

[Planning Code - Affordable Housing Program Exemption for Qualified Student Housing]

**Ordinance amending the Residential Inclusionary Affordable Housing Program,
Planning Code Sections 415 et seq. to exempt certain Qualified Student Housing
Projects, as defined, if the project meets certain requirements; and making findings
including environmental findings.**

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

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

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

(a) The Planning Department has determined that the actions contemplated in this Ordinance are in compliance 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.

(b) On _____, 2009, the Planning Commission, in Resolution No. _____ approved and recommended for adoption by the Board this legislation and adopted findings that it is consistent, on balance, with the City's General Plan and eight priority policies of Planning Code Section 101.1. The Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No. _____, and is incorporated by reference herein.

(c) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this legislation will serve the public necessity, convenience, and welfare for the reasons

1 set forth in Planning Commission Resolution No. _____, and incorporates such
2 reasons by reference herein.

3 Section 2. The San Francisco Planning Code is hereby amended by amending Section
4 401 and 415.3, to read as follows:

5 **SEC. 401. DEFINITIONS.**

6 (a) In addition to the specific definitions set forth elsewhere in this Article, the
7 following definitions shall govern interpretation of this Article:

8 (1) "Affordable housing project." A housing project containing units constructed to
9 satisfy the requirements of Sections 413.5, 413.8, 415.4, or 4.5.5 of this Article, or receiving
10 funds from the Citywide Affordable Housing Fund.

11 (2) "Affordable to a household." A purchase price that a household can afford to pay
12 based on an annual payment for all housing costs of 33 percent of the combined household
13 annual net income, a 10 percent down payment, and available financing, or a rent that a
14 household can afford to pay based on an annual payment for all housing costs of 30 percent
15 of the combined annual net income.

16 (3) "Affordable to qualifying households":

17 (A) With respect to owned units, the average purchase price on the initial sale of all
18 affordable owned units in an affordable housing project shall not exceed the allowable
19 average purchase price. Each unit shall be sold:

20 (i) Only to households with an annual net income equal to or less than that of a
21 household of moderate income; and

22 (ii) At or below the maximum purchase price.

23 (B) With respect to rental units in an affordable housing project, the average annual
24 rent shall not exceed the allowable average annual rent. Each unit shall be rented:

1 (i) Only to households with an annual net income equal to or less than that of a
2 household of lower income;

3 (ii) At or less than the maximum annual rent.

4 (4) "Allowable average purchase price":

5 (A) For all affordable one-bedroom units in a housing project, a price affordable to a
6 two-person household of median income as set forth in Title 25 of the California Code of
7 Regulations Section 6932 ("Section 6932") on January 1st of that year;

8 (B) For all affordable two-bedroom units in a housing project, a price affordable to a
9 three-person household of median income as set forth in Section 6932 on January 1st of that
10 year;

11 (C) For all affordable three-bedroom units in a housing project, a price affordable to
12 a four-person household of median income as set forth in Section 6932 on January 1st of that
13 year;

14 (D) For all affordable four-bedroom units in a housing project, a price affordable to a
15 five-person household of median income as set forth in Section 6932 on January 1st of that
16 year.

17 (1) "Affordable to qualifying middle income households":

18 (A) With respect to owned units, the average purchase price on the initial sale of all
19 qualifying middle income units shall not exceed the allowable average purchase price deemed
20 acceptable for households with an annual gross income equal to or less than the qualifying
21 limits for a household of middle income, adjusted for household size. This purchase price shall
22 be based on household spending of 35% of income for housing, and shall only apply to initial
23 sale, and not for the life of the unit.

24 (B) With respect to rental units, the average annual rent--including the cost of
25 utilities paid by the tenant according to the HUD utility allowance established by the San

1 Francisco Housing Authority -- for qualifying middle income units shall not exceed the
2 allowable average purchase price deemed acceptable for households with an annual gross
3 income equal to or less than the qualifying limits for a household of middle income, adjusted
4 for household size. This price restriction shall exist for the life of the unit.

5 (5) "Allowable average annual rent":

6 (A) For all affordable one-bedroom units in a housing project, 18 percent of the
7 median income for a household of two persons as set forth in Section 6932 on January 1st of
8 that year;

9 (B) For all affordable two-bedroom units in a housing project, 18 percent of the
10 median income for a household of three persons as set forth in Section 6932 on January 1st
11 of that year;

12 (C) For all affordable three-bedroom units in a housing project, 18 percent of the
13 median income for a household of four persons as set forth in Section 6932 on January 1st of
14 that year;

15 (D) For all affordable four-bedroom units in a housing project, 18 percent of the
16 median income for a household of five persons as set forth in Section 6932 on January 1st of
17 that year.

18 (6) "Annual gross income." Gross income as defined in CCR Title 25, Section 6914,
19 as amended from time to time, except that MOH may, in order to promote consistency with
20 the procedures of the San Francisco Redevelopment Agency, develop an asset test that
21 differs from the State definition if it publishes that test in the Procedures Manual.

22 (7) "Annual net income." Net income as defined in Title 25 of the California Code of
23 Regulations Section 6916.

1 (8) "Average annual rent." The total annual rent for the calendar year charged by a
2 housing project for all affordable rental units in the project of an equal number of bedrooms
3 divided by the total number of affordable units in the project with that number of bedrooms.

4 (9) "Average purchase price." The purchase price for all affordable owned units in
5 an affordable housing project of an equal number of bedrooms divided by the total number of
6 affordable units in the project with that number of bedrooms.

7 (10) "Balboa Park Community Improvements Fund." The fund into which all fee
8 revenue the City collects from the Balboa Park Impact Fee is deposited.

9 (11) "Balboa Park Community Improvements Program." The program intended to
10 implement the community improvements identified in the Balboa Park Area Plan, as
11 articulated in the Balboa Park Community Improvements Program Document on file with the
12 Clerk of the Board.

13 (12) "Balboa Park Impact Fee." The fee collected by the City to mitigate impacts of
14 new development in the Balboa Park Program Area, as described in the findings in Section
15 422.1.

