

File No. 100046

Committee Item No. 4

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date October 4, 2010

Board of Supervisors Meeting

Date _____

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| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
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OTHER

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Environmental Review Determination, dtd 1/20/2010</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Planning Commission Resolution No. 18056</u> |
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Completed by: Alisa Somera Date October 1, 2010

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The complete document can be found in the file.

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[Planning Code, Administrative Code – Amending Inclusionary Housing Ordinance.]

Ordinance amending the Planning Code and Administrative Code by amending the Residential Inclusionary Affordable Housing Program, Planning Code Section 415 et seq. (formerly Code Section 315 et seq.) (the "Program") to change the name of the Program to the Affordable Housing Program and to require all project applicants to pay the Affordable Housing Fee unless they are eligible for an alternative; making other amendments to the Program including expanding the uses of the Citywide Affordable Housing Fund, deleting provisions relating to certain requirements for off-site units, and deleting provisions requiring a refund of fees after issuance of certificate of occupancy; amending Sections 416 and 417 to make conforming amendments to the Affordable Housing Program; amending Section 827 to delete the requirement that 50% of on- or off-site affordable housing units provided under Section 415 et seq. in the Rincon Hill Area Plan be provided as rental; amending the Administrative Code by amending Chapter 56 related to Development Agreements to create certain exceptions from its requirements for rental housing developments with on-site inclusionary units; and making findings including findings under the California Environmental Quality Act.

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 ~~strikethrough-normal~~.

Be it ordained by the People of the City and County of San Francisco: Section 1. Findings.
The Board of Supervisors 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

1 Board of Supervisors in File No. 100046 and is incorporated herein by
2 reference.

3 (b) On March 25, 2010, 2009, the Planning Commission, in
4 Resolution No. 18056 approved and recommended for adoption by the Board this
5 legislation and adopted findings that it is consistent, on balance, with the City's General Plan
6 and eight priority policies of Planning Code Section 101.1. The Board adopts these findings
7 as its own. A copy of said Resolution is on file with the Clerk of the Board of Supervisors in
8 File No. 100046, and is incorporated by reference herein.

9 (c) Pursuant to Planning Code Section 302, this Board of Supervisors finds
10 that this legislation will serve the public necessity, convenience, and welfare for the reasons
11 set forth in Planning Commission Resolution No. 18056, and incorporates such reasons
12 by reference herein.

13 Section 2. The San Francisco Planning Code is hereby amended by amending
14 Sections 401, 415, 415.1, 415.2, 415.3, 415.4, 415.5, 415.6, 415.7, 415.8, 415.9, 416, 416.1,
15 416.2, 416.3, 416.4, 416.5, 417, 417.1, 417.2, 417.3, 417.4, 417.5, to read as follows:

16 SEC. 401. DEFINITIONS. (a) In addition to the specific definitions set forth elsewhere
17 in this Article, the following definitions shall govern interpretation of this Article:

18 (1)—"Affordable housing project." A housing project that is subject to the requirements of
19 ~~containing units constructed to satisfy the requirements~~ of Sections 413.5, 413.8, 415.4 (Imposition
20 of Requirements), ~~or~~ 415.5 (Affordable Housing Fee), 415.6 (On-Site Alternative), or 415.7 (Off-
21 Site Alternative) of this Article, or receiving funds from the Citywide Affordable Housing Fund.

22 (2)—"Affordable to a household." A purchase price that a household can afford to pay
23 based on an annual payment for all housing costs of 33 percent of the combined household
24 annual net income, a 10 percent down payment, and available financing, or a rent that a
25

household can afford to pay based on an annual payment for all housing costs of 30 percent of the combined annual net income.

(3) — "Affordable to qualifying households":

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

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

(ii) At or below the maximum purchase price.

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

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

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

(4) — "Allowable average purchase price": A price for all affordable owned units of the size indicated below that are affordable to a household of median income as defined in this Section, adjusted for the household size indicated below as of the date of the close of escrow, and, where applicable, adjusted to reflect the Department's policy on unbundled parking for affordable housing units as specified in the Procedures Manual and amended from time to time:

<u>Number of Bedrooms (or, for live/work units square foot equivalency)</u>	<u>Number of Persons in Household</u>
<u>0 (Less than 600 square feet)</u>	<u>1</u>
<u>1 (601 to 850 square feet)</u>	<u>2</u>

2 (851 to 1,100 square feet)	3
3 (1,101 to 1,300 square feet)	4
4 (More than 1,300 square feet)	5

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

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

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

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

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

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

(B) ~~With respect to rental units, the average annual rent including the cost of utilities paid by the tenant according to the HUD utility allowance established by the San Francisco Housing Authority for qualifying middle income units shall not exceed the allowable average purchase price deemed acceptable for households with an annual gross income equal to or less than the qualifying~~

~~limits for a household of middle income, adjusted for household size. This price restriction shall exist for the life of the unit.~~

(5) — "Allowable average annual rent": Annual rent for an affordable rental unit of the size indicated below that is 30 percent of the annual gross income of a household of ~~median~~ low income as defined in this Section, adjusted for the household size indicated below, and, where applicable, adjusted to reflect the Department's policy on unbundled parking for affordable housing units as specified in the Procedures Manual and amended from time to time:

Number of Bedrooms (or, for live/work units square foot equivalency)	Number of Persons in Household
0 (Less than 600 square feet)	1
1 (601 to 850 square feet)	2
2 (851 to 1,100 square feet)	3
3 (1,101 to 1,300 square feet)	4
4 (More than 1,300 square feet)	5

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

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

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

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

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

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

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

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

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

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

21 (12) — "Balboa Park Impact Fee." The fee collected by the City to mitigate impacts of
22 new development in the Balboa Park Program Area, as described in the findings in Section
23 422.1.

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

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

7 (15)—"Base service standard fee rate." The TIDF that would allow the City to recover
8 the estimated costs incurred by the Municipal Railway to meet the demand for public transit
9 resulting from new development in the economic activity categories for which the fee is
10 charged, after deducting government grants, fare revenue, and costs for non-vehicle
11 maintenance and general administration.

