

BOARD of SUPERVISORS



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March 18, 2022

File No. 220262

Lisa Gibson
Environmental Review Officer
Planning Department
49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103

Dear Ms. Gibson:

On March 15, 2022, Mayor Breed submitted the following legislation:

File No. 220262

Ordinance amending the Planning Code to permit the Mayor's Office of Housing and Community Development to enforce, and collect fines and penalties for violations of, Planning Code provisions governing affordable housing; amending the Administrative Code to allow the Mayor's Office of Housing and Community Development (MOHCD) to use the proceeds in the Affordable Housing Enforcement Fund for all Planning Code enforcement activities by MOHCD relating to affordable housing; 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, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning
Don Lewis, Environmental Planning

1 [Planning, Administrative Codes - Affordable Housing Code Enforcement]

2

3 **Ordinance amending the Planning Code to permit the Mayor's Office of Housing and**
 4 **Community Development to enforce, and collect fines and penalties for violations of,**
 5 **Planning Code provisions governing affordable housing; amending the Administrative**
 6 **Code to allow the Mayor's Office of Housing and Community Development (MOHCD) to**
 7 **use the proceeds in the Affordable Housing Enforcement Fund for all Planning Code**
 8 **enforcement activities by MOHCD relating to affordable housing; affirming the Planning**
 9 **Department's determination under the California Environmental Quality Act; and**
 10 **making findings of consistency with the General Plan, and the eight priority policies of**
 11 **Planning Code, Section 101.1, and findings of public necessity, convenience, and**
 12 **welfare under Planning Code, Section 302.**

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

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

21 Section 1. Environmental and Land Use Findings.

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

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

7 (c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this
8 ordinance will serve the public necessity, convenience, and welfare for the reasons set forth in
9 Planning Commission Resolution No. _____, and incorporates such reasons by this
10 reference thereto. A copy of said resolution is on file with the Clerk of the Board of
11 Supervisors in File No. _____.

12 Section 2. The Planning Code is hereby amended by revising Sections 176, 350, and
13 415.9, to read as follows:

14 **SEC. 176. ENFORCEMENT AGAINST VIOLATIONS.**

15 (a) **Violations Unlawful.** Any use, structure, lot, feature, or condition in violation of
16 this Code is hereby found and declared to be unlawful and a public nuisance. Should any
17 permit or license have been issued that was not then in conformity with the provisions of this
18 Code, such permit or license shall be null and void.

19 (b) **Methods of Enforcement.** The Zoning Administrator shall have authority to
20 enforce this Code against violations thereof by any of the following actions:

21 (1) Serving notice requiring the cessation, removal, or correction of any
22 violation of this Code upon the owner, agent, or tenant of the property that is the subject of the
23 violation, or upon the architect, builder, contractor, or other person who commits or assists in
24 such violation;

1 (2) Calling upon the City Attorney to maintain an action for injunction to restrain
2 or abatement to cause the correction or removal of any such violation, and for assessment
3 and recovery of a civil penalty for such violation as well as any attorneys' fees or costs,
4 including but not limited to expert witness fees, incurred in maintaining such an action;

5 (3) Calling upon the District Attorney to institute criminal proceedings in
6 enforcement of this Code against any such violation; ~~and~~

7 (4) Calling upon the Chief of Police and authorized agents to assist in the
8 enforcement of this Code; and

9 (5) Calling upon the Mayor's Office of Housing and Community Development
10 (MOHCD) to enforce Planning Code requirements relating to affordable housing. The Department and
11 MOHCD shall enter into a memorandum of understanding to identify the types of enforcement cases to
12 be delegated to MOHCD.

13 (c) **Penalties.**

14 (1) **Administrative Penalties.** In the notice requiring the cessation, removal, or
15 correction of any violation of this Code, the Zoning Administrator may assess upon the
16 responsible party an administrative penalty for each violation in an amount up to \$250-~~00~~ for
17 each day the violation continues unabated. The "responsible party" is the owner(s) of the real
18 property on which the code violation is located, as listed in the records of the San Francisco
19 Assessor, and the current leaseholder if different from the current owner(s) of the real
20 property.

