

Amendment of the Whole
May 10, 2006.

FILE NO. 051668

ORDINANCE NO.

1 [Expand the Inclusionary Affordable Housing Program to include Buildings of 5 units or more.]

2

3 **Ordinance amending Planning Code Sections 315. 2, and 315.3, and 315.6 to expand the**
4 **application of the Inclusionary Affordable Housing Program to buildings of five units**
5 **and more.**

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

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

10 Section 1. The San Francisco Planning Code is hereby amended by amending
11 Sections 315.2, 315.3, and 315.6, to read as follows:

12 **SEC. 315.2. FINDINGS.**

13 *The Board of Supervisors hereby finds and declares as follows:*

14 Affordable Housing: The findings in Planning Code Section 315.2 of the Inclusionary
15 Affordable Housing Ordinance are hereby readopted and updated as follows:

16 1. Affordable housing is a paramount statewide concern. In 1980, the Legislature declared
17 in Government Code Section 65580:

18 (a) The availability of housing is of vital statewide importance, and the early attainment of
19 decent housing and a suitable living environment for every California family is a priority of the highest
20 order.

21 (b) The early attainment of this goal requires the cooperative participation of government
22 and the private sector in an effort to expand housing opportunities and accommodate the housing needs
23 of Californians of all economic levels.

24 (c) The provision of housing affordable to low-and moderate- income households requires
25 the cooperation of all levels of government.

1 (d) Local and state governments have a responsibility to use the powers vested in them to
2 facilitate the improvement and development of housing to make adequate provision for the housing
3 needs of all economic segments of the community...

4 The Legislature further stated in Government Code Section 65581 that:

5 It is the intent of the Legislature in enacting this article:

6 (a) To assure that counties and cities recognize their responsibilities in contributing to the
7 attainment of the state housing goal.

8 (b) To assure that counties and cities will prepare and implement housing elements
9 which...will move toward attainment of the state housing goal.

10 (c) To recognize that each locality is best capable of determining what efforts are required
11 by it to contribute to the attainment of the state housing goal...

12 The California Legislature requires each local government agency to develop a comprehensive
13 long-term general plan establishing policies for future development. As specified in the Government
14 Code (at Sections 65300, 65302(c), and 65583(c)), the plan must (1) "encourage the development of a
15 variety of types of housing for all income levels, including multifamily rental housing"; (2) "[a]ssist in
16 the development of adequate housing to meet the needs of low- and moderate-income households"; and
17 (3) "conserve and improve the condition of the existing affordable housing stock, which may include
18 addressing ways to mitigate the loss of dwelling units demolished by public or private action."

19 2. San Francisco faces a continuing shortage of affordable housing for very low and low-
20 income residents. The San Francisco Planning Department reported that for the four year period
21 between 2000 and 2004, 8,389 total new housing units were built in San Francisco. This number
22 includes 1,933 units for low and very low-income households out of a total need of 3,930 low and very
23 low-income housing units for the same period. According to the state Department of Housing and
24 Community Development, there will be a regional need for 230,743 new housing units in the nine Bay
25

1 Area counties from 1999—2006. Of that amount, at least 58 percent, or 133,164 units, are needed for
2 moderate, low and very low-income households. The Association of Bay Area Governments (ABAG) is
3 responsible for dividing the total regional need numbers among its member governments which
4 includes both counties and cities. ABAG estimates that San Francisco's low and very low-income
5 housing production need from 1999 through 2006 is 7,370 units out of a total new housing need of
6 20,372 units, or 36% of all units built. Within the past four years, only 23% of all housing built, or
7 49% of the previously projected housing need for low and very low-income housing for the same
8 period, was produced in San Francisco. The production of moderate income rental units also fell short
9 of the ABAG goal. Only 351 moderate income units were produced over the previous four years, or 4%
10 of all units built, compared to ABAG's call for 28% of all units to be affordable to households of
11 moderate income. Given the need for 3,007 moderate income units over the 4-year period, only 12% of
12 the projected need for moderate income units was built.

13 3. In response to the above mandate from the California Legislature and the projections of
14 housing needs for San Francisco, San Francisco has instituted several strategies for producing new
15 affordable housing units. The 2004 Housing Element of the General Plan recognizes the need to
16 support affordable housing production by increasing site availability and capacity for permanently
17 affordable housing through the inclusion of affordable units in larger housing projects. Further, the
18 City, as established in the General Plan, seeks to encourage the distribution of affordable housing
19 throughout all neighborhoods and, thereby, offer diverse housing choices and promote economic and
20 social integration. The 2004 Housing Element calls for an increase in the production of new affordable
21 housing and for the development of mixed income housing to achieve social and cultural diversity. This
22 legislation furthers the goals of the State Legislature and the General Plan.

