

BOARD of SUPERVISORS



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## MEMORANDUM

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Date: September 18, 2024  
To: Planning Department/Planning Commission  
From: John Carroll, Assistant Clerk, Land Use and Transportation Committee  
Subject: Board of Supervisors Legislation Referral - File No. 240873  
Planning Code - Inclusionary Housing Ordinance

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- California Environmental Quality Act (CEQA) Determination  
(*California Public Resources Code, Sections 21000 et seq.*)
  - Ordinance / Resolution
  - Ballot Measure
  
- Amendment to the Planning Code, including the following Findings:  
(*Planning Code, Section 302(b): 90 days for Planning Commission review*)
  - General Plan     Planning Code, Section 101.1     Planning Code, Section 302
  
- Amendment to the Administrative Code, involving Land Use/Planning  
(*Board Rule 3.23: 30 days for possible Planning Department review*)
  
- General Plan Referral for Non-Planning Code Amendments  
(*Charter, Section 4.105, and Administrative Code, Section 2A.53*)  
(Required for legislation concerning the acquisition, vacation, sale, or change in use of City property; subdivision of land; construction, improvement, extension, widening, narrowing, removal, or relocation of public ways, transportation routes, ground, open space, buildings, or structures; plans for public housing and publicly-assisted private housing; redevelopment plans; development agreements; the annual capital expenditure plan and six-year capital improvement program; and any capital improvement project or long-term financing proposal such as general obligation or revenue bonds.)
  
- Historic Preservation Commission
  - Landmark (*Planning Code, Section 1004.3*)
  - Cultural Districts (*Charter, Section 4.135 & Board Rule 3.23*)
  - Mills Act Contract (*Government Code, Section 50280*)
  - Designation for Significant/Contributory Buildings (*Planning Code, Article 11*)

Please send the Planning Department/Commission recommendation/determination to John Carroll at [john.carroll@sfgov.org](mailto:john.carroll@sfgov.org).

1 [Planning Code - Inclusionary Housing Ordinance]

2

3 **Ordinance amending the Planning Code to permit the use of California Debt Limit**  
 4 **Allocation Committee tax-exempt bond financing and tax credits under the Tax Credit**  
 5 **Allocation Committee for certain affordable housing projects that provide additional**  
 6 **affordable units or deeper affordability levels than required by the Inclusionary**  
 7 **Housing Ordinance; affirming the Planning Department’s determination under the**  
 8 **California Environmental Quality Act; making findings of public necessity,**  
 9 **convenience, and general welfare findings under Planning Code, Section 302; and**  
 10 **making findings of consistency with the General Plan, and the eight priority policies of**  
 11 **Planning Code, Section 101.1.**

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

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

18

19 Section 1. Environmental and Land Use Findings.

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

25

1 (b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_,  
2 adopted findings that the actions contemplated in this ordinance are consistent, on balance,  
3 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The  
4 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of  
5 the Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.

6 (c) Pursuant to Planning Code Section 302, this Board finds that these Planning Code  
7 amendments will serve the public necessity, convenience, and welfare for the reasons set  
8 forth in Planning Commission Resolution No. \_\_\_\_\_, and the Board adopts such  
9 reasons as its own. A copy of said resolution is on file with the Clerk of the Board of  
10 Supervisors in File No. \_\_\_\_\_ and is incorporated herein by reference.

11  
12 Section 2. General Findings.

13 (a) The California Debt Limit Allocation Committee (CDLAC) administers the State's  
14 tax-exempt bond financing program that helps spur affordable housing production by assisting  
15 developers of multifamily rental housing units with the acquisition and construction of new  
16 units, or the purchase and rehabilitation of existing units.

17 (b) The California Tax Credit Allocation Committee (TCAC) administers the State's  
18 Low Income Housing Tax Credit Programs to facilitate the investment of private capital into  
19 the development of affordable rental housing for low-income Californians. TCAC allocates  
20 federal and state tax credits to the developers of these projects.

21 (c) Currently, the Inclusionary Housing Ordinance permits housing projects to use  
22 financing awarded from CDLAC and TCAC if (1) 20% of the project's units are affordable to  
23 households at 50% of Area Median Income; or (2) 10% of the project's units are affordable to  
24 households at 50% of Area Median Income, and 30% of the units are affordable to  
25 households at 60% of Area Median Income for on-site housing.

1 (d) Certain affordable housing projects that exceed these thresholds, but do not meet  
2 the minimum affordability levels, are unable to use the CDLAC and TCAC financing. It is  
3 reasonable and in the public interest to allow the use of these financing programs when the  
4 project will provide additional affordable units, or units at deeper affordability levels.

5  
6 Section 3. Article 4 of the Planning Code is hereby amended by revising Section  
7 415.6, to read as follows:

8 **SEC. 415. HOUSING REQUIREMENTS FOR RESIDENTIAL AND LIVE/WORK**  
9 **DEVELOPMENT PROJECTS.**

10 \* \* \* \*

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

12 \* \* \* \*

13 (g) **Marketing the Units.** MOHCD shall be responsible for overseeing and monitoring  
14 the marketing of Affordable Units by the Project Sponsor under this Section 415.6. 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. MOHCD may  
17 develop occupancy standards for units of different bedroom sizes in the Procedures Manual in  
18 order to promote an efficient allocation of Affordable Units. MOHCD may require in the  
19 Procedures Manual that prospective purchasers complete homebuyer education training or  
20 fulfill other requirements. MOHCD shall develop a list of minimum qualifications for marketing  
21 firms that market Affordable Units under Section 415.6 *et seq.*, referred to in the Procedures  
22 Manual as Below Market Rate (BMR units). Developers marketing Affordable Units under  
23 Section 415.6 shall market the Affordable Units through a marketing firm meeting all of the  
24 minimum qualifications. The Notice of Special Restrictions or conditions of approval shall  
25

1 specify that the marketing requirements and procedures contained in the Procedures Manual  
2 as amended from time to time, shall apply to the Affordable Units in the project.

