income, adjusted for the household size indicated below, ~~as of the date of the close of escrow,~~ assuming an annual payment for all housing costs of 33 percent of the combined household annual net gross income, a ~~10 percent~~ down payment recommended by MOH and set forth in the Procedures Manual, and available financing:

| Number of Bedrooms (or, for live/work units square foot equivalency) | Number of Persons in Household |
|--|--------------------------------|
| 0 (Less than 600 square feet) | 1 |
| 1 (601 to 850 square feet) | 2 |
| 2 (851 to 1100 square feet) | 3 |
| 3 (1101 to 1300 square feet) | 4 |
| 4 (More than 1300 square feet) | 5 |

(25A) "Mayor's Office of Housing" shall mean the Mayor's Office of Housing or its successor.

(26) "Notice of Special Restrictions" shall mean a document recorded with the San Francisco Recorder's Office for any unit subject to this Program detailing the sale and resale or rental restrictions and any restrictions on purchaser or tenant income levels included as a Condition of Approval of the principal project relating to the unit.

(27) "Off-site unit" shall mean a unit affordable to qualifying households constructed pursuant to this Ordinance on a site other than the site of the principal project.

1 (28) "On-site unit" shall mean a unit affordable to qualifying households constructed
2 pursuant to this Ordinance on the site of the principal project.

3 (29) "Ordinance" shall mean Planning Code Sections 315.1 through 315.9.

4 (30) "Owned unit" shall mean a unit affordable to qualifying households which is a
5 condominium, stock cooperative, community apartment, or detached single-family
6 home. The owner or owners of an owned unit must occupy the unit as their primary
7 residence.

8 (31) "Owner" shall mean the record owner of the fee or a vendee in possession.

9 (32) "Principal project" shall mean a housing development on which a requirement to
10 provide affordable housing units is imposed.

11 (33) "Procedures Manual" shall mean the City and County of San Francisco Affordable
12 Housing Monitoring Procedures Manual issued by the San Francisco Department of
13 City Planning, as amended.

14 (34) "Program" shall mean the Residential Inclusionary Affordable Housing Program.

15 (35) "Project applicant" shall mean an applicant for a building permit or a site permit or
16 an applicant for a conditional use permit or planned unit development permit, seeking
17 approval from the Planning Commission or Planning Department for construction of a
18 housing project subject to this Section, such applicant's successors and assigns.

19 (36) "Rent" or "rental" shall mean the total charges for rent, utilities, and related
20 housing services to each household occupying an affordable unit.

21 (37) "Rental unit" shall mean a unit affordable to qualifying households which is not a
22 condominium, stock cooperative, or community apartment.

23 **SEC. 315.2. FINDINGS.**

24 The Board of Supervisors hereby finds and declares as follows:
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1 Affordable Housing: The findings in Planning Code Section 315.2 of the Inclusionary
2 Affordable Housing Ordinance are hereby readopted and updated as follows:

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

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

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

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

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

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

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

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

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

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

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

9 2. San Francisco faces a continuing shortage of affordable housing for very low and low-
10 income residents. The San Francisco Planning Department reported that for the four-year
11 period between 2000 and 2004, 8,389 total new housing units were built in San Francisco.
12 This number includes 1,933 units for low and very low-income households out of a total need
13 of 3,930 low and very low-income housing units for the same period. According to the state
14 Department of Housing and Community Development, there will be a regional need for
15 230,743 new housing units in the nine Bay Area counties from 1999--2006. Of that amount, at
16 least 58 percent, or 133,164 units, are needed for moderate, low and very low-income
17 households. The Association of Bay Area Governments (ABAG) is responsible for dividing the
18 total regional need numbers among its member governments which includes both counties
19 and cities. ABAG estimates that San Francisco's low and very low-income housing production
20 need from 1999 through 2006 is 7,370 units out of a total new housing need of 20,372 units, or
21 36% of all units built. Within the past four years, only 23% of all housing built, or 49% of the
22 previously projected housing need for low and very low-income housing for the same period,
23 was produced in San Francisco. The production of moderate income rental units also fell short
24 of the ABAG goal. Only 351 moderate income units were produced over the previous four
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1 years, or 4% of all units built, compared to ABAG's call for 28% of all units to be affordable to
2 households of moderate income. Given the need for 3,007 moderate income units over the 4-
3 year period, only 12% of the projected need for moderate income units was built.

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

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

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

15 The San Francisco residential real estate market is one of the most expensive in the United
16 States. In May 2005, the California Association of Realtors reported that the median priced
17 home in San Francisco was \$755,000. This is 18% higher than the median priced home one
18 year earlier, 44% higher than the State of California median, and 365% higher than the nation
19 average. While the national homeownership rate is approximately 69%, only approximately
20 35% of San Franciscans own their own home. The majority of market-rate homes for sale in
21 San Francisco are priced out of the reach of low and moderate income households. In May
22 2005, the average rent for a 2-bedroom apartment was \$1821, which is affordable to
23 households earning over \$74,000.

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

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

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

11 6. The development of affordable housing on the same site as market-rate housing
12 increases social and economic integration vis-a-vis housing in the City and has corresponding
13 social and economic benefits to the City. Inclusionary housing provides a healthy job and
14 housing balance. Inclusionary housing provides more affordable housing close to employment
15 centers which in turn may have a positive economic impact by reducing such costs as
16 commuting and labor costs. However, there may also be trade-offs where constructing
17 affordable units at a different site than the site of the principle project may produce a greater
18 number of affordable units without additional costs to the project applicant. If a project
19 applicant may produce a significantly greater number of affordable units off-site then it is in
20 the best interest of the City to permit the development of affordable units at a different location
21 than that of the principle project.

22 7. Provided project applicants can take these requirements into consideration when
23 negotiating to purchase land for a housing project, the requirements of this Section are
24 generally financially feasible for project applicants to meet, particularly because of the benefits
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1 being conferred by the City to housing projects under this ordinance. This Ordinance provides
2 a means by which a project applicant may seek a reduction or waiver of the requirements of
3 this mitigation fees if the project applicant can show that imposition of these requirements
4 would create an unlawful financial burden.