23 4. The 2005 Consolidated Plan for July 1, 2000 - June 30, 2005, issued by the Mayor's
24 Office of Community Development and the Mayor's Office of Housing, establishes that extreme housing
25

1 pressures face San Francisco, particularly in regard to low- and moderate-income residents. Many
2 elements constrain housing production in the City. This is especially true of affordable housing. As
3 discussed in the 2004 Housing Element published by the City Planning Department, San Francisco is
4 largely built out, with very few large open tracts of land to develop. As noted in the 2000 Consolidated
5 Plan, its geographical location at the northern end of a peninsula inherently prevents substantial new
6 development. There is no available adjacent land to be annexed, as the cities located on San
7 Francisco's southern border are also dense urban areas. Thus new construction of housing is limited
8 to areas of the City not previously designated as residential areas, infill sites, or to areas with
9 increased density. New market-rate housing absorbs a significant amount of the remaining supply of
10 land and other resources available for development and thus limits the supply of affordable housing.

11 There is a great need for affordable rental and owner-occupied housing in the City. Housing
12 cost burden is one of the major standards for determining whether a locality is experiencing inadequate
13 housing conditions, defined as households that expend 30% or more of gross income for rent or 35% or
14 more of household income for owner costs. The 2000 Census indicates that 64,400 renter households
15 earning up to 80% of the area median income are cost burdened. Of these, about 25,000 households
16 earn less than 50% AMI and pay more than 50% of their income to rent. According to more recent
17 data from the American Housing Survey, 80,662 total renter households, or 41%, are cost burdened in
18 2003. A significant number of owners are also cost burdened. According to 2000 Census data, 18,237
19 of owners are cost-burdened, or 23% of all owner households. The 2003 American Housing Survey
20 indicates that this level has risen to 29%.

21 The San Francisco residential real estate market is one of the most expensive in the United
22 States. In May 2005, the California Association of Realtors reported that the median priced home in
23 San Francisco was \$755,000. This is 18% higher than the median priced home one year earlier, 44%
24 higher than the State of California median, and 365% higher than the nation average. While the

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1 national homeownership rate is approximately 69%, only approximately 35% of San Franciscans own
2 their own home. The majority of market-rate homes for sale in San Francisco are priced out of the
3 reach of low and moderate income households. In May 2005, the average rent for a 2-bedroom
4 apartment was \$1821, which is affordable to households earning over \$74,000.

5 These factors contribute to a heavy demand for affordable housing in the City that the private
6 market cannot meet. Each year the number of market rate units that are affordable to low income
7 households is reduced by rising market rate rents and sales prices. The number of households
8 benefiting from rental assistance programs is far below the need established by the 2000 Census.
9 Because the shortage of affordable housing in the City can be expected to continue for many years, it is
10 necessary to maintain the affordability of the housing units constructed by housing developers under
11 this Program. The 2004 Housing Element of the General Plan recognizes this need. Objective 1 of the
12 Housing Element is to provide new housing, especially permanently affordable housing, in appropriate
13 locations which meets identified housing needs and takes into account the demand for affordable
14 housing created by employment demand. Objective 6 is to protect the affordability of existing housing,
15 and to ensure that housing developed to be affordable be kept affordable for 50 – 75 year terms, or
16 even longer if possible.

17 In 2004 the National Housing Conference issued a survey entitled "Inclusionary Zoning: The
18 California Experience." The survey found that as of March 2003, there were 107 cities and counties
19 using inclusionary housing in California, one-fifth of all localities in the state. Overall, the
20 inclusionary requirements were generating large numbers of affordable units. Only six percent of
21 jurisdictions reported voluntary programs, and the voluntary nature appears to compromise the local
22 ability to guarantee affordable housing production. While there was a wide range in the affordability
23 percentage-requirements for inclusionary housing, the average requirement for affordability in rental

1 developments is 13%. Approximately half of all jurisdictions require at least 15% to be affordable, and
2 one-quarter require 20% or more to be affordable.

3 5. Development of new market-rate housing makes it possible for new residents to move to
4 the City. These new residents place demands on services provided by both public and private sectors.
5 Some of the public and private sector employees needed to meet the needs of the new residents earn
6 incomes only adequate to pay for affordable housing. Because affordable housing is in short supply
7 within the City, such employees may be forced to live in less than adequate housing within the City, pay
8 a disproportionate share of their incomes to live in adequate housing within the City, or commute ever-
9 increasing distances to their jobs from housing located outside the City. These circumstances harm the
10 City's ability to attain goals articulated in the City's General Plan and place strains on the City's ability
11 to accept and service new market-rate housing development.

