

1 [Planning Code - Amending Inclusionary Housing Ordinance to Add New Alternative in Market  
2 and Octavia Plan Area]

3 **Ordinance amending Planning Code Section 415.5 to provide for a new land dedication**  
4 **alternative in the Market and Octavia Plan Area in lieu of payment of the Affordable**  
5 **Housing Fee; and adding Section 415.10 to provide for the requirements of such land**  
6 **dedication; making findings including environmental findings and findings of**  
7 **consistency with the Priority Policies and the General Plan.**

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9 NOTE: Additions are *single-underline italics Times New Roman*;  
10 deletions are ~~*strike-through italics Times New Roman*~~.  
11 Board amendment additions are double-underlined;  
12 Board amendment deletions are ~~strike-through normal~~.

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

14 Section 1. Findings. The Board of Supervisors finds and declares as follows:

15 (a) The Planning Department has determined that the actions contemplated in this  
16 Ordinance are in compliance with the California Environmental Quality Act (California Public  
17 Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the  
18 Board of Supervisors in File No. \_\_\_\_\_ and is incorporated herein by  
19 reference.

20 (b) On \_\_\_\_\_, the Planning Commission, in Resolution No.  
21 \_\_\_\_\_ approved and recommended for adoption by the Board this legislation  
22 and adopted findings that it is consistent, on balance, with the City's General Plan and eight  
23 priority policies of Planning Code Section 101.1. The Board adopts these findings as its own.  
24 A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No.  
25 \_\_\_\_\_, and is incorporated by reference herein.

1 (c) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this  
2 legislation will serve the public necessity, convenience, and welfare for the reasons set forth in  
3 Planning Commission Resolution No. \_\_\_\_\_, and incorporates such reasons by  
4 reference herein.

5 Section 2. The San Francisco Planning Code is hereby amended by amending  
6 Sections 415.5, and adding Section 415.10:

7 **SEC. 415.5. AFFORDABLE HOUSING FEE (formerly Code Section 315.6)**

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

11 (a) Payment of a fee to the ~~to the~~ Development Collection Unit at DBI for deposit  
12 into the Citywide Affordable Housing Fund for the purposes of that Fund.

13 (b) Amount of Fee. The amount of the fee which may be paid by the project sponsor  
14 subject to this Program shall be determined by MOH utilizing the following factors:

15 (1) The number of units equivalent to the applicable percentage of the number of  
16 units in the principal project. The applicable percentage shall be 20 percent or the percentage  
17 that applied to the project if the project is subject to the requirements of an earlier version of  
18 this Program due to the date it submitted its application. For the purposes of this Section, the  
19 City shall calculate the fee using the direct fractional result of the total number of units  
20 multiplied by the applicable percentage, rather than rounding up the resulting figure as  
21 required by Section 415.6(a).

22 (2) The affordability gap using data on the cost of construction of residential housing  
23 from the "San Francisco Sensitivity Analysis Summary Report: Inclusionary Housing Program"  
24 prepared by Keyser Marston Associates, Inc. in August 2006 for the Maximum Annual Rent or  
25 Maximum Purchase Price for the equivalent unit sizes. The Department and MOH shall

1 update the technical report from time to time as they deem appropriate in order to ensure that  
2 the affordability gap remains current.

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

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

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

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

23 (f) Use of Fees. All monies contributed pursuant to this Section shall be deposited  
24 in the special fund maintained by the Controller called the Citywide Affordable Housing Fund.  
25 MOH shall use the funds in the following manner:

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

3 (a) increase the supply of housing affordable to qualifying households subject to the  
4 conditions of this Section; and

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

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

14 (2) "Small Sites Funds":

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

1 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, MOH  
3 shall commit all of the previously diverted funds and 10 percent of any new funds, subject to  
4 the cap above, to the Small Sites Fund.

