

File No. 160077

Committee Item No. _____

Board Item No. 29

COMMITTEE/BOARD OF SUPERVISORS

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Date: _____

Board of Supervisors Meeting

Date: February 2, 2016

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Prepared by: John Carroll

Date: January 28, 2016

Prepared by: _____

Date: _____

1 [Approval of an additional 90-Day Extension for Planning Commission Review of Inclusionary
2 Affordable Housing Program (File No. 150911)]

3 **Resolution extending by an additional 90 days the prescribed time within which the**
4 **Planning Commission may render its decision on a Ordinance (File No. 150911) —**
5 **amending the Planning Code to provide revised geographic, timing, pricing and other**
6 **requirements for the off-site alternative to the Inclusionary Housing Fee; create a new**
7 **option for off-site projects that qualify as Nonprofit Provider Partner Projects; create a**
8 **new alternative for project sponsors of smaller market-rate projects to direct the**
9 **Affordable Housing Fee to small sites projects; create an option for project sponsors of**
10 **on- and off-site housing to provide higher amounts of affordable housing at higher**
11 **levels of affordability termed “dialing up”; revise certain definitions and operating**
12 **procedures related to the Inclusionary Housing Program and make conforming**
13 **changes; and affirming the Planning Department’s determination under the California**
14 **Environmental Quality Act, and making findings of consistency with the General Plan,**
15 **and the eight priority policies of the Planning Code, Section 101.1.**

16
17 WHEREAS, On September 15, 2015, Mayor Edwin M. Lee and Supervisors Mark
18 Farrell and Katy Tang introduced legislation amending the Planning Code to provide revised
19 geographic, timing, pricing and other requirements for the off-site alternative to the
20 Inclusionary Housing Fee; create a new option for off-site projects that qualify as Nonprofit
21 Provider Partner Projects; create a new alternative for project sponsors of smaller market-rate
22 projects to direct the Affordable Housing Fee to small sites projects; create an option for
23 project sponsors of on- and off-site housing to provide higher amounts of affordable housing
24 at higher levels of affordability termed “dialing up”; revise certain definitions and operating
25 procedures related to the Inclusionary Housing Program and make conforming changes;

1 affirming the Planning Department's determination under the California Environmental Quality
2 Act; and making Planning Code Section 302 findings, and making findings of consistency with
3 the General Plan and the eight priority policies of the Planning Code, Section 101.1. A copy
4 of said legislation is on file with the Clerk of the Board of Supervisors in File No. 150911 and
5 is incorporated herein by reference; and

6 WHEREAS, On or about September 22, 2015, the Clerk of the Board of Supervisors
7 referred the proposed ordinance to the Planning Commission, which currently is reviewing the
8 proposed ordinance; and

9 WHEREAS, The Planning Commission shall, in accordance with Planning Code
10 Section 306.4(d), render a decision on the proposed Ordinance within 90 days from the date
11 of referral of the proposed amendment or modification by the Board to the Commission; and

12 WHEREAS, The Board, in accordance with Planning Code Section 306.4(d) may, by
13 Resolution, extend the prescribed time within which the Planning Commission is to render its
14 decision on proposed amendments to the Planning Code that the Board of Supervisors
15 initiates; and

16 WHEREAS, The Board, on December 15, 2015, adopted Resolution Number 531-15
17 which extended the Planning Department original review by 45 days; and

18 WHEREAS, Mayor Lee and Supervisors Farrell and Tang have requested additional
19 time for the Planning Commission to review the proposed Ordinance; and

20 WHEREAS, The Board deems it appropriate in this instance to grant to the Planning
21 Commission additional time to review the proposed Ordinance and render its decision; now,
22 therefore, be it

1 RESOLVED, That by this Resolution, the Board hereby extends the prescribed time
2 within which the Planning Commission may render its decision on the proposed Ordinance for
3 an additional 90 days, until May 4, 2016.

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1 [Planning Code - Inclusionary Affordable Housing Program]

2
3 **Ordinance amending the Planning Code to provide revised geographic, timing, pricing**
4 **and other requirements for the off-site alternative to the Inclusionary Affordable**
5 **Housing Fee; create a new option for off-site projects that qualify as Nonprofit Provider**
6 **Partner Projects; create a new alternative for project sponsors of smaller market-rate**
7 **projects to direct the Affordable Housing Fee to small sites projects; create an option**
8 **for project sponsors of on- and off-site housing to provide higher amounts of**
9 **affordable housing at higher levels of affordability termed “dialing up”; revise certain**
10 **definitions and operating procedures related to the Inclusionary Housing Program and**
11 **make conforming changes; and affirming the Planning Department’s determination**
12 **under the California Environmental Quality Act, and making findings of consistency**
3 **with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

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

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

22 Section 1. Findings.

23 (a) The Planning Department has determined that the actions contemplated in this
24 ordinance comply with the California Environmental Quality Act (California Public Resources
25 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of

1 Supervisors in File No. ____ and is incorporated herein by reference. The Board affirms this
2 determination.

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

8 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code
9 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth
10 in Planning Commission Resolution No. _____, and the Board incorporates such reasons
11 herein by reference.

12 Section 2. The Planning Code is hereby amended by revising Sections 401, 415.3,
13 415.4, 415.5, 415.6, 415.7, 415.8, 415.9, 419.3, 419.4 and 419.5 and adding Section 415.7A,
14 to read as follows:

15 **SEC. 401. DEFINITIONS.**

16 In addition to the specific definitions set forth elsewhere in this Article, the following
17 definitions shall govern interpretation of this Article:

18 ~~"Affordable unit" or "affordable housing unit." A unit that is restricted as affordable under
19 Section 415-et seq.~~

20 "Affordable to a Hhousehold" shall mean a purchase price adjusted for the household size
21 indicated below that a household can afford to pay based on an annual payment for all housing
22 costs, ~~as defined in California Code of Regulations ("CCR") Title 25, Section 6920, as amended from~~
23 ~~time to time,~~ of 33% percent of the combined household Annual Gross Income annual gross
24 income, assuming a down payment recommended by ~~the~~ MOHCD Mayor's Office of Housing in
25 the Procedures Manual, and available financing, or a rent level adjusted for the household size

1 indicated below that does not exceed 30% *percent* of a household's combined annual gross
 2 income. Where applicable, the purchase price or rent may be adjusted to reflect the absence
 3 or existence of a parking space(s), subject to the Department's policy on unbundled parking
 4 for Inclusionary Housing Units as specified in the Procedures Manual and amended from time
 5 to time. In the case of Single Room Occupancy units and Group Housing units that are less than 350
 6 square feet (both as defined in Section 102) such units shall be 75% of the maximum sales or rent level
 7 for studio units.

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

19
20 ~~"Affordable to qualifying households."~~

21 ~~— (A) With respect to owned units, the average purchase price on the initial sale of all~~
 22 ~~affordable-owned units in a housing project shall not exceed the allowable average purchase price.~~

23 ~~Each unit shall be sold:~~

24 ~~— (i) Only to first-time homebuyer households, as defined in this Section;~~

1 ~~(ii) Only to households with an annual gross income equal to or less than the qualifying~~
2 ~~income limits for a household of moderate income, adjusted for household size, except for the~~
3 ~~exceptions set forth in Section 415.8(a)(4)(C), (D) and (E);~~

4 ~~(iii) Only to households that meet the household size requirements, as defined in the~~
5 ~~Procedures Manual;~~

6 ~~(iv) On the initial sale, at or below the maximum purchase price, as defined in this~~
7 ~~Section;~~

8 ~~(v) On subsequent sales at or below the prices to be determined according to the formula~~
9 ~~specified in the Procedures Manual in place at the time of the affordable unit owner's purchase, as~~
10 ~~amended from time to time, such that the units remain affordable to qualifying households. The formula~~
11 ~~in the Procedures Manual shall permit the seller to include certain allowable capital improvements in~~
12 ~~the new maximum purchase price. The formula shall include a per unit cap on capital improvements of~~
13 ~~10% of the resale price in order to maintain affordability. Special Assessments shall be added to the~~
14 ~~resale price at an uncapped rate. Capital improvement requests shall be evaluated by the Mayor's~~
15 ~~Office of Housing according to the formula specified in the Procedures Manual.~~

16 ~~(B) With respect to rental units in an affordable housing project, the average annual rent~~
17 ~~shall not exceed the allowable average annual rent. Each unit shall be rented:~~

18 ~~(i) Only to households with an annual gross income equal to or less than qualifying~~
19 ~~limits for a household of lower income adjusted for household size, as defined in this Section, except for~~
20 ~~the exceptions set forth in Section 415.8(a)(4)(A) and (B);~~

21 ~~(ii) Only to households that meet the household size requirements, as defined in the~~
22 ~~Procedures Manual;~~

23 ~~(iii) At or less than the maximum annual rent.~~

24 ~~"Allowable average purchase price." A price for all affordable owned units of the size~~
25 ~~indicated below that are affordable to a household of median income as defined in this Section,~~

1 *adjusted for the household size indicated below as of the date of the close of escrow, except for Single*
 2 *Room Occupancy units (as defined in Section 890.88), which shall be 75% of the maximum purchase*
 3 *price level for studio units, and, where applicable, adjusted to reflect the Department's policy on*
 4 *unbundled parking for affordable housing units as specified in the Procedures Manual and amended*
 5 *from time to time:*

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

16 ~~—"Allowable average annual rent." Annual rent for an affordable rental unit of the size~~
 17 ~~indicated below that is 30 percent of the annual gross income of a household of low income as defined~~
 18 ~~in this Section, adjusted for the household size indicated below except for Single Room Occupancy~~
 19 ~~units (as defined in Section 890.88), which shall be 75% of the maximum rent level for studio units,~~
 20 ~~and, where applicable, adjusted to reflect the Department's policy on unbundled parking for affordable~~
 21 ~~housing units as specified in the Procedures Manual and amended from time to time:~~

<i>Number of Bedrooms (or, for live/work units square foot equivalency)</i>	<i>Number of Persons in Household</i>
<i>0 (Less than 600 square feet)</i>	<i>1</i>

1	1 (601 to 850 square feet)	2
2	2 (851 to 1,100 square feet)	3
3	3 (1,101 to 1,300 square feet)	4
4	4 (More than 1,300 square feet)	5

5
6 *At no time can a rent increase, or can multiple rent increases within one year, exceed the percentage*
7 *change in Maximum Monthly Rent levels as published by MOH from the previous calendar year to the*
8 *current calendar year.*

9 "Area Median Income" or "AMI." The unadjusted median income levels *as calculated by*
10 *MOHCD using data derived* from the Department of Housing and Urban Development ("HUD") on
11 an annual basis for the San Francisco area, adjusted solely for household size, but not high
12 housing cost area.

13 "Annual gross income." Gross income as defined in *California Code of Regulations* Title
14 25, Section 6914, as amended from time to time, except that MOHCD may, *in order to promote*
15 *consistency with the procedures of the San Francisco Redevelopment Agency*, develop an asset test
16 that differs from the State definition if it publishes that test in the Procedures Manual.

17 * * * *

18 "Homeowner Household." A household in which any member owns any interest in a dwelling
19 unit.

20 ~~"Household of low income." For purposes of Section 415 et seq., a household whose combined~~
21 ~~annual gross income for all members does not exceed 55 percent of AMI.~~

22 ~~"Household of median income." For purposes of Section 415 et seq., a household whose~~
23 ~~combined annual gross income for all members does not exceed 90 percent of AMI.~~

1 *"Household of moderate income." For purposes of Section 415 et seq., a household whose*
2 *combined annual gross income for all members does not exceed 110 percent of AMI.*

3
4 * * * *

5 *"Inclusionary Housing Unit" or "Inclusionary Unit." A rental or ownership unit that is*
6 *restricted as affordable under Section 415 et seq.*

7 * * * *

8 *"Maximum annual rent." The maximum rent that a housing developer may charge any tenant*
9 *occupying an affordable unit for the calendar year. The maximum annual rent for an affordable*
10 *housing unit of the size indicated below shall be no more than 30 percent of the annual gross income*
11 *for a household of low income as defined in this Section, as adjusted for the household size indicated*
12 *below, except in the case of Single Room Occupancy units (as defined in Section 890.88), which shall*
13 *be 75% of the maximum rent level for studio units, as of the first date of the tenancy:*

14 -

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

22 -

1 ~~At no time can a rent increase, or can multiple rent increases within one year, exceed the~~
 2 ~~percentage change in Maximum Monthly Rent levels as published by MOH from the previous calendar~~
 3 ~~year to the current calendar year.~~

4 ~~"Maximum purchase price." The maximum purchase price for an affordable owned unit of the~~
 5 ~~size indicated below except in the case of Single Room Occupancy units (as defined in Section 890.88),~~
 6 ~~which shall be 75% of the maximum purchase price level for studio units, that is affordable to a~~
 7 ~~household of moderate income, adjusted for the household size indicated below, assuming an annual~~
 8 ~~payment for all housing costs of 33 percent of the combined household annual gross income, a down~~
 9 ~~payment recommended by MOH and set forth in the Procedures Manual, and available financing:~~

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

18
 19
 20 ~~"Mayor's Office of Housing and Community Development" or "MOHCD." The Mayor's~~
 21 ~~Office of Housing and Community Development, or its successor.~~

22 ~~"Median-income." 100% of Area Median Income, as defined herein.~~

23 ~~"Moderate-income." 80 - 120% of Area Median Income, as defined herein.~~

24 * * * *

1 "Nonprofit Provider Partner Project" shall mean an affordable housing project where a Non-
2 profit Partner and a Sponsor of a Principal Project have entered into an agreement to provide Off-site
3 units to satisfy the Off-site Inclusionary Housing requirements of a project subject to the Inclusionary
4 Housing Program. The Director of MOHCD shall review and approve such Projects, including
5 determining whether the Project has demonstrated that it has satisfactory funds necessary to commence
6 construction and complete the Project.