12 6. The development of affordable housing on the same site as market-rate housing
13 increases social and economic integration vis-à-vis housing in the City and has corresponding social
14 and economic benefits to the City. Inclusionary housing provides a healthy job and housing balance.
15 Inclusionary housing provides more affordable housing close to employment centers which in turn may
16 have a positive economic impact by reducing such costs as commuting and labor costs. However, there
17 may also be trade-offs where constructing affordable units at a different site than the site of the
18 principle project may produce a greater number of affordable units without additional costs to the
19 project applicant. If a project applicant may produce a significantly greater number of affordable units
20 off-site then it is in the best interest of the City to permit the development of affordable units at a
21 different location than that of the principle project.

22 7. Provided project applicants can take these requirements into consideration when
23 negotiating to purchase land for a housing project, the requirements of this Section are generally
24 financially feasible for project applicants to meet, particularly because of the benefits being conferred
25

1 by the City to housing projects under this ordinance. This ordinance provides a means by which a
2 project applicant may seek a reduction or waiver of the requirements of this mitigation fees if the
3 project applicant can show that imposition of these requirements would create an unlawful financial
4 burden.

5 8. Conditional Use and Planned Unit Development Permits permit the development of
6 certain uses not permitted as of right in specific districts or greater density of permitted residential
7 uses. As the General Plan recognizes, through the conditional use and planned unit development
8 process, applicants for housing projects generally receive material economic benefits. Such applicants
9 are generally permitted to build in excess of the generally applicable black letter requirements of the
10 Planning Code for housing projects resulting in increased density, bulk, or lot coverage or a reduction
11 in parking or other requirements or an approval of a more intensive use over that permitted without the
12 conditional use permit or planned unit development permit. Through the conditional use and planned
13 unit development process, building standards can be relaxed in order to promote lower cost home
14 construction. An additional portion of San Francisco's affordable housing needs can be supplied (with
15 no public subsidies or financing) by private sector housing developers developing inclusionary
16 affordable units in their large market-rate projects in exchange for the density and other bonuses
17 conferred by conditional use or planned unit development approvals, provided it is financially
18 attractive for private sector housing developers to seek such conditional use and/or planned unit
19 development approvals.

20 9. Live/work as defined in the Planning Code recognizes that "residential living space" is
21 an integral part of a live/work unit. A substantial portion of new housing development in San
22 Francisco has been live/work units in Mixed Use Districts South of Market and in industrially zoned
23 areas of San Francisco where residential development has not traditionally been permitted as of right.
24 Live/work development projects are subject to less stringent development standards than other types of
25

1 housing projects in certain Mixed Use Districts and industrially zoned areas. Live/work developments
2 are conferred an equivalent benefit as projects going through the conditional use or planned unit
3 development permit process by virtue of the fact that (1) live/work developments are not required to get
4 a conditional use permit for housing development in some Mixed Use Districts and in all industrially
5 zoned districts where other residential uses are required to get a conditional use permit; (2) live/work
6 developments receive a five foot height bonus above prevailing height limits for specific
7 neighborhoods; (3) live/work units are permitted to cover 100% of a lot rather than the stricter lot
8 coverage requirements that apply to other residential development, typically requiring rear yards equal
9 to 15 feet in length or 25% of the lot, whichever is greater. Given these benefits conferred by statute
10 which allow live/work developments to exceed the limitations on other housing development in the City,
11 the Board of Supervisors finds that, for purposes of this Program, live/work developments are
12 conferred a private benefit equal to or in excess of housing projects which require a conditional use or
13 planned unit development permit. The relaxed building standards applied to live/work projects
14 promote the ability to include lower cost home production in live/work projects. A unit meets the
15 definition of California Civil Code Section 1940(c) as a "dwelling unit" because it "is used as a home,
16 residence or sleeping place by one person who maintains a household or by two or more persons who
17 maintain a common household." Live/work units shall not be considered "commercial real property"
18 for purposes of Civil Code Section 1954.25 et seq.

19 10. The City wants to balance the burden on private property owners with the demonstrated
20 need for affordable housing in the City. For the reasons stated above, the Board of Supervisors thus
21 intends to apply an inclusionary housing requirement to all residential projects of 5 units or more. In
22 order to balance the burden on property owners, the Board intends to limit the application of an
23 inclusionary housing requirement to 10% for housing projects that do not receive any of the benefits
24 described above through the conditional use or planned unit development process, or in live/work
25

1 projects. A slightly higher percentage will be applied to projects which generally receive benefits
2 through the conditional use or planned unit development process, or in live/work projects. The
3 Housing Element (Policy 4.2) states: Include affordable units in larger housing developments. It also
4 calls for the City to review its inclusionary housing program regularly to ensure fair burden and not
5 constrain new housing production. The Board of Supervisors has reviewed the inclusionary affordable
6 housing program and finds that, for purposes of the Housing Element of the General Plan, a housing
7 project of five units or more is a larger housing project. Expanding the inclusionary housing
8 requirements to buildings of five units or more ensures more fair burden on all housing development
9 and will not constrain new housing production.