5 8. Conditional Use and Planned Unit Development Permits permit the development of certain
6 uses not permitted as of right in specific districts or greater density of permitted residential
7 uses. As the General Plan recognizes, through the conditional use and planned unit
8 development process, applicants for housing projects generally receive material economic
9 benefits. Such applicants are generally permitted to build in excess of the generally applicable
10 black letter requirements of the Planning Code for housing projects resulting in increased
11 density, bulk, or lot coverage or a reduction in parking or other requirements or an approval of
12 a more intensive use over that permitted without the conditional use permit or planned unit
13 development permit. Through the conditional use and planned unit development process,
14 building standards can be relaxed in order to promote lower cost home construction. An
15 additional portion of San Francisco's affordable housing needs can be supplied (with no public
16 subsidies or financing) by private sector housing developers developing inclusionary affordable
17 units in their large market-rate projects in exchange for the density and other bonuses
18 conferred by conditional use or planned unit development approvals, provided it is financially
19 attractive for private sector housing developers to seek such conditional use and/or planned
20 unit development approvals.

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

22 10. The City wants to balance the burden on private property owners with the demonstrated
23 need for affordable housing in the City. For the reasons stated above, the Board of
24 Supervisors thus intends to increase the inclusionary housing requirements for all residential
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1 projects. In order to balance the burden on property owners, the Board intends to limit the
2 application of an inclusionary housing requirement to 15% for housing projects that do not
3 receive any of the benefits described above through the conditional use or planned unit
4 development process, or in live/work projects. A slightly higher percentage will be applied to
5 projects which generally receive benefits through the conditional use or planned unit
6 development process, or in live/work projects. The Housing Element (Policy 4.2) states:
7 Include affordable units in larger housing developments. It also calls for the City to review its
8 inclusionary housing program regularly to ensure fair burden and not constrain new housing
9 production. The Board of Supervisors has reviewed the inclusionary affordable housing
10 program and finds that, for purposes of the Housing Element of the General Plan, increasing
11 the inclusionary housing requirements ensures more fair burden on all housing development
12 and will not constrain new housing production. The Board of Supervisors has reviewed the
13 inclusionary affordable housing program and finds that, for purposes of the Housing Element
14 of the General Plan, a housing project of five units or more is a larger housing project.
15 Expanding the inclusionary housing requirements to buildings of five units or more ensures
16 more fair burden on all housing development and will not constrain new housing production.
17 11. The findings of Planning Code Section 313.2 for the Jobs-Housing Linkage Program,
18 Planning Code Sections 313 et seq., relating to the shortage of affordable housing, the low
19 vacancy rate of housing affordable to persons of lower and moderate income, and the
20 decrease in construction of affordable housing in the City are hereby readopted.
21 12. The Land Use and Economic Development Committee of the Board of Supervisors held
22 hearings on this legislation on July 12 and 19, 2006. At those hearings, the Committee heard
23 testimony from Planning Department staff and consultant Kate Funk of Keyser Marston and
24 Associates regarding a study undertaken at the direction of the Planning Department by the
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1 consultant Keyser Marston and Associates. The study was entitled Inclusionary Housing
2 Program Sensitivity Analysis, dated July 7, 2006, and was undertaken to examine the
3 economic impacts of adjusted inclusionary requirements on market-rate housing projects
4 ("Sensitivity Analysis"). The study can be found in Board File No. 6051685 and is incorporated
5 herein by reference. The study was guided by the Planning Department and Mayor's Office of
6 Housing and informed by a Technical Advisory Committee comprised of a variety of experts
7 from the San Francisco Housing Development and Affordable Housing Advocacy
8 Communities. Planning Department staff presented a report summarizing the findings of the
9 Sensitivity Analysis and the recommendations of the Technical Advisory Committee. That
10 report, dated July 10, 2006, is found in Board File No. 051685 and is incorporated herein by
11 reference.

12 After considering the Sensitivity Analysis and staff report and hearing the recommendations
13 and testimony of the Planning Department, Mayor's Office of Housing, members of the
14 Technical Advisory Committee, and members of the public including representatives of
15 housing developers, community members, and affordable housing advocates, the Land Use
16 and Economic Development Committee considered various amendments to the legislation.
17 The Committee found, among other things, that it was in the public interest to increase the
18 percentage requirements of the ordinance, but not by as much as originally proposed; to
19 modify the application dates of the ordinance to grandfather more existing projects from the
20 increased percentage requirements, but to make most projects subject to the other
21 requirements of the ordinance; and to require further study on some issues by the Planning
22 Department and Mayor's Office of Housing.

23 13. The City of San Francisco, under the direction of the Office of the Controller, is
24 undertaking a comprehensive program of analyses to update its programs and supporting
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1 documentation for many types of fees, including updating nexus analyses in support of
2 development impact fees. At the direction of the Board of Supervisors and as part of this
3 larger analysis, the City contracted with Keyser Marston Associates to prepare a nexus
4 analysis in support of the Inclusionary Housing Program, or an analysis of the impact of
5 development of market rate housing on affordable housing supply and demand. The Planning
6 Department and Mayor's Office of Housing worked closely with the consultant and also
7 consulted with the Technical Advisory Committee, noted above, comprised of a variety of
8 experts from the San Francisco housing development and affordable housing advocacy
9 communities.

10 The City's current position is that the City's Inclusionary Housing Program including the
11 in lieu fee provision which is offered as an alternative to building units within market rate
12 projects, is not subject to the requirements of the Mitigation Fee Act, Government Code
13 Sections 66000 et seq. While the City does not expect to alter its position on this matter, due
14 to past legislative actions supporting such a study, the Citywide study being undertaken to
15 conduct nexus studies in other areas, and a general interest in determining whether the
16 Inclusionary Program can be supported by a nexus type analysis as an additional support
17 measure, the City contracted to undertake the preparation of a nexus analysis at this time.

18 The final study can be found in Board of Supervisors File No. 061529 and is
19 incorporated by reference herein. The Board of Supervisors has reviewed the study and staff
20 analysis and report of the study and, on that basis finds that the study supports the current
21 inclusionary housing requirements. Specifically, the Board finds that this study: identifies the
22 purpose of the fee to mitigate impacts on the demand for affordable housing in the City;
23 identifies the use to which the fee is to be put as being to increase the City's affordable
24 housing supply; and establishes a reasonable relationship between the use of the fee for
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1 affordable housing and the need for affordable housing and the construction of new market
2 rate housing. Moreover, the Board finds that the current inclusionary requirements are less
3 than the cost of mitigation and do not include the costs of remedying any existing deficiencies.
4 The Board also finds that the study establishes that the current inclusionary requirements do
5 not duplicate other city requirements or fees.

6 14. The Board of Supervisors recognizes that this Inclusionary Housing Program is only one
7 part of the City's overall strategy for providing affordable housing. The City will spend over
8 \$154 million in capital funds on affordable housing in 2006-07 of combined expenditures by
9 the Mayor's Office of Housing and San Francisco Redevelopment Agency, but not including
10 expenditures by the Department of Public Health or the Human Services Agency. At the very
11 most, only \$22 million of those monies will come from contributions from private developers
12 through this Inclusionary Program or other similar programs. The City expects to spend over
13 \$78 million on affordable housing in 2007-08 and, the current expectation is that only \$2.5
14 million of those monies will come from contributions from private developers through this
15 Inclusionary Program or other similar programs.