12 (16)—"Board" or "Board of Supervisors." The Board of Supervisors of the City and
13 County of San Francisco.

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

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

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

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

24 (21)—"Commercial development project." Any new construction, addition, extension,
25 conversion or enlargement, or combination thereof, of an existing structure which includes any

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

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

8 (23)—"Commission" or "Planning Commission." The San Francisco Planning
9 Commission.

10 (24)—"Community apartment." As defined in San Francisco Subdivision Code Section
11 1308(b).

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

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

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

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

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

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

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

3 (32)—"Department" or "Planning Department." The San Francisco Planning
4 Department or the Planning Department's designee, including the Mayor's Office of Housing
5 and other City agencies or departments.

6 (33)—"Designated affordable housing zones." For the purposes of implementing the
7 Eastern Neighborhoods Public Benefits Fund, shall mean the Mission NCT defined in Section
8 736 and the Mixed Use Residential District defined in Section 841.

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

12 (35)—"Development Fee Collection Unit" or "Unit." The Development Fee Collection
13 Unit at DBI.

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

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

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

1 ~~(39)~~—"Development under the TIDF." Any new construction, or addition to or
2 conversion of an existing structure under a building or site permit issued on or after
3 September 4, 2004, that results in 3,000 gross square feet or more of a covered use. In the
4 case of mixed use development that includes residential development, the term "new
5 development" shall refer to only the non-residential portion of such development. "Existing
6 structure" shall include a structure for which a sponsor already paid a fee under the prior TIDF
7 ordinance, as well as a structure for which no TIDF was paid.

8 ~~(40)~~—"Director." The Director of Planning or his or her designee.

9 ~~(41)~~—"DPW." The Department of Public Works.

10 ~~(42)~~—"Eastern Neighborhoods Infrastructure Impact Fee." The fee collected by the
11 City to mitigate impacts of new development in the Eastern Neighborhoods Program Area, as
12 described in the Findings in Section 423.1

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

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

20 ~~(45)~~—"Eastern Neighborhoods Program Area." The Eastern Neighborhoods Plan Area
21 in Map 1 (Land Use Plan) of the Eastern Neighborhoods Area Plan of the San Francisco
22 General Plan.

23 ~~(46)~~—"Economic activity category." Under the TIDF, one of the following six categories
24 of non-residential uses: Cultural/Institution/Education (CIE), Management, Information and
25

1 Professional Services (MIPS), Medical and Health Services, Production/Distribution/Repair
2 (PDR), Retail/Entertainment, and Visitor Services.

3 ~~(47)~~—"Entertainment development project." Any new construction, addition, extension,
4 conversion, or enlargement, or combination thereof, of an existing structure which includes
5 any gross square feet of entertainment use.

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

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

19 ~~(50)~~—"First construction document." As defined in Section 107A.13.1 of the San
20 Francisco Building Code.

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

23 ~~(52)~~—"Gross square feet of use." With respect to the TIDF, the total square feet of
24 gross floor area in a building and/or space within or adjacent to a structure devoted to all uses
25 covered by the TIDF, including any common areas exclusively serving such uses and not

1 serving residential uses. Where a structure contains more than one use, areas common to
2 two or more uses, such as lobbies, stairs, elevators, restrooms, and other ancillary spaces
3 included in gross floor area that are not exclusively assigned to one uses shall be apportioned
4 among the two or more uses in accordance with the relative amounts of gross floor area,
5 excluding such space, in the structure or on any floor thereof directly assignable to each use.

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

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

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

17 (56)—"Household." Any person or persons who reside or intend to reside in the same
18 housing unit.

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

23 ~~(58)—"Household of median income." A household composed of one or more persons with a~~
24 ~~combined annual net income for all adult members which does not exceed the qualifying limit for a~~
25

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

3 ~~(59) "Household of moderate income." A household composed of one or more persons with a~~
4 ~~combined annual net income for all adult members which does not exceed the qualifying limit for a~~
5 ~~moderate income family of a size equivalent to the number of persons residing in such household, as set~~
6 ~~forth for the County of San Francisco in Title 25 of the California Code of Regulations Section 6932.~~

7 "Household of low income." A household whose combined annual gross income for all
8 members does not exceed 60 percent of median income for the City and County of San Francisco, as
9 calculated by the Mayor's Office of Housing using data from the United States Department of Housing
10 and Urban Development (HUD) and adjusted for household size or, if data from HUD is unavailable,
11 calculated by the Mayor's Office of Housing using other publicly available and credible data and
12 adjusted for household size.

13 "Household of median income." A household whose combined annual gross income for all
14 members does not exceed 100 percent of the median income for the City and County of San Francisco,
15 as calculated by the Mayor's Office of Housing using data from the United States Department of
16 Housing and Urban Development (HUD) and adjusted for household size or, if data from HUD is
17 unavailable, calculated by the Mayor's Office of Housing using other publicly available and credible
18 data and adjusted for household size.

19 "Household of moderate income." A household whose combined annual gross income for all
20 members does not exceed 120 percent of the median income for the City and County of San Francisco,
21 as calculated by the Mayor's Office of Housing using data from the United States Department of
22 Housing and Urban Development (HUD) and adjusted for household size or, if data from HUD is
23 unavailable, calculated by the Mayor's Office of Housing using other publicly available and credible
24 data and adjusted for household size.

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

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

14 (62)—"Housing unit" or "unit." A dwelling unit as defined in San Francisco Housing
15 Code Section 401.

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

18 (64)—"In-Kind Agreement." An agreement acceptable in form and substance to the
19 City Attorney and the Director of Planning between a project sponsor and the Planning
20 Commission, subject to approval by the Planning Commission in its sole discretion, to provide
21 a specific set of community improvements at a specific phase of construction in lieu of
22 contribution to the relevant Improvements Fund. The In-Kind Agreement shall also mandate a
23 covenant of the project sponsor to reimburse all City agencies for their administrative and staff
24 costs in negotiating, drafting, and monitoring compliance with the In-Kind Agreement. The City
25 shall also require the project sponsor to provide a letter of credit or other instrument

1 acceptable in form and substance to the City Attorney and the Planning Department to secure
2 the City's right to receive payment as described in the preceding sentence.