10 K. The findings of Planning Code Section 313.2 for the Jobs-Housing Linkage
11 Program, Planning Code Sections 313 et seq., relating to the shortage of affordable housing, the low
12 vacancy rate of housing affordable to persons of lower and moderate income, and the decrease in
13 construction of affordable housing in the City are hereby readopted.

14 ~~SEC. 315.2. FINDINGS.~~

15 ~~———— The Board of Supervisors hereby finds and declares as follows:~~

16 ~~———— A. Affordable housing is a paramount statewide concern. In 1980, the Legislature~~
17 ~~declared in Government Code Section 65580:~~

18 ~~———— (a) The availability of housing is of vital statewide importance, and the early~~
19 ~~attainment of decent housing and a suitable living environment for every California family is a priority~~
20 ~~of the highest order.~~

21 ~~———— (b) The early attainment of this goal requires the cooperative participation of~~
22 ~~government and the private sector in an effort to expand housing opportunities and accommodate the~~
23 ~~housing needs of Californians of all economic levels.~~

1 ~~———— (c) ——— The provision of housing affordable to low and moderate income households~~
2 ~~requires the cooperation of all levels of government.~~

3 ~~———— (d) ——— Local and state governments have a responsibility to use the powers vested in~~
4 ~~them to facilitate the improvement and development of housing to make adequate provision for the~~
5 ~~housing needs of all economic segments of the community....~~

6 ~~———— The Legislature further stated in Government Code Section 65581 that:~~

7 ~~———— It is the intent of the Legislature in enacting this article:~~

8 ~~———— (a) ——— To assure that counties and cities recognize their responsibilities in contributing~~
9 ~~to the attainment of the state housing goal.~~

10 ~~———— (b) ——— To assure that counties and cities will prepare and implement housing elements~~
11 ~~which...will move toward attainment of the state housing goal.~~

12 ~~———— (c) ——— To recognize that each locality is best capable of determining what efforts are~~
13 ~~required by it to contribute to the attainment of the state housing goal....~~

14 ~~———— The California Legislature requires each local government agency to develop a~~
15 ~~comprehensive long term general plan establishing policies for future development. As specified in the~~
16 ~~Government Code (at Sections 65300, 65302(c), and 65583(c)), the plan must (1) "encourage the~~
17 ~~development of a variety of types of housing for all income levels, including multifamily rental~~
18 ~~housing"; (2) "[a]ssist in the development of adequate housing to meet the needs of low and moderate~~
19 ~~income households"; and (3) "conserve and improve the condition of the existing affordable housing~~
20 ~~stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or~~
21 ~~private action."~~

22 ~~———— B. ——— San Francisco faces a continuing shortage of affordable housing for very low~~
23 ~~and low income residents. The San Francisco Planning Department reported that for the past ten~~
24 ~~years, 3,199 units of low and very low income housing were built in San Francisco out of a total need~~
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1 ~~of 15,103 units for the same period. According to the state Department of Housing and Community~~
2 ~~Development, there will be a regional need for 230,743 new housing units in the nine Bay Area~~
3 ~~counties from 1999—2006. Of that amount, at least 58 percent, or 133,164 units, are needed for~~
4 ~~moderate, low and very low income house holds. The Association of Bay Area Governments (ABAG) is~~
5 ~~responsible for dividing the total regional need numbers among its member governments which~~
6 ~~includes both counties and cities. ABAG estimates that San Francisco's low and very low income~~
7 ~~housing production need through 2006 is 7,370 units out of a total new housing need of 20,372 units.~~
8 ~~Within the past ten years, less than 25% of the previously projected housing need was produced in San~~
9 ~~Francisco. The new ABAG housing goals will require that San Francisco produce more than twice the~~
10 ~~amount of low and very low income housing within half the time.~~

11 ~~————C.—— In response to the above mandate from the California Legislature and the~~
12 ~~projections of housing needs for San Francisco, San Francisco has instituted several strategies for~~
13 ~~producing new affordable housing units. The General Plan Residential Element recognizes the need to~~
14 ~~increase the amount of land available and improve building resources for permanently affordable~~
15 ~~housing through the inclusion of affordable units in larger market rate housing projects. Further, the~~
16 ~~City, as established in the General Plan, seeks to encourage the distribution of affordable housing~~
17 ~~throughout all neighborhoods and, thereby, offer diverse housing choices and promote economic and~~
18 ~~social integration. The General Plan calls for an increase in the production of new affordable housing~~
19 ~~and for the development of mixed income housing to achieve social and cultural diversity. As one~~
20 ~~strategy to achieve these goals, the General Plan states that "[i]nclusion of affordable housing should~~
21 ~~be required as a condition of approval of housing projects containing 10 or more units which seek~~
22 ~~Planning Commission approval as conditional uses or planned unit developments." This legislation~~
23 ~~further the goals of the State Legislature and the General Plan. For housing projects to which this~~
24 ~~legislation applies it is intended to replace the Planning Commission Guidelines for Application of San~~