16 **SEC. 315.3. APPLICATION.**

17 (a) This Ordinance shall apply to any housing project that consists of five or more units where
18 an individual project or a phased project is to be undertaken and where the total undertaking
19 comprises a project with ~~10~~ 5 or more units, even if the development is on separate but
20 adjacent lots; and

21 (1) Does not require Planning Commission approval as a conditional use or planned unit
22 development;

23 (2) Requires Planning Commission approval as a conditional use or planned unit
24 development;

1 (3) Consists of live/work units as defined by Planning Code Section 102.13; or
2 (4) Requires Planning Commission approval of replacement housing destroyed by
3 earthquake, fire or natural disaster only where the destroyed housing included units restricted
4 under the Residential Inclusionary Housing Program or the City's predecessor inclusionary
5 housing policy, condominium conversion requirements, or other affordable housing program.

6 (b) This Ordinance shall apply to all housing projects that have not received a first site or
7 building permit on or before the effective date of this ordinance with the following exceptions.
8 Until these application dates take effect as described below, the provisions of the Ordinance
9 as it exists on July 18, 2006 shall govern.

10 (1) The amendments to the off-site requirements in Section 315.5(c) and (d) relating to
11 location and type of off-site housing, and Section 315.4(e) relating to when a developer shall
12 declare whether it will choose an alternative to the on-site requirement shall apply only to
13 projects that receive their Planning Commission or Department approval on or after the
14 effective date of this legislation.

15 (2) The amendments to the percentage-requirements of this Ordinance that govern the
16 number of affordable units a housing project is required to provide in Section 315.4(a) and
17 315.5(a) apply only to housing projects that submit their first application, including an
18 environmental evaluation application or any other Planning Department or Building
19 Department application, on or after July 18, 2006. Notwithstanding the foregoing, the
20 amendments to the percentage-requirements of this Ordinance also apply to any project that
21 has not received its final Planning Commission or Department approvals before July 18,
22 2006 for housing projects that receive a Zoning Map amendment or Planning Code text
23 amendment related to their project approvals that (A) results in a net increase in the number
24 of permissible residential units, or (B) results in a material increase in the net permissible
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1 residential square footage. For purposes of subsection B above a material increase shall
2 mean an increase of 5 percent or more, or an increase in 10,000 square feet or more,
3 whichever is less.

4 (3) The amendments in Section 315.1 to the way median income is calculated apply to any
5 housing project that has not received a first site or building permit by the effective date of this
6 Ordinance. (4) This Ordinance shall apply to all housing projects of 5 to 9 units that filed their
7 first application, including an environmental evaluation application or any other Planning
8 Department application on or after July 18, 2006.

9 (c) This Ordinance shall not apply to:

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

14 (2) That portion of a housing project located on property owned by the State of California or
15 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 the San
18 Francisco Redevelopment Agency or the Port of San Francisco where the application of this
19 Ordinance is prohibited by California or local law;

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

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

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

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

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1 (e) For projects that have received a first site or building permit prior to the effective date of
2 this legislation, the requirements in effect prior to the effective date of this Ordinance shall
3 apply.

4 **SEC. 315.4. ON-SITE HOUSING REQUIREMENT AND BENEFITS.**

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

8 (a) Number of Units:

9 (1)

10 (A) For any housing development of any height that is located in an area with a specific inclusionary
11 housing requirement, the more specific inclusionary housing requirement shall apply.

12 (B) Buildings 120 feet in height and under or buildings of over 120 feet in height that do not meet the
13 criteria in subsection (C) below: Except as provided in Subsection (C) below, the The Planning
14 Department shall require for housing projects covered by Section 315.3(a)(1), as a condition
15 of Planning Department approval of a project's building permit, and by Section 315.3(a)(2),
16 (3) and (4), as a Condition of Approval of a conditional use or planned unit development
17 permit or as a condition of Planning Department approval of a live/work project, that 15% of
18 all units constructed on the project site shall be affordable to qualifying households so that a
19 project applicant must construct .15 times the total number of units produced in the principal
20 project beginning with the construction of the ~~tenth~~ fifth unit. If the total number of units is not
21 a whole number, the project applicant shall round up to the nearest whole number for any
22 portion of .5 or above.

23 ~~Notwithstanding any other provision of this section, any inclusionary affordable requirement imposed~~
24 ~~on housing projects covered by Section 315.3(a)(1) in connection with an application filed with the~~

1 ~~Department of Building Inspection from the effective date of this legislation and 180 days thereafter~~
2 ~~shall be 5% so that a project applicant must construct .05 times the total number of units produced in~~
3 ~~the principal project beginning with the construction of the tenth unit. If the total number of units is~~
4 ~~not a whole number, the project applicant shall round up to the nearest whole number for any portion~~
5 ~~of .5 or above.~~

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

9 (C) Buildings of over 120 feet in height. Except as provided in subsection (A) above, the
10 requirements of this Subsection shall apply to any project that is over 120 feet in height and does not
11 require a Zoning Map amendment or Planning Code text amendment related to its project approvals
12 which (i) results in a net increase in the number of permissible residential units, or (ii) results in a
13 material increase in the net permissible residential square footage as defined in Section 315.3(b)(2) or
14 has not received or will not receive a zoning map amendment or Planning Code text amendment as
15 part of an Area Plan adopted after January 1, 2006 which (i) results in a net increase in the number of
16 permissible residential units, or (ii) results in a material increase in the net permissible residential
17 square footage as defined in Section 315.3(b)(2). The Planning Department shall require for housing
18 projects covered by this Subsection and Section 315.3(a)(1), as a condition of Planning Department
19 approval of a project's building permit, or by this Subsection and by Section 315.3(a)(2), (3) and (4),
20 as a Condition of Approval of a conditional use or planned unit development permit or as a condition
21 of Planning Department approval of a live/work project, that 12% of all units constructed on the
22 project site shall be affordable to qualifying households so that a project applicant must construct .12
23 times the total number of units produced in the principal project beginning with the construction of the
24 fifth unit. If the total number of units is not a whole number, the project applicant shall round up to the
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1 nearest whole number for any portion of .5 or above. Consistent with the conclusions of the Mayor's
2 Office of Housing study authorized in Section 315.8(e), the Mayor's Office of Housing shall
3 recommend and the Board of Supervisors shall consider whether the requirements of this Subsection
4 for buildings of over 120 feet in height shall continue or expire after approximately 5 years.
5 The Planning Department shall provide written notice by mail to the project applicant of the number
6 of affordable units which shall be required within 30 days of approval by the Planning Department or
7 Planning Commission. This notice shall also be sent to project applicants who elect to pay an in-lieu
8 fee.