7 "Nonprofit Partner" shall mean a nonprofit affordable housing provider or a group of
8 nonprofit affordable housing developers that, in the case of a rental project, is eligible under the Tax
9 Credit Allocation Committee (TCAC) as a tax credit-managing General Partner; and, in all cases, in
10 the determination of the Director of MOHCD, as verified by a letter from MOHCD to the Director of
11 the Planning Department, has (a) demonstrated, recent experience owning and/or managing affordable
12 housing in San Francisco; (b) experience within the past five years of constructing housing of a
13 comparable scale in San Francisco; and (c) sufficient financial capacity to undergo the off-site project.
14 In the case where there is more than one Nonprofit Partner, then at least one of the Nonprofit Partners
15 must meet each of the above requirements.

16 * * * *

17 "Off-site Uunit." An Inclusionary Housing Uunit affordable to qualifying households
18 constructed pursuant to this Article 4 on a site other than the site of the Principal Project
19 principal project.

20 "On-site Uunit." An Inclusionary Housing Uunit affordable to qualifying households
21 constructed pursuant to this Article 4 on the site of the Principal Project principal project.

22 ~~"Owned unit." A unit affordable to qualifying households which is a condominium, stock~~
23 ~~cooperative, community apartment, or detached single family home. The owner or owners of an owned~~
24 ~~unit must occupy the unit as their primary residence.~~

25 * * * *

1 "Project Sponsor" or "Sponsor." An applicant seeking approval for construction of a
2 development project subject to this Article, such applicant's successor and assigns, and/or any entity
3 which controls or is under common control with such applicant.

4 * * * *

5 Q

6 "Qualified Household." Defined in Sections 415.6 (d) and 415.7 (e).

7 "Qualifying Household." Defined in Sections 415.6 (d) and 415.7 (e).

8 * * * *

9 ~~"Rental unit." A unit affordable to qualifying households which is not a condominium, stock~~
10 ~~cooperative, or community apartment.~~

11 * * * *

12 "Residential Floor Area." The area within the inside face of the walls enclosing a dwelling unit,
13 including closets and the partitions that separate rooms that are within the same unit. Residential
14 Floor Area shall not include common hallways, lobbies, amenity space, or storage areas located
15 outside of individual dwelling units. Residential Floor Area within Group Housing is intended to
16 capture all of the interconnected private and common living areas that would otherwise be included
17 inside dwelling units, and to exclude nonessential, disconnected areas that are typically found on the
18 ground floor or basement levels. Therefore, it shall only include the area within the inside face of the
19 walls enclosing the Group Housing use, including bedrooms, closets, bathrooms, kitchens, common
20 hallways, living rooms, and other common living areas. It shall not include spaces that are located
21 outside of, or otherwise disconnected from, living areas within the Group Housing use, such as
22 hallways, lobbies, stairways, elevator shafts, accessory parking, storage areas, or other similar spaces.

23 * * * *

1 ~~"Sponsor" or "project sponsor." An applicant seeking approval for construction of a~~
2 ~~development project subject to this Article, such applicant's successor and assigns, and/or any entity~~
3 ~~which controls or is under common control with such applicant.~~

4 * * * *

5
6 **SEC. 415.3. APPLICATION.**

7 (a) Notwithstanding any other provision to the contrary in this Code, Section 415.1 et
8 seq. shall apply to any housing project that consists of ten or more units where an individual
9 project or a phased project is to be undertaken and where the total undertaking comprises a
10 project with ten or more units, even if the development is on separate but adjacent lots; and

11 (1) Does not require Commission approval as a Conditional Use authorization
12 or Planned Unit Development;

13 (2) Requires Commission approval as a Conditional Use Authorization or
14 Planned Unit Development;

15 (3) Consists of Live/Work Units as defined by Section 102 of this Code; or

16 (4) Requires Commission approval of replacement housing destroyed by
17 earthquake, fire or natural disaster only where the destroyed housing included units restricted
18 under the Inclusionary Affordable Housing Program or the City's predecessor inclusionary
19 housing policy, condominium conversion requirements, or other affordable housing program.

20 (b) The effective date of these requirements shall be either April 5, 2002, which is the
21 date that the requirements originally became effective, or the date a subsequent modification,
22 if any, became operative. ~~The following table is designed to summarize the most significant~~
23 ~~subsequent modifications to this Program and the dates those modifications went into effect.~~ The
24 Planning Department and ~~MOHCD~~*the Mayor's Office of Housing* shall maintain a record for the
25 public summarizing ~~the most significant subsequent various~~ amendments to this Program and

1 their effective or operative dates and make such information available on the City's website. To the
 2 extent there is a conflict between ~~the following table or~~ any summary produced by the
 3 Department or MOHCD and the provisions of the original implementing ordinances, the
 4 implementing ordinances shall prevail.

5 *Table 415.3*

<i>Program Modification</i>	<i>Effective or Operative Date</i>
<p>6 7 8 9 10 11 12 13 14 15 16 17</p> <p>All projects with 5 or more units must participate in the Inclusionary Housing Program Section 415 (changed from a threshold of 10 units).</p> <p>Threshold changed back to 10 units or more such that the Section 415 et seq. no longer applies to buildings of 5-9 units.</p>	<p>All projects that submitted a first application on or after July 18, 2006</p> <p>Any 5-9 unit project, regardless of when it submitted a first application, that has not received a first construction document as of January 15, 2013.</p>
<p>18 19 20 21 22 23 24 25</p> <p>Affordable Housing Percentages:</p> <ul style="list-style-type: none"> • 20% Fee • 12% on-site* • 20% off-site* <p>*Of total number of units</p> <p>(Percentages may vary in specific Area Plans or Special Use Districts. Please refer to those applicable Code Sections.)</p>	<p>All projects that submitted a first application on or after July 18, 2006</p> <p>(For off-site and fee: except buildings of over 120 feet in height that meet the requirements of Section 415.7(a)(1)(C))</p>

1 * * * *

2
3 **SEC. 415.4. IMPOSITION OF REQUIREMENTS.**

4 (a) **Determination of Requirements.** The Department shall determine the
5 applicability of Section 415.1 *et seq.* to any development project requiring a First Construction
6 Document ~~first construction document~~ and, if Section 415.1 is applicable, shall impose any such
7 requirements as a condition of approval for issuance of the First Construction Document ~~first~~
8 ~~construction document~~. The Pproject Ssponsor shall supply any information necessary to assist
9 the Department in this determination.

10 (b) **Notice to Development Fee Collection Unit and MOHCD of Requirements.**
11 After the Department has made its final determination regarding the application of the
12 affordable housing requirements to a development project pursuant to Section 415.1 *et seq.*, it
13 shall immediately notify the Development Fee Collection Unit at DBI and MOHCD in addition to
14 the other information required by Section 402(b) of this Article.

15 (c) **Payment of Affordable Housing Fee or Project Sponsor's Eligibility for and**
16 **Selection of Alternative.** Prior to issuance of the First Construction Document ~~first construction~~
17 ~~document~~ for a development project subject to the requirements of Section 415.1 *et seq.*, the
18 Ssponsor of the development project shall pay the Affordable Housing Fee set forth in Section
19 415.5 or, if eligible to meet the requirements through an Alternative, prior to the time designated
20 to select each Alternative, shall select one of the options listed in Section 415.5(gf).

21 (d) **Department Notice to Development Fee Collection Unit of Sponsor's Choice.**
22 After the Ssponsor has filled out a Declaration of Intent and, if necessary, an "Affidavit of
23 Compliance with the Inclusionary Housing Program" ~~Affidavit of Eligibility for an Alternative to the~~
24 ~~Affordable Housing Fee~~ indicating how it will fulfill the affordable housing requirements of

1 Section 415.1 *et seq.*, the Department shall immediately notify the Development Fee
2 Collection Unit at DBI and MOHCD of the Sponsor's choice.

3 (e) **Development Fee Collection Unit Notice to Department Prior to Issuance of**
4 **the First Certificate of Occupancy.** The Development Fee Collection Unit at DBI shall
5 provide notice in writing or electronically to the Department and MOHCD prior to issuing the
6 first Certificate of Occupancy for any development project subject to Section 415.1 *et seq.* that
7 has elected to fulfill all or part of its requirement with an option other than payment of the
8 Affordable Housing Fee. If the Department or MOHCD notifies the Unit at such time that the
9 Sponsor has not satisfied the requirements, the Director of DBI shall deny and all Certificates
10 of Occupancy until the subject project is brought into compliance with the requirements of
11 Section 415.1 *et seq.*

12 (f) **Process for Revisions of Determination of Program Requirements.** In the
13 event that the Department or the Commission takes action affecting any development project
14 subject to Section 415.1 *et seq.* and such action is subsequently modified, superseded,
15 vacated, or reversed by the Board of Appeals, the Board of Supervisors, or by court action,
16 the procedures of Section 402(c) shall be followed.

17 **SEC. 415.5. AFFORDABLE HOUSING FEE.**

18 Except as provided in Section 415.5(g), all development projects subject to this
19 Program shall be required to pay an Affordable Housing Fee subject to the following
20 requirements:

21 (a) **Payment of a Fee.** The fee is due and payable to the Development Fee Collection
22 Unit at DBI for deposit into the Citywide Affordable Housing Fund at the time of and in no
23 event later than issuance of the First Construction Document ~~first construction document~~, with an
24 option for the Pproject Sponsor to defer payment to prior to issuance of the ~~first-First~~
25 Certificate of Occupancy ~~ertificate of occupancy~~ upon agreeing to pay a deferral surcharge that

1 would be deposited into the Downtown Park Fund, in accordance with Section 107A.13.15 of
2 the San Francisco Building Code.

3 (b) **Amount of Fee.** The amount of the fee which may be paid by the Pproject
4 Sponsor subject to this Program shall be determined by MOHCD utilizing the following
5 factors:

6 (1) The number of units equivalent to the applicable off-site percentage of the
7 number of units in the principal project. The applicable percentage shall be 20% percent or the
8 percentage that applied to the project if the project is subject to the requirements of an earlier
9 version of this Program due to the date it submitted its application or that percentage required
10 in certain Special Use Districts or Area Plans or the requirements for buildings that are 120 feet or
11 higher per Section 415.7(a)(1)(C). For the purposes of this Section 415.5, the City shall calculate
12 the fee using the direct fractional result of the total number of units multiplied by the applicable
13 percentage, rather than rounding up the resulting figure as required by Section 415.6(a).

14 (2) The affordability gap using data on the cost of construction of residential
15 housing and the maximum purchase price for new ownership Inclusionary Housing Units allowed
16 under Section 415.6 Maximum Purchase Price for the equivalent unit size. ~~As of the effective date of~~
17 ~~this Ordinance No. 62-13,1~~ MOHCD shall use construction cost data from the "San Francisco
18 Inclusionary Housing Program Financial Analysis 2012" prepared by Seifel Consulting. The
19 Department and MOHCD shall update the technical report from time to time as they deem
20 appropriate in order to ensure that the affordability gap remains current.

21 (3) No later than January 1 of each year ~~following the effective date of this~~
22 ~~Ordinance No. 62-13,1~~ MOHCD shall adjust the fee. No later than December 1 ~~following the~~
23 ~~effective date of this Ordinance No. 62-131~~ of each year, MOHCD shall provide the Planning
24 Department, DBI, and the Controller with information on the adjustment to the fee so that it
25 can be included in the Planning Department's and DBI's website notice of the fee adjustments

1 and the Controller's Citywide Development Fee and Development Impact Requirements
2 Report described in Section 409(a). MOHCD shall index the fee annually based on the annual
3 percent change in the Construction Cost Index for San Francisco as published by Engineering News-
4 Record or a similar index selected by MOHCD. MOH is authorized to develop an appropriate
5 methodology for indexing the fee, based on adjustments in the cost of constructing housing and the
6 Maximum Purchase Price for the equivalent unit size. The method of indexing shall be published
7 in the Procedures Manual.

8 (c) **Notice to Development Fee Collection Unit of Amount Owed.** Prior to issuance
9 of the first construction document for a development project subject to Section 415.5, MOHCD
10 or the Department shall notify the Development Fee Collection Unit at DBI electronically or in
11 writing of its calculation of the amount of the fee owed.

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

18 (e) If a housing project is located in an Area Plan with an additional or specific
19 affordable housing requirements such as those set forth in a special use district or section
20 416, 417, and 419 or elsewhere in this code, the more specific provisions shall apply in lieu of
21 or in addition to those provided in this Program, as applicable.

22 (f) **Use of Fees.** All monies contributed pursuant to this Section shall be deposited in
23 the special fund maintained by the Controller called the Citywide Affordable Housing Fund.
24 The Mayor's Office of Housing and Community Development ("MOHCD") shall use the funds in the
25 following manner:

1 (1) Except as provided in subsection (2) below, the receipts in the Fund are
2 hereby appropriated in accordance with law to be used to:

3 (A) increase the supply of housing affordable to Low-income or Moderate-
4 income qualifying households ~~subject to the conditions of this Section; and~~

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

6 (C) pay the expenses of MOHCD in connection with monitoring and
7 administering compliance with the requirements of the Program. MOHCD is authorized to use
8 funds in an amount not to exceed \$200,000 every 5 years to conduct follow-up studies under
9 Section 415.9(e) and to update the affordable housing fee amounts as described above in
10 Section 415.5(b). All other monitoring and administrative expenses shall be appropriated
11 through the annual budget process or supplemental appropriation for MOHCD. The fund shall
12 be administered and expended by MOHCD, which shall have the authority to prescribe rules
13 and regulations governing the Fund which are consistent with this Section.

