



October 23, 2024

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

Re: **Transmittal of Planning Department Case Number 2024-007228PCA:**  
Authorize Increases to the Affordable Price and Income Limits for Certain Below Market Rate Owned Units  
and Require Amenities to be Resold with Unit  
Board File No. 240802

**Planning Commission Recommendation: Adopt a Recommendation for Approval as Amended**

Dear Ms. Calvillo and Supervisor Melgar,

On October 17, 2024 the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Melgar. The proposed ordinance would allow certain Below Market Rate (BMR) Owned Units to be resold at a price affordable to households at an increased Area Median Income (AMI) level. It would also increase the qualifying AMI limit for BMR purchasers. In addition, it would clarify in the Planning Code that BMR Owned Units originally purchased with parking spaces and other amenities to be resold with the same parking and amenities. At the hearing the Planning Commission adopted a recommendation for approval as amended.

The sponsor's amendments were as follows:

1. Add a ten-unit trigger for a report to the Planning Commission, and
2. Allow the Planning Commission to delegate authority to staff.

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

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

Sincerely,



Aaron D. Starr  
*Manager of Legislative Affairs*

cc: Heather Goodman, Deputy City Attorney  
Jen Low, Aide to Supervisor Melgar  
John Carroll, Office of the Clerk of the Board

**ATTACHMENTS :**

Planning Commission Resolution  
Planning Department Executive Summary



# PLANNING COMMISSION RESOLUTION NO. 21626

**HEARING DATE: OCTOBER 17, 2024**

*Project Name:* Authorize Increases to the Affordable Price and Income Limits for Certain Below Market Rate Owned Units  
*Case Number:* 2024-007228PCA [Board File No. 240802]  
*Initiated by:* Supervisor Melgar / Introduced July 30, 2024  
*Staff Contact:* Veronica Flores Legislative Affairs  
veronica.flores@sfgov.org, 628-652-7525  
*Reviewed by:* Aaron Starr, Manager of Legislative Affairs  
aaron.starr@sfgov.org, 628-652-7533

**RESOLUTION ADOPTING A RECOMMENDATION FOR APPROVAL AS AMENDED OF A PROPOSED ORDINANCE THAT WOULD AMENDING THE PLANNING CODE TO ALLOW CERTAIN BELOW MARKET RATE (BMR) OWNED UNITS TO BE RESOLD AT A PRICE AFFORDABLE TO HOUSEHOLDS AT AN INCREASED AREA MEDIAN INCOME (AMI) LEVEL, AND TO INCREASE THE QUALIFYING AMI LIMIT FOR BMR PURCHASERS; AND AFFIRMING THE PLANNING DEPARTMENT’S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1, AND MAKING FINDINGS OF PUBLIC NECESSITY, CONVENIENCE, AND WELFARE PURSUANT TO PLANNING CODE, SECTION 302.**

WHEREAS, on July 30, 2024 Supervisor Melgar introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 240802, which would amending the Planning Code to allow certain Below Market Rate (BMR) Owned Units to be resold at a price affordable to households at an increased Area Median Income (AMI) level, and to increase the qualifying AMI limit for BMR purchasers;

WHEREAS, the Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on October 10, 2024; and,

WHEREAS, the Commission heard the proposed Ordinance on October 10, 2024 and continued the matter for consideration on October 17, 2024; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15378 and 15060(c)(2); and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the Custodian of Records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby adopts a **recommendation for approval as amended** of the proposed ordinance. During the hearing, the sponsor amended the ordinance as follows:

1. Ten unit trigger for a report to the Planning Commission and
2. Delegation of authority to staff.

## Findings

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

The proposed Ordinance will support BMR sellers by creating a new resell waiver for BMR owners who purchased a unit at a higher price than today's affordable prices. Additionally, the qualifying income limits would be adjusted to make sure that the unit is affordable to future buyers. This ensures that the unit remains permanently affordable.

