

1 [Inclusionary In Lieu Fees For Small Site Acquisition and Rehabilitation.]

2

3 **Ordinance amending Planning Code Section 315.6 of the Residential Inclusionary**
4 **Affordable Housing Program to provide that ten percent (10%) of in lieu fees paid under**
5 **Section 315.6, not to exceed a maximum of \$15 million at any one time, be designated**
6 **exclusively for the acquisition and/or rehabilitation of affordable housing sites**
7 **consisting of less than 25 units.**

8 Note: Additions are *single-underline italics Times New Roman*;
9 deletions are *strikethrough italics Times New Roman*.
10 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

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

12 Section 1. Findings.

13 Section 2. The San Francisco Planning Code is hereby amended by amending Section
14 315.6, to read as follows:

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

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

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

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

25

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

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

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

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

1 and all site or building permits or certificates of occupancy for the development project until
2 the Planning Department notifies DBI and MOH that such payment has been made.

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

15 (e) All monies contributed pursuant to this section shall be deposited in the special fund
16 maintained by the Controller called the Citywide Affordable Housing Fund.

17 (1) Except as provided in subsection (2) below, the The receipts in the Fund are hereby
18 appropriated in accordance with law to be used to (1) increase the supply of housing
19 affordable to qualifying households subject to the conditions of this Section, and (2) pay the
20 expenses of MOH in connection with monitoring and administering compliance with the
21 requirements of the Program. MOH is authorized to use funds in an amount not to exceed
22 \$200,000 every 5 years to conduct follow-up studies under Section 315.8(e) and to update the
23 in lieu fee amounts as described above in Section 315.6(b). All other monitoring and
24 administrative expenses shall be appropriated through the annual budget process or
25

1 supplemental appropriation for MOH. The fund shall be administered and expended by MOH,
2 which shall have the authority to prescribe rules and regulations governing the Fund which are
3 consistent with this Section.

4 (2) "Small Sites Funds":

5 (A) Designation of funds: MOH shall designate and separately account for 10% of all in
6 lieu fees that it receives under Section 315 et seq., excluding in lieu fees that are
7 geographically targeted such as those in Sections 315.4(a)(1) and 827(b)(5)(C), to support
8 acquisition and rehabilitation of Small Sites ("Small Sites Funds"). MOH shall continue to
9 divert 10% of all in lieu fees for this purpose until the Small Sites Funds reach a total of \$15
10 million at which point, MOH will stop designating funds for this purpose. At such time as
11 designated Small Sites Funds are expended and dip below \$15 million, MOH shall start
12 designating funds again for this purpose, such that at no time the Small Sites Funds shall
13 exceed \$15 million.

14 (B) Use of Small Sites Funds. The funds shall be used exclusively to acquire or
15 rehabilitate "Small Sites" defined as properties consisting of less than 25 units. Units
16 supported by monies from the fund shall be designated as housing affordable to qualifying
17 households as defined in Section 315.1 for no less than 55 years. Properties supported by
18 the Small Sites Funds must be either (i) rental properties that will be maintained as rental
19 properties; (ii) vacant properties that were formerly rental properties as long as those
20 properties have been vacant for a minimum of two years prior to the effective date of this
21 legislation, or (iii) properties that have been the subject of foreclosure.

22 (f) Lien Proceedings.

23

24

25

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

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

21 (3) Any notice required to be given to a sponsor or owner shall be sufficiently given or served
22 upon the sponsor or owner or all purposes hereunder if personally served upon the sponsor or
23 owner or if deposited, postage prepaid, in a post office letterbox addressed in the name of the
24 sponsor or owner at the official address of the sponsor or owner maintained by the Tax
25

1 Collector for the mailing of tax bills or, if no such address is available, to the sponsor at the
2 address of the development project, and to the applicant for the site or building permit at the
3 address on the permit application.

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

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

17

18

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

20

21 By: _____
Susan Cleveland-Knowles
22 Deputy City Attorney

23

24

25