14 (2) **"Small Sites Funds."**

15 (A) **Designation of Funds.** MOHCD shall designate and separately
16 account for 10% ~~percent~~ of all fees that it receives under Section 415.1 *et seq.*, excluding fees
17 that are geographically targeted such as those in Sections 415.6(a)(1) and 827(b)(1)(C), to
18 support acquisition and rehabilitation of Small Sites ("Small Sites Funds"). MOHCD shall
19 continue to divert 10% ~~percent~~ of all fees for this purpose until the Small Sites Funds reach a
20 total of \$15 million at which point, MOHCD will stop designating funds for this purpose. At
21 such time as designated Small Sites Funds are expended and dip below \$15 million, MOHCD
22 shall start designating funds again for this purpose, such that at no time the Small Sites Funds
23 shall exceed \$15 million. When the total amount of fees paid to the City under Section 415.1
24 *et seq.* totals less than \$10 million over the preceding 12 month period, MOHCD is authorized
25 to temporarily divert funds from the Small Sites Fund for other purposes. MOHCD must keep

1 track of the diverted funds, however, such that when the amount of fees paid to the City under
2 Section 415.1 *et seq.* meets or exceeds \$10 million over the preceding 12 month period,
3 MOHCD shall commit all of the previously diverted funds and 10% ~~percent~~ of any new funds,
4 subject to the cap above, to the Small Sites Fund.

5 (B) **Use of Small Sites Funds.** The funds shall be used exclusively to
6 acquire or rehabilitate "Small Sites" defined as properties consisting of ~~less than 2 to~~ 25 units.
7 Units supported by monies from the fund shall be designated as housing affordable to
8 ~~qualifying~~ *Low-income or Moderate-income* households as defined in Section ~~401~~ 415.1 for no
9 less than 55 years. Properties supported by the Small Sites Funds must be either

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

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

18 (C) **Initial Funds.** ~~If, within 18 months from the date of adoption of this~~
19 ~~ordinance, MOHCD dedicates an initial one-time contribution of other eligible funds to be used~~
20 ~~initially as Small Sites Funds, MOHCD may use the equivalent amount of Small Sites Funds received~~
21 ~~from fees for other purposes permitted by the Citywide Affordable Housing Fund until the amount of~~
22 ~~the initial one-time contribution is reached.~~

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

1 ~~(DE)~~ **Intent.** In adopting Section 415.5(f)(2) ~~this ordinance~~ regarding the
2 Small Sites Funds, the Board of Supervisors does not intend to preclude MOHCD from
3 expending other eligible sources of funding on Small Sites as described in this Section, or
4 from allocating or expending more than \$15 million of other eligible funds on Small Sites.

5 (3) For all projects funded by the Citywide Affordable Housing Fund, MOHCD
6 requires the ~~P~~project ~~S~~sponsor or its successor in interest to give preference in occupying
7 units first to Residential Certificate of Preference Holders under the San Francisco
8 Redevelopment Agency's Property Owner and Occupant Preference Program, as reprinted
9 September 11, 2008 and effective October 1, 2008 and on file with the Clerk of the Board in
10 File No. 080521, who otherwise meet all of the requirements for a unit; and second to any
11 Displaced Tenant, as defined in Administrative Code Section 24.8, who meets all of the
12 qualifications for the unit or assistance, provided that the following limitations shall apply to the
13 Displaced Tenant preference: ~~(iA)~~ a Displaced Tenant may apply the preference to existing,
14 currently-occupied developments only for three years from the date the landlord filed with the
15 Residential Rent Stabilization and Arbitration Board ("Rent Board") a notice of intent to
16 withdraw the tenant's unit from the rental market pursuant to the Ellis Act, California
17 Government Code Section 7060 *et seq.* and the corresponding provisions of the San
18 Francisco Rent Stabilization and Arbitration Ordinance ("Rent Ordinance"), Administrative
19 Code Sections 37.9(a)(13) and 37.9A; ~~(B#)~~ a Displaced Tenant may apply the preference to
20 new developments going through the initial occupancy process only for six years from the
21 date the landlord filed with the Rent Board a notice of intent to withdraw the tenant's unit from
22 the rental market pursuant to the Ellis Act, cited above, and the corresponding provisions of
23 the Rent Ordinance; and ~~(C##)~~ for any new residential development going through the initial
24 occupancy process, the Displaced Tenant preference shall apply only to ~~twenty percent (20%)~~
25 of the units in such development. The Displaced Tenant's preference shall still apply even if

1 such Displaced Tenant declines a unit offered through application of the preference, but upon
2 accepting and occupying a unit obtained using the preference, such Displaced Tenant's
3 preference terminates. Otherwise, it is the policy of the City to treat all households equally in
4 allocating Inclusionary Housing Units~~affordable units~~ under this Program.

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

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

10 (A) **Alternative #1:** On-Site Units. Pproject Ssponsors may elect to
11 construct Inclusionary Housing Units ~~affordable to qualifying households~~ on-site of the pPrincipal
12 pProject pursuant to the requirements of Section 415.6.

13 (B) **Alternative #2:** Off-Site Units. Pproject Ssponsors may elect to
14 construct Inclusionary Housing Units ~~affordable to qualifying households~~ at an alternative site
15 within the City and County of San Francisco pursuant to the requirements of Section 415.7.
16 Prior to Planning Commission or Planning Department approval, a Project Sponsor shall only be
17 required to declare that they choose the off-site Alternative. The Project Sponsor shall provide a name
18 and address of the off-site location prior to obtaining the Principal Project's First Construction
19 Document. A Project Sponsor must also apply to and be approved by MOHCD for the ability to work
20 with a Nonprofit Partner prior to obtaining the Principal Project's first construction document.

21 (C) **Alternative #3:** Small Sites. Qualifying Project Sponsors may elect to
22 fund buildings as set forth in Section 415.7A.

23 (D) **Alternative #4:** Combination. Pproject Ssponsors may elect any
24 combination of payment of the Affordable Housing Fee as provided in Section 415.5,
25 construction of eOn-site Units as provided in Section 415.6, or construction of eOff-site Units

1 as provided in Section 415.7, provided that the Project Sponsor project applicant constructs or
2 pays the fee at the appropriate percentage or fee level required for that option.

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

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

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

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

4 (3) ~~Declaration of Intent.~~ The Planning Commission or the Department may not
5 require a ~~P~~project ~~S~~sponsor to select a specific Alternative, but a Project Sponsor must make an
6 affirmative election to pay the Affordable Housing Fee or to select an Alternative under this subsection
7 (g) and demonstrate that it qualifies for such Alternative prior to the earlier of any neighborhood
8 notification or project approval from the Planning Commission or Department through the submission
9 of a form maintained by the Planning Department entitled "Affidavit of Compliance with the
10 Inclusionary Housing Program." ~~If a project sponsor elects to meet the Program requirements through~~
11 ~~one of the Alternatives described in this subsection (1g), they must choose it and demonstrate that they~~
12 ~~qualify by submitting the "Affidavit of Compliance with the Inclusionary Housing Program" to the~~
13 ~~Planning Department prior to any project approvals from the Planning Commission or Department.~~
14 The Affordable Housing Fee or Alternative will be a condition of project approval and the Fee or
15 an Alternative will be recorded against the property in an NSR. Notwithstanding the foregoing,
16 if a ~~P~~project ~~S~~sponsor qualifies for an Alternative described in this subsection (1g) and elects to
17 construct the Inclusionary Housing Units~~affordable units~~ on- or off-site, they it must submit the
18 'Affidavit of Compliance with the Inclusionary Housing Program' based on the fact that the
19 units will be sold as ownership units or qualify for a waiver under the Costa Hawkins Rental
20 Housing Act to provide rental units. ~~A project sponsor who has elected to construct affordable~~
21 ~~ownership units on- or off-site may only elect to pay the Affordable Housing Fee up to the issuance of~~
22 ~~the first construction document if the project sponsor submits a new Affidavit establishing that the units~~
23 ~~will not be sold as ownership units.~~ If a ~~P~~project ~~S~~sponsor fails to choose an Alternative before
24 project approval by the Planning Commission or Planning Department or if a project becomes
25 ineligible for an Alternative, the provisions of Section 415.5(a) through (f) shall apply.

1 (4) Change in the Method of Meeting the Requirement. ~~If at any time, the project~~
2 ~~sponsor eliminates the on-site or off-site affordable ownership-only units, then the project sponsor must~~
3 ~~immediately inform the Department and MOH and pay the applicable Affordable Housing Fee plus~~
4 ~~interest and any applicable penalties provided for under this Code. If a project sponsor requests a~~
5 ~~modification to its conditions of approval for the sole purpose of complying with this Section, the~~
6 ~~Planning Commission shall be limited to considering issues related to Section 415 et seq. in considering~~
7 ~~the request for modification. A Project Sponsor may change its election of method of compliance in the~~
8 ~~following ways:~~

9 _____ (A) Prior to issuance of the First Construction Document, the Zoning
10 Administrator may approve in writing a change (i) from the Affordable Housing Fee to an Alternative
11 permitted under this subsection (g) or (ii) from any declaration of intent to the On-site Alternative.

12 _____ (B) Prior to issuance of the First Certificate of Occupancy, a Project Sponsor
13 who has submitted an Affidavit to provide On-site or Off-site Ownership Units who can establish that it
14 is not selling the On- or Off-site Units as ownership units must immediately inform the Department and
15 MOHCD and apply to the Department to (i) change to pay the applicable Affordable Housing Fee plus
16 interest and any applicable penalties provided for under this Code or (ii) qualify to rent the units under
17 subsection (g)(2).

18 If a Project Sponsor requests a modification to its conditions of approval for the sole purpose of
19 complying with this Section 415.5(g), the Planning Commission shall be limited to considering issues
20 related to Section 415 et seq. in considering the request for modification.

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

22 If a Project Sponsor is eligible and elects to provide On-site Units pursuant to
23 Section 415.5(g), the development project shall meet the following requirements:

24 (a) **Number of Units:** The number of Inclusionary Housing Units~~units~~ constructed on-
25 site shall be as follows:

1 (1) The number of Inclusionary Housing Units~~units~~ constructed on-site shall
2 generally be 12% of all units constructed on the project site. The Department shall require for
3 housing projects covered by Section 415.3(a)(1), as a condition of Department approval of a
4 project's building permit, or by Section 415.3(a)(2), (3) and (4), as a condition of approval of a
5 Conditional Use Authorization or Planned Unit Development or as a condition of Department
6 approval of a live/work project, that ~~12% percent~~ of all units constructed on the project site
7 shall be Inclusionary Housing Units affordable to qualifying households so that a Pproject Ssponsor
8 must construct .12 times the total number of units produced in the Pprincipal Pproject. If the
9 total number of units is not a whole number, the Pproject Ssponsor shall round up to the
10 nearest whole number for any portion of .5 or above. Notwithstanding the foregoing, a Project
11 Sponsor may elect to participate in the Dial program set forth in subsection (e).

12 (2) **Specific Geographic Areas.** For any housing development that is located
13 in an area with a specific affordable housing requirement set forth in a Special Use District or
14 in any other section of the Code such as Section 419, the more specific housing requirement
15 shall apply as long as it is consistent with Charter Section 16.110.

16 (3) If the principal project has resulted in demolition, conversion, or removal of
17 affordable housing units renting or selling to households at income levels and/or for a rental
18 rate or sales price below corresponding income thresholds for Inclusionary Housing Units
19 affordable to qualifying households, the Commission or the Department shall require that the
20 Pproject Ssponsor replace the number of affordable units removed with units of a comparable
21 number of bedrooms or provide that ~~12% percent~~ of all units constructed as part of the new
22 project shall be Inclusionary Housing Units affordable to qualifying households, whichever is
23 greater.

24 (4) **Already Approved Projects.** Charter Section 16.110(g)(3) contains
25 procedures for certain projects that have been approved but that have not received their first

1 construction document as defined in Section 107A.13.1 of the San Francisco Building Code
2 by January 1, 2013 to modify their conditions of approval under limited circumstances.

3 (b) **Timing of Construction:** On-site ~~Units~~*affordable housing* required by this Section
4 415.6 must be constructed, completed, ready for occupancy, and marketed no later than the
5 market rate units in the ~~P~~principal ~~P~~project.

6 (c) **Type of Housing:** All ~~O~~en-site ~~U~~units constructed under this Section 415.6 must be
7 provided as ownership units unless the ~~P~~project ~~S~~sponsor meets the eligibility requirement of
8 Section 415.5(g). All ~~O~~en-site units must be ~~Inclusionary Housing Units~~*Affordable to Qualifying*
9 ~~Households~~. In general, ~~Inclusionary Housing Units~~*affordable units* constructed under this
10 Section 415.6 shall be *proportional in unit type by bedroom count and* comparable in-number of
11 bedrooms, exterior appearance and overall quality of construction to market rate units in the
12 principal project. A Notice of Special Restrictions shall be recorded prior to issuance of the
13 first construction document and shall specify the number, location and sizes for all ~~Inclusionary~~
14 ~~Housing Units~~*affordable units* required under this Subsection (c). The interior features in
15 ~~Inclusionary Housing Units~~*affordable units* should be generally the same as those of the market
16 rate units in the principal project, but need not be the same make, model or type of such item
17 as long as they are of good and new quality and are consistent with then-current standards for
18 new housing. The square footage of ~~Inclusionary Housing Units~~*affordable units* do not need to
19 be same as or equivalent to those in market rate units in the ~~P~~principal ~~P~~project, so long as it
20 is consistent with then-current standards for new housing. Where applicable, parking shall be
21 offered to the ~~affordable units~~ ~~Inclusionary Housing Units~~ subject to the terms and conditions of
22 the Department's policy on unbundled parking for ~~affordable housing units~~ ~~Inclusionary Housing~~
23 ~~Units~~ as specified in the Procedures Manual and amended from time to time. On-site
24 ~~affordable~~ ~~u~~Units shall be ownership units unless the project applicant meets the eligibility
25 requirement of Section 415.5(g).

1 (d) Income Requirements: All On-site Inclusionary Housing Units must be sold or rented to
2 Qualified Households. A Qualified Household must:

3 (1) For ownership units, earn no more than an Annual Gross Income of 90% of AMI,
4 except for the alternatives set forth in (e)(3) below.