5 (B) Use of Small Sites Funds. The funds shall be used exclusively to acquire or  
6 rehabilitate "Small Sites" defined as properties consisting of less than 25 units. Units  
7 supported by monies from the fund shall be designated as housing affordable to qualifying  
8 households as defined in Section 415.1 for no less than 55 years. Properties supported by the  
9 Small Sites Funds must be either (i) rental properties that will be maintained as rental  
10 properties; (ii) vacant properties that were formerly rental properties as long as those  
11 properties have been vacant for a minimum of two years prior to the effective date of this  
12 legislation, (iii) properties that have been the subject of foreclosure or (iv) a Limited Equity  
13 Housing Cooperative as defined in Subdivision Code Sections 1399.1 et seq. or a property  
14 owned or leased by a non-profit entity modeled as a Community Land Trust.

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

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

23 (E) Intent. In adopting this ordinance regarding Small Sites Funds, the Board of  
24 Supervisors does not intend to preclude MOH from expending other eligible sources of  
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1 funding on Small Sites as described in this Section, or from allocating or expending more than  
2 \$15 million of other eligible funds on Small Sites.

3 (g) Alternatives to Payment of Affordable Housing Fee:

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

8 (A) Alternative #1: On-Site Units. Project sponsors may elect to construct units  
9 affordable to qualifying households on-site of the principal project pursuant to the  
10 requirements of Section 415.6.

11 (B) Alternative #2: Off-Site Units. Project sponsors may elect to construct units  
12 affordable to qualifying households at an alternative site within the City and County of San  
13 Francisco pursuant to the requirements of Section 415.7.

14 (C) Alternative #3: Land Dedication. Project sponsors may, with the approval of the  
15 Mayor's Office of Housing and the Planning Commission, elect to dedicate a portion of the total  
16 developable area of the principal site or a comparable site in proximity to the principal site to the City  
17 and County of San Francisco for the purpose of constructing units affordable to qualifying households  
18 under the requirements of Section 415.10.

19 (D) Alternative #34: Combination. Project sponsors may elect any combination of  
20 payment of the Affordable Housing Fee as provided in Section 415.5, construction of on-site  
21 units as provided in Section 415.6; ~~or~~ construction of off-site units as provided in Section  
22 415.7; ~~or~~ dedication of land as provided in Section 415.10 provided that the project applicant  
23 constructs; ~~or~~ pays the fee; or dedicates land at the appropriate percentage or ~~fee~~-level required  
24 for that option.

1 (2) Qualifications: If a project sponsor wishes to comply with the Program through  
2 one of the Alternatives described in (1) rather than pay the Affordable Housing Fee, they must  
3 demonstrate that they qualify for the Alternative to the satisfaction of the Department and  
4 MOH. A project sponsor may only qualify for Alternative 3 with the written approval of the Mayor's  
5 Office of Housing and approval of the Planning Commission as provided in Section 415.10. A  
6 project sponsor may qualify for ~~an~~ Alternative 1 or 2 only by the following methods:

7 (i) Method #1 - Ownership Units. All affordable units provided under this Program  
8 shall be sold as ownership units and will remain ownership units for the life of the project.  
9 Project sponsors must submit the 'Affidavit to Establish Eligibility for an Alternative to  
10 Affordable Housing Fee' to the Planning Department prior to project approval by the  
11 Department or the Commission; or

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

1 (iii) Method #3 – Development Agreement. A project sponsor may apply to enter  
2 into a Development Agreement with the City and County of San Francisco under California  
3 Government Code Section 65864 et seq. and Chapter 56 of the San Francisco Administrative  
4 Code, permitting the project to be eligible for on-site units as an alternative to payment of the  
5 Affordable Housing Fee to satisfy the requirements of the Program and obligating the project  
6 sponsor to provide the affordable units on-site.

7 (3) The Planning Commission or the Department may not require a project sponsor  
8 to select a specific Alternative. If a project sponsor elects to meet the Program requirements  
9 through one of the Alternatives described in (1), they must choose it and demonstrate that  
10 they qualify prior to any project approvals from the Planning Commission or Department. The  
11 Alternative will be a condition of project approval and recorded against the property in an  
12 NSR. Notwithstanding the foregoing, if a project sponsor qualifies for an Alternative described  
13 in (1) and elects to construct the affordable units on- or off-site, they must submit the 'Affidavit  
14 to Establish Eligibility for an Alternative to Affordable Housing Fee' based on the fact that the  
15 units will be sold as ownership units. A project sponsor who has elected to construct  
16 affordable ownership units on- or off-site may only elect to pay the Affordable Housing Fee up  
17 to the issuance of the first construction document if the project sponsor submits a new  
18 Affidavit establishing that the units will not be sold as ownership units. If a project sponsor  
19 fails to choose an Alternative before project approval by the Planning Commission or Planning  
20 Department or if a project becomes ineligible for an Alternative, the provisions of Section  
21 415.5 shall apply.