16 (13) "Balboa Park Program Area." The Balboa Park Plan Area in Figure 1 of the
17 Balboa Park Station Area Plan of the San Francisco General Plan.

18 (14) "Base service standard." The relationship between revenue service hours
19 offered by the Municipal Railway and the number of automobile and transit trips estimated to
20 be generated by certain non-residential uses, expressed as a ratio where the numerator
21 equals the average daily revenue service hours offered by MUNI and the denominator equals
22 the daily automobile and transit trips generated by non-residential land uses as estimated by
23 the TIDF Study or updated under Section 411.5 of this Article.

24 (15) "Base service standard fee rate." The TIDF that would allow the City to recover
25 the estimated costs incurred by the Municipal Railway to meet the demand for public transit

1 resulting from new development in the economic activity categories for which the fee is
2 charged, after deducting government grants, fare revenue, and costs for non-vehicle
3 maintenance and general administration.

4 (16) "Board" or "Board of Supervisors." The Board of Supervisors of the City and
5 County of San Francisco.

6 (17) "Child-care facility." A child-care facility as defined in California Health and
7 Safety Code Section 1596.750.

8 (18) "Child-care provider." A provider as defined in California Health and Safety Code
9 Section 1596.791.

10 (19) "City" or "San Francisco." The City and County of San Francisco.

11 (20) "Commercial Space Subject to the Market and Octavia Community
12 Infrastructure Impact Fee." For each net addition of occupiable square feet within the Program
13 Area which results in an additional commercial unit or any increased commercial capacity that
14 is beyond 20 percent of the non-residential capacity at the time that requirements originally
15 became effective.

16 (21) "Commercial development project." Any new construction, addition, extension,
17 conversion or enlargement, or combination thereof, of an existing structure which includes any
18 occupied floor area of commercial use; provided, however, that for projects that solely
19 comprise an addition to an existing structure which would add occupied floor area in an
20 amount less than 20 percent of the occupied floor area of the existing structure, the provisions
21 of this Article shall only apply to the new occupied square footage.

22 (22) "Commercial use." Any structure or portion thereof intended for occupancy by
23 retail or office uses that qualify as an accessory use, as defined and regulated in Sections 204
24 through 204.5 of this Code.

1 (23) "Commission" or "Planning Commission." The San Francisco Planning
2 Commission.

3 (24) "Community apartment." As defined in San Francisco Subdivision Code Section
4 1308(b).

5 (25) "Community facilities." All uses as defined under Section 209.4(a) and 209.3(d)
6 of this Code.

7 (26) "Condition of approval" or "Conditions of approval." A condition or set of written
8 conditions imposed by the Planning Commission or another permit-approving or issuing City
9 agency or appellate body to which a project applicant agrees to adhere and fulfill when it
10 receives approval for the construction of a development project subject to this Article .

11 (27) "Condominium." As defined in California Civil Code Section 783.

12 (28) "Cultural/Institution/Education (CIE)." An economic activity category subject to
13 the TIDF that includes, but is not limited to, schools, as defined in Sections 209.3(g), (h), and
14 (i) and 217(f)-(i) of this Code; child care facilities; museums and zoos; and community facilities
15 , as defined in Sections 209.4 and 221(a)-(c) of this Code.

16 (29) "DBI." The San Francisco Department of Building Inspection.

17 (30) "Dedicated." Legally transferred to the City and County of San Francisco,
18 including all relevant legal documentation, at no cost to the City.

19 (31) "Dedicated site." The portion of site proposed to be legally transferred at no cost
20 to the City and County of San Francisco under the requirements of this section.

21 (32) "Department" or "Planning Department." The San Francisco Planning
22 Department or the Planning Department's designee, including the Mayor's Office of Housing
23 and other City agencies or departments.

1 (33) "Designated affordable housing zones." For the purposes of implementing the
2 Eastern Neighborhoods Public Benefits Fund, shall mean the Mission NCT defined in Section
3 736 and the Mixed Use Residential District defined in Section 841.

4 (34) "Development fee." Either a development impact fee or an in-lieu fee. It shall not
5 include a fee for service or any time and material charges charged for reviewing or processing
6 permit applications.

7 (35) "Development Fee Collection Unit" or "Unit." The Development Fee Collection
8 Unit at DBI.

9 (36) "Development impact fee." A fee imposed on a development project as a
10 condition of approval to mitigate the impacts of increased demand for public services, facilities
11 or housing caused by the development project that may or may not be an impact fee
12 governed by the California Mitigation Fee Act (California Government Code Section 66000 et
13 seq.).

14 (37) "Development impact requirement." A requirement to provide physical
15 improvements, facilities or below market rate housing units imposed on a development project
16 as a condition of approval to mitigate the impacts of increased demand for public services,
17 facilities or housing caused by the development project that may or may not be governed by
18 the California Mitigation Fee Act (California Government Code Section 66000 et seq.).

19 (38) "Development project." A project that is subject to a development impact or in-
20 lieu fee or development impact requirement.

21 (39) "Development under the TIDF." Any new construction, or addition to or
22 conversion of an existing structure under a building or site permit issued on or after
23 September 4, 2004, that results in 3,000 gross square feet or more of a covered use. In the
24 case of mixed use development that includes residential development, the term "new
25 development" shall refer to only the non-residential portion of such development. "Existing

1 structure" shall include a structure for which a sponsor already paid a fee under the prior TIDF
2 ordinance, as well as a structure for which no TIDF was paid.

3 (40) "Director." The Director of Planning or his or her designee.

4 (41) "DPW." The Department of Public Works.

5 (42) "Eastern Neighborhoods Infrastructure Impact Fee." The fee collected by the
6 City to mitigate impacts of new development in the Eastern Neighborhoods Program Area, as
7 described in the Findings in Section 423.1

8 (43) "Eastern Neighborhoods Public Benefits Fund." The fund into which all fee
9 revenue collected by the City from the Eastern Neighborhoods Impact Fee is deposited.