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1 ~~San Francisco's Inclusionary Affordable Housing Policy. For housing projects to which this legislation~~
2 ~~does not apply because of the application date, it is intended that the Planning Commission Guidelines~~
3 ~~in effect at the time of project approval, where applicable, will apply.~~

4 ~~—————D.————— The 2000 Consolidated Plan for July 1, 2000— June 30, 2005, issued by the~~
5 ~~Mayor's Office of Community Development and the Mayor's Office of Housing establishes that extreme~~
6 ~~housing pressures face San Francisco, particularly in regard to low and moderate income residents.~~
7 ~~Many elements constrain housing production in the City. This is especially true of affordable housing.~~
8 ~~San Francisco is largely built out, and its geographical location at the northern end of a peninsula~~
9 ~~inherently prevents substantial new development. There is no available adjacent land to be annexed, as~~
10 ~~the cities located on San Francisco's southern border are also dense urban areas. Thus new~~
11 ~~construction of housing is limited to areas of the City not previously designated as residential areas,~~
12 ~~infill sites, or to areas with increased density. New market rate housing absorbs a significant amount~~
13 ~~of the remaining supply of land and other resources available for development and thus limits the~~
14 ~~supply of affordable housing.~~

15 ~~————— There is a great need for affordable rental and owner occupied housing in the City. The~~
16 ~~vacancy rate for residential rental property has dropped significantly since 1989-90 when the~~
17 ~~Residence Element 1992 Annual Evaluation Report reported a 4.2 percent citywide vacancy rate (for~~
18 ~~1989), and the U.S. Census showed a 6.9 percent vacancy rate (as of 1990). Data from the San~~
19 ~~Francisco rental market from RealFacts for 2000 indicates a vacancy rate of 1.9 percent. Rents on~~
20 ~~newly occupied residential units have risen dramatically. Housing cost burden is one of the major~~
21 ~~standards for determining whether a locality is experiencing inadequate housing conditions; the~~
22 ~~Consolidated Plan defines a household expending 30 percent or more of its gross income for housing~~
23 ~~costs as experiencing a cost burden. According to the 1990 Census, 38.1 percent of San Franciscans~~

1 ~~experienced a cost burden in 1990 and, according to more recent data from the American Housing~~
2 ~~Survey, this level had risen to 45 percent in 1993.~~

3 ~~———— The San Francisco residential real estate market is one of the most expensive in the~~
4 ~~United States. A February 1999 report from the National Association of Realtors found that San~~
5 ~~Francisco had the highest median price of existing homes in the United States. In the 1980's average~~
6 ~~home prices in San Francisco rose nearly three times as fast as the overall cost of living in San~~
7 ~~Francisco according to data from the Bay Area Council and 1990 Census. An analysis of sales data~~
8 ~~from a three month period in 1999 gathered by American Real Estate Solutions showed that of 1,420~~
9 ~~full, confirmed, and verified sales, the median sales price was \$390,000. This study, among others,~~
10 ~~demonstrates that the majority of market rate homes for sale in San Francisco are priced out of the~~
11 ~~reach of low and moderate income households.~~

12 ~~———— These factors contribute to a heavy demand for affordable housing in the City that the~~
13 ~~private market cannot meet. Each year the number of market rate units that are affordable to low~~
14 ~~income households is reduced by rising market rate rents and sales prices. The number of households~~
15 ~~benefiting from rental assistance programs is far below the need established by the 1990 Census.~~
16 ~~Because the shortage of affordable housing in the City can be expected to continue for many years, it is~~
17 ~~necessary to maintain the affordability of the housing units constructed by housing developers under~~
18 ~~this Program. The Residential Element of the General Plan (Objective 9, Policy 2) recognizes this~~
19 ~~need and provides that affordable units should be required to remain affordable for at least 50 years~~
20 ~~and, where possible, for longer.~~

21 ~~———— In 1994 the California Coalition for Rural Housing Project issued a study entitled~~
22 ~~"Creating Affordable Communities: Inclusionary Housing Programs in California." The study found~~
23 ~~that at least 64 jurisdictions in California had inclusionary housing programs and that, overall, the~~
24 ~~inclusionary requirements were generating large numbers of affordable units. Sixty six percent of the~~
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1 ~~inclusionary programs studied were mandatory programs and the mandatory programs were proven to~~
2 ~~be more effective by a number of measures than the voluntary programs. While there was a wide range~~
3 ~~in the percentage requirements for inclusionary housing, a 10% requirement is the most common,~~
4 ~~occurring in 39% of the jurisdictions studied, followed by a 15% requirement that was the second most~~
5 ~~common.~~