21 The responsible party may request a Zoning Administrator's hearing in order to
22 show cause why the notice requiring the cessation, removal, or correction of the violation and
23 any assessment of administrative penalties is in error and should be rescinded. The Zoning
24 Administrator may designate a member of Department staff to act as the hearing officer in ~~his~~
25 ~~or her~~ the Zoning Administrator's place. The Department shall send a notice of the date, hour,

1 and place of the hearing to the responsible party at the address specified in the request for
2 hearing and to any member of the public who has expressed an interest in the matter.

3 The responsible party may also request that the Zoning Administrator terminate
4 abatement proceedings under Section 176 and refer the matter to the Director for
5 enforcement action under the process set forth in Section 176.1 ~~of this Code~~. If the Zoning
6 Administrator determines that the enforcement case will proceed under Section 176, that
7 determination shall be made as part of the final written decision and is not appealable
8 separately from the decision on the merits.

9 The responsible party may waive the right to a Zoning Administrator's hearing
10 and proceed directly to an appeal to the Board of Appeals under Section 308.2 ~~of this Code~~.
11 Administrative penalties shall not accrue during the period of time that the matter is pending
12 before the Zoning Administrator on a request for hearing or before the Board of Appeals on
13 appeal. If the responsible party elects to request a Zoning Administrator's hearing, the request
14 for hearing must be in writing and submitted to the Zoning Administrator prior to the expiration
15 date of the Notice of Violation and Penalty. If a request for a Zoning Administrator's hearing is
16 timely filed, any appeal to the Board of Appeals shall be from the decision of the Zoning
17 Administrator rendered after the hearing.

18 The Zoning Administrator or the Zoning Administrator's designee, after a full and
19 fair consideration of the evidence and testimony received at the hearing, shall render within
20 ~~thirty~~30 days following the conclusion of the hearing a written decision that either rescinds the
21 notice of violation and dismisses the proceedings, upholds the original decision, or modifies
22 the original decision. In rendering a decision, the Zoning Administrator or the Zoning
23 Administrator's designee shall consider:

- 24 (A) whether the responsible party was properly identified;

- 1 (B) whether the accrual dates for the administrative penalties are
- 2 accurate;
- 3 (C) the amount of documented staff time spent in order to secure
- 4 abatement of the violation;
- 5 (D) the nature of the violation;
- 6 (E) the duration of the violation;
- 7 (F) efforts made by the responsible party to correct the violation;
- 8 (G) the impact of the violation upon the community;
- 9 (H) any instance in which the responsible party has been in violation of
- 10 the same or similar laws at the same or other locations in the City and County of San
- 11 Francisco;
- 12 (I) the responsible party's good faith efforts to comply;
- 13 (J) whether the violation is easy to correct; and
- 14 (K) such other factors as the Zoning Administrator or ~~his or her~~ the Zoning
- 15 Administrator's designee may consider relevant.

16 In hearing any appeal of the Zoning Administrator's determination, the Board of
17 Appeals shall consider the above factors. If the Board upholds the Zoning Administrator's
18 decision in whole or in part but reduces the amount of the penalty, it may not reduce the
19 amount of the penalty below \$100.00 for each day that the violation exists, excluding the
20 period of time that the matter has been pending either before the Zoning Administrator on a
21 request for hearing or before the Board of Appeals on appeal.

22 In addition to any administrative penalties imposed under this subsection (c)(1),
23 the Zoning Administrator may recover any attorneys' fees and costs, including but not limited
24 to expert witness fees, incurred by the City in pursuing administrative remedies. The provision
25

1 of administrative penalties is not intended to be punitive in nature but is intended to secure
2 compliance with the Planning Code and to compensate the City for its costs of enforcement.

3 (2) **Civil Penalties.** Any individual, firm, partnership, corporation, company,
4 association, society, group, or other person or legal entity that violates any provision of this
5 Code shall be liable for the City's costs of enforcement and a civil penalty, of not less than
6 \$200.00 for each day such violation is committed or permitted to continue, which penalty shall
7 be assessed and recovered in a civil action brought in the name of the people of the City and
8 County of San Francisco by the City Attorney in any court of competent jurisdiction. The City
9 Attorney may seek recovery of any attorneys' fees and costs, including but not limited to
10 expert witness fees, incurred by the City in bringing such civil action. For civil actions to
11 enforce Municipal Code provisions related to general advertising signs, the penalties,
12 attorneys' fees, and costs set forth in this Section 176 shall be in addition to those authorized
13 by Section 610 of this Code.