## General Plan Compliance

The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

### HOUSING ELEMENT

#### OBJECTIVE 1.A

ENSURE HOUSING STABILITY AND HEALTHY HOMES.

#### OBJECTIVE 4.A

SUBSTANTIALLY EXPAND THE AMOUNT OF PERMANENTLY AFFORDABLE HOUSING FOR EXTREMELY LOW- TO MODERATE-INCOME HOUSEHOLDS.

### Policy 2

Preserve affordability of existing subsidized housing, government-owned or cooperative-owned housing, or SRO hotel rooms where the affordability requirements are at risk or soon to expire.

### Policy 15

Expand permanently affordable housing investments in Priority Equity Geographies to better serve American Indian, Black, and other People of color within income ranges underserved, including extremely-, very low-, and moderate-income households.

### Policy 23

Retain and increase the number of moderate- and middle-income households by increasing their homebuying opportunities and reversing the shortage in housing that is affordable to these households.

### Policy 26

Streamline and simplify permit processes to provide more equitable access to the application process, improve certainty of outcomes, and ensure meeting State- and local-required timelines, especially for 100% affordable housing and shelter projects.

*The proposed Ordinance supports the Housing Element objective of ensuring housing stability. Specifically, the proposed Ordinance aligns with Policy 23: retain and increase the number of homebuying opportunities for moderate- and middle-income households. This is done by creating a new waiver to allow the current BMR seller to sell their BMR at a price closer to the original purchase price. As a result, the eligible BMR owner will be more financially stable in their search for new housing. The new price is calculated in a simpler fashion than the original purchase price. This supports Policy 26: streamline and simplify the permit process. Additionally, this new price is coupled with adjusting the qualifying income AMI for the BMR unit. This supports Policies 2 and 23 by making sure that future buyers can afford the available BMR units. Further, adjusting the qualifying income supports Objective 4.A and Policy 15: expand the amount of permanently affordable housing for extremely low- to moderate-income households. In some cases, this may create more affordable housing opportunities at different income levels.*

## Planning Code Section 101 Findings

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

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve

the cultural and economic diversity of our neighborhoods;

*The proposed Ordinance would not have a negative effect on housing or neighborhood character.*

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

*The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.*

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

*The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

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

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

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

*The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.*

7. That the landmarks and historic buildings be preserved;

*The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.*

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

*The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.*

### **Planning Code Section 302 Findings.**

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

NOW THEREFORE BE IT RESOLVED that the Commission hereby ADOPTS A RECOMMENDATION FOR APPROVAL AS AMENDED the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on October 17, 2024.



Jonas P. Ionin  
*Commission Secretary*

Jonas P Ionin Digitally signed by Jonas P Ionin  
Date: 2024.10.22 17:24:31 -07'00'

AYES: Campbell, McGarry, Williams, Braun, So  
NOES: Moore  
ABSENT: Imperial  
ADOPTED: October 17, 2024



# EXECUTIVE SUMMARY

## PLANNING CODE TEXT AMENDMENT

**HEARING DATE: October 10, 2024**

**90-Day Deadline:** November 5, 2024

*Project Name:* Authorize Increases to the Affordable Price and Income Limits for Certain Below Market Rate Owned Units

*Case Number:* 2024-007228PCA [Board File No. 240802]

*Initiated by:* Supervisor Melgar / Introduced July 30, 2024

*Staff Contact:* Veronica Flores Legislative Affairs  
veronica.flores@sfgov.org, 628-652-7525

*Reviewed by:* Aaron Starr, Manager of Legislative Affairs  
aaron.starr@sfgov.org, 628-652-7533

Environmental

*Review:* Not a Project Under CEQA

**RECOMMENDATION: Adopt of Recommendation for Approval**

### Planning Code Amendment

The proposed Ordinance would amend the Planning Code to allow certain Below Market Rate (BMR) Owned Units to be resold at a price affordable to households at a higher Area Median Income (AMI) level. The proposed Ordinance would also increase the qualifying income AMI limit for these BMRs.