5 (2) For rental units, earn no more than an Annual Gross Income of 55% of AMI, except
6 for the alternatives set forth in (e)(3) below.

7 (3) Meet the household size requirements, as defined in the Procedures Manual.

8 (4) For ownership units, be a First-time Homebuyer household, as defined in Section
9 401.

10 (5) For rental units, not be a Homeowner household, as defined in Section 401.

11 (e) Pricing Requirements: All On-site Inclusionary Housing Units shall adhere to the
12 following pricing requirements.

13 (1) For ownership units upon initial sale, Inclusionary Housing Units shall be priced to
14 be Affordable to a Household earning no more or less than 90% of AMI, except for the alternatives set
15 forth in (e)(3) below.

16 (2) For ownership units on subsequent sale, Inclusionary Housing Units shall be priced
17 at or below the prices determined by the formula specified in the Procedures Manual that reflects the
18 change in AMI from the date of purchase to the date of resale, or the applicable standard set forth in
19 the Procedures Manual in place at the time of the current Inclusionary Housing Unit owner's purchase.

20 (3) For rental units, Inclusionary Housing Units shall be priced to be Affordable to a
21 Household earning no more or less than 55% of AMI, except for the alternatives set forth in (e)(3)
22 below. MOHCD shall publish such monthly rent levels on an annual basis.

23 (4) Dial Alternative. The Dial program allows Project Sponsors to provide more
24 Inclusionary Housing Units at a higher income level by "dialing up." Dialing up meets the goals of
25 expanding housing resources for households at slightly higher income levels, but still qualifying as Low

1 or Moderate-Income households, and producing more units than would otherwise be created under the
 2 Program. A Project Sponsor must declare the use of the Dial program, including the specific income
 3 targets and affordable unit count, upon submission of the Inclusionary Housing Program Affidavit in
 4 advance of project approval and such declaration will be recorded as a Condition of Approval. Any
 5 change to a Project Sponsor's Dial Program election requires Planning Commission approval if the
 6 original project required Planning Commission approval. Any project choosing the Dial program must
 7 adhere to any underlying unit mix zoning requirements and cannot apply for any unit mix exception.

8 Dialing up is permitted for On-site projects in the following circumstances:

9 **On-site Units - Baseline 12%**

	<u>Unit Requirement</u>	<u>Ownership AMI Target</u>	<u>Rental AMI Target</u>
<u>Baseline requirement</u>	<u>12%</u>	<u>90% of AMI</u>	<u>55% of AMI</u>
<u>Dial up</u>	<u>13%</u>	<u>Not available</u>	<u>70% of AMI</u>
<u>Dial up</u>	<u>15%</u>	<u>120% of AMI</u>	<u>Not available</u>
<u>Dial up</u>	<u>16%</u>	<u>Not available</u>	<u>90% of AMI</u>

17 **On-site Units - Baseline 14.4%**

	<u>Unit Requirement</u>	<u>Ownership AMI Target</u>	<u>Rental AMI Target</u>
<u>Baseline requirement</u>	<u>14.4 %</u>	<u>90% of AMI</u>	<u>55% of AMI</u>
<u>Dial up</u>	<u>16%</u>	<u>Not available</u>	<u>70% of AMI</u>
<u>Dial up</u>	<u>18%</u>	<u>120% of AMI</u>	<u>Not available</u>
<u>Dial up</u>	<u>19%</u>	<u>Not available</u>	<u>90% of AMI</u>

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<u>On-site Units - Baseline 15%</u>			
	<u>Unit Requirement</u>	<u>Ownership AMI Target</u>	<u>Rental AMI Target</u>
<u>Baseline requirement</u>	<u>15%</u>	<u>90% of AMI</u>	<u>55% of AMI</u>
<u>Dial up</u>	<u>17%</u>	<u>Not available</u>	<u>70% of AMI</u>
<u>Dial up</u>	<u>19%</u>	<u>120% of AMI</u>	<u>Not available</u>
<u>Dial up</u>	<u>20%</u>	<u>Not available</u>	<u>90% of AMI</u>

<u>On-site Units - Baseline 16%</u>			
	<u>Unit Requirement</u>	<u>Ownership AMI Target</u>	<u>Rental AMI Target</u>
<u>Baseline requirement</u>	<u>16%</u>	<u>90% of AMI</u>	<u>55% of AMI</u>
<u>Dial up</u>	<u>18%</u>	<u>Not available</u>	<u>70% of AMI</u>
<u>Dial up</u>	<u>20%</u>	<u>120% of AMI</u>	<u>Not available</u>
<u>Dial up</u>	<u>21%</u>	<u>Not available</u>	<u>90% of AMI</u>

<u>On-site Units - Baseline 17.6%</u>			
	<u>Unit Requirement</u>	<u>Ownership AMI Target</u>	<u>Rental AMI Target</u>
<u>Baseline requirement</u>	<u>17.6%</u>	<u>90% of AMI</u>	<u>55% of AMI</u>
<u>Dial up</u>	<u>20%</u>	<u>Not available</u>	<u>70% of AMI</u>
<u>Dial up</u>	<u>22%</u>	<u>120% of AMI</u>	<u>Not available</u>
<u>Dial up</u>	<u>23%</u>	<u>Not available</u>	<u>90% of AMI</u>

1 On-site Inclusionary Housing Units that convert to ownership Inclusionary Housing Units after
2 the unit was first rented under the Program are subject to the conversion AMI levels as published in the
3 Procedures Manual.

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

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

24 (2) **Preferences:** MOHCD shall create a lottery system that gives the following
25 preferences:

1 (A) first to Residential Certificate of Preference Holders under the San
2 Francisco Redevelopment Agency's Property Owner and Occupant Preference Program, as
3 reprinted September 11, 2008 and effective October 1, 2008 and on file with the Clerk of the
4 Board in File No. 080521, who meet the qualifications of the Program;

5 (B) second to any Displaced Tenant, as defined in Administrative Code
6 Section 24.8, who meets all of the qualifications for the unit or assistance, provided that the
7 following limitations shall apply to the Displaced Tenant preference: (i) a Displaced Tenant
8 may apply the preference to existing, currently-occupied developments only for three years
9 from the date the landlord filed with the Residential Rent Stabilization and Arbitration Board
10 ("Rent Board") a notice of intent to withdraw the tenant's unit from the rental market pursuant
11 to the Ellis Act, California Government Code Section 7060 et seq. and the corresponding
12 provisions of the San Francisco Rent Stabilization and Arbitration Ordinance ("Rent
13 Ordinance"), Administrative Code Sections 37.9(a)(13) and 37.9A; (ii) a Displaced Tenant
14 may apply the preference to new developments going through the initial occupancy process
15 only for six years from the date the landlord filed with the Rent Board a notice of intent to
16 withdraw the tenant's unit from the rental market pursuant to the Ellis Act, cited above, and
17 the corresponding provisions of the Rent Ordinance; and (iii) for any new residential
18 development going through the initial occupancy process, the Displaced Tenant preference
19 shall apply only to ~~twenty percent (20%)~~ of the units in such development; and

20 (C) third to people who live or work in San Francisco who meet the
21 qualifications of the Program.

22 The Displaced Tenant's preference shall still apply even if such Displaced Tenant
23 declines a unit offered through application of the preference, but upon accepting and
24 occupying a unit obtained using the preference, such Displaced Tenant's preference
25 terminates. MOHCD shall propose policies and procedures for implementing these

1 preferences to the Planning Commission for inclusion in the Procedures Manual. Otherwise,
2 it is the policy of the City to treat all households equally in allocating Inclusionary Housing
3 Units~~affordable units~~ under this Program.

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

12 (fh) Projects Using California Debt Limit Allocation Tax-exempt Bond Financing.
13 Notwithstanding the provisions of Section 415.6(eg) above, a project may use California Debt
14 Limit Allocation Committee (CDLAC) tax-exempt bond financing and 4% tax credits under the
15 Tax Credit Allocation Committee (TCAC) to help fund its obligations under this Inclusionary
16 Affordable Housing Program ~~ordinance~~ as long as the project provides 20% ~~percent~~ of the units
17 as Inclusionary Housing Units affordable to households at 50% ~~percent~~ of AMI ~~Area Median~~
18 ~~Income~~ for on-site housing, and also meets the relevant on-site requirement for the project under
19 Section 415.6(a). The income table to be used for such projects when the units are priced at
20 50% ~~percent~~ of AMI ~~Area Median Income~~ is the income table used by MOHCD for the
21 Inclusionary Affordable Housing Program, not that used by TCAC or CDLAC. Except as
22 provided in this subsection (h), all units provided under this Section 415.6 must meet all of the
23 requirements of the Inclusionary Housing Program ~~this ordinance~~ and the Procedures Manual for
24 on-site housing. When the terms of the tax-exempt bond financing have expired, the units shall be
25

1 subject to the requirements for On-site Units for the remaining Life of the Project, including any
2 additional units that were required as a stipulation of government financing.

3 (g) **Benefits:** If the Pproject Sponsor is eligible for and elects to satisfy the affordable
4 housing requirements through the production of on-site affordable housing in this Section
5 415.6, the Pproject Sponsor shall be eligible to receive a refund for only that portion of the
6 housing project which is affordable for the following fees: a Conditional Use Authorization or
7 other fee required by Section 352 of this Code, if applicable; an environmental review fee
8 required by Administrative Code Section 31.21 and following 31.46B, if applicable; a building
9 permit fee required by the Building Code and by Section 355 of this Code for the portion of the
10 housing project that is affordable. The Pproject Sponsor shall pay the building fee for the
11 portion of the project that is market-rate.

12 The Controller shall refund fees from any appropriated funds to the Pproject Sponsor
13 on application by the Pproject Sponsor. The application must include a copy of the Certificate
14 of Occupancy for all Inclusionary Housing ~~Units~~ affordable to a qualifying household required by
15 the Inclusionary Housing Program. It is the policy of the Board of Supervisors to appropriate
16 money for this purpose from the General Fund.

17 **SEC. 415.7. OFF-SITE AFFORDABLE HOUSING ALTERNATIVE.**

18 If the Pproject Sponsor is eligible and selects pursuant to Section 415.5(g) to provide
19 Off-site Units to satisfy the requirements of Section 415.1 et seq., the Pproject Sponsor
20 shall notify the Planning Department and the Mayor's Office of Housing and Community
21 Development ("MOHCD") of its intent as early as possible. The Planning Department and
22 MOHCD shall provide an evaluation of the project's compliance with this Section 415.7 prior to
23 approval by the Planning Commission or Planning Department. There are two ways a Principal
24 Project may propose to meet the off-site requirements: by meeting "Core off-site requirements," or by
25 applying to MOHCD to develop a "Nonprofit Provider Partner Project" as defined in Section 401.

1 The development project shall meet the following requirements:

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

3 (1) ~~(A) Core Off-site projects: The number of units constructed off-site shall be as~~
4 ~~follows:~~

5 _____ (A) For any housing development of any height that is located in an area
6 with a specific affordable housing requirement, set forth in Section 419, or elsewhere in this
7 Code, the more specific off-site housing requirement shall apply. Notwithstanding the foregoing,
8 a Project Sponsor may elect to participate in the Dial program set forth in subsection (f).

9 (B) Buildings of 120 feet and under in height or buildings of over 120 feet
10 in height that do not meet the criteria in Subsection (C) below: Except as provided in
11 Subsection (A), the Department shall require for housing projects described in Section
12 415.3(a)(1), (2), (3), and (4) 20% so that a project applicant must construct .20 times the total
13 number of units produced in the principal project. If the total number of units is not a whole
14 number, the project applicant shall round up to the nearest whole number for any portion of .5
15 or above. Notwithstanding the foregoing, a Project Sponsor may elect to participate in the Dial
16 program set forth in subsection (f).

17 (C) Buildings of over 120 feet in height. Except as provided in
18 subsection (A) above, the requirements of this Subsection shall apply to any project that is
19 over 120 feet in height and does not require a Zoning Map amendment or Planning Code text
20 amendment related to its project approvals which (i) results in a net increase in the number of
21 permissible residential units, or (ii) results in a material increase in the net permissible
22 residential square footage as defined in Section 415.3(b)(2); or has not received or will not
23 receive a Zoning Map amendment or Planning Code text amendment as part of an Area Plan
24 adopted after January 1, 2006 ~~which that:~~ a. (i) results in a net increase in the number of
25 permissible residential units, or b. (ii) results in a material increase in the net permissible

1 residential square footage as defined in Section 415.3(b)(2). The Department shall require for
2 housing projects covered by this Subsection and Section 415.3(a)(1), as a condition of
3 Planning Department approval of a project's building permit, or by this Subsection and by
4 Section 415.3(a)(2), (3) and (4), as a condition of approval of a Conditional Use Authorization
5 or Planned Unit Development or as a condition of Department approval of a live/work project,
6 that 17% of all units constructed on the project site shall be Inclusionary Housing Units
7 ~~affordable to qualifying households~~ so that a Pproject Ssponsor must construct .17 times the total
8 number of units produced in the Pprincipal Pproject. If the total number of units is not a whole
9 number, the Pproject Ssponsor shall round up to the nearest whole number for any portion of
10 .5 or above. ~~Consistent with the conclusions of the MOH study authorized in Section 415.9(e), MOH~~
11 ~~shall recommend and the Board of Supervisors shall consider whether the requirements of this~~
12 ~~Subsection for buildings of over 120 feet in height shall continue or expire after approximately five~~
13 ~~years from April 24, 2007. Notwithstanding the foregoing, a Project Sponsor may elect to participate~~
14 ~~in the Dial program set forth in subsection (f)(4).~~

15 (2) Non-profit Provider Partner Projects. Such Projects must provide a minimum of
16 20% or the project's applicable percentage requirement under Section 415.7(a)(1)(A) of the Principal
17 Project units, but may meet their off-site requirement on a square footage basis and would be required
18 to provide 20% of their Principal Project Residential Floor Area as Off-Site Units.