10 (44) "Eastern Neighborhoods Public Benefits Program." The program intended to
11 implement the community improvements identified in the four Area Plans affiliated with the
12 Eastern Neighborhoods (Central Waterfront, East SoMa, Mission, and Showplace
13 Square/Potrero Hill), as articulated in the Eastern Neighborhoods Public Benefits Program
14 Document, on file with the Clerk of the Board in File No. 081155.)

15 (45) "Eastern Neighborhoods Program Area." The Eastern Neighborhoods Plan Area
16 in Map 1 (Land Use Plan) of the Eastern Neighborhoods Area Plan of the San Francisco
17 General Plan.

18 (46) "Economic activity category." Under the TIDF, one of the following six categories
19 of non-residential uses: Cultural/Institution/Education (CIE), Management, Information and
20 Professional Services (MIPS), Medical and Health Services, Production/Distribution/Repair
21 (PDR), Retail/Entertainment, and Visitor Services.

22 (47) "Entertainment development project." Any new construction, addition, extension,
23 conversion, or enlargement, or combination thereof, of an existing structure which includes
24 any gross square feet of entertainment use.

1 (48) "Entertainment use." Space within a structure or portion thereof intended or
2 primarily suitable for the operation of a nighttime entertainment use as defined in Section
3 102.17 of this Code, a movie theater use as defined in Sections 790.64 and 890.64 of this
4 Code, an adult theater use as defined in Sections 790.36 and 890.36 of this Code, any other
5 entertainment use as defined in Sections 790.38 and 890.37 of this Code, and,
6 notwithstanding Section 790.38 of this Code, an amusement game arcade (mechanical
7 amusement devices) use as defined in Sections 790.4 and 890.4 of this Code. Under this
8 Article, "entertainment use" shall include all office and other uses accessory to the
9 entertainment use, but excluding retail uses and office uses not accessory to the
10 entertainment use.

11 (49) "First certificate of occupancy." Either a temporary certificate of occupancy or a
12 Certificate of Final Completion and Occupancy as defined in San Francisco Building Code
13 Section 109A, whichever is issued first.

14 (50) "First construction document." As defined in Section 107A.13.1 of the San
15 Francisco Building Code.

16 (51) "Gross floor area." The total area of each floor within the building's exterior
17 walls, as defined in Section 102.9(b)(12) of this Code.

18 (52) "Gross square feet of use." With respect to the TIDF, the total square feet of
19 gross floor area in a building and/or space within or adjacent to a structure devoted to all uses
20 covered by the TIDF, including any common areas exclusively serving such uses and not
21 serving residential uses. Where a structure contains more than one use, areas common to
22 two or more uses, such as lobbies, stairs, elevators, restrooms, and other ancillary spaces
23 included in gross floor area that are not exclusively assigned to one uses shall be apportioned
24 among the two or more uses in accordance with the relative amounts of gross floor area,
25 excluding such space, in the structure or on any floor thereof directly assignable to each use.

1 (53) "Gross square footage." The meaning set forth in Section 102.9 of this Code.

2 (54) "Hotel development project." Any new construction, addition, extension,
3 conversion, or enlargement, or combination thereof, of an existing structure which includes
4 any gross square feet of hotel use.

5 (55) "Hotel" or "Hotel use." Space within a structure or portion thereof intended or
6 primarily suitable for rooms, or suites of two or more rooms, each of which may or may not
7 feature a bathroom and cooking facility or kitchenette and is designed to be occupied by a
8 visitor or visitors to the City who pays for accommodations on a daily or weekly basis but who
9 do not remain for more than 31 consecutive days. Under this Article "hotel use" shall include
10 all office and other uses accessory to the renting of guest rooms, but excluding retail uses and
11 office uses not accessory to the hotel use.

12 (56) "Household." Any person or persons who reside or intend to reside in the same
13 housing unit.

14 (57) "Household of lower income." A household composed of one or more persons
15 with a combined annual net income for all adult members which does not exceed the
16 qualifying limit for a lower-income family of a size equivalent to the number of persons
17 residing in such household, as set forth for the County of San Francisco in Title 25 of the
18 California Code of Regulations Section 6932.

19 (58) "Household of median income." A household composed of one or more persons
20 with a combined annual net income for all adult members which does not exceed the
21 qualifying limit for a median-income family of a size equivalent to the number of persons
22 residing in such household, as set forth for the County of San Francisco in Title 25 of the
23 California Code of Regulations Section 6932.

24 (59) "Household of moderate income." A household composed of one or more
25 persons with a combined annual net income for all adult members which does not exceed the

1 qualifying limit for a moderate-income family of a size equivalent to the number of persons
2 residing in such household, as set forth for the County of San Francisco in Title 25 of the
3 California Code of Regulations Section 6932.

4 (60) "Housing developer." Any business entity building housing units which receives a
5 payment from a sponsor for use in the construction of the housing units. A housing developer
6 may be (a) the same business entity as the sponsor, (b) an entity in which the sponsor is a
7 partner, joint venturor, or stockholder, or (c) an entity in which the sponsor has no control or
8 ownership.

9 (61) "Housing project." Any development which has residential units as defined in the
10 Planning Code, including but not limited to dwellings, group housing, independent living units,
11 and other forms of development which are intended to provide long-term housing to
12 individuals and households. "Housing project" shall not include that portion of a development
13 that qualifies as an Institutional Use under the Planning Code. "Housing project" for purposes
14 of this Program shall also include the development of live/work units as defined by Section
15 102.13 of this Code. Housing project for purposes of this Program shall mean all phases or
16 elements of a multi-phase or multiple lot residential development.

17 (62) "Housing unit" or "unit." A dwelling unit as defined in San Francisco Housing
18 Code Section 401.

19 (63) "Improvements Fund." The fund into which all revenues collected by the City for
20 each Program Area's impact fees are deposited.