14 (3) **Criminal Penalties.** Any individual, firm, partnership, corporation, company,
15 association, society, group, or other person or legal entity that violates any provision of this
16 Code shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in
17 an amount not less than \$200.00 or be imprisoned for a period not exceeding six months or be
18 both so fined and imprisoned. Each day such violation is committed or permitted to continue
19 shall constitute a separate offense and shall be punishable as such hereunder.

20 (4) **Planning Code Enforcement Fund.** Any fees and penalties collected
21 pursuant to this Section 176 except those collected pursuant to subsection (b)(5) shall be
22 deposited in the Planning Code Enforcement Fund established by Administrative Code
23 Section 10.100-166. The Planning Department, through the Planning Code Enforcement
24 Fund, shall reimburse City departments and agencies, including the City Attorney's Office, for
25 all costs and fees incurred in the enforcement of this Section 176.

1 (5) Affordable Housing Enforcement Fund. Any fees and penalties described in
2 subsection (c)(2) that are collected as a result of the enforcement efforts of MOHCD as provided in
3 subsection (b)(5), shall be deposited in the Affordable Housing Enforcement Fund established by
4 Administrative Code Section 10.100-10. MOHCD shall reimburse City departments and agencies,
5 including the City Attorney's Office, for all costs and fees incurred in the enforcement of this Section
6 176, from the Affordable Housing Enforcement Fund.

7 * * * *

8 **SEC. 350. FEES.**

9 * * * *

10 (g) **Time and Materials.** The Planning Department shall charge the applicant for any
11 time and materials cost incurred in excess of the initial fee charged if required to recover the
12 Department's costs for providing services.

13 (1) The Department shall charge time and materials to recover the cost of
14 correcting code violations and violations of Planning Commission and Department conditions
15 of approval of use if such costs are not covered by the monitoring fee for conditions of
16 approval specified in the Planning Department Fee Schedule.

17 (2) Where a different limitation on time and materials charges is set forth
18 elsewhere in this Article 3.5, that limitation shall prevail.

19 (3) The Planning Department may also charge the applicant for any time and
20 materials costs incurred by another department or agency of the City and County of San Francisco, or
21 may authorize such other departments or agencies of the City and County to charge directly for any
22 time and materials costs incurred by the respective department or agency to recover the cost of
23 correcting code violations, violations of Planning Commission and Department conditions of
24 approval. ~~other departments or agencies of the City and County of San Francisco.~~

1 (4) Any balance of time and materials costs for active and open projects must
2 be paid in full one week in advance of a scheduled public hearing before the Planning
3 Commission to consider the project or before issuance of the first site permit if no hearing is
4 required.

5 * * * *

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

7 (a) A first construction document or first Certificate of Occupancy, whichever
8 applies, shall not be issued by the Director of DBI to any unit in the Principal Project until all of
9 the affordable housing requirements of Sections 415.1_ *et seq.* are satisfied.

10 (b) If, after issuance of the first Certificate of Occupancy, the Commission or
11 Department determines that a project sponsor has failed to comply with any requirement in
12 Section 415.1_ *et seq.* or any reporting requirements detailed in the Procedures Manual, or has
13 violated the Notice of Special Restrictions, the Commission, Department, or DBI may, until the
14 violation is cured, (1) revoke the Certificate of Occupancy for the Principal Project or required
15 Affordable Units, (2) impose a penalty on the project pursuant to Section 176(c) of this Code,
16 and/or (3) the Zoning Administrator *or MOHCD* may enforce the provisions of Section 415.1_ *et*
17 *seq.* through any means provided for in Section 176 of this Code.

18 (c) The Department shall notify MOHCD of any housing project subject to the
19 requirements of Section 415.1_ *et seq.*, including the name of the project sponsor and the
20 number and location of the Affordable Units, within 30 days of the Department's approval of a
21 building, or site permit for the project. MOHCD shall provide all project sponsors with
22 information concerning the City's first time homebuyer assistance programs and any other
23 related programs MOHCD shall deem relevant to the Inclusionary Affordable Housing
24 Program.