19 The off-site units must:

20 (A) Meet or exceed the weighted average of unit type by bedroom count of the
21 Principal Project; and

22 (B) Provide at minimum the same total number of bedrooms as would have
23 been provided in a bedroom mix proportional to the Principal Project under Subsection (a)(1)(B)
24 above.

25 (b) **Timing of Construction:**

1 (1) Core Off-site projects. The ~~P~~project ~~S~~sponsor shall ~~i~~ensure that the off-site
2 units are constructed, completed, ready for occupancy, and marketed no later than the market
3 rate units in the ~~P~~principal ~~P~~project. ~~In no case shall the~~ The Principal Project shall not receive its
4 First Certificate of Occupancy until the ~~o~~Off-site project has received its First Certificate of
5 Occupancy.

6 (2) Nonprofit Provider Partner Projects. The Project Sponsor shall ensure that the Off-
7 site Units are constructed, completed, ready for occupancy, and marketed no later than the market rate
8 units in the Principal Project. The Principal Project shall not receive its First Certificate of
9 Occupancy until the Off-site project has received its First Certificate of Occupancy.

10 (3) If the Director of MOHCD makes a recommendation to the Zoning Administrator,
11 the Zoning Administrator may grant an exception within the time limits set forth in subsection (4) to the
12 timing requirements above. MOHCD shall only recommend and the Zoning Administrator shall only
13 grant an exception if the Project Sponsor has demonstrated that the requirements of the Inclusionary
14 Affordable Housing Program will be met and if all of the following conditions are met:

15 (A) Prior to receiving its First Certificate of Occupancy for the Principal
16 Project, the Project Sponsor provides the City with an irrevocable standby letter of credit, acceptable
17 in form and substance and from a provider reasonably acceptable to MOHCD and the City Attorney's
18 Office each of whose consent will not be unreasonably withheld, in the amount of the Affordable
19 Housing Fee that would have been due from the Principal Project Sponsor under Section 415.5 plus
20 interest and penalties from the date when it should have been paid until the last date of the requested
21 extension, less any amount of equity that the Principal Project Sponsor has paid in cash that has
22 already been spent on constructing the off-site project;

23 (B) The Off-site Project is entitled before the Principal Project obtains its First
24 Construction Document; and

1 (C) The following rules are met before the Principal Project obtains its First
2 Certificate of Occupancy: (i) the Off-site Project parcel has been acquired by the Principal Project
3 Sponsor, Nonprofit Provider Partner, or an entity that is owned or controlled by either such party; (ii)
4 the Off-site Project has obtained its First Construction Document and has commenced construction;
5 and (iii) a Notice of Special Restrictions reflecting the Off-site Project's conditions of approval,
6 including but not limited to the requirements of Planning Code Section 415 et. al. and the Procedures
7 Manual, has been recorded on the Off-site Project.

8 (4) The maximum amount of time permitted for an exception is as follows:

9 (A) Core Off-site Projects. The Off-site project must receive its First Certificate
10 of Occupancy within one year of the date the Principal Project obtained its First Certificate of
11 Occupancy.

12 (B) Nonprofit Provider Partner Projects. The Off-site project must receive its
13 First Certificate of Occupancy within two years of the date the Principal Project obtained its First
14 Certificate of Occupancy. The Director of MOHCD may recommend that the Zoning Administrator
15 grant an additional year in the case of projects that have demonstrated significant progress and can
16 demonstrate ability to be completed within the additional extension period.

17 (5) Failure to complete an off-site project within the time exception permitted per
18 subsections (3) and (4) above shall result in forfeiting the Project Sponsor's letter of credit, but the
19 Certificate of Occupancy for the Principal Project will not be withheld or withdrawn.

20 (6) The Director of MOHCD may recommend that the Zoning Administrator allow
21 exceptions to the timing requirements in subsections (4)(A) and (B) above if the CEQA decision,
22 building permit, or other entitlement for the off-site project is appealed or the off-site project is the
23 subject of a later court challenge.

24 **(c) Location of off-site housing:** The project sponsor must insure that off-site units are
25 located within one mile of the principal project.

1 (1) Core Off-site projects. MOHCD shall not permit a Core Off-site project unless the
2 off-site units are located within a one-mile radius of the Principal Project, or MOHCD, in consultation
3 with the Planning Department, determines that the off-site project is within the same neighborhood as
4 the Principal Project using a definition of "neighborhood" in common use by the Planning
5 Department, such as the Planning Department's 37-neighborhood notification map. If the Director of
6 MOHCD makes an affirmative recommendation, the Zoning Administrator may allow the off-site
7 project to be located an additional one quarter mile beyond the one-mile radius.

8 (2) Nonprofit Provider Partner Projects. The requirements for location of Off-site
9 housing are the same as for the Core Off-site projects.

10 **(d) Type of Housing:**

11 (1) Core Off-site projects. All Off-site Units constructed under this Section 415.7 must
12 be provided for the Life of the Project. All off-site units constructed under this Section must be
13 provided as ownership housing for the life of the project unless the project applicant meets the
14 eligibility requirement of Section 415.5(g). If offered for ownership, all off-site units must be
15 affordable to households earning no more than 70 percent of the AMI, or if offered for rent, Affordable
16 to Qualifying Households at the rental level. Nothing in this Section shall limit a Pproject Ssponsor
17 from meeting the requirements of this Section through the construction of units in a limited
18 equity or land trust form of ownership if such units otherwise meet all of the requirements for
19 off-site housing. In general, Off-site Units constructed under Section 415.7 shall be
20 proportional in unit type by bedroom count and comparable in number of bedrooms, exterior
21 appearance and overall quality of construction to market rate units in the Principal Project
22 principal project. The total square footage of the Off-site Units off-site affordable units
23 constructed under Section 415.7 shall be no less than the calculation of the total square
24 footage of the on-site market-rate units in the Principal Project principal project multiplied by
25 the relevant on-site percentage requirement for the project specified in Section 415.7. The

1 Notice of Special Restrictions or conditions of approval shall include a specific number of units
 2 at specified unit sizes - including number of bedrooms and minimum square footage - for
 3 Inclusionary Housing Units~~affordable units~~. The interior features in Inclusionary Housing
 4 Units~~affordable units~~ should generally be the same as those of the market rate units in the
 5 Principal Project~~principal project~~ but need not be the same make model or type of such item
 6 as long as they are of new and good quality and are consistent with then-current standards for
 7 new housing and so long as they are consistent with the "Quality Standards for Off-Site
 8 Inclusionary Affordable Housing Units" found in the Procedures Manual. Where applicable,
 9 parking shall be offered to the Inclusionary Housing Units~~affordable units~~ subject to the terms
 10 and conditions of the Department's policy on unbundled parking for Inclusionary Housing
 11 Units~~affordable housing units~~ as specified in the Procedures Manual and amended from time to
 12 time. If the residential units in the Principal Project are live/work units which do not contain
 13 bedrooms or are other types of units which do not contain bedrooms separated from the living
 14 space, the Off-site Units shall be comparable in size according to the following equivalency
 15 calculation between 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 1,100 square feet)	3
3 (1,101 to 1,300 square feet)	4
4 (More than 1,300 square feet)	5

22
 23 (2) Nonprofit Provider Partner Projects. The requirements for location of Off-site
 24 housing are the same as for the Core Off-site projects.

25

1 (e) **Income Requirements:** All Off-site Inclusionary Housing Units must be sold or rented to
2 Qualified Households. A Qualified Household must:

3 (1) For ownership units, earn no more than an Annual Gross Income of 90% of AMI,
4 except for as provided in the Dial in (e)(4) below.

5 (2) For rental units, earn no more than an Annual Gross Income of 55% of AMI, except
6 for the as provided in the Dial in (e)(4) below.

7 (3) Meet the household size requirements, as defined in the Procedures Manual.

8 (4) For ownership units, be a First-time Homebuyer household, as defined in Section
9 401.

10 (5) For rental units, not be a Homeowner household, as defined in Section 401.

11 (f) **Pricing Requirements:** All Off-site Inclusionary Housing Units shall adhere to the
12 following pricing requirements.

13 (1) For ownership units upon initial sale, Inclusionary Housing Units shall be priced to
14 be Affordable to a Household earning no more or less than 90% of AMI, except for as provided in the
15 Dial in (e)(4) below.

16 (2) For ownership units on subsequent sale, Inclusionary Housing Units shall be priced
17 at or below the prices determined by the formula specified in the Procedures Manual that reflects the
18 change in AMI from the date of purchase to the date of resale, or the applicable standard set forth in
19 the Procedures Manual in place at the time of the current Affordable Housing Unit owner's purchase.

20 (3) For rental units, Inclusionary Housing Units shall be priced to be Affordable to a
21 Household earning no more or less than 55% of AMI, except as provided in the Dial in (e)(4) below.
22 MOHCD shall publish such monthly rent levels on an annual basis. At no time can a rent increase, or
23 can multiple rent increases within one year, exceed the percentage change in the monthly rent levels as
24 published by MOHCD from the previous calendar year to the current calendar year.

<u>Dial up</u>	<u>26%</u>	<u>120% of AMI</u>	<u>90% of AMI</u>
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<u>Off-site Units - Baseline 23%</u>			
	<u>Unit Requirement</u>	<u>Ownership AMI Target</u>	<u>Rental AMI Target</u>
<u>Baseline requirement</u>	<u>23%</u>	<u>90% of AMI</u>	<u>55% of AMI</u>
<u>Dial up</u>	<u>27%</u>	<u>Not available</u>	<u>70% of AMI</u>
<u>Dial up</u>	<u>35%</u>	<u>120% of AMI</u>	<u>90% of AMI</u>

<u>Off-site Units - Baseline 25%</u>			
	<u>Unit Requirement</u>	<u>Ownership AMI Target</u>	<u>Rental AMI Target</u>
<u>Baseline requirement</u>	<u>25%</u>	<u>90% of AMI</u>	<u>55% of AMI</u>
<u>Dial up</u>	<u>29%</u>	<u>Not available</u>	<u>70% of AMI</u>
<u>Dial up</u>	<u>38%</u>	<u>120% of AMI</u>	<u>90% of AMI</u>

<u>Off-site Units - Baseline 27%</u>			
	<u>Unit Requirement</u>	<u>Ownership AMI Target</u>	<u>Rental AMI Target</u>
<u>Baseline requirement</u>	<u>27%</u>	<u>90% of AMI</u>	<u>55% of AMI</u>
<u>Dial up</u>	<u>32%</u>	<u>Not available</u>	<u>70% of AMI</u>
<u>Dial up</u>	<u>41%</u>	<u>120% of AMI</u>	<u>90% of AMI</u>

1 Off-site Inclusionary Housing Units that convert to ownership Inclusionary Housing Units after the unit
2 was first rented under the Program are subject to the conversion AMI levels as published in the
3 Procedures Manual.

4 (g) Marketing the Units:

5 (1) Core Off-site projects. MOHCD shall be responsible for overseeing and
6 monitoring the marketing of Inclusionary Housing Units~~affordable units~~ under this Section. In
7 general, the marketing requirements and procedures shall be contained in the Procedures
8 Manual as amended from time to time and shall apply to the Inclusionary Housing
9 Units~~affordable units~~ in the project. MOHCD may develop occupancy standards for units of
10 different bedroom sizes in the Procedures Manual in order to promote an efficient allocation of
11 Inclusionary Housing Units~~affordable units~~. MOHCD may require in the Procedures Manual that
12 prospective purchasers complete homebuyer education training or fulfill other requirements.
13 MOHCD shall develop a list of minimum qualifications for marketing firms that market
14 Inclusionary Housing Units~~affordable units~~ under Section 415.1et seq., referred to the
15 Procedures Manual as Below Market Rate (BMR units). No ~~P~~project ~~S~~sponsor marketing units
16 under the Program shall be able to market BMR units except through a firm meeting all of the
17 minimum qualifications. The Notice of Special Restrictions or conditions of approval shall
18 specify that the marketing requirements and procedures contained in the Procedures Manual
19 as amended from time to time, shall apply to the Inclusionary Housing Units~~affordable units~~ in
20 the project.

21 (A) Lottery: At the initial offering of Inclusionary Housing Units~~affordable~~
22 ~~units~~ in a housing project and when ownership units become available for resale in any
23 housing project subject to this Program after the initial offering, MOHCD must require the use
24 of a public lottery approved by MOHCD to select purchasers or tenants.

1 ~~(B2)~~ **Preferences:** MOHCD shall create a lottery system that gives the
2 following preferences:

3 ~~(iA)~~ first to Residential Certificate of Preference Holders under the
4 San Francisco Redevelopment Agency's Property Owner and Occupant Preference Program,
5 as reprinted September 11, 2008 and effective October 1, 2008 and on file with the Clerk of
6 the Board in File No. 080521, who meet the qualifications of the Program;

7 ~~(iiB)~~ second to any Displaced Tenant, as defined in Administrative
8 Code Section 24.8, who meets all of the qualifications for the unit for assistance, provided that
9 the following limitations shall apply to the Displaced Tenant preference: ~~fi~~

10 _____ ~~a.~~ a Displaced Tenant may apply the preference to
11 existing, currently-occupied developments only for three years from the date the landlord filed
12 with the Residential Rent Stabilization and Arbitration Board ("Rent Board") a notice of intent
13 to withdraw the tenant's unit from the rental market pursuant to the Ellis Act, California
14 Government Code Section 7060 et seq. and the corresponding provisions of the San
15 Francisco Rent Stabilization and Arbitration Ordinance ("Rent Ordinance"), Administrative
16 Code Sections 37.9(a)(13) and 37.9A; ~~fi~~

17 _____ ~~b.~~ a Displaced Tenant may apply the preference to new
18 developments going through the initial occupancy process only for six years from the date the
19 landlord filed with the Rent Board a notice of intent to withdraw the tenant's unit from the
20 rental market pursuant to the Ellis Act, cited above, and the corresponding provisions of the
21 Rent Ordinance; ~~and (iii)~~

22 _____ ~~c.~~ for any new residential development going through the initial
23 occupancy process, the Displaced Tenant preference shall apply only to ~~twenty percent (20%)~~
24 of the units in such development; and
25

1 bond financing and 4% credits under the Tax Credit Allocation Committee (TCAC) to help
2 fund its obligations under this ordinance as long as the project provides a minimum of 20% 25
3 percent of the units as Inclusionary Housing Units affordable at 50% of AMI area median income
4 for off-site housing, and also meets the relevant off-site requirement for the projects per Section
5 415.7(a). The income table to be used for such projects when the units are priced at 50%
6 percent of AMI area median income is the income table used by MOHCD for the Inclusionary
7 Housing Program, not that used by TCAC or CDLAC. Except as provided in this subsection,
8 all units provided under this Section 415.7 must meet all of the requirements of this
9 ordinance Section 415 and the Procedures Manual for off-site housing. When the terms of the tax-
10 exempt bond financing have expired, the units shall be subject to the requirements for Off-site Units for
11 the remaining Life of the Project, including any additional units that were required as a stipulation of
12 government financing.