3 ~~(65)~~—"Infrastructure." Open space and recreational facilities; public realms
4 improvements such as pedestrian improvements and streetscape improvements; public transit
5 facilities; and community facilities such as libraries, child care facilities, and community
6 centers.

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

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

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

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

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

17 ~~(71)~~—"Long term housing." Housing intended for occupancy by a person or persons
18 for 32 consecutive days or longer.

19 ~~(72)~~—"Low income." For purposes of this Article, up to 80% of median family income
20 for the San Francisco PMSA, as calculated and adjusted by the United States Department of
21 Housing and Urban Development (HUD) on an annual basis, except that as applied to
22 housing-related purposes such as the construction of affordable housing and the provision of
23 rental subsidies with funds from the SOMA Stabilization Fund established in Section 418.7, it
24 shall mean up to 60% of median family income for the San Francisco PMSA, as calculated
25 and adjusted by HUD on an annual basis.

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

6 (74)—"Market and Octavia Community Improvements Fund" The fund into which all
7 fee reveue collected by the City from the Market and Octavia Community Improvements Fee
8 is deposited.

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

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

16 (77)—"Market and Octavia Program Area." The Market and Octavia Plan Area in Map
17 1 (Land Use Plan) of the Market and Octavia Area Plan of the San Francisco General Plan,
18 which includes those districts zoned RTO, NCT, or any neighborhood specific NCT, a few
19 parcels zoned RH-1 or RH-2, and those parcels within the Van Ness and Market Downtown
20 Residential Special Use District (VMDRSUD).

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

23 (79) "Maximum annual rent." The maximum rent that a housing developer may charge any
24 tenant occupying an affordable unit for the calendar year. The maximum annual rent for an affordable
25 housing unit of the size indicated below shall be no more than 30 percent of the annual gross income

for a household of low income as defined in this Section, as adjusted for the household size indicated below as of the first date of the tenancy:

<u>Number of Bedrooms (or, for live/work units square foot equivalency)</u>	<u>Number of Persons in Household</u>
<u>0 (Less than 600 square feet)</u>	<u>1</u>
<u>1 (601 to 850 square feet)</u>	<u>2</u>
<u>2 (851 to 1100 square feet)</u>	<u>3</u>
<u>3 (1101 to 1300 square feet)</u>	<u>4</u>
<u>4 (More than 1300 square feet)</u>	<u>5</u>

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

~~(A) For all one bedroom units, for a household of two persons;~~

~~(B) For all two bedroom units, for a household of three persons;~~

~~(C) For all three bedroom units, for a household of four persons;~~

~~(D) For all four bedroom units, for a household of five persons.~~

~~(19)~~—"Maximum purchase price." The maximum purchase price for an affordable owned unit of the size indicated below that is affordable to a household of moderate income, adjusted for the household size indicated below, assuming an annual payment for all housing costs of 33 percent of the combined household annual gross income, a down payment recommended by MOH and set forth in the Procedures Manual, and available financing:

Number of Bedrooms (or, for live/work units square foot equivalency)	Number of Persons in Household
0 (Less than 600 square feet)	1
1 (601 to 850 square feet)	2
2 (851 to 1100 square feet)	3
3 (1101 to 1300 square feet)	4
4 (More than 1300 square feet)	5

~~The maximum purchase price that a household of moderate income can afford to pay for an owned unit based on an annual payment for all housing costs of 33 percent of the combined household annual net income, a 10 percent down payment, and available financing, for the following household sizes:-~~

~~(A) — For all one bedroom units, for a household of two persons;~~

~~(B) — For all two bedroom units, for a household of three persons;~~

~~(C) — For all three bedroom units, for a household of four persons;~~

~~(D) — For all four bedroom units, for a household of five persons.~~

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

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

1 adjusted for household size or, if data from HUD is unavailable, as calculated by the Mayor's
2 Office of Housing using other publicly available and credible data and adjusted for household
3 size.

4 ~~(82)~~—"MOCD." The Mayor's Office of Community Development.

5 ~~(83)~~—"MOH." The Mayor's Office of Housing.

6 ~~(84)~~—"MTA." The Municipal Transportation Agency.

7 ~~(85)~~—"MTA Director." The Director of MTA or his or her designee.

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

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

17 ~~(88)~~ "Net addition of occupiable square feet of commercial use." Occupied floor area,
18 as defined in Section 102.10 of this Code, to be occupied by or primarily serving, non-
19 residential use excluding common areas such as hallways, maintenance facilities and lobbies,
20 less the occupied floor area in any structure demolished or rehabilitated as part of the
21 proposed commercial development project which occupied floor area was used primarily and
22 continuously for commercial use and was not accessory to any use other than residential use
23 for at least five years prior to Planning Department approval of a residential development
24 project subject to this Article, or for the life of the structure demolished or rehabilitated,
25 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 "Program." The Affordable Housing Program as detailed in Sections 415 - 417.

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

7 ~~(115)~~—"Rental unit." A unit affordable to qualifying households which is not a
8 condominium, stock cooperative, or community apartment.

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

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

18 ~~(118)~~—"Research and development use." Space within any structure or portion thereof
19 intended or primarily suitable for basic and applied research or systematic use of research
20 knowledge for the production of materials, devices, systems, information or methods,
21 including design, development and improvement of products and processing, including
22 biotechnology, which involves the integration of natural and engineering sciences and
23 advanced biological techniques using organisms, cells, and parts thereof for products and
24 services, excluding laboratories which are defined as light manufacturing uses consistent with
25 Section 226 of this Code.

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

4 ~~(120)~~—"Residential Space Subject to the Eastern Neighborhoods Infrastructure Impact
5 Fee." Each net addition of net square feet within the Eastern Neighborhoods Project Area
6 which results in a net new residential unit.