21 (64) "In-Kind Agreement." An agreement acceptable in form and substance to the
22 City Attorney and the Director of Planning between a project sponsor and the Planning
23 Commission, subject to approval by the Planning Commission in its sole discretion, to provide
24 a specific set of community improvements at a specific phase of construction in lieu of
25 contribution to the relevant Improvements Fund. The In-Kind Agreement shall also mandate a

1 covenant of the project sponsor to reimburse all City agencies for their administrative and staff
2 costs in negotiating, drafting, and monitoring compliance with the In-Kind Agreement. The City
3 shall also require the project sponsor to provide a letter of credit or other instrument
4 acceptable in form and substance to the City Attorney and the Planning Department to secure
5 the City's right to receive payment as described in the preceding sentence.

6 (65) "Infrastructure." Open space and recreational facilities; public realms
7 improvements such as pedestrian improvements and streetscape improvements; public transit
8 facilities; and community facilities such as libraries, child care facilities, and community
9 centers.

10 (66) "In lieu fee." A fee paid by a project sponsor in lieu of complying with a
11 requirement of this Code and that is not a development impact fee governed by the Mitigation
12 Fee Act.

13 (67) "Interim Guidelines" shall mean the Office Housing Production Program Interim
14 Guidelines adopted by the City Planning Commission on January 26, 1982, as amended.

15 (68) "Licensed Child-care facility." A child-care facility which has been issued a valid
16 license by the California Department of Social Services pursuant to California Health and
17 Safety Code Sections 1596.80-1596.875, 1596.95-1597.09, or 1597.30-1597.61.

18 (69) "Live/work project." A housing project containing more than one live/work unit.

19 (70) "Live/work unit" shall be as defined in Section 102.13 of this Code.

20 (71) "Long term housing." Housing intended for occupancy by a person or persons
21 for 32 consecutive days or longer.

22 (72) "Low income." For purposes of this Article, up to 80% of median family income
23 for the San Francisco PMSA, as calculated and adjusted by the United States Department of
24 Housing and Urban Development (HUD) on an annual basis, except that as applied to
25 housing-related purposes such as the construction of affordable housing and the provision of

1 rental subsidies with funds from the SOMA Stabilization Fund established in Section 418.7, it
2 shall mean up to 60% of median family income for the San Francisco PMSA, as calculated
3 and adjusted by HUD on an annual basis.

4 (73) "Management, Information and Professional Services (MIPS). An economic
5 activity category under the TIDF that includes, but is not limited to, office use; medical offices
6 and clinics, as defined in Section 890.114 of this Code; business services, as defined in
7 Section 890.111 of this Code; Integrated PDR, as defined in Section 890.49 of this Code, and
8 Small Enterprise Workspaces, as defined in Section 227(t) of this Code.

9 (74) "Market and Octavia Community Improvements Fund" The fund into which all
10 fee revenue collected by the City from the Market and Octavia Community Improvements Fee
11 is deposited.

12 (75) "Market and Octavia Community Improvements Impact Fee." The fee collected
13 by the City to mitigate impacts of new development in the Market and Octavia Program Area,
14 as described in the findings in Section 421.1.

15 (76) "Market and Octavia Community Improvements Program." The program
16 intended to implement the community improvements identified in the Market and Octavia Area
17 Plan, as articulated in the Market and Octavia Community Improvements Program Document
18 on file with the Clerk of the Board in File No. 071157.)

19 (77) "Market and Octavia Program Area." The Market and Octavia Plan Area in Map
20 1 (Land Use Plan) of the Market and Octavia Area Plan of the San Francisco General Plan,
21 which includes those districts zoned RTO, NCT, or any neighborhood specific NCT, a few
22 parcels zoned RH-1 or RH-2, and those parcels within the Van Ness and Market Downtown
23 Residential Special Use District (VMDRSUD).

24 (78) "Market rate housing." Housing constructed in the principal project that is not
25 subject to sales or rental restrictions.

1 (79) "Maximum annual rent." The maximum rent that a housing developer may
2 charge any tenant occupying an affordable unit for the calendar year. The maximum annual
3 rent shall be 30 percent of the annual income for a lower-income household as set forth in
4 Section 6932 on January 1st of each year for the following household sizes:

- 5 (A) For all one-bedroom units, for a household of two persons;
- 6 (B) For all two-bedroom units, for a household of three persons;
- 7 (C) For all three-bedroom units, for a household of four persons;
- 8 (D) For all four-bedroom units, for a household of five persons.

9 (19) "Maximum purchase price." The maximum purchase price that a household of
10 moderate income can afford to pay for an owned unit based on an annual payment for all
11 housing costs of 33 percent of the combined household annual net income, a 10 percent
12 down payment, and available financing, for the following household sizes:

- 13 (A) For all one-bedroom units, for a household of two persons;
- 14 (B) For all two-bedroom units, for a household of three persons;
- 15 (C) For all three-bedroom units, for a household of four persons;
- 16 (D) For all four-bedroom units, for a household of five persons.

17 (80) "Medical and Health Services." An economic activity category under the TIDF
18 that includes, but is not limited to, those non-residential uses defined in Sections 209.3(a) and
19 217(a) of this Code; animal services, as defined in Section 224(a) and (b) of this Code; and
20 social and charitable services, as defined in Sections 209.3(d) and 217(d) of this Code.

21 (81) "Middle Income Household." A household whose combined annual gross
22 income for all members is between 120 percent and 150 percent of the local median income
23 for the City and County of San Francisco, as calculated by the Mayor's Office of Housing
24 using data from the United States Department of Housing and Urban Development (HUD) and
25 adjusted for household size or, if data from HUD is unavailable, as calculated by the Mayor's

1 Office of Housing using other publicly available and credible data and adjusted for household
2 size.

3 (82) "MOCD." The Mayor's Office of Community Development.

4 (83) "MOH." The Mayor's Office of Housing.

5 (84) "MTA." The Municipal Transportation Agency.

6 (85) "MTA Director." The Director of MTA or his or her designee.

7 (86) "Municipal Railway; MUNI." The public transit system owned by the City and
8 under the jurisdiction of the MTA.

