

LEGISLATIVE DIGEST

[Affordable Housing Transfer Fee Restriction Alternative for Inclusionary and Jobs Housing Linkage Programs.]

Ordinance amending the San Francisco Planning Code by amending Sections 313.4 and 315.5 and by adding Section 313.16 to add an alternative for compliance with the Jobs Housing Linkage Program and the Residential Inclusionary Affordable Housing Program by allowing a project sponsor to defer 33% of its obligation under either Program in exchange for recording an Affordable Housing Transfer Fee Restriction on the affected property providing that 1% of the value of the property be paid to the Citywide Affordable Housing Fund at every future transfer of the Property.

Existing Law

The Inclusionary Housing Ordinance, San Francisco Planning Code section 315 imposes as a condition of approval of certain market rate housing projects that project applicants provide a percentage of the residential units as on- or off-site affordable units or pay an in lieu fee (the "Inclusionary Housing Ordinance Requirements"). Similarly, the Jobs-Housing Linkage Ordinance, Planning Code Section 313 requires that project applicants for certain office and other commercial projects contribute land to construct affordable housing units or pay an in-lieu fee (the "Jobs-Housing Linkage Program Requirements"). Project applicants must generally satisfy the Inclusionary Housing Ordinance Requirements and Jobs-Housing Linkage Program Requirements (collectively "Program Requirements") prior to receiving a first site or building permit or a first certificate of occupancy. There is no option under either ordinance to defer the Program Requirements.

Amendments to Current Law

The original proposed ordinance would amend the Jobs Housing and Inclusionary Housing Ordinances to provide another option that applicants could voluntarily decide to participate in to satisfy the Program Requirements. The applicant could defer 33% of its Program Requirements but in return would have to record a restriction against the development site (the "Property") that would obligate current and future owners of the Property to pay a fee to the City equal to 1% of the property value (the "Transfer Fee") upon each transfer of the Property, or portion of the Property. The definition of a transfer for purposes of the ordinance is based on the definition of a transfer that is subject to the City's real property transfer tax. Under the proposed ordinance, if no transfer has occurred by the end of 10 years after issuance of the first certificate of occupancy then the property owner would have to pay the first Transfer Fee at such time based on the assessed value of the

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Property. Like the current in lieu fees, the Transfer Fees would be paid into a fund dedicated to the development of affordable housing.

The Mayor introduced substitute legislation to respond to four recommendations made by the Planning Commission. All four of the recommendations are incorporated in the substitute legislation as follows:

- The legislation is clarified to provide that the ability to defer fees is offered only to those projects that have not yet paid development impact fees.
- The procedures to implement the Affordable Housing Transfer Fee have been tightened to require that the Owner record a Notice of Special Restrictions ("NSR") on the Property prior to issuance of the first site or building permit and then, if the Property will be subdivided, that prior to issuance of first certificate of occupancy, the Owner has recorded individual NSRs on every parcel in any subsequent subdivision of the Property.
- The option to pre-pay the present value of the Transfer Fee restriction has been deleted;
- The legislation has been amended to provide that the Planning Commission will review the legislation in three years and, if certain conditions are met, will recommend that the Board of Supervisors sunset the legislation.

Background Information

The ordinance will provide a voluntary option for project applicants to defer a significant amount of their Program Requirements until they have cash flow in order to encourage development projects in a difficult economy, while providing the City with a long-term stream of cash payments for its Affordable Housing Fund.