#### The Way It Is Now:

1. The Inclusionary Housing Program (hereinafter the Program) uses ambiguous language.
2. BMR owners are restricted on the resale price per the Program, except for a few waivers for units that are unable to be resold.
3. MOHCD requires that parking included during the initial BMR sale continue to be included with the



BMR unit in resales. This means the parking space cannot be sold separately from the BMR unit. This contradicts the Planning Code's unbundled parking requirement.

4. Prior legislation amended the Program but omitted some corresponding changes in other subsections of the Code.

### **The Way It Would Be:**

1. The proposed Ordinance would add new definitions to Section 401 for "Affordable Price" and "Qualifying Income".
2. The proposed Ordinance would create a new waiver for BMR units that were purchased at a higher price than the affordable resale price of today. This new waiver would allow the Mayor's Office of Housing and Community Development (MOHCD) to increase the resale price to reflect the original purchase price up to a maximum Affordable Price of 130% AMI. Additionally, this new waiver would allow MOHCD increase the qualifying income AMI by up to 20%, up to a maximum of 150% of AMI.
3. The proposed Ordinance would explicitly clarify that parking spaces that were included during the initial purchase are exempt from unbundled parking requirements during the resale process. This is a technical clarification and would make the Planning Code consistent with the Inclusionary Affordable Housing Program Monitoring and Procedures Manual.
4. The proposed Ordinance would make other technical clarifications to make the Program consistent.

## **Background**

This ordinance came about because of 201 Valencia Street, Unit 201 (hereinafter Valencia Street unit). The owners of the Valencia Street unit purchased their property in 2018. They decided to sell the property in 2022 and requested a resale price from MOHCD. Since the owners' original purchase date, MOHCD has refined their methodology based on current interest rates and other factors to calculate resale prices. This newer (and current) pricing methodology resulted in an affordable resale price for this property approximately \$60,000 less than the owners' purchase price in 2018. The owners have tried selling their BMR unit at a higher price to be able to recoup more of their equity; however, they have been unable to sell their unit because the pool of buyers is limited to a specific AMI. The proposed Ordinance would create a path for the owners of the Valencia Street unit to sell their unit for the price they paid for it while keeping the unit within the Inclusionary Housing program.

## **Issues and Considerations**

### **BMR Affordability**

BMR units have strict price and qualifying income limits to ensure affordability. These are calculated based on what is deemed affordable for a household making a certain percentage of the Area Median Income (hereinafter AMI). MOHCD considers various factors or assumptions so that the price is affordable to the

buyer. Full details are outlined on page 87 of the [Inclusionary Affordable Housing Program Monitoring and Procedures Manual](#). Some factors include:

- The final HOA dues for each BMR unit.
- The tax rate as published by the San Francisco Assessor and Recorders Office.
- A mortgage interest rate based on data provided by Freddie Mac.
- Ensuring total housing costs<sup>1</sup> are no more than 33% of the gross monthly income.
- A 10% down-payment.
- Whether or not parking is included.

This final price AMI is recorded in a Notice of Special Restrictions (NSR) against the property. The goal of this sale price is to preserve affordability. BMR owners are not anticipated to be able to make a major profit when they sell a unit, rather the price AMI for future resales is set based on the equivalent affordability level.

### New Waiver for Price and Qualifying Income Limits and Why It Is Needed

There is a systemic problem if today's affordable pricing methodology results in a substantial loss for older BMR units.

The proposed Ordinance creates a new waiver for the price and qualifying income limits. This is needed to offset some structural changes in the Program. The Valencia Street unit is an older BMR unit, and the current owners are the second owners. When these owners purchased the unit in 2018, the affordable price was calculated using a method MOHCD now finds is not reflective of current affordable pricing. MOHCD used the newer methodology in 2022 to calculate the new affordable price for the Valencia Street unit. This resulted in an affordable price approximately \$60,000 less than the original purchase price. The proposed waiver allows MOHCD to reset the affordable price to the original purchase price, instead of relying on all the standard factors and assumptions to calculate the price. This is also meant to make the repricing process for eligible BMR units simpler and easier for staff and the public to understand.