9 (87) "Net addition." The total amount of gross floor area defined in Planning Code
10 Section 102.9 to be occupied by a development project, less the gross floor area existing in
11 any structure demolished or retained as part of the proposed development project that had
12 been occupied by, or primarily serving, any residential, non-residential, or PDR use for five
13 years prior to the Planning Commission or Planning Department approval of a development
14 project subject to this Article, or for the life of the structure demolished or retained, whichever
15 is shorter.

16 (88) "Net addition of occupiable square feet of commercial use." Occupied floor area,
17 as defined in Section 102.10 of this Code, to be occupied by or primarily serving, non-
18 residential use excluding common areas such as hallways, maintenance facilities and lobbies,
19 less the occupied floor area in any structure demolished or rehabilitated as part of the
20 proposed commercial development project which occupied floor area was used primarily and
21 continuously for commercial use and was not accessory to any use other than residential use
22 for at least five years prior to Planning Department approval of a residential development
23 project subject to this Article, or for the life of the structure demolished or rehabilitated,
24 whichever is shorter.

1 (89) Net addition of gross square feet of entertainment space." Gross floor area as
2 defined in Section 102.9 of this Code to be occupied by, or primarily serving, entertainment
3 use, less the gross floor area in any structure demolished or rehabilitated as part of the
4 proposed entertainment development project that was used primarily and continuously for
5 entertainment, hotel, office, research and development, or retail use and was not accessory to
6 any use other than entertainment, hotel, office, research and development, or retail use, for
7 five years prior to Commission approval of an entertainment development project subject to
8 this Article, or for the life of the structure demolished or rehabilitated, whichever is shorter, so
9 long as such space was subject to Section 413.1 et seq. of this Article or the Interim
10 Guidelines.

11 (90) "Net addition of gross square feet of hotel space." Gross floor area as defined in
12 Section 102.9 of this Code to be occupied by, or primarily serving, hotel use, less the gross
13 floor area in any structure demolished or rehabilitated as part of the proposed hotel
14 development project space used primarily and continuously for office or hotel use and not
15 accessory to any use other than office or hotel use for five years prior to Commission approval
16 of a hotel development project subject to this Article, or for the life of the structure demolished
17 or rehabilitated, whichever is shorter.

18 (91) "Net addition of gross square feet of non-residential space." Gross floor area as
19 defined in Section 102.9 of this Code to be occupied by, or primarily serving, any non-
20 residential use, less the gross floor area in any structure demolished or rehabilitated as part of
21 the proposed development project space used primarily and continuously for the same non-
22 residential use within the same economic activity category. This space shall be accessory to
23 any use other than that same non-residential use for five years prior to Commission approval
24 of a development project subject to this Article, or for the life of the structure demolished or
25 rehabilitated, whichever is shorter.

1 (92) "Net addition of gross square feet of residential space." Gross floor area as
2 defined in Section 102.9 of this Code to be occupied by, or primarily serving, residential use,
3 less the gross floor area in any structure demolished or rehabilitated as part of the proposed
4 residential development project space used primarily and continuously for residential use and
5 not accessory to any use other than residential use for five years prior to Planning
6 Commission approval of a development project, subject to this Article, or for the life of the
7 structure demolished or rehabilitated, whichever is shorter.

8 (93) "Net addition of gross square feet of office space." Gross floor area as defined in
9 Planning Code Section 102.9 to be occupied by, or primarily serving, office use, less the gross
10 floor area in any structure demolished or rehabilitated as part of the proposed office
11 development project space used primarily and continuously for office or hotel use and not
12 accessory to any use other than office or hotel use for five years prior to Planning
13 Commission approval of an office development project subject to this Article, or for the life of
14 the structure demolished or rehabilitated, whichever is shorter.

15 (94) Net addition of gross square feet of research and development space." Gross
16 floor area as defined in Section 102.9 of this Code to be occupied by, or primarily serving,
17 research and development use, less the gross floor area in any structure demolished or
18 rehabilitated as part of the proposed research and development project that was used
19 primarily and continuously for entertainment, hotel, office, research and development, or retail
20 use and was not accessory to any use other than entertainment, hotel, office, research and
21 development, or retail use, for five years prior to Commission approval of a research and
22 development project subject to this Article, or for the life of the structure demolished or
23 rehabilitated, whichever is shorter.

24 (95) "Net addition of gross square feet of retail space." Gross floor area as defined in
25 Section 102.9 of this Code to be occupied by, or primarily serving, retail use, less the gross

1 floor area in any structure demolished or rehabilitated as part of the proposed retail
2 development project that was used primarily and continuously for entertainment, hotel, office,
3 research and development, or retail use and was not accessory to any use other than
4 entertainment, hotel, office, research and development, or retail use, for five years prior to
5 Planning Commission approval of a retail development project subject to this Article, or for the
6 life of the structure demolished or rehabilitated, whichever is shorter.

7 (96) "New development." Under the TIDF, any new construction, or addition to or
8 conversion of an existing structure under a building or site permit issued on or after
9 September 4, 2004 that results in 3,000 gross square feet or more of a use covered by the
10 TIDF. In the case of mixed use development that includes residential development, the term
11 "new development" shall refer to only the non-residential portion of such development.
12 "Existing structure" shall include a structure for which a sponsor already paid a fee under the
13 prior TIDF ordinance, as well as a structure for which no TIDF was paid.

14 (97) "Nonprofit child-care provider." A child-care provider that is an organization
15 organized and operated for nonprofit purposes within the provisions of California Revenue
16 and Taxation Code Sections 23701--23710, inclusive, as demonstrated by a written
17 determination from the California Franchise Tax Board exempting the organization from taxes
18 under Revenue and Taxation Code Section 23701.

19 (98) "Nonprofit organization." An organization organized and operated for nonprofit
20 purposes within the provisions of California Revenue and Taxation Code Sections 23701--
21 23710, inclusive, as demonstrated by a written determination from the California Franchise
22 Tax Board exempting the organization from taxes under Revenue and Taxation Code Section
23 23701.