7 ~~(121)~~ "Residential Space Subject to the Market and Octavia Community Infrastructure
8 Impact Fee." Each net addition of occupiable square feet within the Market and Octavia
9 Program Area which results in an additional residential unit or contributes to a 20 percent
10 increase of residential space from the time that this ordinance is adopted within the Market
11 and Octavia Community Improvements Fund.

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

17 ~~(123)~~—"Retail development project." Any new construction, addition, extension,
18 conversion, or enlargement, or combination thereof, of an existing structure which includes
19 any gross square feet of retail use.

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

24 ~~(125)~~—"Retail use." Space within any structure or portion thereof intended or primarily
25 suitable for occupancy by persons or entities which supply commodities to customers on the

1 premises including, but not limited to, stores, shops, restaurants, bars, eating and drinking
2 businesses, and the uses defined in Sections 218 and 220 through 225 of this Code; and also
3 including all space accessory to such retail use.

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

7 ~~(127)~~—"Rincon Hill Community Improvements Fund." The fund into which all fee
8 revenue collected by the City from the Rincon Hill Community Infrastructure Impact Fee is
9 deposited.

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

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

15 ~~(130)~~—"Section 6932." Section 6932 of Title 25 of the California Code of Regulations as
16 such section applies to the County of San Francisco.

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

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

22 ~~(132)~~—"SOMA Community Stabilization Fund." The fund into which all fee revenue
23 collected by the City from the SOMA Community Stabilization Fee is deposited.
24
25

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

4 ~~(134)~~—"Stock cooperative." As defined in California Business and Professions Code
5 Section 11003.2.

6 ~~(135)~~—"Student housing." A building where 100 percent of the residential uses are
7 affiliated with and operated by an accredited post-secondary educational institution. Typically,
8 student housing is for rent, not for sale. This housing shall provide lodging or both meals and
9 lodging, by prearrangement for one week or more at a time. This definition only applies in the
10 Eastern Neighborhoods Mixed Use Districts.

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

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

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

21 ~~(139)~~—"Treasurer." The Treasurer for the City and County of San Francisco.

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

1 ~~(141)~~—"Use." The purpose for which land or a structure, or both, are legally designed,
2 constructed, arranged, or intended, or for which they are legally occupied or maintained, let or
3 leased.

4 ~~(142)~~—"Visitation Valley." The area bounded by Carter Street and McLaren Park to the
5 west, Mansell Street to the north, Route 101 between Mansell Street and Bayshore Boulevard
6 to the northeast, Bayview Park to the north, Candlestick Park and Candlestick Point
7 Recreation Area to the east, the San Francisco Bay to the southeast, and the San Francisco
8 County line to the south.

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

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

15 **SEC. 415 (formerly Section 315). HOUSING REQUIREMENTS FOR RESIDENTIAL**
16 **AND LIVE/WORK DEVELOPMENT PROJECTS.**

17 Sections 415.1 through 415.11 9, hereafter Section 415.1 et seq., set forth the
18 requirements and procedures for the *Residential Inclusionary* Affordable Housing Program
19 ("Program"). The effective date of these requirements shall be either April 5, 2002, which is
20 the date that the requirements originally became effective, or the date a subsequent
21 modification, if any, became effective.

22 The Department and MOH shall periodically publish a Procedures Manual containing
23 procedures for monitoring and enforcement of the policies and procedures for implementation
24 of this Program. The Procedures Manual must be made available at the Zoning Counter of the
25 Department and on the Department's web site. The Procedures Manual shall not be

1 amended, except for an annual update of the affordability housing guidelines, which reflect
2 updated income limits, prices, and rents, without approval of the Commission or as otherwise
3 specified herein.

4 The Procedures Manual in effect at the time of initial purchase or initial rental of a unit
5 shall govern the regulation of that unit until it is sold or re-rented unless an owner or current
6 tenant chooses to be governed by all of the more up-to-date provisions of the then-current
7 Procedures Manual. In that case, the owner or tenant must agree to be governed by the
8 totality of the new regulations -- an owner or tenant may not pick some provisions from the
9 Procedures Manual in effect at the time of initial purchase or initial rental and some in effect in
10 the then-current Procedures Manual. If the owner or tenant chooses to be governed by the
11 then-current Procedures Manual he or she shall sign an agreement with the City to that effect,
12 and the Department and MOH shall apply all of the rules and regulations in the then-current
13 Procedures Manual to the unit.

14 **SEC. 415.1. FINDINGS** *(formerly Section 315.2).*

15 A. The Board of Supervisors hereby finds and declares as follows:

16 **Affordable Housing:** The findings in former Planning Code Section 315.2 of the
17 ~~Inclusionary~~ Affordable Housing Ordinance are hereby readopted and updated as follows:

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

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

23 (b) The early attainment of this goal requires the cooperative participation of
24 government and the private sector in an effort to expand housing opportunities and
25 accommodate the 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
5 for the 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
16 specified in the Government Code (at Sections 65300, 65302(c), and 65583(c)), the plan must
17 (1) "encourage the development of a variety of types of housing for all income levels,
18 including multifamily rental housing"; (2) "[a]ssist in the development of adequate housing to
19 meet the needs of low- and moderate-income households"; and (3) "conserve and improve
20 the condition of the existing affordable housing stock, which may include addressing ways to
21 mitigate the loss of dwelling units demolished by public or private action."

22 2. 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 four-
24 year period between 2000 and 2004, 8,389 total new housing units were built in San
25 Francisco. This number includes 1,933 units for low and very low-income households out of a

1 total need of 3,930 low and very low-income housing units for the same period. According to
2 the state Department of Housing and Community Development, there will be a regional need
3 for 230,743 new housing units in the nine Bay Area counties from 1999 through 2006. Of that
4 amount, over 58 percent, or 133,164 units, are needed for moderate, low and very low-
5 income households. The Association of Bay Area Governments (ABAG) is responsible for
6 dividing the total regional need numbers among its member governments which includes both
7 counties and cities. ABAG estimates that San Francisco's low and very low-income housing
8 production need from 1999 through 2006 is 7,370 units out of a total new housing need of
9 20,372 units, or 36 percent of all units built. Within the past four years, only 23 percent of all
10 housing built, or 49 percent of the previously projected housing need for low and very low-
11 income housing for the same period, was produced in San Francisco. The production of
12 moderate income rental units also fell short of the ABAG goal. Only 351 moderate income
13 units were produced over the previous four years, or four percent of all units built, compared
14 to ABAG's call for 28 percent of all units to be affordable to households of moderate income.
15 Given the need for 3,007 moderate income units over the four-year period, only 12 percent of
16 the projected need for moderate income units was built.