3 (1) Notice of Special Restrictions. The Notice of Special Restrictions (“NSR”)  
4 required pursuant to this Section 415.6 shall be completed and recorded by the project  
5 sponsor no later than the issuance of the architectural addendum for the site permit and at  
6 least 12 months prior to the first certificate of occupancy.

7 (2) Pricing Determination. The project sponsor shall submit a request for a  
8 pricing determination from MOHCD at least 8 months prior to issuance of a first certificate of  
9 occupancy.

10 (3) Timeline for Construction. After the project has been approved by the  
11 Planning Commission or Department, the project sponsor must submit an update to the  
12 Department and MOHCD which includes an estimated timeline for the construction of the  
13 project. The estimated construction timeline must assume the requirements of subsections  
14 (g)(1) and (g)(2) above. Failure to finalize the NSR or initiate marketing within the time frames  
15 set forth in this Section 415.6(g), or to submit an estimated construction timeline will be  
16 deemed a violation of the Planning Code subject to enforcement and penalties.

17 ~~(42)~~ **Lottery.** At the initial offering of Affordable Units in a housing project and  
18 when Affordable Units become available for re-sale or re-rent in any housing project subject to  
19 this Program after the initial offering, MOHCD must require the use of a public lottery  
20 approved by MOHCD to select purchasers or tenants.

21 ~~(53)~~ **Preferences.** MOHCD shall create a lottery system that gives preference  
22 according to the provisions of Administrative Code Chapter 47. MOHCD shall propose policies  
23 and procedures for implementing these preferences to the Planning Commission for inclusion  
24 as an addendum to the Procedures Manual. Otherwise, it is the policy of the City to treat all  
25 households equally in allocating affordable units under this Program.

1 (h) Use of Subsidies.

2 (1) Generally Prohibited. Individual affordable units constructed under Section  
3 415.6 as part of an on-site project shall not have received development subsidies from any  
4 Federal, State, or local program established for the purpose of providing affordable housing  
5 ~~and.~~ Units that have received such development subsidies shall not be counted to satisfy any  
6 affordable housing requirement. ~~Other units in the same on-site project may have received such~~  
7 ~~subsidies. In addition,~~

8 (2) Exceptions:

9 (A) Notwithstanding subsection (h)(1), subsidies may be used, ~~only with the~~  
10 ~~express written permission by MOHCD,~~ to deepen the affordability of an affordable unit beyond  
11 the level of affordability required by this Program, with the express written permission of MOHCD.

12 (iB) CDLAC and TCAC. Notwithstanding the provisions of ~~S~~subection  
13 415.6 (h)(1) and (h)(2)(A) above, a project may use California Debt Limit Allocation Committee  
14 (CDLAC) tax-exempt bond financing, ~~and~~ 4% tax credits under the Tax Credit Allocation  
15 Committee (TCAC), and tax credits allocated under the TCAC guidelines to help fund its  
16 obligations under Section 415.1 et seq. as long as the project provides at least one of the  
17 following: (i) 20% of the units as affordable to households at 50% of Area Median Income for  
18 on-site housing; ~~or~~ (ii) 10% of the units as affordable to households at 50% of Area Median  
19 Income, and 30% of the units as affordable to households at 60% of Area Median Income for  
20 on-site housing; or (iii) the same number of on-site affordable units as required by the applicable on-  
21 site affordable housing requirement in this Section 415 et seq. plus an additional number of on-site  
22 affordable units equal to 10% of the applicable on-site affordable units as affordable to households at  
23 or below 80% of Area Median Income. The income table to be used for such projects when the  
24 units are priced at 50%, ~~or~~ 60%, or 80% of Area Median Income is the income table used by  
25 MOHCD for the Inclusionary Affordable Housing Program, not that used by TCAC or CDLAC.



## LEGISLATIVE DIGEST

[Planning Code - Inclusionary Housing Ordinance]

**Ordinance amending the Planning Code to permit the use of California Debt Limit Allocation Committee tax-exempt bond financing and tax credits under the Tax Credit Allocation Committee for certain affordable housing projects that provide additional affordable units or deeper affordability levels than required by the Inclusionary Housing Ordinance; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of public necessity, convenience, and general welfare findings under Planning Code, Section 302; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

### Existing Law

The Inclusionary Ordinance generally requires certain residential projects to pay a fee or provide on-site inclusionary housing units. For projects that provide on-site units, the Planning Code generally does not allow those projects to use the California Debt Limit Allocation Committee (CDLAC) tax-exempt bond financing or tax credits under the Tax Credit Allocation Committee (TCAC), unless the project provides deeper levels of affordability. The Planning Code currently considers deeper affordability to be the following: 20% of the units as affordable to households at 50% of Area Median Income for on-site housing; or 10% of the units as affordable to households at 50% of Area Median Income, and 30% of the units as affordable to households at 60% of Area Median Income for on-site housing.

### Amendments to Current Law

This ordinance would allow projects to use tax credits allocated under TCAC, in addition to the CDLAC tax-exempt bond financing and TCAC tax credits. The ordinance would also create a third circumstance for projects to use financing from the California Debt Limit Allocation Committee tax-exempt bond financing and tax credits under the Tax Credit Allocation Committee. This would be permissible if the project provides the same number of on-site affordable units as required by the applicable on-site affordable housing requirement in this Section 415 et seq, plus an additional number of on-site affordable units equal to 10% of the applicable on-site affordable units at or below 80% of Area Median Income.

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