

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Tom Hui, Director, Department of Building Inspection  
Olson Lee, Director, Mayor's Office of Housing and Community  
Development  
Tiffany Bohee, Executive Director, Office of Community Investment and  
Infrastructure

FROM: Andrea Ausberry, Assistant Clerk, Board of Supervisors

DATE: April 13, 2016

SUBJECT: LEGISLATION INTRODUCED - SUBSTITUTE

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The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, introduced by President Breed on April 5, 2016:

**File No. 151258-2**

Ordinance amending the Planning Code to require additional affordable housing or payment of a fee for certain sites that obtained higher residential development potential as a result of the rezoning of the Divisadero Street Neighborhood Commercial Transit District and the Fillmore Street Neighborhood Commercial Transit District; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, Planning Code, Section 302, and the eight priority policies of Planning Code, Section 101.1.

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: [andrea.ausberry@sfgov.org](mailto:andrea.ausberry@sfgov.org)

c: William Strawn, Department of Building Inspection  
Carolyn Jayin, Department of Building Inspection  
Sophie Hayward, Mayor's Office of Housing and Community Development  
Claudia Guerra, Office of Community Investment and Infrastructure  
Natasha Jones, Office of Community Investment and Infrastructure

[Planning Code - Affordable Housing Requirement and Fee in Divisadero and Fillmore Neighborhood Commercial Transit Districts]

**Ordinance amending the Planning Code to require additional affordable housing or payment of a fee for certain sites that obtained higher residential development potential as a result of the rezoning of the Divisadero Street Neighborhood Commercial Transit District and the Fillmore Street Neighborhood Commercial Transit District; affirming the Planning Department’s determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, Planning Code, Section 302, and the eight priority policies of Planning Code, Section 101.1.**

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

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

Section 1. Findings.

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

(b) On \_\_\_\_\_, 2016, the Planning Commission, in Resolution No. \_\_\_\_\_, adopted findings that the actions contemplated in this ordinance are consistent, on balance, with the City’s General Plan and eight priority policies of Planning Code Section 101.1. The Board

1 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the  
2 Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.

3 (c) Pursuant to Planning Code Section 302, this Board finds that the actions  
4 contemplated in this ordinance will serve the public necessity, convenience, and welfare for  
5 the reasons set forth in Planning Commission Resolution No. \_\_\_\_\_ and the Board  
6 incorporates such reasons herein by reference. A copy of the Planning Commission  
7 Resolution No. \_\_\_\_\_ is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_.

8 (d) The City adopted legislation rezoning the area along Divisadero Street between  
9 Haight and O'Farrell Streets to become the Divisadero Neighborhood Commercial Transit  
10 District ("NCT") in Ordinance No. 127-15 in August 2015, and the area along Fillmore Street  
11 between Bush and McAllister Streets to become the Fillmore NCT in Ordinance No. 126-15 in  
12 August 2015. The rezoning for both NCTs removed any residential density limits based on lot  
13 area, and instead restricted residential uses by physical envelope controls like height, bulk,  
14 and setback requirements for each site. This removal of density limits based on lot areas  
15 should afford for greater development on certain sites within each NCT.

16 (e) On November 6, 2012, the voters adopted Proposition C ("Prop C"), The Housing  
17 Trust Fund, which is set forth in San Francisco Charter Section 16.110. Prop C established a  
18 limitation on the Inclusionary Housing Cost Obligation that the City could impose on  
19 residential development projects. Prop C set forth certain exceptions to this limitation,  
20 including but not limited to circumstances in which a project receives a 20% or greater  
21 increase in developable residential uses, as measured by a change in height limits, Floor Area  
22 Ratio limits, or use, over prior zoning, or a 50% or greater increase in residential densities  
23 over prior zoning, through a special use district or other local legislation adopted after  
24 November 6, 2012. The Divisadero Street NCT and the Fillmore Street NCT rezonings were  
25 adopted after this date.