13 (2) Nonprofit Provider Partner Projects. The requirement for Core Off-site projects
14 apply.

15 (i) Aggregation of Principal Project Off-site Units: As long as all of the other requirements of
16 this Section 415.7 are met, any Core or Nonprofit Partner Provider Off-site project may include units
17 to satisfy the off-site requirements of one or more Principal Projects.

18 **SEC. 415.7A. SMALL SITES AFFORDABLE HOUSING ALTERNATIVE.**

19 A Project Sponsors of a Principal Project comprised of up to 25 residential units may elect
20 under Section 415.5(g) to meet its Inclusionary Affordable Housing requirement by designating its
21 payment of the Affordable Housing Fee due under Section 415.5 into a Small Sites Program that
22 MOHCD shall establish for this purpose. MOHCD shall expend the funds from a Principal Project on
23 a Small Sites Project that meets the requirements set forth in Section 415.5(f)(2)(B) within the
24 geographic area described in Section 415.7. If MOHCD is unable to identify a qualifying Small Sites
25 Project and apply the fee to a Small Sites Project within the geographic area required in Section 415.7

1 within two years of the payment of the fee, such fee shall be released into the Affordable Housing Fund
2 to fund other qualifying Small Sites Projects in San Francisco.

3 **SEC. 415.8. DURATION AND MONITORING OF AFFORDABILITY.**

4 (a) For any units permitted under the Program:

5 (1) All units constructed pursuant to Sections 415.6 (on-site alternative) and
6 415.7 (off-site alternative) must be owner-occupied, as defined in the Procedures Manual, in
7 the case of ownership units or occupied by Qualified Households~~qualified households~~ in the case
8 of rental units.

9 (2) Units shall not remain vacant for a period exceeding 60 days without the
10 written consent of MOHCD.

11 (3) All units constructed pursuant to Sections 415.6 and 415.7 must remain
12 Inclusionary Housing Units~~affordable to qualifying households~~ for the Life of the Project~~life of the~~
13 project.

14 (4) The income levels specified in the Notice of Special Restrictions and/or
15 Conditions of Approval~~conditions of approval~~ for the project shall be the required income
16 percentages for the Life of the Project~~life of the project~~. Notwithstanding the foregoing, if
17 approved by MOHCD and as provided in the Procedures Manual, an exception to the required
18 income percentage may be made in the following cases:

19 (A) a rental unit that converts to an ownership unit, up to a maximum of
20 120% of AMI;

21 (B) where there is an existing tenant, the household income may
22 increase by up to 200% of the levels specified in the Notice of Special Restrictions or
23 conditions of approval but at no time higher than Moderate Income;

1 (C) new ownership units where the ~~Project Sponsor~~ has used good
2 faith efforts to secure a contract with a ~~Qualified Household~~~~qualified buyer~~ but is unable to
3 secure such a contract in a timely manner from the initiation of marketing;

4 (D) resale ownership units where the owner has used good faith efforts
5 to secure a contract with a ~~Qualified Household~~~~qualified buyer~~ but is unable to secure a buyer
6 contract at a maximum resale price specified by MOHCD in a timely manner; or

7 (E) the qualifying income level for ~~new~~ ownership units may be set at
8 10% above the income level stated in the Notice of Special Restrictions or Conditions of
9 Approval~~conditions of approval~~.

10 (5) The price levels specified in Sections 415.6 (e)(1) and 415.7 (e)(1) shall apply
11 except in the case where a Project Sponsor at the time of completion of the project makes a request to
12 the Director of MOHCD and the Director approves the request in writing to sell the Inclusionary
13 Housing Units at a lower price on initial sale.

14 (6) The Commission or the Department shall require all Housing Projects ~~housing~~
15 ~~projects~~ subject to Section 415.1 et seq. to record a Notice of Special Restrictions with the
16 Recorder of the City and County of San Francisco. The Notice of Special Restrictions must
17 incorporate the affordability restrictions. All projects described in Section 415.3(a)(1) and
18 415.3(a)(3) must incorporate all of the requirements of this Section 415.8 into the Notice for
19 Special Restrictions, including any provisions required to be in the Conditions of
20 Approval~~conditions of approval~~ for Housing Projects ~~housing projects~~ described in Section
21 415.3(a)(2). These Section 415.3(a)(2) projects which are Housing Projects ~~housing projects~~
22 ~~which that~~ go through the conditional use or planned unit development process shall have
23 Conditions of Approval~~conditions of approval~~. The Conditions of Approval~~conditions of approval~~
24 shall specify that project applicants shall adhere to the marketing, monitoring, and
25 enforcement procedures outlined in the Procedures Manual, as amended from time to time, ~~in~~

1 ~~effect at the time of project approval. The Commission shall file the Procedures Manual in the case file~~
2 ~~for each project requiring inclusionary housing pursuant to this Program.~~ The Procedures Manual
3 ~~will~~ shall be referenced in the Notice of Special Restrictions for each project.

4 (b) For any units permitted to be ownership units under the Program, MOHCD~~the~~
5 ~~Mayor's Office of Housing~~ shall:

6 (1) establish and implement a process for reselling an Inclusionary Housing
7 Unit~~affordable unit~~ in the Procedures Manual;

8 (2) provide that owners may not change title on the unit without review and
9 approval by MOHCD and according to guidelines published in the Procedures Manual.

10 (3) provide that owners must comply with refinancing procedures and limitations
11 as published in the Procedures Manual.

12 (4) provide that, in order to retain all units restricted as affordable under this
13 Program within the City's affordable housing stock, the specific procedures for passing an
14 Inclusionary Housing Unit~~affordable unit~~ through inheritance are contained in the Procedures
15 Manual. All transfers through inheritance must be reviewed and approved by MOHCD and, in
16 all cases, the heir must acknowledge and agree to the provisions of the Program. The
17 following households may inherit the ability to occupy a unit restricted under this Program:

18 (A1) a spouse or registered domestic partner, regardless of income; or (B2) a child of the
19 owner if the child is a Qualifying Household~~qualifying household~~ for the unit. If the heir qualifies
20 under one of these categories, the heir must occupy the unit or the heir must market and sell
21 the unit at the restricted price through a public lottery process and retain the proceeds from
22 the sale. If the heir does not qualify to occupy the unit, the heir must market and sell the unit
23 at the restricted price to a Qualifying Household ~~qualified buyer~~ through a public lottery process.
24 The heir would retain the proceeds of such sale.

1 (5) Require that ~~affordable~~-rental Inclusionary Housing Units~~units~~ permitted by the
2 Commission to be converted to ownership units must satisfy the requirements of the
3 Procedures Manual, as amended from time to time, including that the units shall be sold at
4 restricted sales prices to households meeting the income qualifications specified in the Notice
5 of Special Restrictions or Conditions of Approval~~conditions of approval~~, with a right of first refusal
6 for the occupant(s) of such units at the time of conversion. If the current tenant qualifies for
7 and purchases the unit, the unit shall be sold at a sales price corresponding to the affordability
8 level required for rental units or to the affordability level for the specific tenant household,
9 whichever is higher, with a maximum allowable qualifying income level up to 120% of AMI. If
10 the unit is sold to anyone else, the sales price shall correspond to the affordability level
11 required for ownership units. Upon conversion to ownership, the units are subject to the
12 resale and other restrictions of this Program for the Life of the Project~~life of the project~~, as
13 defined in the Notice of Special Restrictions or Conditions of Approval~~conditions of approval~~ for
14 the Project.

15 (6) For ownership units approved pursuant to Sections 415.6 or 415.7, the
16 Notice of Special Restrictions or Conditions of Approval~~conditions of approval~~ will include
17 provisions restricting resale prices and purchaser income levels according to the formula
18 specified in the Procedures Manual, as amended from time to time. ~~In the case that~~
19 ~~subordination of the Affordability Conditions contained in a recorded Notice of Special Restrictions~~
20 ~~may be necessary to ensure the Project Applicant's receipt of adequate construction and/or permanent~~
21 ~~financing for the project, or to enable first time home buyers to qualify for mortgages, the project~~
22 ~~applicant may follow the procedures for subordination of affordability restrictions as described in the~~
23 ~~principal project's conditions of approval or in the Procedures Manual.~~ A release following
24 foreclosure or other transfer in lieu of foreclosure may be authorized if required as a condition
25 to buyer financing pursuant to the procedures set forth in the Procedures Manual.

1 (7) Purchasers of Inclusionary Housing Units~~affordable units~~ shall secure the
2 obligations contained in the Notice of Special Restrictions or Conditions of Approval~~conditions of~~
3 ~~approval~~ by executing and delivering to the City a promissory note secured by a deed of trust
4 encumbering the applicable Inclusionary Housing Unit~~affordable unit~~ as described in the
5 Procedures Manual or by an alternative means if so provided for in the Procedures Manual,
6 as amended from time to time.

7 (8) **Procedures For Units Unable To Resell.** The Board of Supervisors finds
8 that certain requirements of this Program and the Procedures Manual may create hardship for
9 owners of Inclusionary Housing Units~~affordable units~~ restricted under this Program. However,
10 the Board also recognizes that the requirements of this Program are important to preserve the
11 long-term affordability of units restricted under the Program. In order to allow some relief for
12 owners of Inclusionary Housing Units~~affordable units~~ during a time of economic downturn, but to
13 provide the maximum protection for the long-term affordability of the units, the Board directs
14 MOHCD to analyze the following issues and, if it deems appropriate, to propose amendments
15 to the Procedures Manual to address the issues:

16 (~~1A~~) **Waiver of Re-Sale Requirements and Maximum Qualifying**
17 **Income Level for New Buyers of Resale BMR Units.** The Board recognizes that the risk to
18 low and moderate income homeowners during times of economic downturn can increase the
19 risk of default and foreclosure of units restricted under this Program. The Board directs
20 MOHCD to study ways to reduce such risks in the Inclusionary Housing Unit~~unit~~ context and, if
21 it deems appropriate, to make recommendations to the Planning Commission to amend the
22 Procedures Manual to allow MOHCD discretion, in certain limited circumstances, to waive
23 requirements for owners of Inclusionary Housing Units~~affordable units~~ who have used good faith
24 efforts to secure a contract with a Qualified Buyer~~qualified buyer~~ but are unable to resell their
25 unit in a timely manner. Such amendments to the Procedures Manual may include, but are

1 not limited to, authorizing MOHCD to make one or more allowances for owners of Inclusionary
2 Housing Units~~affordable units~~ unable to resell such as: (i) a one-time waiver of the First-time
3 Homebuyer~~first-time homebuyer~~ rule for the purchasing household; (ii) a one-time waiver of
4 Qualifying Household~~qualifying household~~ size requirements for the purchasing household; (iii)
5 ~~and~~ a one-time waiver of owner occupancy rules to allow a temporary rental; (iv) a one-time
6 modification of the asset test for the new buyer household; and (v) allowing MOHCD
7 discretion to increase the qualifying income level for the unit by up to 20% above the
8 maximum income limit currently allowed by the Use Restrictions for the Inclusionary Housing
9 Unit but at no time higher than 120% of AMI. MOHCD and the Commission shall set forth
10 criteria for granting such allowances such as establishing a minimum time that the units must
11 have been advertised by MOHCD without selling; establishing criteria related to unusual
12 economic or personal circumstances of the owner; providing a maximum percentage for the
13 increase above the maximum income limit currently allowed; providing that the increase may
14 only be granted on a one-time basis; and requiring the owner to clearly establish that the
15 Inclusionary Housing Unit~~BMR unit~~ is being resold at the original purchase price plus the current
16 repricing mechanism under the Program which calculates the percentage change in AMI from
17 the time of purchase to resale plus the commission and any eligible capital improvements or
18 special assessments.

19 (2B) **Waiver of Maximum Qualifying Income Level For New Buyers of**
20 **Initial Sale BMR Units.** The Board of Supervisors recognizes that the current Program
21 provides that the income of a new buyer of a below market rate household cannot exceed the
22 maximum income stated in the Planning Approval or Notice of Special Restrictions for the
23 BMR-Inclusionary Housing Unit. Due to a less desirable developments or geographic areas, a
24 Project Sponsor is sometimes unable to find a buyer for an BMR-Inclusionary Housing Unit
25 within the maximum income stated in the Planning Approval or Notice of Special Restrictions

1 for the Unit. This situation makes it difficult, if not impossible, for certain current owners of
2 Inclusionary Housing Units below market rate units to sell their units. In order to minimize this
3 situation, the Board of Supervisors directs MOHCD~~the Mayor's Office of Housing~~ to study ways
4 to address this issue and, if it deems appropriate, to make recommendations to the Planning
5 Commission to amend the Procedures Manual to allow MOHCD to assist Project Sponsors
6 who have used good faith efforts to secure a contract with a Qualified Buyer~~qualified buyer~~ but
7 who are unable to secure such a contract in a timely manner from the initiation of marketing.
8 Such amendments may include allowing MOHCD discretion to increase the qualifying income
9 level for the unit by up to 20% above the maximum income limit currently allowed by the Use
10 Restrictions for the Unit but at no time higher than 120% of AMI. MOHCD and the Planning
11 Commission shall establish limits to this or a similar proposal such as: providing a maximum
12 percentage for the increase above the maximum income limit currently allowed; requiring that
13 a certain period without securing a buyer would pass before such an allowance would be
14 made; and providing that the increase may only be granted on a one-time basis.