24 (99) "Non-Residential development project." Any new construction, addition,
25 extension, conversion or enlargement, or combination thereof, of an existing structure that

1 includes any occupied floor area of a non-residential use; provided, however, that for projects
2 that solely comprise an addition to an existing structure that would add occupied floor area in
3 an amount less than 20 percent of the occupied floor area of the existing structure, the
4 provisions of this Article shall only apply to the new occupied square footage.

5 (100) "Non-Residential space subject to the Balboa Park Impact Fee." Each net
6 addition of gross square feet within the Project Area that contributes to a 20 percent increase
7 in commercial capacity of an existing structure.

8 (101) "Non-residential Space Subject to the Eastern Neighborhoods Infrastructure
9 Impact Fee. Each net addition of net square feet within the Eastern Neighborhoods Project
10 Area which contributes to a 20 percent increase in non-residential capacity of an existing
11 structure.

12 (102) "Non-residential use." Any structure or portion thereof intended for occupancy by
13 retail, office, commercial, or other non-residential uses defined in Section 209.3, 209.8, 217,
14 218, 219 of this Code, and 221; except that residential components of uses defined in Section
15 209.3(a)-(c) and (g)-(i) shall be defined as a "residential use" for purposes of this Article. For
16 the purposes of this Article, non-residential use shall not include PDR and publicly owned and
17 operated community facilities.

18 (103) "Notice of Special Restrictions." A document recorded with the San Francisco
19 Recorder's Office for any unit subject to this Program detailing the sale and resale or rental
20 restrictions and any restrictions on purchaser or tenant income levels included as a Condition
21 of Approval of the principal project relating to the unit.

22 (104) "Office development project." Any new construction, addition, extension,
23 conversion or enlargement, or combination thereof, of an existing structure which includes any
24 gross floor area of office use
25

1 (105) "Office use." Space within a structure or portion thereof intended or primarily
2 suitable for occupancy by persons or entities which perform, provide for their own benefit, or
3 provide to others at that location services including, but not limited to, the following:
4 Professional; banking; insurance; management; consulting; technical; sales; and design; and
5 the non-accessory office functions of manufacturing and warehousing businesses; all uses
6 encompassed within the definition of "office" in Section 219 of this Code; multimedia,
7 software, development, web design, electronic commerce, and information technology; all
8 uses encompassed within the definition of "administrative services" in Section 890.106 of this
9 Code; and all "professional services" as proscribed in Section 890.108 of this Code excepting
10 only those uses which are limited to the Chinatown Mixed Use District.

11 (106) "Off-site unit." A unit affordable to qualifying households constructed pursuant to
12 this Ordinance on a site other than the site of the principal project.

13 (107) "On-site unit." A unit affordable to qualifying households constructed pursuant to
14 this Article on the site of the principal project.

15 (108) "Owned unit." A unit affordable to qualifying households which is a
16 condominium, stock cooperative, community apartment, or detached single-family home. The
17 owner or owners of an owned unit must occupy the unit as their primary residence.

18 (109) "Owner." The record owner of the fee or a vendee in possession.

19 (110) "PDR use." Those uses contained in Sections 220, 222, 223, 224, 225, and 226
20 of this Code.

21 (111) "Principal project." A housing development on which a requirement to provide
22 affordable housing units is imposed.

23 (112) "Principal site." The total site proposed for development, including the portion of
24 site proposed to be legally transferred to the City and County of San Francisco.
25

1 (113) "Procedures Manual." The City and County of San Francisco Affordable Housing
2 Monitoring Procedures Manual issued by the San Francisco Department of City Planning, as
3 amended.

4 (113A) "Qualified Educational Institution" shall mean an accredited post secondary
5 Educational Institution which has Qualified Students.

6 (113B) "Qualified Student" shall mean a student who receives or is eligible to receive need-
7 based financial aid from Pell Grants, Perkins Loans, Stafford Subsidized Loans or other grants or
8 loans made or guaranteed by the United States Government or a state or local government, or by an
9 entity sponsored and regulated by such unit of government and is currently enrolled at a Qualified
10 Educational Institute.

11 (113C) "Qualified Student Housing Project" shall mean any housing project that contains
12 housing for Qualified Students and which may also contain housing for persons who are enrolled
13 students but not Qualified Students, created either through new construction or conversion of an
14 existing building or space.

15 (113D) "Qualified Student Housing" shall mean housing or group housing (measured either by
16 units or beds) or accessory living space within a non-residential space, either owned by a Qualified
17 Educational Institution or controlled by a Qualified Educational Institution through a long-term master
18 lease for a period of at least 20 years in which at least thirty percent (30%) of such units or beds are
19 occupied by Qualified Students. The Qualified Student Housing may be on the site of the Institution or
20 at another location in the City and County of San Francisco.

21 (114) "Rent" or "rental." The total charges for rent, utilities, and related housing
22 services to each household occupying an affordable unit.

23 (115) "Rental unit." A unit affordable to qualifying households which is not a
24 condominium, stock cooperative, or community apartment.

1 (116) "Replacement." The total amount of gross floor area, as defined in Section 102.9
2 of this Code, to be demolished and reconstructed by a development project, provided that the
3 space demolished had been occupied by, or primarily serving, any residential, non-residential,
4 or PDR use for five years prior to Planning Commission or Planning Department approval of
5 the development project subject to this Article or for the life of the structure demolished or
6 retained, whichever is shorter.

7 (117) "Research and Development ("R&D") project." Any new construction, addition,
8 extension, conversion, or enlargement, or combination thereof, of an existing structure which
9 includes any gross square feet of R&D use.

10 (118) "Research and development use." Space within any structure or portion thereof
11 intended or primarily suitable for basic and applied research or systematic use of research
12 knowledge for the production of materials, devices, systems, information or methods,
13 including design, development and improvement of products and processing, including
14 biotechnology, which involves the integration of natural and engineering sciences and
15 advanced biological techniques using organisms, cells, and parts thereof for products and
16 services, excluding laboratories which are defined as light manufacturing uses consistent with
17 Section 226 of this Code.