1 (f) The City conducted a Nexus Study in 2007, performed by Keyser Marston and  
2 Associates, in support of the Inclusionary Affordable Housing Program, or an analysis of the  
3 impact of development of market rate housing on affordable housing supply and demand. The  
4 Board of Supervisors reviewed the Nexus Study and staff analysis and report of the Study  
5 and, on that basis, found that the Study supported the inclusionary affordable housing  
6 requirements combined with the additional affordable housing fee set forth in Planning Code  
7 Sections 415 *et seq.*, prior to enactment of Prop C. The City is now in the process of updating  
8 this nexus analysis.

9 (g) On June 7, 2016, the voters will consider a Charter Amendment eliminating the  
10 limits on inclusionary affordable housing set forth in Charter Section 16.110. The Board of  
11 Supervisors is also considering legislation to implement changes to the inclusionary affordable  
12 housing requirements, if the voters approve the Charter Amendment at the June 7, 2016  
13 election.

14 (h) The 2015 rezoning of the Divisadero and Fillmore NCTs will allow a 20% or greater  
15 increase in residential densities over prior zoning, through a special use district or other local  
16 legislation adopted after November 6, 2012, on certain sites contained within the two NCTs.  
17 Current Charter Section 16.110 contains exemptions that would allow imposition of a higher  
18 Inclusionary Housing Cost Obligation because the Divisadero and Fillmore NCT rezonings  
19 took place after November 6, 2012 and result in higher development potential for certain sites  
20 located within both NCTs.

21  
22 Section 2. The Planning Code is hereby amended by adding Section 428, including  
23 Sections 428.1, 428.2, 428.3, 428.4, and 428.5, to read as follows:  
24  
25

1                   **SEC. 428. DIVISADERO STREET NCT AND FILLMORE STREET NCT AFFORDABLE**  
2 **HOUSING FEE AND REQUIREMENTS.**

3                   Sections 428.1 through 428.5, hereafter referred to as Section 428.1 et seq., set forth the  
4 requirements and procedures for the Divisadero Street and Fillmore Street Neighborhood Commercial  
5 Transit Districts Affordable Housing Fee.

6                   **SEC. 428.1. FINDINGS.**

7                   The Board of Supervisors hereby finds that:

8                   (a) The additional affordable housing fee requirement of this Section 428.1 et seq. is supported  
9 by the Nexus Study performed by Keyser Marston and Associates found in Board File No. 081152. The  
10 Board of Supervisors has reviewed the Nexus Study and other documents and, on that basis, finds that  
11 the Study supports the inclusionary affordable housing requirements combined with the additional  
12 affordable housing fee and requirements set forth in this Section 428.1 et seq. Specifically, the Board  
13 finds that the Study: (1) identifies the purpose of the additional fee and requirements to mitigate  
14 impacts on the demand for affordable housing in the City; (2) identifies the use of the additional fee to  
15 increase the City's affordable housing supply; and (3) establishes a reasonable relationship between  
16 the use of the additional fee for affordable housing and the need for affordable housing and the  
17 construction of new market rate housing. The study identified a different nexus for ownership housing  
18 and rental housing, and the City has imposed an inclusionary housing requirement based on the lower  
19 of the 2 amounts, since the City does not impose different fees on rental or ownership housing.  
20 Moreover, the current inclusionary affordable housing fees provided herein are less than the cost of  
21 mitigation, as identified in the nexus study, and this amount provides a margin for possible calculation  
22 differences among projects and analyses. Further, the affordable housing fee and requirements do not  
23 include the costs of remedying any existing deficiencies and do not duplicate other City requirements or  
24 fees.

1           (b) An account has been established, funds appropriated, and a construction schedule adopted  
2 for affordable housing projects funded through the Inclusionary Affordable Housing Program. The  
3 Affordable Housing Fee will reimburse the City for expenditures on affordable housing that have  
4 already been made and that will be made in the future.