15 (c) For any units permitted to be rental units under the Program, MOHCD shall
16 establish:

17 (1) restrictions on lease changes and propose such restrictions to the
18 Commission for inclusion in the Procedures Manual.

19 (2) additional eligibility criteria for subleasing and propose such restrictions to
20 the Commission for inclusion in the Procedures Manual.

21 (3) criteria for continued eligibility for occupied rental units and propose such
22 restrictions to the Commission for inclusion in the Procedures Manual.

23 (4) criteria for homeownership status and propose such restrictions to the
24 Commission for inclusion in the Procedures Manual.

1 (5) criteria for granting affordable rental households the right of first refusal in
2 purchasing an affordable unit that is converted from rental to ownership and propose such
3 restrictions to the Commission for inclusion in the Procedures Manual.

4 (6) that at no time shall an annual increase exceed the actual allowable
5 increase for that year. In cases where the rent has decreased, the tenant's rent must be
6 decreased. In cases where the annual adjustments have not been applied year to year, the
7 Project Owner may not take advantage of any increases that were not applied until the Unit is
8 vacant and re-rented.

9 **SEC. 415.9. ENFORCEMENT PROVISIONS AND MONITORING OF PROGRAM.**

10 (a) A ~~First Construction Document~~*first construction document* or first Certificate of
11 Occupancy, whichever applies, shall not be issued by the Director of DBI to any unit in the
12 ~~Principal Project~~*principal project* until all of the ~~affordable housing~~ requirements of Sections
13 415.1 et seq. are satisfied.

14 (b) If, after issuance of the first Certificate of Occupancy, the Commission or
15 Department determines that a ~~P~~project ~~S~~sponsor has failed to comply with any requirement in
16 Section 415.1 et seq. or any reporting requirements detailed in the Procedures Manual, or has
17 violated the Notice of Special Restrictions, the Commission, Department, or DBI may, until the
18 violation is cured, ~~(1a)~~ revoke the Certificate of Occupancy for the ~~Principal Project~~*principal*
19 ~~project~~ or required ~~Inclusionary Housing Units~~*affordable units*, ~~(2b)~~ impose a penalty on the
20 project pursuant to Section 176(c) of this Code, and/or ~~(3e)~~ the Zoning Administrator may
21 enforce the provisions of Section 415.1 et seq. through any means provided for in Section 176
22 of this Code.

23 (c) The Department shall notify MOHCD of any housing project subject to the
24 requirements of Section 415.1 et seq., including the name of the ~~P~~project ~~S~~sponsor and the
25 number and location of the ~~Inclusionary Housing Units~~*affordable units*, within 30 days of the

1 Department's approval of a building, or site permit for the project. MOHCD shall provide all
2 ~~P~~project ~~S~~sponsors with information concerning the City's first time home-buyer assistance
3 programs and any other related programs MOHCD shall deem relevant to the Inclusionary
4 Affordable Housing Program.

5 (d) The Department shall, as part of the annual Housing Inventory, report to the Board
6 of Supervisors on the results of Section 415.1 et seq. including, but not limited to, a report on
7 the following items:

8 (1) The number of, location of, and project applicant for housing projects which
9 came before the Commission for a Conditional Use Authorization or Planned Unit
10 Development, and the number of, location of, and project applicant for housing projects which
11 were subject to the requirements of Section 415.1 et seq.;

12 (2) The number of, location of, and ~~P~~project ~~S~~sponsor for housing projects which
13 applied for a waiver, adjustment, or reduction from the requirements of Section 415.1 et seq.
14 pursuant to Section 406 of this Article, and the number of, location of, and ~~P~~project ~~S~~sponsor
15 for ~~Housing Projects~~*housing projects* which were granted such a waiver, adjustment, or
16 reduction and, if a reduction, to what percentage;

17 (3) The number of, location of, and ~~P~~project ~~S~~sponsor for every *Housing*
18 ~~Project~~*housing project* to which Section 415.1 et seq. applied and the number of market rate
19 units and the number of affordable ~~On- and Off-~~*and off-*site ~~Units~~*units* provided, including the
20 location of all of the ~~Inclusionary Housing Units~~*affordable units*; and

21 (e) A study is authorized to be undertaken under the direction of MOHCD
22 approximately every five years to update the requirements of Section 415.1 et seq. MOHCD
23 shall make recommendations to the Board of Supervisors and the Commission regarding any
24 legislative changes. *In the 2016 study, MOHCD shall specifically evaluate: (1) the Dial program to*
25 *evaluate its impact on the production of Inclusionary Housing Units at the baseline AMI levels; and (2)*

1 changes to the Off-site alternative including, but not limited to, timing, geography, and requirements
2 for Nonprofit Provider Partner Projects. MOH shall specifically evaluate the different inclusionary
3 housing requirements for developments of over 120 feet approximately five years from the enactment of
4 the requirement or as deemed appropriate by MOH. MOHCD shall coordinate this report with the
5 five-year evaluation by the Director of Planning required by Section 410 of this Article.

6 (g) Annual or Bi-annual Monitoring:

7 (1) MOHCD shall monitor and require occupancy certification for rental and
8 ownership Inclusionary Housing Units~~affordable ownership and rental units~~ on an annual or bi-
9 annual basis, as outlined in the Procedures Manual.

10 (2) MOHCD may require the owner of an Inclusionary Housing Unit~~affordable~~
11 rental unit, the owner's designated representative, or the tenant in an Inclusionary Housing
12 Unit~~affordable unit~~ to verify the income levels of the tenant on an annual or bi-annual basis, as
13 outlined in the Procedures Manual.

14 **SEC. 419.3. APPLICATION OF UMU AFFORDABLE HOUSING REQUIREMENTS.**

15 (a) Section 419.1 et seq. shall apply to any housing project located in the UMU Zoning
16 District of the Eastern Neighborhoods, that is subject to the requirements of Sections 415 et
17 seq.

18 (b) Additional UMU Affordable Housing Requirements to the Section 415 Inclusionary
19 Affordable Housing Program Requirements. The requirements of Section 415 through 415.9
20 shall apply subject to the following exceptions:

21 (1) For all projects sites designated as Tier A, a minimum of 14.4% ~~percent~~ of
22 the total units constructed shall be Inclusionary Housing Units ~~affordable to and occupied by~~
23 ~~qualifying persons and families as defined in Section 415 et seq. elsewhere in this Code~~, so that a
24 ~~P~~project ~~S~~ponsor must construct .144 times the total number of units produced in the
25 Principal Project ~~principal project beginning with the construction of the tenth unit~~. If the total

1 number of units is not a whole number, the Ssponsor shall round up to the nearest whole
2 number for any portion of .5 or above.

3 (A) If the Pproject Ssponsor is eligible for and elects pursuant to Section
4 415.5(g) to build off-site units to satisfy the requirements of this program, the Ssponsor shall
5 construct ~~23% percent~~ so that a Ssponsor must construct .23 times the total number of units
6 produced in the ~~Principal Project~~ *principal project beginning with the construction of the tenth unit*.
7 If the total number of units is not a whole number, the Ssponsor shall round up to the nearest
8 whole number for any portion of .5 or above.

9 (B) If the Pproject Ssponsor elects pursuant to Section 415.5 to pay the
10 fee to satisfy the requirements of this program, the Ssponsor shall meet the requirements of
11 Section 415 according to the number of units required above if the ~~Project Sponsor~~ *project*
12 *applicant* were to elect to meet the requirements of this Section by off-site housing
13 development. For the purposes of this Section ~~419.3~~, the City shall calculate the fee using the
14 direct fractional result of the total number of units multiplied by the percentage of off-site
15 housing required, rather than rounding up the resulting figure.

16 (2) For all project sites designated Tier B, a minimum of ~~16% percent~~ of the total
17 units constructed shall be ~~Inclusionary Housing Units as defined in Section 415 et seq.~~ *affordable to*
18 *and occupied by qualifying persons and families as defined elsewhere in this Code*, so that a Pproject
19 Ssponsor must construct .16 times the total number of units produced in the ~~Principal Project~~
20 *principal project beginning with the construction of the tenth unit*. If the total number of units is not
21 a whole number, the Ssponsor shall round up to the nearest whole number for any portion of
22 .5 or above.

23 (A) If the Pproject Ssponsor is eligible for and elects pursuant to Section
24 415.5(g) to build off-site units to satisfy the requirements of this program, the Ssponsor shall
25 construct ~~25% percent~~ so that a Ssponsor must construct .25 times the total number of units

1 produced in the Principal Project ~~principal project beginning with the construction of the tenth unit.~~

2 If the total number of units is not a whole number, the Ssponsor shall round up to the nearest
3 whole number for any portion of .5 or above.

4 (B) If the Pproject Ssponsor elects pursuant to Section 415.5(g) to pay the
5 fee to satisfy the requirements of this program, the Ssponsor shall meet the requirements of
6 Section 415 according to the number of units required above if the Ssponsor were to elect to
7 meet the requirements of this Section 419.3 by off-site housing development. For the
8 purposes of this Section, the City shall calculate the fee using the direct fractional result of the
9 total number of units multiplied by the percentage of off-site housing required, rather than
10 rounding up the resulting figure.

11 (3) For all project sites designated Tier C, a minimum of 17.6% ~~percent~~ of the
12 total units constructed shall be Inclusionary Housing Units as defined in Section 415 et seq.
13 ~~affordable to and occupied by qualifying persons and families as defined elsewhere in this Code~~, so
14 that a Pproject Ssponsor must construct .176 times the total number of units produced in the
15 Principal Project ~~principal project beginning with the construction of the tenth unit.~~ If the total
16 number of units is not a whole number, the Ssponsor shall round up to the nearest whole
17 number for any portion of .5 or above.

18 (A) If the Pproject Ssponsor is eligible for and elects pursuant to Section
19 415.5(g) to build off-site units to satisfy the requirements of this program, the Ssponsor shall
20 construct 27% ~~percent~~ so that a Ssponsor must construct .27 times the total number of units
21 produced in the Principal Project ~~principal project beginning with the construction of the tenth unit.~~
22 If the total number of units is not a whole number, the Ssponsor shall round up to the nearest
23 whole number for any portion of .5 or above.

24 (B) If the Pproject Ssponsor elects pursuant to Section 415.5 to pay the
25 fee to satisfy the requirements of this program, the Ssponsor shall meet the requirements of

1 Section 415 according to the number of units required above if the Sponsor 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
4 number of units multiplied by the percentage of off-site housing required, rather than rounding
5 up the resulting figure.

6 (c) Timing and Payment of Fee. Any fee required by Section 419.1 et seq. shall be
7 paid to the Development Fee Collection Unit at DBI at the time of and in no event later than
8 issuance of the First Construction Document~~first construction document~~, with an option for the
9 Project Sponsor to defer payment to prior to issuance of the ~~first~~First Certificate of
10 Occupancy~~certificate of occupancy~~ upon agreeing to pay a deferral surcharge in accordance with
11 Section 107A.13.3 of the San Francisco Building Code.

12 **SEC. 419.4. IMPOSITION OF UMU AFFORDABLE HOUSING REQUIREMENTS.**

13 (a) The Department shall determine the applicability of Section 419.1 et seq. to any
14 development project requiring a First Construction Document~~first construction document~~ and, if
15 Section 419.1 et seq. is applicable, the additional requirements~~affordable housing required~~
16 pursuant to Section 419.1 et seq. and shall impose these requirements as condition on the
17 approval for issuance of the First Construction Document~~first construction document~~ for the
18 development project. The Project Sponsor shall supply any information necessary to assist
19 the Department in this determination.

20 (b) **Notice to Development Fee Collection Unit at DBI and MOHCD.** After the
21 Department has made its final determination of the additional requirements~~affordable housing~~
22 required pursuant to Section 419.1 et seq., it shall immediately notify the Development Fee
23 Collection Unit at DBI and MOHCD of its determination in addition to the other information
24 required by Section 402(b) of this Article.

1 (c) **Sponsor's Choice to Fulfill Requirements.** Prior to the earlier of any neighborhood
2 notification or project approval from the Planning Commission or Planning Department issuance of a
3 building or site permit for a development project subject to the requirements of Section 419.1 et
4 seq., the Ssponsor of the development project shall select one of the options described in
5 Section 419.3 above or the alternatives described in Section 419.5 below to fulfill the
6 affordable housing requirements and notify the Department of their choice.

7 (d) **Department Notice to Development Fee Collection Unit of Sponsor Choice.**
8 After the Ssponsor has submitted to the Department the "Affidavit of Compliance with the
9 Inclusionary Housing Ordinance" indicating how it will notified the Department of their choice to
10 fulfill the additional affordable housing requirements of Section 419.1 et seq., the Department
11 shall immediately notify the Development Fee Collection Unit at DBI and MOHCD of the
12 Ssponsor's choice.

13 (e) **The Development Fee Collection Unit Notice to Department Prior to Issuance**
14 **of the First Certificate of Occupancy.** The Development Fee Collection Unit at DBI shall
15 provide notice in writing or electronically to the Department and MOHCD prior to issuing the
16 first Certificate of Occupancy~~certificate of occupancy~~ for any development project subject to
17 Section 419.1 et seq. that has elected to fulfill its requirement with an option other than
18 payment of the Affordable Housing Fee~~an in-lieu fee~~. If the Department or MOHCD notifies the
19 Unit at such time that the Ssponsor has not satisfied the requirements, the Director of DBI
20 shall deny any and all certificates of occupancy until the subject project is brought into
21 compliance with the requirements of Section 419.1 et seq.