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

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

19 (c) Type of Housing: The type of affordable housing needed in San Francisco is documented
20 in the City's Consolidated Plan and the Residence Element of the General Plan. In general,
21 affordable units constructed under this Section 315.4 shall be comparable in number of
22 bedrooms, exterior appearance and overall quality of construction to market rate units in the
23 principal project. The Notice of Special Restrictions or Conditions of Approval shall include a
24 specific number of units at specified unit sizes for affordable units. The square footage of
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1 affordable units and interior features in affordable units do not need to be same as or
2 equivalent to those in market rate units in the principal project, so long as they are of good
3 quality and are consistent with then-current standards for new housing: Where applicable,
4 parking shall be offered to the affordable units subject to the terms and conditions of the Department's
5 policy on unbundled parking for affordable housing units as specified in the Procedures Manual and
6 amended from time to time. Unless provided otherwise by the Mayor's Office of Housing in writing, if
7 the units in the market rate portion of the development are ownership units, then the affordable units
8 shall be ownership units and if the market rate units are rental units, then the affordable units shall be
9 rental units. ~~In the case of life care or assisted living developments where amenities such as~~
10 ~~meals are provided as a mandatory part of the cost of living at the facility, such care and~~
11 ~~amenities shall be provided to the inhabitant of the affordable unit at a cost proportionate to~~
12 ~~the market rate rent compared to the affordable rent.~~

13 (d) Marketing the Units: The Mayor's Office of Housing ~~or its successor~~ shall be responsible for
14 overseeing and monitoring the marketing of affordable units under this Section. In general,
15 the marketing requirements and procedures shall be contained in the Procedures Manual as
16 amended from time to time and shall apply to the affordable units in the project. The Mayor's
17 Office of Housing may develop occupancy standards for units of different bedroom sizes in the
18 Procedures Manual in order to promote an efficient allocation of affordable units. The Mayor's Office
19 of Housing may require in the Procedures Manual that prospective purchasers complete homebuyer
20 education training or fulfill other requirements. The Notice of Special Restrictions or Conditions
21 of Approval shall specify that the marketing requirements and procedures contained in the
22 Procedures Manual as amended from time to time, shall apply to the affordable units in the
23 project.

1 (1) Lottery: At the initial offering of affordable units in a housing project, the Mayor's Office of
2 Housing ~~or its successor~~ must require the use of a public lottery approved by ~~MOH~~ the Mayor's
3 Office of Housing to select purchasers or tenants. The Mayor's Office of Housing ~~or its~~
4 ~~successor~~ shall also hold a general public lottery and maintain and utilize a list generated from
5 this lottery or utilize a list generated from a recent lottery at another similar housing project to
6 fill spaces in units that become available for re-sale or occupancy in any housing project
7 subject to this ordinance after the initial offering. The list shall be updated from time to time
8 but in no event less than annually to ensure that it remains current.

9 (2) Preferences: ~~The Mayor's Office of Housing or its successor shall consider appropriate~~
10 ~~preferences for the allocation of inclusionary units to qualifying households and shall, within 90 days,~~
11 ~~present amendments of the Procedures Manual to the Planning Department for Commission review~~
12 ~~that require that certain preferences be given in the lottery process. In determining the appropriate~~
13 ~~preferences, the Mayor's Office of Housing shall hold at least one meeting open to members of the~~
14 ~~public and shall, as appropriate, consult with other City departments and interested nonprofit~~
15 ~~organizations. The Mayor's Office of Housing shall create a lottery system that gives preference to~~
16 ~~people who live or work in San Francisco. MOH shall propose policies and procedures for~~
17 ~~implementing this preference to the Planning Commission for inclusion in the Procedures Manual.~~
18 ~~Otherwise, it is the policy of the Board of Supervisors to treat all households equally in allocating~~
19 ~~affordable units under this Program.~~

20 (e) Alternatives: The project sponsor may elect to satisfy the requirements of Section 315.4
21 by one of the alternatives specified in this Section. The project sponsor has the choice between
22 the alternatives and the Planning Commission may not require a specific alternative. The project
23 sponsor must elect an alternative before it receives project approvals from the Planning
24 Commission or Planning Department and that alternative will be a condition of project
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1 approval. Notwithstanding the foregoing, if a project sponsor elects an alternative other than
2 the on-site alternative, the project sponsor still has the option to choose the on-site
3 alternative up to the issuance of the first site or building permit. If a project sponsor fails to

4 elect an alternative before project approval by the Planning Commission or Planning
5 Department, the provisions of Section 315.4 shall apply. The alternatives are as follows:

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

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

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

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

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

1 The Controller shall refund fees from any appropriated funds to the project applicant on
2 application by the project applicant. The application must include a copy of the certificate of
3 occupancy for all units affordable to a qualifying household required by the Inclusionary
4 Affordable Housing Program. It is the policy of the Board of Supervisors to appropriate
5 money for this purpose from the General Fund.

6 **SEC. 315.5. COMPLIANCE THROUGH OFF-SITE HOUSING DEVELOPMENT.**

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

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

11 *(1)*

12 *(A) For any housing development of any height that is located in an area with a specific inclusionary*
13 *housing requirement, the more specific off-site inclusionary housing requirement shall apply.*

14 *(B) Buildings of 120 feet and under in height or buildings of over 120 feet in height that do not meet*
15 *the criteria in subsection (C) below: Except as provided in Subsection (A), the ~~For~~ projects*

16 described in Section 315.3(a)(1), (2), (3), and (4) 20% so that a project applicant must
17 construct .20 times the total number of units produced in the principal project beginning with
18 the construction of the ~~tenth~~ *fifth* unit. If the total number of units is not a whole number, the
19 project applicant shall round up to the nearest whole number for any portion of .5 or above.