17 3. In response to the above mandate from the California Legislature and the
18 projections of housing needs for San Francisco, San Francisco has instituted several
19 strategies for producing new affordable housing units. The 2004 Housing Element of the
20 General Plan recognizes the need to support affordable housing production by increasing site
21 availability by expanding the financial resources available for permanent affordable housing and by
22 encouraging the production of affordable housing through process and zoning accommodations. and
23 capacity for permanently affordable housing through the inclusion of affordable units in larger housing
24 projects. Further, the City, as established in the General Plan, seeks to encourage the
25 distribution of affordable housing throughout all neighborhoods and, thereby, offer diverse

1 housing choices and promote economic and social integration. The 2004 Housing Element
2 calls for an increase in the production of new affordable housing and for the promotion of
3 integrated neighborhoods with a diversity of housing types provided and a range of income
4 levels. ~~development of mixed income housing to achieve social and cultural diversity. Section 415.1 et~~
5 ~~seq.~~ Section 415.1 et seq. furthers the goals of the State Legislature and the General Plan.

6 4. The 2005 Consolidated Plan for July 1, 2000--June 30, 2005, issued by the
7 Mayor's Office of Community Development and the Mayor's Office of Housing, establishes
8 that extreme housing pressures face San Francisco, particularly in regard to low- and
9 moderate-income residents. Many elements constrain housing production in the City. This is
10 especially true of affordable housing. As discussed in the 2004 Housing Element published by
11 the City Planning Department. San Francisco is largely built out, with very few large open
12 tracts of land to develop. As noted in the 2000 Consolidated Plan, its geographical location at
13 the northern end of a peninsula inherently prevents substantial new development.-There is no
14 available adjacent land to be annexed, as the cities located on San Francisco's southern
15 border are also dense urban areas. Thus new construction of housing is limited to areas of the
16 City not previously designated as residential areas, infill sites, or to areas with increased
17 density. New market-rate housing absorbs a significant amount of the remaining supply of
18 land and other resources available for development and thus limits the supply of affordable
19 housing.

20 There is a great need for affordable rental and owner-occupied housing in the City.
21 Housing cost burden is one of the major standards for determining whether a locality is
22 experiencing inadequate housing conditions, defined as households that expend 30 percent
23 or more of gross income for rent or 35 percent or more of household income for owner costs.
24 The 2000 Census indicates that 64,400 renter households earning up to 80 percent of the
25 area median income are cost burdened. Of these, about 25,000 households earn less than 50

1 percent AML and pay more than 50 percent of their income to rent. According to more recent
2 data from the American Housing Survey, 80,662 total renter households, or 41 percent, are
3 cost burdened in 2003. A significant number of owners are also cost burdened. According to
4 2000 Census data, 18,237 of owners are cost-burdened, or 23 percent of all owner
5 households. The 2003 American Housing Survey indicates that this level has risen to 29
6 percent.

7 The San Francisco residential real estate market is one of the most expensive in the
8 United States. In May 2005, the California Association of Realtors reported that the median
9 priced home in San Francisco was \$755,000.00. This is 18 percent higher than the median
10 priced home one year earlier, 44 percent higher than the State of California median, and 365
11 percent higher than the nation average. While the national homeownership rate is
12 approximately 69 percent, only approximately 35 percent of San Franciscans own their own
13 home. The majority of market-rate homes for sale in San Francisco are priced out of the reach
14 of low and moderate income households. In May 2005, the average rent for a two-bedroom
15 apartment was \$1,821.00, which is affordable to households earning over \$74,000.00.

16 These factors contribute to a heavy demand for affordable housing in the City that the
17 private market cannot meet. Each year the number of market rate units that are affordable to
18 low income households is reduced by rising market rate rents and sales prices. The number
19 of households benefiting from rental assistance programs is far below the need established by
20 the 2000 Census. Because the shortage of affordable housing in the City can be expected to
21 continue for many years, it is necessary to maintain the affordability of the housing units
22 constructed by housing developers under this Program. The 2004 Housing Element of the
23 General Plan recognizes this need. Objective 1 of the Housing Element is to provide new
24 housing, especially permanently affordable housing, in appropriate locations which meets
25 identified housing needs and takes into account the demand for affordable housing created by

1 employment demand. Objective 6 is to protect the affordability of existing housing, and to
2 ensure that housing developed to be affordable be kept affordable for 50--75 year terms, or
3 even longer if possible.

4 In 2004 the National Housing Conference issued a survey entitled "Inclusionary
5 Zoning: The California Experience." The survey found that as of March 2003, there were 107
6 cities and counties using inclusionary housing in California, one-fifth of all localities in the
7 state. Overall, the inclusionary requirements were generating large numbers of affordable
8 units. Only six percent of jurisdictions reported voluntary programs, and the voluntary nature
9 appears to compromise the local ability to guarantee affordable housing production. While
10 there was a wide range in the affordability percentage-requirements for inclusionary housing,
11 the average requirement for affordability in rental developments is 13 percent. Approximately
12 half of all jurisdictions require at least 15 percent to be affordable, and one-quarter require 20
13 percent or more to be affordable.

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

24 6. The payment of an Affordable Housing Fee by developers of market rate housing is
25 justified for the reasons stated herein and has identifiable benefits to the City. Because it is not

1 financially feasible in most circumstances to develop new housing affordable to very-low, low, and
2 moderate-income households, the City and County provide direct housing investments to developers to
3 enable the creation of affordable housing. The Affordable Housing Fee will be used to help subsidize
4 these development costs and provide administrative support for these programs and other affordable
5 housing development activities administered by the City and County. Without these funds, the City and
6 County would be less able to meet its affordable housing needs and the Regional Housing Needs goals
7 established by ABAG and the State of California for the City and County for 2006-2013.