22 (f) **Process for Revisions of Determination of Requirements.** In the event that the
23 Department or the Commission takes action affecting any development project subject to
24 Section 419.1 et seq. and such action is subsequently modified, superseded, vacated, or

1 reversed by the Department or the Commission, Board of Appeals, the Board of Supervisors,
2 or by court action, the procedures of Section 402(c) of this Article shall be followed.

3 **SEC. 419.5. ALTERNATIVES TO THE INCLUSIONARY HOUSING COMPONENT.**

4 (a) **Alternatives to the Inclusionary Housing Component.** In addition to the
5 alternatives specified in Section 415.5(9) the ~~P~~project ~~S~~sponsor may elect to satisfy the
6 requirements of Section 415.5 by one of the alternatives specified in this Section 419.5. The
7 ~~P~~project ~~S~~sponsor has the choice between the alternatives and the Planning Commission may
8 not require a specific alternative. The ~~P~~project ~~S~~sponsor must elect an alternative before it
9 receives project approvals from the Planning Commission or Planning Department and that
10 alternative will be a condition of project approval. The alternatives are as follows:

11 (1) **Middle Income Alternative.** On sites with less than 50,000 square feet of
12 total developable area, applicants may provide Inclusionary Housing Units for Middle-income
13 Qualifying Households~~units as affordable to qualifying "middle-income" households as follows:~~

14 (A) A minimum percent of the total units constructed shall be Inclusionary
15 Housing Units affordable to and occupied ~~affordable to~~ by qualifying "middle-income" Middle
16 Income Qualifying Households~~households~~ upon initial sale, according to the schedule in Table
17 419.5. If the total number of units is not a whole number, the project applicant shall round up
18 to the nearest whole number for any portion of .5 or above. Units shall be Affordable to
19 Households~~affordable to households~~ between 120% percent and 150% percent of AMI~~the San~~
20 ~~Francisco Area Median Income~~, with an average affordability level of 135% percent of AMI for all
21 units provided through this alternative.

22 (B) Where market rate sales prices exceed restricted sales prices, the
23 difference between the market rate sales prices and the restricted sales prices shall be held
24 by MOHCD~~the Mayor's Office of Housing~~ as a silent second mortgage according to the
25 Procedures Manual. The City shall hold a deed of trust and promissory note for the second

1 mortgage. MOHCD shall hold this mortgage shall release it when the original note and
2 proportional share of the appreciation are paid in full to the City.

3 (C) Units shall initially be sold at or below prices to be determined by
4 MOHCD in the Conditions of Approval or Notice of Special Restrictions according to the
5 formula specified in the Procedures Manual to make them affordable to Middle Income
6 Households ~~middle income households~~. Upon resale, the seller shall be permitted to sell the units
7 at their market price. The City will waive its right of first refusal to the seller when the
8 promissory note and deed of trust are paid, along with the City's share of the appreciation of
9 the unit. The promissory note shall accrue no interest and shall require no monthly payments.

10 (D) Upon first resale, the seller shall have a right to keep a percentage of
11 the total appreciation of the unit proportional to every year the original seller owns the unit as
12 an owner occupant. The remainder of the proceeds of the sale, after the first mortgage, the
13 second mortgage, and any other subordinate financing is paid off, shall be repaid to MOHCD.
14 Detailed resale procedures shall be specified in the Middle Income Housing Procedures
15 Manual published by MOHCD and approved by the Planning Commission. The Director of
16 MOHCD shall amend the Procedures Manual as needed with the Commission's approval.

17 (E) The City shall monitor units provided under this option during the 2-
18 and 5-year Monitoring Report specified in Section 342 of this Code ~~and in a separate resolution~~.
19 Should this monitoring report indicate that units constructed under this program do not meet
20 the programs stated goals of providing Inclusionary Housing Units for affordable housing to
21 Middle Income Households, the Planning Department and MOHCD shall consider changes to
22 this program, including, but not limited to, legislative changes.

23 (F) If the Pproject Ssponsor elects to satisfy the requirements of Section
24 415.5 and of this Section by the alternative specified above, the dwelling unit mix required by
25 Section 207.6 may be waived provided the minimum percent of total units affordable to

1 qualifying Middle Income Households "~~middle-income~~" as required by Table 419.5 is increased by
2 10%.

3 (2) **Land Dedication Alternative.** Applicants may dedicate a portion of the
4 total developable area of the principal site to the City and County of San Francisco for the
5 purpose of constructing units ~~affordable to~~ Affordable to Low-income and Moderate-income
6 Households ~~qualifying households~~. A minimum percentage of developable area, representing an
7 equivalent percent of total potential units to be constructed, shall be dedicated to the City
8 according to the schedule in Table 419.5. To meet the requirements of this alternative, the
9 developer must convey title to land in fee simple absolute to MOHCD according to the
10 Procedures Manual, provided the dedicated site is deemed of equivalent or greater value to
11 the principal site per those procedures and is in line with the following requirements:

12 (A) The dedicated site will result in a total amount of affordable
13 housing ~~inclusionary~~ units not less than ~~forty (40)~~ units. MOHCD may conditionally approve and
14 accept dedicated sites which result in no less than ~~twenty-five (25)~~ affordable housing units at its
15 discretion.

16 (B) The dedicated site will result in a total amount of affordable
17 housing ~~inclusionary~~ units that is equivalent or greater than the minimum percentage of the units
18 that ~~would~~ will be provided on the principal site, as required by Table 419.5. MOHCD may also
19 accept dedicated sites that represent the equivalent of or greater than the required
20 percentage of units for all units that could be provided on a collective of sites within a one-mile
21 radius, provided the total amount of affordable housing ~~inclusionary~~ units provided on the
22 dedicated site is equivalent to or greater than the total requirements for all principal sites
23 participating in the collective, according to the requirements of Table 419.5.

24 (C) The dedicated site is suitable from the perspective of size,
25 configuration, physical characteristics, physical and environmental constraints, access,

1 location, adjacent use, and other relevant planning criteria. The site must allow development
2 of affordable housing that is sound, safe and acceptable.

3 (D) The dedicated site includes infrastructure necessary to serve the
4 inclusionary units, including sewer, utilities, water, light, street access and sidewalks.

5 (E) The developer must submit full environmental clearance for the
6 dedicated site before the land can be considered for conveyance, and before a first site or
7 building permit may be conferred upon the principal project.

8 (F) The City may accept dedicated sites that vary from the minimum
9 threshold provided such a dedication is deemed generally equivalent to the original
10 requirement by the *MOHCD Mayor's Office of Housing*.

11 (G) The City may accept dedicated sites that meet the above
12 requirements in accordance with the Procedures Manual, in combination with fees or on-site
13 units, provided such a combination is deemed generally equivalent by MOHCD to the original
14 requirement.

15 (H) The project applicant has a letter from MOHCD verifying acceptance
16 of site before it receives project approvals from the Planning Commission or Planning
17 Department, which shall be used to verify dedication as a condition of approval.

18 (I) If the Pproject Ssponsor elects to satisfy the requirements of Section
19 415.5 and of this Section by the alternative specified above, the dwelling unit mix required by
20 Section 207.6 may be waived.

21 (J) The Land Dedication Alternative may be satisfied through the
22 dedication to the City of air space above or adjacent to the project, upon the approval of
23 MOHCD, or a successor entity, and provided the other requirements of subsection (a)(2)(A)-(I)
24 are otherwise satisfied.

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Table 419.5

HOUSING REQUIREMENTS FOR THE UMU DISTRICT

<i>Tier</i>	On-Site Housing Requirement	Off-Site/ In- Lieu Fee Requirement	Middle Income Alternative*	Land Dedication Alternative for sites that have less than 30,000 square feet of developable area	Land Dedication Alternative for sites that have at least 30,000 square feet of developable area
A	14.4%	23%	30%	35%	30%
B	16%	25%	35%	40%	35%
C	17.6%	27%	40%	45%	40%

*Requirement increases by 5% if dwelling unit mix required by Section 207.6 is waived.

Section 3. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment

1 additions, and Board amendment deletions in accordance with the "Note" that appears under
2 the official title of the ordinance.

3

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

6

6 By: SUSAN CLEVELAND-KNOWLES
7 Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning Code - Inclusionary Affordable Housing Program]

Ordinance amending the Planning Code to provide revised geographic, timing, pricing and other requirements for the off-site alternative to the Inclusionary Affordable Housing Fee; create a new option for off-site projects that qualify as Nonprofit Provider Partner Projects; create a new alternative for project sponsors of smaller market-rate projects to direct the Affordable Housing Fee to small sites projects; create an option for project sponsors of on- and off-site housing to provide higher amounts of affordable housing at higher levels of affordability termed “dialing up”; revise certain definitions and operating procedures related to the Inclusionary Housing Program and make conforming changes; and affirming the Planning Department’s determination under the California Environmental Quality Act, and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

Existing Law

The Inclusionary Affordable Housing Program or Program requires project sponsors of new market rate residential units to pay a fee or, in the majority of cases, to provide 12% of their units as affordable On-site units or 20% of their units as affordable off-site units. Inclusionary Housing Units must be affordable to households of 55% of Area Median Income (AMI) if rented and 90% of AMI if sold as on-site Units and to 70% of AMI if sold as off-site Units. If a project sponsor pays the fee, it goes into the Citywide Affordable Housing Fund to be used to increase the supply of affordable housing and to provide assistance to low and moderate income homebuyers. The Mayor’s Office of Housing and Community Development (“MOHCD”) must use approximately 10% of the fee money for a “Small Sites Fund” that funds affordable housing projects consisting of less than 25 units. Off-site Units must be marketed and occupied no later than the market-rate units in the principal project, and must be within one mile of the principal project. While units in tax credit projects can qualify as off-site Inclusionary Housing Units, a project sponsor must provide a higher number of units for off-site projects than for on-site projects.

Amendments to Current Law

The Proposed Legislation makes three primary policy changes to the Inclusionary Program.

1. Creates a “Dial” to allow project sponsors to increase the AMI levels of On- or Off-site units in exchange for providing more units. For rental units, sponsors will be able to dial up from 55% AMI to 70% or 90% AMI, in exchange for a higher percentage of units. For ownership units, sponsors may choose to dial up from 90% to 120% AMI, in exchange for more units.

2. Addition of a "Small Sites" Alternative. The Proposed Ordinance adds an alternative in which developers of small projects of up to 25 units have the option to direct their fee toward the "Small Sites Program." MOHCD will expend the funds from a particular market rate project to acquire rental buildings at risk of conversion to market-rate in the neighborhood of the project.
3. The draft Ordinance includes a set of amendments that aim to strengthen the Offsite alternative. Changes include:
 - **Geography.** The area in which an off-site project may be located in relation to the principal project has been expanded from one mile to one mile and a quarter, or within the same Planning Department-defined neighborhood.
 - **Timing.** If the project meets certain requirements, the offsite building may be completed one year after the principal project is completed, rather than at the same time or before the market rate project receives its First Certificate of Occupancy. If the offsite project is constructed by a nonprofit housing developer, that timeline may be further extended, if it meets certain requirements, to two years (with the option of an additional one year extension) after the completion of the principal project.
 - **Square Footage:** Offsite projects constructed by a nonprofit housing developer may satisfy the offsite requirement based on square footage, rather than based on the total unit count of the principal project.
 - **Pricing for Offsite Ownership Units and Tax Credit Projects.** The Proposed Legislation would standardize the pricing of off-site ownership units with the current requirement for on-site ownership units as affordable to households earning 90% of AMI. The Proposed Legislation also removes the increased requirement for Off-site projects that use non-competitive Low Income Housing Tax Credits or bond financing to be the same as that for on-site units – 20%.

The Proposed Legislation also revises certain definitions and clarifies and streamlines some operating procedures related to the Inclusionary Housing Program and makes conforming changes throughout Article 4 of the Planning Code.

Background Information



The package of amendments included in the Proposed Legislation are the result of work done under the umbrella of the Mayor's Housing Working Group, convened by Mayor Lee in February, 2014. The goal of the group was to implement changes to help bring additional affordable units online quickly; the focus of the Legislative Subcommittee was to create and to strengthen alternatives to paying the Inclusionary Housing Fee. The Legislative Subcommittee was comprised of stakeholders who included market rate and affordable housing developers, advocates, property managers, and city staff. The group vetted and discussed concepts over the course of 12 meetings beginning in the spring of 2014. Specific components were developed with the benefit of economic analysis and modeling conducted by Seifel Consulting, SPUR's Housing Board, and Council of Community Housing Organizations' staff.

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EDWIN M. LEE

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TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM:  Mayor Edwin M. Lee 
RE: Approval of an additional 90-Day Extension for Planning Commission Review of Inclusionary Affordable Housing Program (File No. 150911)
DATE: January 26, 2016

Attached for introduction to the Board of Supervisors is a resolution extending by an additional 90 days the prescribed time within which the Planning Commission may render its decision on an Ordinance (File No. 150911) amending the Planning Code to provide revised geographic, timing, pricing and other requirements for the off-site alternative to the Inclusionary Housing Fee; create a new option for off-site projects that qualify as Nonprofit Provider Partner Projects; create a new alternative for project sponsors of smaller market-rate projects to direct the Affordable Housing Fee to small sites projects; create an option for project sponsors of on- and off-site housing to provide higher amounts of affordable housing at higher levels of affordability termed "dialing up"; revise certain definitions and operating procedures related to the Inclusionary Housing Program and make conforming changes; and affirming the Planning Department's determination under the California Environmental Quality Act, and making findings of consistency with the General Plan and the eight priority policies of the Planning Code, Section 101.1.

I respectfully request that this item be heard at the February 2, 2016 Board of Supervisors meeting on the "For Adoption without Committee Reference" section of the agenda.

Please note that this item is co-sponsored by Supervisors Farrell and Tang.

Should you have any questions, please contact Nicole Elliott (415) 554-7940.


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