6 ~~—————E.————— Development of new market rate housing makes it possible for new residents to~~
7 ~~move to the City. These new residents place demands on services provided by both public and private~~
8 ~~sectors. Some of the public and private sector employees needed to meet the needs of the new residents~~
9 ~~earn incomes only adequate to pay for affordable housing. Because affordable housing is in short~~
10 ~~supply within the City, such employees may be forced to live in less than adequate housing within the~~
11 ~~City, pay a disproportionate share of their incomes to live in adequate housing within the City, or~~
12 ~~commute ever increasing distances to their jobs from housing located outside the City. These~~
13 ~~circumstances harm the City's ability to attain goals articulated in the City's General Plan and place~~
14 ~~strains on the City's ability to accept and service new market rate housing development.~~

15 ~~—————F.————— The development of affordable housing on the same site as market rate housing~~
16 ~~increases social and economic integration vis à vis housing in the City and has corresponding social~~
17 ~~and economic benefits to the City. Inclusionary housing provides a healthy job and housing balance.~~
18 ~~Inclusionary housing provides more affordable housing close to employment centers which in turn may~~
19 ~~have a positive economic impact by reducing such costs as commuting and labor costs. However, there~~
20 ~~may also be trade offs where constructing affordable units at a different site than the site of the~~
21 ~~principle project may produce a greater number of affordable units without additional costs to the~~
22 ~~project applicant. If a project applicant may produce a significantly greater number of affordable units~~
23 ~~off site then it is in the best interest of the City to permit the development of affordable units at a~~
24 ~~different location than that of the principle project.~~

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1 ~~———G.——— Provided project applicants can take these requirements into consideration when~~
2 ~~negotiating to purchase land for a housing project, the requirements of this Section are generally~~
3 ~~financially feasible for project applicants to meet, particularly because of the benefits being offered by~~
4 ~~the City to housing projects that comply with this Section. Some of the requirements of this Section are~~
5 ~~being phased in over a period of one year, so that project applicants will have adequate notice of these~~
6 ~~requirements and can take them into consideration when negotiating to purchase land for a project.~~
7 ~~This Section provides a means by which a project applicant may seek a reduction or waiver of the~~
8 ~~requirements of this Section if the project applicant can show that imposition of these requirements~~
9 ~~would create an unlawful financial burden.~~

10 ~~———H.——— Conditional Use and Planned Unit Development Permits permit the~~
11 ~~development of certain uses not permitted as of right in specific districts or greater density of permitted~~
12 ~~residential uses. As the General Plan recognizes, through the conditional use and planned unit~~
13 ~~development process, applicants for housing projects generally receive material economic benefits.~~
14 ~~Such applicants are generally permitted to build in excess of the generally applicable black letter~~
15 ~~requirements of the Planning Code for housing projects resulting in increased density, bulk, or lot~~
16 ~~coverage or a reduction in parking or other requirements or an approval of a more intensive use over~~
17 ~~that permitted without the conditional use permit or planned unit development permit. Through the~~
18 ~~conditional use and planned unit development process, building standards can be relaxed in order to~~
19 ~~promote lower cost home construction. An additional portion of San Francisco's affordable housing~~
20 ~~needs can be supplied (with no public subsidies or financing) by private sector housing developers~~
21 ~~developing inclusionary affordable units in their large market rate projects in exchange for the density~~
22 ~~and other bonuses conferred by conditional use or planned unit development approvals, provided it is~~
23 ~~financially attractive for private sector housing developers to seek such conditional use and/or planned~~
24 ~~unit development approvals.~~

1 ~~I. The Residential Element of the General Plan (Objective 7, Policy 1) provides~~
2 ~~that as land not previously used for residential space is developed for residential use, such development~~
3 ~~should also provide for a minimum of 10% permanently affordable units for all residential development~~
4 ~~containing more than 10 units. Live/work as defined in the Planning Code recognizes that "residential~~
5 ~~living space" is an integral part of a live/work unit. A substantial portion of new housing development~~
6 ~~in San Francisco has been live/work units in Mixed Use Districts South of Market and in industrially~~
7 ~~zoned areas of San Francisco where residential development has not traditionally been permitted as of~~
8 ~~right. Live/work development projects are subject to less stringent development standards than other~~
9 ~~types of housing projects in certain Mixed Use Districts and industrially zoned areas. Live/work~~
10 ~~developments are conferred an equivalent benefit as projects going through the conditional use or~~
11 ~~planned unit development permit process by virtue of the fact that (1) live/work developments are not~~
12 ~~required to get a conditional use permit for housing development in some Mixed Use Districts and in~~
13 ~~all industrially zoned districts where other residential uses are required to get a conditional use permit;~~
14 ~~(2) live/work developments receive a five foot height bonus above prevailing height limits for specific~~
15 ~~neighborhoods; (3) live/work units are permitted to cover 100% of a lot rather than the stricter lot~~
16 ~~coverage requirements that apply to other residential development, typically requiring rear yards equal~~
17 ~~to 15 feet in length or 25% of the lot, whichever is greater. Given these benefits conferred by statute~~
18 ~~which allow live/work developments to exceed the limitations on other housing development in the City,~~
19 ~~the Board of Supervisors finds that, for purposes of this Program, live/work developments are~~
20 ~~conferred a private benefit equal to or in excess of housing projects which require a conditional use or~~
21 ~~planned unit development permit. The relaxed building standards applied to live/work projects~~
22 ~~promote the ability to include lower cost home production in live/work projects. A unit meets the~~
23 ~~definition of California Civil Code Section 1940(c) as a "dwelling unit" because it "is used as a home,~~
24 ~~residence or sleeping place by one person who maintains a household or by two or more persons who~~
25