5           (c) A major objective of the Divisadero Street and Fillmore Street NCTs, set forth in Planning  
6 Code Sections 746 and 747, respectively, is to encourage and promote development that enhances the  
7 walkable, mixed-use character of the corridor and surrounding neighborhoods and to encourage  
8 housing development in new buildings above the ground floor. New market rate housing development  
9 could outnumber both the number of units and potential new sites within the area for permanently  
10 affordable housing opportunities. The City has adopted a policy in its General Plan to meet the  
11 affordable housing needs of its general population and to require new housing developments to  
12 produce sufficient affordable housing opportunities for all income groups, both of which goals are not  
13 likely to be met by the potential housing development in the area. In addition, the Nexus Study  
14 indicates that market rate housing itself generates additional lower income affordable housing needs  
15 for the workforce needed to serve the residents of the new market rate housing proposed for the area.  
16 To meet the demand created for affordable housing by the Divisadero Street NCT and Fillmore Street  
17 NCT zoning and to be consistent with the policy of the City, additional affordable housing requirements  
18 should be included for all market rate housing development in these NCTs, with priority for its use  
19 being given to the area.

20           (d) The Divisadero Street NCT and Fillmore Street NCT rezonings will allow greater  
21 residential development on certain sites within the NCTs, and the amount of the Inclusionary Housing  
22 Cost Obligation may be increased consistent with current Charter Section 16.110 if the City determines  
23 that a site within the NCTs would allow greater residential development, consistent with the exceptions  
24 set forth in Charter Section 16.110(h)(1)(B).

1           (e) If the voters approve the Charter Amendment on June 7, 2016, and the Board adopts  
2 permanent inclusionary affordable housing requirements that are higher than those set forth in  
3 Sections 428 et seq., the higher requirement shall apply.

4           **SEC. 428.2. DEFINITIONS.**

5           See Section 401 of this Article 4.

6           **SEC. 428.3. APPLICATION OF AFFORDABLE HOUSING FEE REQUIREMENT.**

7           (a) Applicability. In the event that the Planning Department determines that the residential  
8 development potential on a site within the Divisadero Street NCT or the Fillmore Street NCT has been  
9 increased through the adoption of the NCT rezoning set forth in Ordinance Nos. 126-15 and 127-15  
10 consistent with certain exceptions set forth in Charter Section 16.110(h)(1)(B), the requirements of  
11 Sections 415.1 through 415.9 of the Planning Code shall apply, except that the following affordable  
12 housing requirements shall be applied to such residential development:

13           (1) Fee. For a development project that is subject to the Residential Inclusionary  
14 Affordable Housing Program, the development project shall pay an affordable housing fee equivalent  
15 to a requirement to provide 25% of the units in the principal project as affordable units, using the  
16 method of fee calculation set forth in Section 415.5(b).

17           (2) On-Site Housing. If the project sponsor of a housing development project is  
18 eligible and elects to construct units affordable to qualifying households on-site of the principal project  
19 as set forth in Planning Code Section 415.5(g), the project sponsor shall construct 23% of all units  
20 constructed on the project site as affordable housing and shall comply with all otherwise applicable  
21 requirements of Section 415.6.

22           (3) Off-Site Housing. If the project sponsor of a housing development project is  
23 eligible and elects to provide units affordable to qualifying households off-site of the principal project  
24 as set forth in Section 415.5(g), the project sponsor shall construct or cause to be constructed  
25

1 affordable housing equal to 25% of all units constructed on the principal project site as affordable  
2 housing and shall comply with all otherwise applicable requirements of Section 415.7.

3 (b) **Exemption for Affordable Housing.** A project applicant shall not pay the affordable  
4 housing fee for any space designated as a below market rate unit under Section 415.1 et seq., the  
5 Citywide Inclusionary Affordable Housing Program, or any other residential unit that is designated as  
6 an affordable housing unit under a Federal, State, or local restriction in a manner that maintains  
7 affordability for a term no less than 50 years.

8 (c) **Timing of Payment.** The Affordable Housing Fee shall be paid at the time of and in no  
9 event later than the City issues a first construction document, with an option for the project sponsor to  
10 defer payment to prior to issuance of the first certificate of occupancy upon agreeing to pay a deferral  
11 surcharge in accordance with Section 107A.13.3 of the San Francisco Building Code.

12 **SEC. 428.4. IMPOSITION OF AFFORDABLE HOUSING REQUIREMENTS.**

13 (a) **Determination of Requirements.** The Planning Department shall determine the  
14 applicability of Section 428.1 et seq. to any development project requiring a first construction  
15 document and, if Section 428.1 et seq. is applicable, shall impose any such requirements as a condition  
16 of approval for issuance of the first construction document. The project sponsor shall supply any  
17 information necessary to assist the Department in this determination.