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

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

8 (2) The number of, location of, and project sponsor for, housing projects which
9 applied for a waiver, adjustment, or reduction from the requirements of Section 415.1 *et seq.*
10 pursuant to Section 406 of this Article, and the number of, location of, and project sponsor for
11 housing projects which were granted such a waiver, adjustment, or reduction and, if a
12 reduction, to what percentage; and

13 (3) The number of, location of, and project sponsor for, every housing project to
14 which Section 415.1 *et seq.* applied and the number of market rate units and the number of
15 affordable on- and off-site units provided, including the location of all of the affordable units.

16 * * * *

17 Section 3. The Administrative Code is hereby amended by adding Section 10.100-10,
18 to read as follows:

19 **SEC. 10.100-10. AFFORDABLE HOUSING ENFORCEMENT FUND.**

20 (a) Establishment of Fund. The Affordable Housing Enforcement Fund is established as a
21 category four fund to receive funds collected for penalties and fees assessed under Planning Code
22 Section 176(c) for violations of Planning Code requirements and regulations relating to affordable
23 housing.

24 (b) Use of Fund. Proceeds in the fund are to be expended as follows: (1) administration and
25 enforcement of the Planning Code's requirements and regulations relating to affordable housing,

1 including but not limited to funding MOHCD personnel and the services of the City Attorney, in the
2 administration and enforcement of Planning Code requirements and regulations relating to affordable
3 housing; (2) enforcement of any housing contract or agreement administered by MOHCD; and (3) to
4 the extent authorized by state law, penalties and fees collected by the City Attorney in any action to
5 abate violations of the Planning Code's requirements and regulations relating to affordable housing
6 shall be used to fund administration and enforcement of the requirements and regulations, including
7 the services of the City Attorney.

8 Section 4. Effective Date. This ordinance shall become effective 30 days after
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
11 of Supervisors overrides the Mayor's veto of the ordinance.

12 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
13 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
14 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
15 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
16 additions, and Board amendment deletions in accordance with the "Note" that appears under
17 the official title of the ordinance.

18
19 APPROVED AS TO FORM:
20 DAVID CHIU, City Attorney

21 By: /s/
22 KRISTEN A. JENSEN
23 Deputy City Attorney

24 n:\legana\as2022\2200147\01583051.docx

LEGISLATIVE DIGEST

[Planning and Administrative Codes - Affordable Housing Code Enforcement]

Ordinance amending the Planning Code to permit the Mayor's Office of Housing and Community Development to enforce, and collect fines and penalties for violations of, Planning Code provisions governing affordable housing; amending the Administrative Code to allow the Mayor's Office of Housing and Community Development (MOHCD) to use the proceeds in the Affordable Housing Enforcement Fund for all Planning Code enforcement activities by MOHCD relating to affordable housing; 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, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

Existing Law

Planning Code section 176 provides the enforcement procedures and methods for the Planning Department to enforce violations of the Planning Code. Under Current Law, fees and penalties collected pursuant to Section 176 must be deposited in the Planning Code Enforcement Fund established by Administrative Code Section 10.100-166, and the funds shall be used as directed in that section.

Amendments to Current Law

The proposed legislation calls upon the Mayor's Office of Housing and Community Development (MOHCD) to enforce Planning Code requirements relating to affordable housing, and directs MOHCD to enter into a memorandum of understanding with the Planning Department to identify the types of enforcement cases to be delegated to MOHCD. The proposed legislation clarifies that the Planning Department may charge applicants for time and materials costs incurred by other departments or agencies of the City and County of San Francisco, or may authorize such other departments or agencies to charge directly for any time and materials costs incurred by the respective department or agency, to recover the cost of correcting code violations, or violations of conditions of approval.

The proposed legislation provides that any fees and penalties that are collected as a result of the enforcement efforts of MOHCD as provided under Section 176 shall be deposited in the Affordable Housing Enforcement Fund established by the proposed legislation, and sets forth the permitted uses of the fund.