8 The Affordable Housing Fee also enables affordable housing developments to leverage outside
9 development funding from the private sector, and the State and Federal Government. This development
10 work also creates economic activity, particularly construction work, which provides high-paying jobs
11 to residents and workers in the City and County.

12 In addition, it is not financially feasible for the typical moderate income household to purchase
13 a home in San Francisco. For these reasons, the Affordable Housing Fee may also be used to provide
14 down payment assistance to low and moderate income homebuyers and provide administrative support
15 for these programs and other first-time homebuyer assistance administered by the City and County.

16 However, The development of affordable housing on the same site as market-rate
17 housing also increases social and economic integration vis-a-vis housing in the City and has
18 corresponding social and economic benefits to the City. Inclusionary housing provides a
19 healthy job and housing balance. Inclusionary housing provides more affordable housing
20 close to employment centers which in turn may have a positive economic impact by reducing
21 such costs as commuting and labor costs. However, there may also be trade-offs where
22 constructing affordable units at a different site than the site of the principle project may
23 produce a greater number of affordable units without additional costs to the project applicant.
24 If a project applicant may produce a significantly greater number of affordable units off-site
25

1 then it is in the best interest of the City to permit the development of affordable units at a
2 different location than that of the principal project.

3 7. Provided project applicants can take these requirements into consideration
4 when negotiating to purchase land for a housing project, the requirements of Section 415.1 et
5 seq. are generally financially feasible for project applicants to meet, particularly because of
6 the benefits being conferred by the City to housing projects under Section 415.1 et seq..
7 Section 406 provides a means by which a project applicant may seek a reduction or waiver of
8 the Affordable Housing Fee or a reduction or waiver of the alternative ~~the~~ requirements of this
9 Program ~~these mitigation fees~~ if the project applicant can show that imposition of these
10 requirements would create an unlawful financial burden.

11 8. Conditional Use and Planned Unit Development Permits permit the development
12 of certain uses not permitted as of right in specific districts or greater density of permitted
13 residential uses. As the General Plan recognizes, through the conditional use and planned
14 unit development process, applicants for housing projects generally receive material
15 economic benefits. Such applicants are generally permitted to build in excess of the generally
16 applicable black letter requirements of the Planning Code for housing projects resulting in
17 increased density, bulk, or lot coverage or a reduction in parking or other requirements or an
18 approval of a more intensive use over that permitted without the conditional use permit or
19 planned unit development permit. Through the conditional use and planned unit development
20 process, building standards can be relaxed in order to promote lower cost home construction.
21 An additional portion of San Francisco's affordable housing needs can be supplied (with no
22 public subsidies or financing) by private sector housing developers developing inclusionary
23 affordable units in their large market-rate projects in exchange for the density and other
24 bonuses conferred by conditional use or planned unit development approvals, provided it is
25

1 financially attractive for private sector housing developers to seek such conditional use and/or
2 planned unit development approvals.

3 9. 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 increase the inclusionary housing requirements for all residential projects.~~
6 ~~In order to balance the burden on property owners, the Board intends to limit the application of an~~
7 ~~inclusionary housing requirement to 15 percent for housing projects that do not receive any of the~~
8 ~~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.~~ The
11 2004 Housing Element (Policy 4.2) states: Include affordable units in larger housing
12 developments. It also calls for the City to review its ~~affordable inclusionary~~ housing program
13 regularly to ensure fair burden and not constrain new housing production. The Board of
14 Supervisors has reviewed the ~~inclusionary~~ Affordable Housing Program and finds that, for
15 purposes of the Housing Element of the General Plan, ~~increasing the inclusionary housing~~
16 ~~requirements~~ the current Affordable Housing Fee – set at the equivalent to providing 20 percent of the
17 ~~total number of units as affordable units (or less for projects approves under prior requirements)~~--
18 ensures more fair burden on all housing development and will not constrain new housing
19 production. The Board of Supervisors has reviewed the ~~inclusionary~~ Affordable Housing
20 Program and finds that, for purposes of the Housing Element of the General Plan, a housing
21 project of five units or more is a larger housing project. ~~Expanding the inclusionary housing~~
22 Applying the Affordable Housing Program requirements to buildings of five units or more ensures
23 more fair burden on all housing development and will not constrain new housing production.

24 10. The findings of former Planning Code Section 313.2 for the Jobs-Housing
25 Linkage Program, Planning Code Sections 313 et seq., relating to the shortage of affordable

1 housing, the low vacancy rate of housing affordable to persons of lower and moderate
2 income, and the decrease in construction of affordable housing in the City are hereby
3 readopted.

4 11. The Land Use and Economic Development Committee of the Board of
5 Supervisors held hearings on this legislation on July 12 and 19, 2006. At those hearings, the
6 Committee heard testimony from Planning Department staff and consultant Kate Funk of
7 Keyser Marston and Associates regarding a study undertaken at the direction of the Planning
8 Department by the consultant Keyser Marston Associates. The study was entitled Inclusionary
9 Housing Program Sensitivity Analysis, dated July 7, 2006, and was undertaken to examine
10 the economic impacts of adjusted inclusionary requirements on market-rate housing projects
11 ("Sensitivity Analysis"). The study can be found in Board File No. 051685 and is incorporated
12 herein by reference. The study was guided by the Planning Department and MOH and
13 informed by a Technical Advisory Committee comprised of a variety of experts from the San
14 Francisco Housing Development and Affordable Housing Advocacy Communities. Planning
15 Department staff presented a report summarizing the findings of the Sensitivity Analysis and
16 the recommendations of the Technical Advisory Committee. That report, dated July 10, 2006,
17 is found in Board File No. 051685 and is incorporated herein by reference. After considering
18 the Sensitivity Analysis and staff report and hearing the recommendations and testimony of
19 the Planning Department, MOH, members of the Technical Advisory Committee, and
20 members of the public including representatives of housing developers, community members,
21 and affordable housing advocates, the Land Use and Economic Development Committee
22 considered various amendments to the legislation. The Committee found, among other things,
23 that it was in the public interest to increase the percentage requirements of the ordinance, but
24 not by as much as originally proposed; to modify the application dates of the ordinance to
25 grandfather more existing projects from the increased percentage requirements, but to make

1 most projects subject to the other requirements of the ordinance; and to require further study
2 on some issues by the Planning Department and MOH.