18 (b) **Department Notice to Development Fee Collection Unit of Fee Requirements.** After the  
19 Department has made its final determination regarding the application of the affordable housing  
20 requirements to a development project pursuant to Section 428.1 et seq., it shall immediately notify the  
21 Development Fee Collection Unit at DBI of the applicable affordable housing fee amount in addition to  
22 the other information required by Planning Code Section 402(b).

23 (c) **Process for Revisions of Determination of Requirements.** If the Department or the  
24 Commission takes action affecting any development project subject to Section 428.1 et seq. and such  
25



1 action is subsequently modified, superseded, vacated, or reversed by the Board of Appeals, the Board  
2 of Supervisors, or a court, the procedures of Planning Code Section 402(c) shall be followed.

3 **SEC. 428.5. USE OF FUNDS.**

4 The additional affordable housing fee specified in this Section 428.1 et seq. for the Divisadero  
5 Street NCT and the Fillmore Street NCT shall be paid into the Citywide Affordable Housing Fund,  
6 established in Administrative Code Section 10.100-49, but the funds shall be separately accounted for.  
7 The Mayor's Office of Housing and Community Development shall expend the funds according to the  
8 following priorities: first, to increase the supply of housing affordable to qualifying households in the  
9 Divisadero Street NCT and the Fillmore Street NCT; second, to increase the supply of housing  
10 affordable to qualifying households within one mile of the boundaries of the Divisadero Street NCT and  
11 the Fillmore Street NCT; and third, to increase the supply of housing affordable to qualifying  
12 households in the City. The funds may also be used for monitoring and administrative expenses subject  
13 to the process described in Planning Code Section 415.5(f).

14  
15 Section 3. The Planning Code is hereby amended by revising Sections 746 and 747,  
16 to read as follows:

17 **SEC. 746. DIVISADERO STREET NEIGHBORHOOD COMMERCIAL TRANSIT**  
18 **DISTRICT.**

19 The Divisadero Street Neighborhood Commercial Transit District ("Divisadero Street  
20 NCT") extends along Divisadero Street between Haight and O'Farrell Streets. Divisadero  
21 Street's dense mixed-use character consists of buildings with residential units above ground-  
22 story commercial use. Buildings typically range in height from two to four stories with  
23 occasional one-story commercial buildings. The district has an active and continuous  
24 commercial frontage along Divisadero Street for most of its length. Divisadero Street is an  
25 important public transit corridor and throughway street. The commercial district provides

1 convenience goods and services to the surrounding neighborhoods as well as limited  
2 comparison shopping goods for a wider market.

3 The Divisadero Street NCT controls are designed to encourage and promote  
4 development that enhances the walkable, mixed-use character of the corridor and  
5 surrounding neighborhoods. Rear yard requirements above the ground story and at residential  
6 levels preserve open space corridors of interior blocks. Housing development in new buildings  
7 is encouraged above the ground story. Existing residential units are protected by limitations  
8 on demolition and upper-story conversions.

9 Consistent with Divisadero Street's existing mixed-use character, new commercial  
10 development is permitted at the ground and second stories. Most neighborhood-serving  
11 businesses are strongly encouraged. Controls on new Formula Retail uses are consistent with  
12 Citywide policy for Neighborhood Commercial Districts; Eating and Drinking and  
13 Entertainment uses are confined to the ground story. The second story may be used by some  
14 retail stores, personal services, and medical, business and professional offices. Additional  
15 flexibility is offered for second-floor Eating and Drinking, Entertainment, and Trade Shop uses  
16 in existing non-residential buildings to encourage the preservation and reuse of such  
17 buildings. Hotels are monitored at all stories. Limits on late-night activity, drive-up facilities,  
18 and other automobile uses protect the livability within and around the district, and promote  
19 continuous retail frontage.