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

1 (C) Buildings of over 120 feet in height. Except as provided in subsection (A) above, the
2 requirements of this Subsection shall apply to any project that is over 120 feet in height and does not
3 require a Zoning Map amendment or Planning Code text amendment related to its project approvals
4 which (i) results in a net increase in the number of permissible residential units, or (ii) results in a
5 material increase in the net permissible residential square footage as defined in Section 315.3(b)(2);
6 or has not received or will not receive a zoning map amendment or Planning Code text amendment as
7 part of an Area Plan adopted after January 1, 2006 which (i) results in a net increase in the number of
8 permissible residential units, or (ii) results in a material increase in the net permissible residential
9 square footage as defined in Section 315.3(b)(2). The Planning Department shall require for housing
10 projects covered by this Subsection and Section 315.3(a)(1), as a condition of Planning Department
11 approval of a project's building permit, or by this Subsection and by Section 315.3(a)(2), (3) and (4),
12 as a Condition of Approval of a conditional use or planned unit development permit or as a condition
13 of Planning Department approval of a live/work project, that 17% of all units constructed on the
14 project site shall be affordable to qualifying households so that a project applicant must construct .17
15 times the total number of units produced in the principal project beginning with the construction of the
16 fifth unit. If the total number of units is not a whole number, the project applicant shall round up to the
17 nearest whole number for any portion of .5 or above. Consistent with the conclusions of the Mayor's
18 Office of Housing study authorized in Section 315.8(e), the Mayor's Office of Housing shall
19 recommend and the Board of Supervisors shall consider whether the requirements of this Subsection
20 for buildings of over 120 feet in height shall continue or expire after approximately 5 years.
21 The Planning Department shall provide written notice by mail to the project applicant of the number
22 of affordable units which shall be required within 30 days of approval by the Planning Department or
23 Planning Commission. This notice shall also be sent to project applicants who elect to pay an in-lieu
24 fee.
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1 (b) Timing of Construction: The project applicant shall insure that the off-site units are
2 constructed, completed, and ready for occupancy no later than the market rate units in the
3 principal project.

4 (c) Location of off-site housing: The project applicant must insure that off-site units are
5 located within one mile of the principal project.

6 (d) Type of Housing: The type of affordable housing needed in San Francisco is documented
7 in the City's Consolidated Plan and the Residence Element of the General Plan. New
8 affordable rental housing and ownership housing affordable to households earning less than
9 the median income is greatly needed in San Francisco. The Planning Department shall
10 develop *Quality Standards for Off-Site Affordable Housing Units* and recommend such
11 standards to the Planning Commission for adoption as part of the Procedures Manual. All
12 off-site units constructed under this Section must be provided as rental housing for the life of
13 the project or, if they are ownership units, must be affordable to households earning no more
14 than 80% of the median income for the City and County of San Francisco. Nothing in this
15 section shall limit a developer from meeting the requirements of this Section through the
16 construction of units in a limited equity or land trust form of ownership if such units otherwise
17 meet all of the requirements for off-site housing. In general, affordable units constructed
18 under this Section 315.5 shall be comparable in number of bedrooms, exterior appearance
19 and overall quality of construction to market rate units in the principal project. The total
20 square footage of the off-site affordable units constructed under this Section 315.5 shall be
21 no less than the calculation of the total square footage of the on-site market-rate units in the
22 principal project multiplied by the relevant on-site percentage requirement for the project
23 specified in Section 315.4 (~~12 for conditional use, planned unit developments or live-work projects,~~
24 ~~and 10 for all other housing projects~~). The Notice of Special Restrictions or Conditions of
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1 Approval shall include a specific number of units at specified unit sizes - including number of
 2 bedrooms and minimum square footage - for affordable units. The interior features in
 3 affordable units need not be the same as or equivalent to those in market rate units in the
 4 principal project, so long as they are of good quality and are consistent with then-current
 5 standards for new housing consistent with the Planning Department's Quality Standards for
 6 Off-Site Affordable Housing Units found in the Procedures Manual. Where applicable, parking
 7 shall be offered to the affordable units subject to the terms and conditions of the Department's policy
 8 on unbundled parking for affordable housing units as specified in the Procedures Manual and
 9 amended from time to time. ~~In the case of life care or assisted living developments where~~
 10 ~~amenities such as meals are provided as a mandatory part of the cost of living at the facility,~~
 11 ~~such care and amenities shall be provided to the inhabitant of the affordable unit at a cost~~
 12 ~~proportionate to the market rate rent compared to the affordable rent. If the residential units~~
 13 ~~in the principal project are live/work units which do not contain bedrooms or are other types~~
 14 ~~of units which do not contain bedrooms separated from the living space, the off-site units~~
 15 ~~shall be comparable in size according to the following equivalency calculation between~~
 16 ~~live/work and units with bedrooms:~~

| Number of Bedrooms (or, for live/work units square foot equivalency) | Number of Persons in Household |
|---|-----------------------------------|
| 0 (Less than 600 square feet) | 1 |
| 1 (601 to 850 square feet) | 2 |
| 2 (851 to 1100 square feet) | 3 |
| 3 (1101 to 1300 square feet) | 4 |
| 4 (More than 1300 square feet) | 5 |

1 (e) Marketing the Units: They Mayor's Office of Housing ~~or its successor~~ shall be responsible
2 for overseeing and monitoring the marketing of affordable units under this Section. In
3 general, the marketing requirements and procedures shall be contained in the Procedures
4 Manual as amended from time to time and shall apply to the affordable units in the project.
5 The Mayor's Office of Housing may develop occupancy standards for units of different bedroom sizes
6 in the Procedures Manual in order to promote an efficient allocation of affordable units. The Mayor's
7 Office of Housing may require in the Procedures Manual that prospective purchasers complete
8 homebuyer education training or fulfill other requirements. The Notice of Special Restrictions or
9 Conditions of Approval shall specify that the marketing requirements and procedures
10 contained in the Procedures Manual as amended from time to time, shall apply to the
11 affordable units in the project.

12 (1) Lottery: At the initial offering of affordable units in a housing project, the Mayor's Office of
13 Housing ~~or its successor~~ must require the use of a public lottery approved by MOH to select
14 purchasers or tenants. The Mayor's Office of Housing ~~or its successor~~ shall also hold a general
15 public lottery and maintain and utilize a list generated from this lottery or utilize a list
16 generated from a recent lottery at another similar housing project to fill spaces in units that
17 become available for re-sale or occupancy in any housing project subject to this Ordinance
18 after the initial offering. The list shall be updated from time to time but in no event less than
19 annually to insure that it remains current.