3 12. The City of San Francisco, under the direction of the Office of the Controller, has
4 undertaken a comprehensive program of analyses to update its programs and supporting
5 documentation for many types of fees, including updating nexus analyses in support of
6 development impact fees. At the direction of the Board of Supervisors and as part of this
7 larger analysis, the City contracted with Keyser Marston Associates to prepare a nexus
8 analysis in support of the Affordable Inclusionary Housing Program, or an analysis of the
9 impact of development of market rate housing on affordable housing supply and demand. The
10 Planning Department and MOH worked closely with the consultant and also consulted with
11 the Technical Advisory Committee, noted above, comprised of a variety of experts from the
12 San Francisco housing development and affordable housing advocacy communities.

13 The City's current position is that the City's Inclusionary Affordable Housing Program
14 ~~including the in-lieu fee provision which is offered as an alternative to building units within market rate~~
15 ~~projects,~~ is not subject to the requirements of the Mitigation Fee Act, Government Code
16 Sections 66000 et seq. While the City does not expect to alter its position on this matter, due
17 to past legislative actions supporting such a study, the Citywide study being undertaken to
18 conduct nexus studies in other areas, and a general interest in determining whether the
19 Inclusionary Program can be supported by a nexus type analysis as an additional support
20 measure, the City contracted to undertake the preparation of a nexus analysis at this time.

21 The final study can be found in the Board of Supervisors File and is incorporated by
22 reference herein. The Board of Supervisors has reviewed the study and staff analysis and
23 report of the study and, on that basis finds that the study supports the current ~~inclusionary~~
24 ~~housing~~ requirements of the Affordable Housing Program including, but not limited to, the primary
25 requirement that project applicants pay the Affordable Housing Fee. Specifically, the Board finds

1 that this study: identifies the purpose of the fee to mitigate impacts on the demand for
2 affordable housing in the City; identifies the use to which the fee is to be put as being to
3 increase the City's affordable housing supply; and establishes a reasonable relationship
4 between the use of the fee for affordable housing and the need for affordable housing and the
5 construction of new market rate housing. Moreover, the Board finds that the current
6 *inclusionary* requirements are less than the cost of mitigation and do not include the costs of
7 remedying any existing deficiencies. The Board also finds that the study establishes that the
8 current *inclusionary* requirements do not duplicate other city requirements or fees.

9 13. The Board of Supervisors recognizes that this *Inclusionary Affordable* Housing
10 Program is only one part of the City's overall strategy for providing affordable housing. The
11 City has spent over \$154 million in capital funds on affordable housing in 2006-07 of
12 combined expenditures by MOH and San Francisco Redevelopment Agency, but not including
13 expenditures by the Department of Public Health or the Human Services Agency. At the very
14 most, only \$22 million of those monies come from contributions from private developers
15 through this Inclusionary Program or other similar programs. The City expected to spend over
16 \$78 million on affordable housing in 2007-08 and, the current expectation is that only \$2.5
17 million of those monies will come from contributions from private developers through this
18 *Inclusionary* Program or other similar programs.

19 **SEC. 415.2. DEFINITIONS.** See Section 401 of this Article.

20 ~~(a) In addition to the definitions set forth in Section 401 of this Article, the following definitions~~
21 ~~shall govern interpretation of Section 415.1 et seq.:~~

22 ~~(1) "Allowable average purchase price." A price for all affordable-owned units of the size~~
23 ~~indicated below that are affordable to a household of median income as defined in this Section,~~
24 ~~adjusted for the household size indicated below as of the date of the close of escrow, and, where~~
25

1 applicable, adjusted to reflect the Department's policy on unbundled parking for affordable housing
2 units as specified in the Procedures Manual and amended from time to time:

3 4 5 6 7 8 9 10 11	Number of Bedrooms (or, for live/work units square foot equivalency) —	Number of Persons in Household —
	0 (Less than 600 square feet) —	1 —
	1 (601 to 850 square feet) —	2 —
	2 (851 to 1,100 square feet) —	3 —
	3 (1,101 to 1,300 square feet) —	4 —
	4 (More than 1,300 square feet) —	5 —

12 (2) ~~"Allowable average annual rent." Annual rent for an affordable rental unit of the size~~
13 ~~indicated below that is 30 percent of the annual gross income of a household of median low income as~~
14 ~~defined in this Section, adjusted for the household size indicated below, and, where applicable,~~
15 ~~adjusted to reflect the Department's policy on unbundled parking for affordable housing units as~~
16 ~~specified in the Procedures Manual and amended from time to time:~~

17 18 19 20 21 22 23 24 25	Number of Bedrooms (or, for live/work units square foot equivalency) —	Number of Persons in Household —
	0 (Less than 600 square feet) —	1 —
	1 (601 to 850 square feet) —	2 —
	2 (851 to 1,100 square feet) —	3 —
	3 (1,101 to 1,300 square feet) —	4 —
	4 (More than 1,300 square feet) —	5 —

~~(3) "Maximum annual rent." The maximum rent that a housing developer may charge any tenant occupying an affordable unit for the calendar year. The maximum annual rent for an affordable housing unit of the size indicated below shall be no more than 30 percent of the annual gross income for a household of low income as defined in this Section, as adjusted for the household size indicated below as of the first date of the tenancy:~~

Number of Bedrooms (or, for live/work units square foot equivalency)	Number of Persons in Household
0 (Less than 600 square feet)	1
1 (601 to 850 square feet)	2
2 (851 to 1100 square feet)	3
3 (1101 to 1300 square feet)	4
4 (More than 1300 square feet)	5

~~(4) "Maximum purchase price." The maximum purchase price for an affordable owned unit of the size indicated below that is affordable to a household of moderate income, adjusted for the household size indicated below, assuming an annual payment for all housing costs of 33 percent of the combined household annual gross income, a down payment recommended by MOH and set forth in the Procedures Manual, and available financing:~~

Number of Bedrooms (or, for live/work units square foot equivalency)	Number of Persons in Household
0 (Less than 600 square feet)	1

1 (601 to 850 square feet)	2
2 (851 to 1100 square feet)	3
3 (1101 to 1300 square feet)	4
4 (More than 1300 square feet)	5

SEC. 415.3. APPLICATION (formerly 315.3).