18 (119) "Residential Space Subject to the Balboa Park Impact Fee." Each net addition of
19 gross square feet within the Balboa Park Project Area which results in a net new residential
20 unit.

21 (120) "Residential Space Subject to the Eastern Neighborhoods Infrastructure Impact
22 Fee." Each net addition of net square feet within the Eastern Neighborhoods Project Area
23 which results in a net new residential unit.

24 (121) "Residential Space Subject to the Market and Octavia Community Infrastructure
25 Impact Fee." Each net addition of occupiable square feet within the Market and Octavia

1 Program Area which results in an additional residential unit or contributes to a 20 percent
2 increase of residential space from the time that this ordinance is adopted within the Market
3 and Octavia Community Improvements Fund.

4 (122) "Residential use." Any structure or portion thereof intended for occupancy by
5 uses defined in Sections 209.1, 790.88, and 890.88 of this Code, as relevant for the subject
6 zoning district, or containing group housing as defined in Section 209.2(a)-(c) of this Code and
7 any residential components of institutional uses as defined in Section 209.3(a)-(c) and (g-i) of
8 this Code.

9 (123) "Retail development project." Any new construction, addition, extension,
10 conversion, or enlargement, or combination thereof, of an existing structure which includes
11 any gross square feet of retail use.

12 (124) "Retail/entertainment." An economic activity category under the TIDF that
13 includes, but is not limited to, a retail use; an entertainment use; massage establishments, as
14 defined in Section 218.1 of this Code; laundering, and cleaning and pressing, as defined in
15 Section 220 of this Code.

16 (125) "Retail use." Space within any structure or portion thereof intended or primarily
17 suitable for occupancy by persons or entities which supply commodities to customers on the
18 premises including, but not limited to, stores, shops, restaurants, bars, eating and drinking
19 businesses, and the uses defined in Sections 218 and 220 through 225 of this Code, and also
20 including all space accessory to such retail use.

21 (126) "Revenue services hours." The number of hours that the Municipal Railway
22 provides service to the public with its entire fleet of buses, light rail (including streetcars), and
23 cable cars.

1 (127) "Rincon Hill Community Improvements Fund." The fund into which all fee
2 revenue collected by the City from the Rincon Hill Community Infrastructure Impact Fee is
3 deposited.

4 (128) "Rincon Hill Community Infrastructure Impact Fee." The fee collected by the City
5 to mitigate impacts of new development in the Rincon Hill Program Area, as described in the
6 findings in Section 418.1.

7 (129) "Rincon Hill Program Area." Those districts identified as the Rincon Hill
8 Downtown Residential (RH DTR) Districts in the Planning Code and on the Zoning Maps.

9 (130) "Section 6932." Section 6932 of Title 25 of the California Code of Regulations as
10 such section applies to the County of San Francisco.

11 (75) "SOMA." The area bounded by Market Street to the north, Embarcadero to the
12 east, King Street to the south, and South Van Ness and Division to the west.

13 (131) "SOMA Community Stabilization Fee." The fee collected by the City to mitigate
14 impacts on the residents and businesses of SOMA of new development in the Rincon Hill
15 Program Area, as described in the findings in Section 418.1.

16 (132) "SOMA Community Stabilization Fund." The fund into which all fee revenue
17 collected by the City from the SOMA Community Stabilization Fee is deposited.

18 (133) "Sponsor" or "project sponsor." An applicant seeking approval for construction of
19 a development project subject to this Article, such applicant's successor and assigns, and/or
20 any entity which controls or is under common control with such applicant.

21 (134) "Stock cooperative." As defined in California Business and Professions Code
22 Section 11003.2.

23 (135) "Student housing." A building where 100 percent of the residential uses are
24 affiliated with and operated by an accredited post-secondary educational institution. Typically,
25 student housing is for rent, not for sale. This housing shall provide lodging or both meals and

1 lodging, by prearrangement for one week or more at a time. This definition only applies in the
2 Eastern Neighborhoods Mixed Use Districts.

3 (136) "TIDF Study." The study commissioned by the San Francisco Planning
4 Department and performed by Nelson/Nygaard Associates entitled "Transit Impact
5 Development Fee Analysis – Final Report," dated May 2001, including all the Technical
6 Memoranda supporting the Final Report and the Nelson/Nygaard update materials contained
7 in Board of Supervisors File No. 040141.

8 (137) "Total developable site area." That part of the site that can be feasibly
9 developed as residential development, excluding land already substantially developed, parks,
10 required open spaces, streets, alleys, walkways or other public infrastructure.

11 (138) "Transit Impact Development Fee; TIDF." The development fee that is the
12 subject of Section 411.1 et seq. of this Article.

13 (139) "Treasurer." The Treasurer for the City and County of San Francisco.

14 (140) "Trip generation rate." The total number of automobile and Municipal Railway
15 trips generated for each 1,000 square feet of development in a particular economic activity
16 category as established in the TIDF Study, or pursuant to the five-year review process
17 established in Section 411.5 of this Article.

18 (141) "Use." The purpose for which land or a structure, or both, are legally designed,
19 constructed, arranged, or intended, or for which they are legally occupied or maintained, let or
20 leased.

21 (142) "Visitacion Valley." The area bounded by Carter Street and McLaren Park to the
22 west, Mansell Street to the north, Route 101 between Mansell Street and Bayshore Boulevard
23 to the northeast, Bayview Park to the north, Candlestick Park and Candlestick Point
24 Recreation Area to the east, the San Francisco Bay to the southeast, and the San Francisco
25 County line to the south.

1 (143) "Visitor services." An economic activity category under the TIDF that includes,
2 but is not limited to, hotel use; motel use, as defined in Section 216(c) and (d); and time-share
3 projects, as defined in Section 11003.5(a) of the California Business and Professions Code.

4 (144) "Waiver Agreement." An agreement acceptable in form and substance to the
5 City Attorney and the Planning Department under which the City agrees to waive all or a
6 portion of the Community Improvements Impact Fee.