20 (2) Preferences: ~~The Mayor's Office of Housing or its successor shall consider appropriate~~
21 ~~preferences for the allocation of inclusionary units to qualifying households and shall, within 90 days,~~
22 ~~present amendments of the Procedures Manual to the Planning Department for Commission review~~
23 ~~that require that certain preferences be given in the lottery process. In determining the appropriate~~
24 ~~preferences, the Mayor's Office of Housing shall hold at least one meeting open to members of the~~
25

1 ~~public and shall, as appropriate, consult with other City departments and interested nonprofit~~
2 ~~organizations. The Mayor's Office of Housing shall create a lottery system that gives preference to~~
3 ~~people who live or work in San Francisco. MOH shall propose policies and procedures for~~
4 ~~implementing this preference to the Planning Commission for inclusion in the Procedures Manual.~~
5 ~~Otherwise, it is the policy of the Board of Supervisors to treat all households equally in allocating~~
6 ~~affordable units under this Program.~~

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

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

18 **SEC. 315.6. COMPLIANCE THROUGH IN-LIEU FEE.**

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

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

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

4 (1) The number of units required by Section 315.5 if the project applicant were to elect to
5 meet the requirements of this section by off-site housing development. For the purposes of
6 this section, ~~developers of 5-9 units may elect to calculate the unit requirement~~ the City shall
7 calculate the fee using the direct fractional result of the total number of units multiplied by the
8 percentage of off-site housing required, rather than rounding up the resulting figure as
9 required by Section 315.5(a).

10 (2) The affordability gap using data on the cost of construction of residential housing from the "San
11 Francisco Sensitivity Analysis Summary Report: Inclusionary Housing Program" prepared by Keyser
12 Marston Associates, Inc. in August 2006 as identified in the "Jobs Housing Nexus Analysis" prepared
13 by Keyser Marston Associates, Inc. in June 1997 for the Maximum Annual Rent or Maximum
14 Purchase Price for the equivalent unit sizes. The Planning Department and MOH shall update the
15 technical report from time to time as they deem appropriate in order to ensure that the affordability
16 gap remains current.

17 (3) ~~Annual adjustments to the affordability gap based upon the percentage increase or decrease in the~~
18 ~~Average Area Purchase Price Safe Harbor Limitations for New Single Family Residences for the San~~
19 ~~Francisco Primary Metropolitan Statistical ("PMSA") established by the Internal Revenue Service~~
20 ~~("IRS") since January 1st of the previous year; provided however, that in the event that said~~
21 ~~percentage increase exceeds 20 percent, the in-lieu fee shall be increased by 20 percent, and the~~
22 ~~difference between the percentage increase in the Average Area Purchase Price and 20 percent shall~~
23 ~~be carried over and added to the in-lieu fee adjustment for the following calendar year. In the event~~
24 ~~that the IRS does not adjust the above figure within 14 months, the Mayor's Office of Housing shall~~

1 *authorize and certify a study for adjusting the last published IRS figure to be effective until IRS revises*
2 *the figure.*

3 (4) No later than July 1 of each year, the Mayor's Office of Housing shall adjust the in lieu fee
4 payment option and provide a report on its adjustment to the Board of Supervisors. MOH
5 shall provide notice of any fee adjustment on its website at least 30 days prior to the adjustment taking
6 effect. The Mayor's Office of Housing is authorized to develop an appropriate methodology for
7 indexing the fee, based on adjustments in the costs of constructing housing and in the price of housing
8 in San Francisco. The method of indexing shall be published in the Procedures Manual.

9 (c) Within 30 days of determining the amount of the fee to be paid by the applicant, MOH
10 shall transmit the amount of the fee to the Treasurer. Prior to the issuance by DBI of the first
11 site or building permit for the project applicant, the project applicant must notify the Planning
12 Department and MOH in writing that it has paid in full the sum required to the Treasurer. If
13 the project applicant fails by the applicable date to demonstrate to the Planning Department
14 that the project applicant has paid the applicable sum in full to the Treasurer, DBI shall deny
15 any and all site or building permits or certificates of occupancy for the development project
16 until the Planning Department notifies DBI and MOH that such payment has been made.

17 (d) Upon payment of the fee in full to the Treasurer and upon request of the project applicant,
18 the Treasurer shall issue a certification that the fee has been paid. The project applicant shall
19 present such certification to the Planning Department, DBI and MOH prior to the issuance by
20 DBI of the first site or building permit or certificate of occupancy for any development subject
21 to this Section. Any failure of the Treasurer, DBI, or Planning Department to give any notice
22 under this Section shall not relieve a project applicant from compliance with this Section.

23 Where DBI inadvertently issues a site or building permit without payment of the fee, DBI shall
24 not issue any certificate of occupancy for the project without notification from the Treasurer
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1 that the fee required by this Section has been paid. The procedure set forth in this subsection
2 is not intended to preclude enforcement of the provisions of this section pursuant to any other
3 section of this Code, or other authority under the laws of the State of California.

4 (e) All monies contributed pursuant to this section shall be deposited in the special fund
5 maintained by the Controller called the Citywide Affordable Housing Fund. The receipts in the
6 Fund are hereby appropriated in accordance with law to be used to (1) increase the supply of
7 housing affordable to qualifying households subject to the conditions of this Section, and (2)
8 pay the expenses of MOH in connection with monitoring and administering compliance with
9 the requirements of the Program. MOH is authorized to use funds in an amount not to exceed
10 \$200,000 every 5 years to conduct follow-up studies under Section 315.8(e) and to update the in lieu
11 fee amounts as described above in Section 315.6(b). All other monitoring ~~Monitoring~~ and
12 administrative expenses shall be appropriated through the annual budget process or
13 supplemental appropriation for MOH. The fund shall be administered and expended by MOH,
14 which shall have the authority to prescribe rules and regulations governing the Fund which
15 are consistent with this Section.

16 (f) Lien Proceedings.

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

20 (2) If, for any reason, the fee imposed pursuant to this Ordinance remains unpaid following
21 issuance of the permit, the Treasurer shall initiate proceedings to impose the lien in
22 accordance with the procedures set forth in Chapter 10, Article XX of the San Francisco
23 Administrative Code to make the entire unpaid balance of the fee, including interest, a lien
24 against all parcels used for the development project. The Treasurer shall send all notices
25

1 required by that Article to the owner of the property as well as the sponsor. The Treasurer
2 shall also prepare a preliminary report notifying the sponsor of a hearing to confirm such
3 report by the Board of Supervisors at least 10 days before the date of the hearing. The report
4 to the sponsor shall contain the sponsor's name, a description of the sponsor's development
5 project, a description of the parcels of real property to be encumbered as set forth in the
6 Assessor's Map Books for the current year, a description of the alleged violation of this
7 Ordinance, and shall fix a time date and place for hearing. The Treasurer shall cause this
8 report to be mailed to the sponsor and each owner of record of the parcels of real property
9 subject to lien. Except for the release of lien recording fee authorized by Administrative Code
10 Section 10.237, all sums collected by the Tax Collector pursuant to this Ordinance shall be
11 held in trust by the Treasurer and deposited in the Citywide Affordable Housing Fund
12 established in Section 313.12.