22 (4) If at any time, the project sponsor eliminates the on-site or off-site affordable  
23 ownership-only units, then the project sponsor must immediately inform the Department and  
24 MOH and pay the applicable Affordable Housing Fee plus interest and any applicable  
25 penalties provided for under this Code.



1           (5) If a project sponsor requests a modification to its conditions of approval for the  
2 sole purpose of complying with this Section, the Planning Commission shall be limited to  
3 considering issues related to Section 415 et seq. in considering the request for modification.

4           Sec. 415.10 LAND DEDICATION ALTERNATIVE

5           (a) **Purpose and Intent.** As an alternative to paying the Affordable Housing Fee,  
6 applicants a project sponsor whose principal project falls within the Market and Octavia Plan  
7 Area as defined in the General Plan may be eligible to enter into a land dedication agreement  
8 with the City through the process described in subsection (c), with the written approval of the  
9 director of the Mayor's Office of Housing, to dedicate 40 % of the total developable area of the  
10 principal site or an equivalent area on another site to the City and County of San Francisco for the  
11 purpose of constructing units affordable to qualifying households. This percentage represents an  
12 equivalent to the percent of total potential affordable units to be constructed.

13           (b) **Criteria.** In order to qualify for this Alternative, the -project applicant sponsor must  
14 convey title to land in fee simple absolute to MOH according to the Procedures Manual the  
15 conditions below, provided the dedicated site is deemed of proportionally equivalent or greater  
16 value to the principal site per those procedures. In addition, The project sponsor must submit  
17 an application to the Mayor's Office of Housing with a copy to the Planning Department. The  
18 Mayor's Office of Housing shall review the application and, prior to recommending a land  
19 dedication agreement to the Planning Commission, MOH shall determine in writing that the  
20 proposed land dedication is in line with meets the following requirements:

21           (1) Both tThe principal project and the dedicated site are is within the Market and  
22 Octavia Area as defined in the General Plan and any dedicated site is within a one half mile  
23 radius of the principal project if within the Market and Octavia Plan Area or within a one  
24 quarter mile radius if adjacent to the Market and Octavia Plan Area. The Director of MOH  
25 may recommend to the Planning Commission that the radius be extended to within a three

1 quarter mile radius of the principle project and the Planning Commission may extend the  
2 radius in that amount only if the dedicated site is within the Market and Octavia Plan Area.

3 (2) Through a commercially accepted valuation process, that the ~~The~~ *dedicated site*  
4 provides the zoning capability to develop 40% of the number of units entitled on the principal  
5 site and that there are no unusual construction costs associated with the site conditions that  
6 would make the development of the required number of affordable units financially infeasible.  
7 will result in a total amount of inclusionary units that is equivalent or greater than the minimum  
8 percentage of the units that would have been required on the principal site under the On-site  
9 Alternative. ~~MOH may also accept applications for dedicated sites located within the Market and~~  
10 ~~Octavia Plan Area that represent a collective of principal project sponsors~~ if the equivalent of or  
11 greater than the required percentage of units for all units will be provided on a collective of  
12 sites, ~~provided the total amount of inclusionary units provided on the dedicated site is equivalent to or~~  
13 ~~greater than the total requirements for all principal sites participating in the collective.~~

14 (3) The dedicated site is suitable from the perspective of size, configuration, physical  
15 characteristics, physical and environmental constraints, access, location, adjacent use, and other  
16 relevant planning criteria. The site must allow development of affordable housing that is sound, safe  
17 and acceptable.