1 ~~maintain a common household." Live/work units shall not be considered "commercial real property"~~
2 ~~for purposes of Civil Code Section 1954.25 et seq.~~

3 ~~———— J. ——— The City wants to balance the burden on private property owners with the~~
4 ~~demonstrated need for affordable housing in the City. For the reasons stated above, the Board of~~
5 ~~Supervisors thus intends to apply an inclusionary housing requirement to all residential projects of 10~~
6 ~~units or more. In order to balance the burden on property owners, the Board intends to limit the~~
7 ~~application of an inclusionary housing requirement to 10% for housing projects that do not receive any~~
8 ~~of the benefits described above through the conditional use or planned unit development process, or in~~
9 ~~live/work projects. A slightly higher percentage will be applied to projects which generally receive~~
10 ~~benefits through the conditional use or planned unit development process, or in live/work projects.~~

11 ~~———— K. ——— The findings of Planning Code Section 313.2 for the Jobs Housing Linkage~~
12 ~~Program, Planning Code Sections 313 et seq., relating to the shortage of affordable housing, the low~~
13 ~~vacancy rate of housing affordable to persons of lower and moderate income, and the decrease in~~
14 ~~construction of affordable housing in the City are hereby readopted.~~

15 **SEC. 315.3. APPLICATION.**

16 (a) This Ordinance shall apply to:

17 (1) All applications for a building permit or a site permit filed with the
18 Department of Building Inspection or the Planning Department on or after June 18, 2001 for
19 housing projects which:

20 (A) Consist of ~~ten~~five or more units; and

21 (B) Do not require Planning Commission approval as a conditional use or
22 planned unit development; and

23 (C) Have a project site which was optioned or acquired or an environmental
24 evaluation application that was filed after June 18, 2001.

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1 (2) All applications for a conditional use or planned unit development permit
2 filed with the Planning Department on or after June 18, 2001 for housing projects which:

3 (A) Consist of ~~ten~~five or more units; and

4 (B) Require Planning Commission approval as a conditional use or planned unit
5 development.

6 (3) All applications for a building permit or a site permit filed with the Planning
7 Department or the Building Department on or after June 18, 2001 for housing projects which:

8 (A) Consist of ~~ten~~five or more units; and

9 (B) Consist of live/work units as defined by Planning Code Section 102.13.

10 (4) Housing projects which require Planning Commission approval of
11 replacement housing destroyed by earthquake, fire or natural disaster only where the
12 destroyed housing included units restricted under the Residential Inclusionary Housing
13 Program or the City's predecessor inclusionary housing policy, condominium conversion
14 requirements, or other affordable housing program.

15 (b) This Ordinance shall not apply to:

16 (1) That portion of a housing project located on property owned by the United
17 States or any of its agencies or leased by the United States or any of its agencies for a period
18 in excess of 50 years, with the exception of such property not used exclusively for a
19 governmental purpose;

20 (2) That portion of a housing project located on property owned by the State
21 of California or any of its agencies, with the exception of such property not used exclusively
22 for a governmental or educational purpose; or

23 (3) That portion of a housing project located on property under the
24 jurisdiction of the San Francisco Redevelopment Agency or the Port of San Francisco where
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1 the application of this Ordinance is prohibited by California or local law; (4) That portion of a
2 housing project for which a project applicant can demonstrate that an impact fee under the
3 Jobs-Housing Linkage Program, commencing with Planning Code Section 313, has been
4 paid.

5 (c) Waiver or Reduction:

6 (1) A project applicant of any project subject to the requirements in this
7 Program may appeal to the Board of Supervisors for a reduction, adjustment, or waiver of the
8 requirements based upon the absence of any reasonable relationship or nexus between the
9 impact of development and either the amount of the fee charged or the inclusionary
10 requirement.

11 (2) A project applicant subject to the requirements of this Program who has
12 received an approved building permit, conditional use permit or similar discretionary approval
13 and who submits a new or revised building permit, conditional use permit or similar
14 discretionary approval for the same property may appeal for a reduction, adjustment or waiver
15 of the requirements with respect to the number of lots or square footage of construction
16 previously approved.