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

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

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

10 **SEC. 315.7. DURATION AND MONITORING OF AFFORDABILITY.**

11 (a) All units constructed pursuant to Sections 315.4 and 315.5 must be owner-occupied in the case of
12 ownership units or occupied by qualified households in the case of rental units, and shall not remain
13 vacant for a period exceeding 60 days without the written consent of the Mayor's Office of Housing. All
14 units constructed pursuant to Sections 315.4 and 315.5 must remain affordable to qualifying
15 households for the life of the project, ~~to be defined as 50 years from the date of issuance of the~~
16 ~~first certificate of temporary~~ occupancy of a qualifying household. For ownership units, the 50-
17 year term shall be recalculated at the time of sale such that a new 50-year restriction shall
18 apply to any subsequent purchaser. If a purchaser owns and occupies a unit for 50 years, the
19 City shall lift the restriction on the unit imposed under this ordinance. For rental units, the unit
20 must remain affordable to qualifying households for 50 years from the date of issuance of the
21 first certificate of temporary occupancy. If an owner can provide proof to the City that it has
22 rented a unit for 50 years to qualifying households, the City shall lift the restriction on the unit
23 imposed by this ordinance. The income levels specified in the Notice of Special Restrictions
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1 and/or Conditions of Approval for the project shall be the required income percentages for the
2 50-year life of the project restrictions.

3 (b) The Planning Commission or the Planning Department shall require all housing projects
4 subject to this ordinance to record a Notice of Special Restrictions with the Recorder of the
5 City and County of San Francisco. The Notice of Special Restrictions must incorporate the
6 affordability restrictions. All projects described in Section 315.3(a)(1) and 315.3(a)(3) must
7 incorporate all of the requirements of this Section 315.7 into the Notice for Special
8 Restrictions, including any provisions required to be in the Conditions of Approval for housing
9 projects described in Section 315.3(a)(2). These Section 315.3(a)(2) projects which are
10 housing projects which go through the conditional use or planned unit development process
11 shall have Conditions of Approval. The Conditions of Approval shall specify that project
12 applicants shall adhere to the marketing, monitoring, and enforcement procedures outlined in
13 the Procedures Manual, as amended from time to time, in effect at the time of project
14 approval. The Planning Commission shall file the Procedures Manual in the case file for each
15 project requiring inclusionary housing pursuant to this Program. The Procedures Manual will
16 be referenced in the Notice of Special Restrictions for each project.

17 (c) Any affordable rental units permitted by the Planning Commission to be converted to
18 ownership units must satisfy the requirements of the Procedures Manual, as amended from
19 time to time, including that the units shall be sold at restricted sales prices to households
20 meeting the income qualifications specified in the Notice of Special Restrictions or Conditions
21 of Approval, with a right of first refusal for the occupant(s) of such units at the time of
22 conversion. ~~Upon conversion to ownership, the units are subject to the 50-year rolling resale~~
23 ~~restrictions, as described in Section 315.7(a).~~

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

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

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

18 (a) A first certificate of occupancy shall not be issued by the Director of the Department
19 of Building Inspection to any unit in the principal project until all of the on-site or off-site
20 housing development requirements of Sections 315.4 or 315.5, if applicable, and
21 Section 315.7 are met. A first site permit for the principal project shall not be issued by
22 the Director of the Department of Building Inspection until the requirements of Sections
23 315.4(e) and 315.6 regarding payment of the in-lieu fee, if applicable, have been met.
24
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1 (b) If the Planning Commission or Planning Department determines that a project
2 applicant has failed to comply with Sections 315.4 or 315.5 and the recording of
3 reporting requirements of Section 315.7 as detailed in the Procedures Manual, or has
4 violated the Conditions of Approval or terms of the Notice of Special Restrictions, the
5 Planning Commission or Planning Department may, until the violation is cured, (a)
6 revoke the certificate of occupancy for the principal project or required affordable units,
7 (b) impose a penalty on the project pursuant to Section 176(c) of this Code, and/or (c)
8 the Zoning Administrator may enforce the provisions of this Program through any
9 means provided for in Section 176 of this Code.

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

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

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

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

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

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

1 ~~Housing shall determine the median and average profit margins for developers of for profit~~
2 ~~housing. The Mayor's Office shall also make a determination whether levels of affordability can~~
3 ~~be increased pursuant to Finding J, enumerated in Section 315.2. The Mayor's Office of~~
4 ~~Housing shall specifically evaluate the different inclusionary housing requirements for~~
5 ~~developments of over 120 feet approximately 5 years from the enactment of the requirement or~~
6 ~~as deemed appropriate by the Mayor's Office of Housing.~~

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

24 (g) Annual Monitoring:
25

1 (1) The Mayor's Office of Housing shall monitor and require occupancy certification for
2 affordable ownership and rental units on an annual basis, as outlined in the Procedures
3 Manual.

4 (2) The Mayor's Office of Housing may require the owner of an affordable rental unit, the
5 owner's designated representative, or the tenant in an affordable unit to verify the income levels
6 of the tenant on an annual basis, as outlined in the Procedures Manual.

7 Section 2: The San Francisco Planning Code is hereby amended by amending Section
8 313.6 of the Jobs Housing Linkage Program, to read as follows:

9 **SEC. 313.6. COMPLIANCE THROUGH PAYMENT OF IN-LIEU FEE.**

10 (a) Commencing on March 11, 1999, the amount of the fee which may be paid by the
11 sponsor of a development project subject to this ordinance in lieu of developing and
12 providing the housing required by Section 313.5 shall be determined by the following
13 formulas for each type of space proposed as part of the development project and
14 subject to this ordinance.

| | | |
|----|---|-----------------------|
| 15 | Net Addition Gross Sq. Ft. Entertainment Space | × \$10.57 = Total Fee |
| 16 | Net Addition Gross Sq. Ft. Hotel Space | × \$8.50 = Total Fee |
| 17 | Net Addition Gross Sq. Ft. Office Space | × \$11.34 = Total Fee |
| 18 | Net Addition Gross Sq. Ft. Research and Development | × \$7.55 = Total Fee |
| 19 | Net Addition Gross Sq. Ft. Retail Space | × \$10.57 = Total Fee |
| 20 | | |

21 (b) Commencing on January 1, 2002, the amount of the fee which may be paid by the
22 sponsor of a development project subject to this ordinance in lieu of developing and
23 providing the housing required by Section 313.5 shall be determined by the following
24
25