20 *If the Planning Department determines that the residential development potential on a site*  
21 *within the Divisadero Street NCT has been increased through the adoption of the NCT rezoning set*  
22 *forth in Ordinance No. 127-15, consistent with certain exceptions set forth in Charter Section*  
23 *16.110(h)(1)(B), any development project that is subject to the Residential Inclusionary Affordable*  
24 *Housing Program on such site shall pay the Affordable Housing Fee, or provide one of the Alternatives*  
25 *to Payment of the Affordable Housing Fee, set forth in Planning Code Sections 415 et seq., except that*

1 the amount of the Affordable Housing Fee or Alternatives to Payment of the Affordable Housing Fee  
2 shall be modified as set forth in Planning Code Section 428 et seq. If the voters approve the Charter  
3 Amendment on June 7, 2016, and the Board adopts permanent inclusionary affordable housing  
4 requirements that are higher than those set forth in Sections 428 et seq., the higher requirements shall  
5 apply.

6 \* \* \* \*

7  
8 **SEC. 747. FILLMORE STREET NEIGHBORHOOD COMMERCIAL TRANSIT**  
9 **DISTRICT.**

10 The Fillmore Street Neighborhood Commercial Transit District ("Fillmore Street NCT")  
11 extends along Fillmore Street between Bush and McAllister Streets. Fillmore Street's dense  
12 mixed-use character consists of buildings with residential units above ground-story  
13 commercial use. Buildings range in height from one-story commercial buildings to high-rise  
14 towers. Fillmore Street and Geary Boulevard are important public transit corridors. The  
15 commercial district provides convenience goods and services to the surrounding  
16 neighborhoods as well as shopping, cultural, and entertainment uses that attract visitors from  
17 near and far.

18 The Fillmore Street NCT controls are designed to encourage and promote  
19 development that enhances the walkable, mixed-use character of the corridor and  
20 surrounding neighborhoods. Rear yard requirements at residential levels preserve open space  
21 corridors of interior blocks. Housing development in new buildings is encouraged above the  
22 ground story. Existing residential units are protected by limitations on demolition and upper-  
23 story conversions.

24 Consistent with Fillmore Street's existing mixed-use character, new commercial  
25 development is permitted at the ground and second stories. Most neighborhood- and visitor-

1 serving businesses are strongly encouraged. Controls on new Formula Retail uses are  
2 consistent with Citywide policy for Neighborhood Commercial Districts; Eating and Drinking  
3 and entertainment uses are confined to the ground story. The second story may be used by  
4 some retail stores, personal services, and medical, business, and professional offices.  
5 Parking and hotels are monitored at all stories. Limits on drive-up facilities and other  
6 automobile uses protect the livability within and around the district and promote continuous  
7 retail frontage.

8 If the Planning Department determines that the residential development potential on a site  
9 within the Fillmore Street NCT has been increased through the adoption of the NCT rezoning set forth  
10 in Ordinance No. 126-15, consistent with certain exceptions set forth in Charter Section  
11 16.110(h)(1)(B), any development project that is subject to the Residential Inclusionary Affordable  
12 Housing Program on such site shall pay the Affordable Housing Fee, or provide one of the Alternatives  
13 to Payment of the Affordable Housing Fee, set forth in Planning Code Sections 415 et seq., except that  
14 the amount of the Affordable Housing Fee or Alternatives to Payment of the Affordable Housing Fee  
15 shall be modified as set forth in Planning Code Section 428 et seq. If the voters approve the Charter  
16 Amendment on June 7, 2016, and the Board adopts permanent inclusionary affordable housing  
17 requirements that are higher than those set forth in Sections 428 et seq., the higher requirements shall  
18 apply.

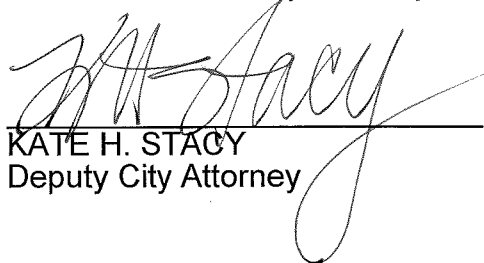
19 \* \* \* \*

20  
21 Section 4. Effective Date. This ordinance shall become effective 30 days after  
22 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
23 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
24 of Supervisors overrides the Mayor's veto of the ordinance.  
25

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

7  
8 APPROVED AS TO FORM:  
9 DENNIS J. HERRERA, City Attorney

10  
11 By:

  
KATE H. STACY  
Deputy City Attorney

12  
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