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

20 (5) ~~The developer project sponsor~~ must submit full environmental clearance for the  
21 ~~dedicated site before the land can be considered for conveyance.~~

22 (6) The project ~~sponsor applicant~~ has a letter from MOH verifying acceptance of site  
23 ~~before it receives project approvals from the Planning Commission or Planning Department, which~~  
24 ~~shall be used to verify dedication as a condition of approval.~~

1           ~~(7) — The Land Dedication Alternative may be satisfied through the dedication to the~~  
2 ~~City of air space above or adjacent to the project, upon the approval of MOH, or a successor~~  
3 ~~entity, and provided the other requirements of this Section 415.10 are otherwise satisfied.~~

4           (c) **Land Dedication Agreement Process:**

5           The City may enter into a Land Dedication Agreement with the project sponsor as  
6 follows:

7           (1) **Approval criteria.** The City shall not enter into a Land Dedication Agreement  
8 unless the Mayor's Office of Housing determines that the proposed land dedication meets the  
9 requirements of subsection (b) above. In making this determination, the Mayor's Office of  
10 Housing shall solicit and consider comments from the public, the Market and Octavia  
11 Community Advisory Council, and any other interested parties.

12           (2) **Valuation.** The Mayor's Office of Housing shall determine whether the proposed  
13 land dedication meets the standards provided in subsection (b)(2) above using a commercially  
14 accepted valuation method. If requested, the project sponsor shall provide the Mayor's Office  
15 of Housing with a valuation of the development potential of the dedicated site from an  
16 independent source.

17           (3) **Content of the Land Dedication Agreement.** The Land Dedication  
18 Improvements Agreement shall include at least the following items:

19           (i) A description of the proposed dedicated site;

20           (ii) The development potential of the proposed dedicated site, as determined in  
21 subsection (2) above.

22           (iii) The legal remedies in the case of failure by the project sponsor to provide the  
23 dedicated site according to the specified timeline and terms in the agreement. Such remedies  
24 shall include the method by which the City will calculate accrued interest.

25           (4) **Approval Process.**

1           (A) The Director of the Mayor's Office of Housing or his or her designee must (i)  
2 recommend or deny the application for land dedication in a written evaluation of the criteria in  
3 subsection (b); and, if recommended, (ii) approve the material terms of a the Land Dedication  
4 Agreement.

5           (B) If the Mayor's Office of Housing recommends the land dedication, then the  
6 Planning Commission shall set the Land Dedication Agreement for a hearing. The Planning  
7 Commission must, within 90 days of transmittal from the Mayor's Office of Housing, approve  
8 or disapprove the Land Dedication Agreement, but may not modify it. If the Planning  
9 Commission disapproves the Land Dedication Agreement, that action is final. If the  
10 Agreement is approved by the Planning Commission or 90 days has passed and the Planning  
11 Commission has not acted on the Agreement, prior to the parties executing the Agreement,  
12 the City Attorney must approve the agreement as to form and to substance. The Director of  
13 the Mayor's Office of Housing or his or her designee is authorized to execute the Agreement  
14 on behalf of the City.

15           (5) **Administrative Costs.** Project sponsors that pursue a Land Dedication  
16 Agreement will be billed time and materials for any administrative costs that the Mayor's  
17 Office of Housing, Planning Department or any other City entity incurs in negotiating, drafting,  
18 and monitoring compliance with the Land Dedication Agreement.

19           (6) **Timing.** The Land Dedication Agreement must be approved by the City,  
20 executed by all parties, and recorded against the principal project and dedicated site prior to  
21 the issuance of the first construction document on the principal project.

22           ~~The Mayor's Office of Housing and the Planning Department shall, in consultation with~~  
23 ~~the Market and Octavia Citizens Advisory Committee, representatives of the real estate~~  
24 ~~development community, and other affected constituencies develop procedures to implement~~  
25

1 ~~this Alternative. Such procedures shall be proposed to the Planning Commission for adoption~~  
2 ~~as part of the Procedures Manual.~~

3 (d) Upon adoption of this Section 415.10, any project that received approvals from the  
4 Planning Department or Planning Commission after July, 4, 2010 is eligible to apply to the Mayor's  
5 Office of Housing for this Alternative. If the conditions of approval for the Project do not specify this  
6 Alternative, the Mayor's Office of Housing shall refer the application to the Zoning Administrator for a  
7 determination of whether the Alternative is consistent with the conditions of approval.

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

11 By: \_\_\_\_\_  
12 Susan Cleveland-Knowles  
13 Deputy City Attorney  
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