The qualifying income AMI limit must also be adjusted to reflect the higher price limit. Without this subsequent qualifying income adjustment, the purchase price then becomes unaffordable to those households at the current qualifying income AMI levels.

The second component of this new waiver preserves the unit's affordability. After the price is adjusted, the qualifying income is also adjusted to make sure that buyers have enough income to afford the new, higher price. This adjustment is limited to an increase of 20% of the qualifying income AMI, up to a maximum of 150%. If the qualifying income is not adjusted in conjunction with this price increase, future buyers would likely spend more than 33% of their household income on housing costs. This would make the unit inherently unaffordable moving forward. Therefore, the price adjustment also needs the corresponding qualifying income adjustment to make sure the unit is affordable to buyers in the future.

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<sup>1</sup> Housing costs may include payments for taxes, insurance, homeowner or association's fees, property tax special assessment costs (if any), and other related costs.

This proposed waiver is a one-time price adjustment to allow the BMR to be sold up to a maximum of the original sale price. MOHCD recognizes that interest rates and the economy fluctuate; however, this proposed price exemption is not anticipated to be needed again because the qualifying income is also adjusted to match the new sale price.

### **Bundled versus Unbundled Parking for BMR Units**

At initial sale, the BMR unit is offered at an option to include parking or not include parking. If parking is included, it is offered at a discounted rate and considered an amenity for the BMR unit. The parking space may not be removed or unbundled from the unit in future sales because of the steep discount in the original purchase price. This is contrary to controls in the Planning Code that require parking to be unbundled from the unit and able to be sold separately. As such, the proposed Ordinance includes a clarification that parking spaces that were included at the initial purchase are exempt from unbundled parking requirements in the Planning Code. This amendment is to match MOHCD's practice of keeping all amenities included during initial sale as part of the resale package. This is not a policy change, but more clean-up in nature.

### **General Plan Compliance**

The proposed Ordinance supports the Housing Element objective of ensuring housing stability. Specifically, the proposed Ordinance aligns with Policy 23: retain and increase the number of homebuying opportunities for moderate- and middle-income households. This is done by creating a new waiver to allow the current BMR seller to sell their BMR at a price closer to the original purchase price. As a result, the eligible BMR owner will be more financially stable in their search for new housing. The new price is calculated in a simpler fashion than the original purchase price. This supports Policy 26: streamline and simplify the permit process. Additionally, this new price is coupled with adjusting the qualifying income AMI for the BMR unit. This supports Policies 2 and 23 by making sure that future buyers can afford the available BMR units. Further, adjusting the qualifying income supports Objective 4.A and Policy 15: expand the amount of permanently affordable housing for extremely low- to moderate-income households. In some cases, this may create more affordable housing opportunities at different income levels.

### **Racial and Social Equity Analysis**

The proposed Ordinance advances racial and social equity by supporting existing BMR owners and preserving affordability. The Inclusionary Housing Program builds a path for low-income households to enter the housing market. For some households, this is the only way to be able to purchase a home. However, these BMR owners are not meant to be able to resell the BMR unit for a lot of equity because the unit is supposed to remain affordable. The Program sets price and qualifying income limits to preserve this affordability. However, MOHCD's historical methodology to calculate affordable pricing resulted in systemic problems when older BMRs try to resell. This is because MOHCD's current methodology makes sure that all the buyer's housing costs are less than 33% of their annual income. One unintentional consequence is that when older BMR units that were priced using the historical methodology are repriced under today's methodology, the resale price is much lower than what the original purchase price was. Newer BMR units that used the current methodology to calculate the original purchase price do not face the same issues. This problem exists for a very specific subset of BMRs, but still yields unwarranted hardships for these BMR owners.