1 formulas for each type of space proposed as part of the development project and
 2 subject to this ordinance:

| | | |
|----|--|-----------------------|
| 3 | Net Addition Gross Sq. Ft. Entertainment Space | × \$13.95 = Total Fee |
| 4 | | |
| 5 | Net Addition Gross Sq. Ft. Hotel Space | × \$11.21 = Total Fee |
| 6 | | |
| 7 | | |
| 8 | Net Addition Gross Sq. Ft. Office Space | × \$14.96 = Total Fee |
| 9 | | |
| 10 | Net Addition Gross Sq. Ft. R & D Space | × \$9.97 = Total Fee |
| 11 | | |
| 12 | | |
| 13 | Net Addition Gross Sq. Ft. Retail Space | × \$13.95 = Total Fee |
| 14 | | |

15 ~~Such in-lieu fee shall be revised effective January 1st of each year thereafter by the percentage~~
 16 ~~increase or decrease in the Average Area Purchase Price Safe Harbor Limitations for New~~
 17 ~~Single Family Residences for the San Francisco Primary Metropolitan Statistical Area~~
 18 ~~("PMSA") established by the Internal Revenue Service ("IRS") since January 1st of the previous~~
 19 ~~year; provided, however, that in the event that said percentage increase exceeds 20 percent, the~~
 20 ~~in-lieu fee shall be increased by 20 percent, and the difference between the percentage increase~~
 21 ~~in the Average Area Purchase Price and 20 percent shall be carried over and added to the in-~~
 22 ~~lieu fee adjustment for the following calendar year. In the event that the IRS does not adjust the~~
 23 ~~above figure within a 14 month period, the Commission shall authorize and certify a study for~~
 24 ~~adjusting the last published IRS figure, to be effective until the IRS revises the figure. No later~~
 25

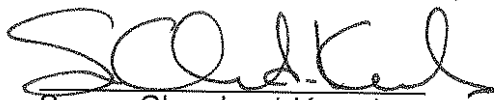
1 than July 1 of each year, the Mayor's Office of Housing shall adjust the in lieu fee payment
2 option and provide a report on its adjustment to the Board of Supervisors. The Mayor's Office
3 of Housing shall provide notice of any fee adjustment on its website at least 30 days prior to the
4 adjustment taking effect. The Mayor's Office of Housing is authorized to develop an
5 appropriate methodology for indexing the fee, based on adjustments in the costs of constructing
6 housing and in the price of housing in San Francisco consistent with the indexing for the
7 Residential Inclusionary Affordable Housing Program in lieu fee set out in Planning Code
8 Section 315.6. The method of indexing shall be published in the Procedures Manual for the
9 Residential Inclusionary Affordable Housing Program. In making a determination as to the
10 amount of the fee to be paid, the Planning Department shall credit to the sponsor any
11 excess Interim Guideline credits or excess credits which the sponsor elects to apply
12 against its housing requirement.

13 (c) Prior to the issuance by DBI of the first site or building permit for a development
14 project subject to this ordinance, the sponsor must notify the Planning Department and
15 MHO in writing that it has either (i) satisfied the conditions of Section 313.5(e) or (ii)
16 paid in full the sum required by this Section to the Treasurer. If the sponsor fails by the
17 applicable date to demonstrate to the Planning Department that the sponsor has
18 satisfied the conditions of Section 313.5(e) or paid the applicable sum in full to the
19 Treasurer, DBI shall deny any and all site or building permits or certificates of
20 occupancy for the development project until the Treasurer notifies DBI and MOH that
21 such payment has been made, and the Treasurer shall immediately initiate lien
22 proceedings against the sponsor's property pursuant to Section 313.9 to recover the
23 fee.

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

15
16 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

17
18 By:



Susan Cleveland-Knowles
Deputy City Attorney



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 061529

Date Passed:

Ordinance approving changes to the Residential Inclusionary Affordable Housing Requirements by amending Section 315 to clarify the regulations in effect for particular projects; amending Section 315.1 to modify certain definitions related to income and sale price calculation; amending Section 315.2 to update findings; amending Section 315.3 to conform the legislation to the requirement that the ordinance apply to all projects of 5 units or more; amending Sections 315.4 and 315.5 to establish separate requirements for buildings of 120 feet in height or greater, to clarify the requirements related to the type of on- and off-site housing required, and to establish a preference in the lottery for on- and off-site units for people who live and work in San Francisco; amending Section 315.6 to provide updated guidelines for the calculation of the in lieu fee and to allow MOH to expend funds for a study to periodically update the fee; amending Section 315.7 to change the amount of time an ownership unit shall remain affordable; amending Section 315.8 to amend certain monitoring and study obligations; making a related change to the Jobs-Housing Linkage Program by amending Section 313.6 to make annual adjustments in the in lieu fee for that program correspond to the method used for the Residential Inclusionary Affordable Housing Program; and making findings, including findings under the California Environmental Quality Act.

April 10, 2007 Board of Supervisors — CONTINUED

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Jew, Maxwell,
McGoldrick, Mirkarimi, Peskin, Sandoval

April 17, 2007 Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE
BEARING SAME TITLE

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Jew, Maxwell,
McGoldrick, Mirkarimi, Peskin, Sandoval

April 17, 2007 Board of Supervisors — PASSED ON FIRST READING AS AMENDED

Ayes: 10 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Maxwell, McGoldrick,
Mirkarimi, Peskin, Sandoval

Noes: 1 - Jew

April 24, 2007 Board of Supervisors — FINALLY PASSED

Ayes: 10 - Alioto-Pier, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi,
Peskin, Sandoval, Ammiano

Noes: 1 - Jew

File No. 061529

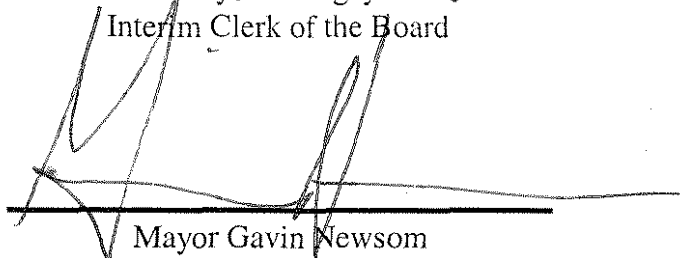
I hereby certify that the foregoing Ordinance was **FINALLY PASSED** on April 24, 2007 by the Board of Supervisors of the City and County of San Francisco.

MAY 04 2007

Date Approved



Kay Gulbengay
Interim Clerk of the Board



Mayor Gavin Newsom