17 (3) Any such appeal shall be made in writing and filed with the Clerk of the Board no
18 later than 15 days after the date the Planning Department sends notice to the project
19 applicant of the number of affordable units required as provided in Section 315.4(a) and
20 315.5(a). The appeal shall set forth in detail the factual and legal basis for the claim of waiver,
21 reduction, or adjustment. The Board of Supervisors shall consider the appeal at the hearing
22 within 60 days after the filing of the appeal. The appellant shall bear the burden of presenting
23 substantial evidence to support the appeal, including comparable technical information to
24 support appellant's position. The decision of the Board shall be by a simple majority vote and
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1 shall be final. If a reduction, adjustment, or waiver is granted, any change in use within the
2 project shall invalidate the waiver, adjustment, or reduction of the fee or inclusionary
3 requirement. If the Board grants a reduction, adjustment or waiver, the Clerk of the Board
4 shall promptly transmit the nature and extent of the reduction, adjustment or waiver to the
5 Treasurer.

6 (d) Except for projects listed in subsection "b" of this Section 315.3, the Planning
7 Commission's Guidelines for Application of San Francisco's Inclusionary Affordable Housing
8 Policy shall apply, where applicable, to housing projects not otherwise covered by this
9 Ordinance because of the application dates set forth in Section 315.3(a), (b), and (c).

10 **SEC. 315.6. COMPLIANCE THROUGH IN LIEU FEE.**

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

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

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

20 (1) The number of units required by Section 315.5 if the project applicant
21 were to elect to meet the requirements of this section by off-site housing development. For
22 the purposes of this section, developers of 5-9 units may elect to calculate the unit
23 requirement using the direct fractional result of the total number of units multiplied by the

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1 percentage of off-site housing required, rather than rounding up the resulting figure as
2 required by Section 315.5(a).

3 (2) The affordability gap as identified in the "Jobs Housing Nexus Analysis"
4 prepared by Keyser Marston Associates, Inc. in June 1997 for the Maximum Annual Rent or
5 Maximum Purchase Price for the equivalent unit sizes.

6 (3) Annual adjustments to the affordability gap based upon the percentage
7 increase or decrease in the Average Area Purchase Price Safe Harbor Limitations for New
8 Single Family Residences for the San Francisco Primary Metropolitan Statistical ("PMSA")
9 established by the Internal Revenue Service ("IRS") since January 1st of the previous year;
10 provided however, that in the event that said percentage increase exceeds 20 percent, the in-
11 lieu fee shall be increased by 20 percent, and the difference between the percentage increase
12 in the Average Area Purchase Price and 20 percent shall be carried over and added to the in-
13 lieu fee adjustment for the following calendar year. In the event that the IRS does not adjust
14 the above figure within 14 months, the Mayor's Office of Housing shall authorize and certify a
15 study for adjusting the last published IRS figure to be effective until IRS revises the figure.

16 (c) Within 30 days of determining the amount of the fee to be paid by the
17 applicant, MOH shall transmit the amount of the fee to the Treasurer. Prior to the issuance by
18 DBI of the first site or building permit for the project applicant, the project applicant must notify
19 the Planning Department and MOH in writing that it has paid in full the sum required to the
20 Treasurer. If the project applicant fails by the applicable date to demonstrate to the Planning
21 Department that the project applicant has paid the applicable sum in full to the Treasurer, DBI
22 shall deny any and all site or building permits or certificates of occupancy for the development
23 project until the Planning Department notifies DBI and MOH that such payment has been
24 made.

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

13 (e) All monies contributed pursuant to this section shall be deposited in the
14 special fund maintained by the Controller called the Citywide Affordable Housing Fund. The
15 receipts in the Fund are hereby appropriated in accordance with law to be used to (1)
16 increase the supply of housing affordable to qualifying households subject to the conditions of
17 this Section, and (2) pay the expenses of MOH in connection with monitoring and
18 administering compliance with the requirements of the Program. Monitoring and
19 administrative expenses shall be appropriated through the annual budget process
20 or supplemental appropriation for MOH. The fund shall be administered and expended by
21 MOH, which shall have the authority to prescribe rules and regulations governing the Fund
22 which are consistent with this Section.

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

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

20 (3) Any notice required to be given to a sponsor or owner shall be sufficiently
21 given or served upon the sponsor or owner or all purposes hereunder if personally served
22 upon the sponsor or owner or if deposited, postage prepaid, in a post office letterbox
23 addressed in the name of the sponsor or owner at the official address of the sponsor or owner
24 maintained by the Tax Collector for the mailing of tax bills or, if no such address is available,
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1 to the sponsor at the address of the development project, and to the applicant for the site or
2 building permit at the address on the permit application.

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

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

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

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By: _____
19 Susan Cleveland-Knowles
20 Deputy City Attorney

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