The proposed Ordinance would create a new resell waiver for BMR owners who purchased their unit at higher price than the current affordable housing prices. This allows eligible BMR owners to resell the unit up to a maximum of the original purchase price. This is important because it allows the BMR owners in this unique situation to retain their equity. Without this new price adjustment, the BMR owner may stay in a unit that no longer fits their needs just to preserve the household's assets and wealth. Additionally, without this new price adjustment, the BMR owner would lose substantial equity during the sale. BMR units are not meant to gain a lot of equity during the resale process; but they are also not mean to take such a severe loss when reselling the BMR unit. In the case of the Valencia Street unit, the BMR owner has tried to sell their unit at a rate much higher than the affordable price today but has been unsuccessful.

The proposed Ordinance includes increasing the qualifying income by up to 20%, up to a maximum of 150% of the AMI. This adjustment is needed to make sure that the BMR buyer can actually afford the new price. MOHCD would determine the appropriate AMI by ensuring the BMR buyer would spend only up to 33% of the household income on housing costs. Additionally, adjusting the qualifying income limit would potentially increase the number of eligible applicants. This may create new housing paths for low- to moderate- income households.

## Implementation

The Department has determined that this Ordinance will impact our current implementation procedures; however, the proposed changes can be implemented without increasing permit costs or review time. The proposed Ordinance would require a new process to update the previously approved conditions of approval for the impacted units. As drafted, the proposed Ordinance ensures that this process can be completed administratively. It is likely the Housing Implementation Team will take the lead in this process. Therefore, no extensive training would be required for the Current Planning division or the Department. Additionally, the Housing Implementation Team can model this process after the process to reduce a project's inclusionary housing. Therefore, the proposed Ordinance would have minimal impacts on the Department's implementation procedures.

## Recommendation

The Department recommends that the Commission ***adopt a recommendation for approval*** of the proposed Ordinance and adopt the attached Draft Resolution to that effect.

## Basis for Recommendation

The proposed Ordinance assists BMR sellers whose purchase price was calculated using an outdated methodology and are now trying to resell based on the new methodology. MOHCD refined this calculation in recent years to make sure BMR owners only spend up to 33% of their total income on housing costs. While the revised methodology is an improvement to the Program overall, it created a systemic problem for older BMR units that are repriced under today's affordable pricing methodology. This is so because the new method adds extra financial considerations that were not used when pricing older BMR units. MOHCD is

currently aware of only one unit that is eligible in this situation, but there are likely other older BMR units that could benefit from this proposed Ordinance.

The proposed Ordinance addresses this issue by creating a new price and qualifying income limit waiver. So now instead of being limited to selling the BMR unit to the price AMI listed in the NSR, the price may be adjusted up to the original purchase price. The goal is for the BMR seller to be more competitive with newer BMRs that are generally listed at more affordable prices. The BMR seller would be more likely to recoup most of the purchase price. This is important because the BMR Program should not force BMR sellers to take a loss when selling their unit. Additionally, substantial losses in the housing market would be more crippling to low-income households.

The proposed Ordinance also allows MOHCD to increase the qualifying income by up to 20%, up to a maximum of 150%. Without this adjustment, the new BMR buyer would likely need to spend more than 33% of the household income on housing. The proposed amendment remedies this by calculating what income is needed so that only 33% of the household income is spent on housing costs for the new purchase price. The combination of both the adjusted price and qualifying income ensures that the unit remains permanently affordable. Further, adjusting the qualifying income limit would reach new AMI levels and make more households eligible that are otherwise not eligible today.

The proposed Ordinance also includes technical clarifications and clean-up items to make the code consistent. The Program was amended in 2017, but some code sections were not accurately updated based on that legislation. The proposed Ordinance seeks to correct that.

## **Required Commission Action**

The proposed Ordinance is before the Commission so that it may adopt a recommendation of approval, disapproval, or approval with modifications.

## **Environmental Review**

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

## **Public Comment**

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.