7 SEC. 415.3. APPLICATION.

8 (a) Section 415.1 et seq. shall apply to any housing project that consists of five or
9 more units where an individual project or a phased project is to be undertaken and where the
10 total undertaking comprises a project with five or more units, even if the development is on
11 separate but adjacent lots; and

12 (1) Does not require Commission approval as a conditional use or planned unit
13 development;

14 (2) Requires Commission approval as a conditional use or planned unit
15 development;

16 (3) Consists of live/work units as defined by Section 102.13 of this Code; or

17 (4) Requires Commission approval of replacement housing destroyed by
18 earthquake, fire or natural disaster only where the destroyed housing included units restricted
19 under the Residential Inclusionary Housing Program or the City's predecessor inclusionary
20 housing policy, condominium conversion requirements, or other affordable housing program.

21 (b) Section 415.1 et seq. shall apply to all housing projects that have not received a
22 first site or building permit on or before the effective date of Section 415.1 et seq. with the
23 following exceptions. Until these application dates take effect as described below, the
24 provisions of Section 415.1 et seq. as it exists on July 18, 2006 shall govern.
25

1 (1) The amendments to the off-site requirements in Section 415.6(c) and (d) relating
2 to location and type of off-site housing, and Section 415.4(c) relating to when a developer
3 shall declare whether it will choose an alternative to the on-site requirement shall apply only to
4 projects that receive their Commission or Department approval on or after the effective date of
5 Section 415.1 et seq.

6 (2) The amendments to the percentage-requirements of Section 415.1 et seq. that
7 govern the number of affordable units a housing project is required to provide in Section
8 415.5(a) and 415.6(a) apply only to housing projects that submit their first application,
9 including an environmental evaluation application or any other Planning Department or
10 Building Department application, on or after July 18, 2006. Notwithstanding the foregoing, the
11 amendments to the percentage-requirements of Section 415.1 et seq. also apply to any
12 project that has not received its final Commission or Department approvals before July 18,
13 2006 for housing projects that receive a Zoning Map amendment or Planning Code text
14 amendment related to their project approvals that (A) results in a net increase in the number
15 of permissible residential units, or (B) results in a material increase in the net permissible
16 residential square footage. For purposes of subsection B above a material increase shall
17 mean an increase of 5 percent or more, or an increase in 10,000 square feet or more,
18 whichever is less.

19 (3) The amendments in Section 415.1 to the way median income is calculated apply
20 to any housing project that has not received a first site or building permit by the effective date
21 of Section 415.1 et seq..

22 (4) Section 415.1 et seq. shall apply to all housing projects of 5 to 9 units that filed
23 their first application, including an environmental evaluation application or any other Planning
24 Department application on or after July 18, 2006.

25 (c) Section 415.1 et seq. shall not apply to:

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

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

8 (3) That portion of a housing project located on property under the jurisdiction of the
9 San Francisco Redevelopment Agency or the Port of San Francisco where the application of
10 Section 415.1 et seq. is prohibited by California or local law.

11 (4) A Qualified Student Housing Project that meets all of the following criteria:

12 (A) The building or space conversion does not result in loss of existing rental housing;

13 (B) An institutional master plan (IMP) pursuant to Section 304.5 is on file with the Planning
14 Department prior to the issuance of any building permit or alteration permit in connection with the
15 creation of the Qualified Student Housing Project, and, in addition to the requirements of Section
16 304.5, such IMP shall describe: (i) to the extent such information is available, the type and location of
17 housing used by its students; (ii) any plans for the provision of Qualified Student Housing; and (iii) the
18 Educational Institution's need for student housing to support its program; and (iv) the percentage of its
19 students, on an average annual basis, that receive some form of need-based assistance as described in
20 (113B).

21 (C) The Qualified Educational Institution shall agree to submit annual documentation to the
22 Mayor's Office of Housing (MOH) and the Planning Department, on or before December 31 of each
23 year, that addresses the following:

24 (i) Evidence that the Qualified Educational Institution continues to own or otherwise
25 control the Qualified Student Housing Project under a master lease, including a certificate from the

1 owner of the real property and the Qualified Educational Institution attaching a true and complete
2 copy of the master lease (financial information may be redacted) and certifying that the lease has not
3 otherwise been amended or terminated; and

4 (ii) Evidence, on an average annualized basis, of the percentage of Qualified Students in
5 good standing enrolled in the Qualified Educational Institution who are occupying the units or beds or
6 accessory living space in the Qualified Student Housing

7 (iii) The Qualified Educational Institution records a Notice of Special Restrictions (NSR)
8 against fee title to the real property on which the Qualified Student Housing is located that states the
9 following:

10 -- the Student Housing Project becomes subject to the Inclusionary Housing Ordinance
11 requirements applicable to Housing Projects other than Qualified Housing Projects if, within one year
12 of a notice of violation issued by the Planning Department, the Student Housing Project fails to meet
13 the requirements for a Qualified Student Housing Project;

14 --the Qualified Educational Institution is required to report annually as required in subsection
15 (C) above;

16 -- the City may commence legal action against the owner and/or Qualified Educational
17 Institution to enforce the NSR and the terms of Article IV of the Planning Code and Planning Code
18 Section 415 et seq. if the it determines that the project no longer meets the requirements for a Qualified
19 Student Housing Project; and

20 -- the Qualified Student Housing Project may be inspected by any City employee to determine
21 its status as a Qualified Student Housing Project and its compliance with this Section at any time upon
22 at least 24 hours' prior notice to the owner of the real property or to the master lessee.

23 (d) For projects that have received a first site or building permit prior to the effective
24 date of Section 415.1 et seq., the requirements in effect prior to the effective date of Section
25 415.1 et seq. shall apply.

1 Section 2. Operative Date. This provisions of Section 415.3(c)(4) shall apply to
2 exempt any project meeting its criteria approved by the Planning Commission or Department
3 on or after the effective date of this Ordinance.

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

6 By: _____
7 ATTORNEY'S NAME
8 Deputy City Attorney
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25