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

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

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

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

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

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

1 alternatives to the payment of the fee, shall become effective immediately upon adoption of Ordinance
2 No. _____ (BOS File No. _____) and shall apply to all projects regardless of application date.

3 (1) The amendments to the off-site requirements in Section 415.7-6 (c) and (d)
4 relating to location and type of off-site housing, and Section 415.4(e) relating to when a
5 developer ~~shall declare whether it is eligible for will choose~~ an alternative to the Affordable
6 Housing Fee-on-site requirement shall apply only to projects that receive their Commission or
7 Department approval on or after the effective date of Section 415.1 et seq..

8 (2) The amendments to the percentage-requirements of Section 415.1 et seq. that
9 govern the number of affordable units a housing project is required to provide in Sections
10 ~~415.5(a) and 415.6(a) and 415.7(a)~~ apply only to housing projects that submit their first
11 application, including an environmental evaluation application or any other Planning
12 Department or Building Department application, on or after July 18, 2006. Notwithstanding the
13 foregoing, the amendments to the percentage-requirements of Section 415.1 et seq. also
14 apply to any project that has not received its final Commission or Department approvals
15 before July 18, 2006 for housing projects that receive a Zoning Map amendment or Planning
16 Code text amendment related to their project approvals that (A) results in a net increase in the
17 number of permissible residential units, or (B) results in a material increase in the net
18 permissible residential square footage. For purposes of subsection B above a material
19 increase shall mean an increase of 5 percent or more, or an increase in 10,000 square feet or
20 more, whichever is less.

21 (3) The amendments in Section 415.1 to the way median income is calculated apply
22 to any housing project that has not received a first site or building permit by the effective date
23 of Section 415.1 et seq.-
24
25

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

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

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

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

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

15 (4) A project using California Debt Limit Allocation Committee (CDLAC) tax-exempt bonds
16 as long as the project provides 20 percent of the units as affordable at 50 percent of area median
17 income for on-site housing or 25 percent of the units as affordable at 50 percent of area median income
18 for off-site housing.

19 (d) For projects that have received a first site or building permit prior to the effective
20 date of Section 415.1 et seq., the requirements in effect prior to the effective date of Section
21 415.1 et seq. shall apply.

22 **SEC. 415.4 IMPOSITION OF REQUIREMENTS.**

23 (a) Determination of Requirements. The Department shall determine the
24 applicability of Section 415.1 et seq. to any development project requiring a building or site
25 permit and, if Section 415.1 is applicable, shall impose any such requirements as a condition

1 of approval for issuance of the building or site permit. The project sponsor shall supply any
2 information necessary to assist the Department in this determination.

3 (b) Notice to Development Fee Collection Unit of Requirements. After the
4 Department has made its final determination regarding the application of the affordable
5 housing requirements to a development project pursuant to Section 415.1 et seq., it shall
6 immediately notify the Development Fee Collection Unit at DBI in addition to the other
7 information required by Section 402(b) of this Article.

8 (c) Payment of Affordable Housing Fee or Project Sponsor's Eligibility For And Selection
9 of Alternative: Sponsor's Choice to Fulfill Requirements. Prior to issuance of a building or site
10 permit for a development project subject to the requirements of Section 415.1 et seq., the
11 sponsor of the development project shall pay the Affordable Housing Fee set forth in Section 415.5
12 or, if eligible to meet the requirements through an alternative, shall select one of the ~~four~~ options
13 listed in Section 415.5(f). below to fulfill their affordable housing requirements and notify the
14 Department of their choice:

15 (1) ~~Construct on-site units affordable to qualifying households pursuant to the requirements~~
16 ~~of Section 415.5.~~

17 (2) ~~Construct off-site units affordable to qualifying households at an alternative site within~~
18 ~~the City and County of San Francisco pursuant to Section 415.6.~~

19 (3) ~~Pay an in-lieu fee to the Development Fee Collection Unit at DBI pursuant to Section~~
20 ~~415.7.~~

21 (4) ~~Provide any combination of on-site units as provided in Section 415.5, off-site units as~~
22 ~~provided in Section 415.6, or payment of an in-lieu fee as provided in Section 415.7, provided that the~~
23 ~~sponsor constructs or pays the fee at the appropriate percentage or fee level required for that option.~~

24 (d) Department Notice to Development Fee Collection Unit of Sponsor's Choice.
25 After the sponsor has filled out a Declaration of Intent and, if necessary, an Affidavit of Eligibility

1 for an Alternative to the Affordable Housing Fee indicating how it will ~~notified the Department of their~~
2 ~~choice to~~ fulfill the affordable housing requirements of Section 415.1 et seq., the Department
3 shall immediately notify the Development Fee Collection Unit at DBI of the sponsor's choice.

4 (e) Development Fee Collection Unit Notice to Department Prior to Issuance of the
5 First Certificate of Occupancy. The Development Fee Collection Unit at DBI shall provide
6 notice in writing or electronically to the Department prior to issuing the first certificate of
7 occupancy for any development project subject to Section 415.1 et seq. that has elected to
8 fulfill all or part of its requirement with an option other than payment of the Affordable Housing
9 Fee ~~an in-lieu fee~~. If the Department notifies the Unit at such time that the sponsor has not
10 satisfied the requirements, the Director of DBI shall deny and all certificates of occupancy until
11 the subject project is brought into compliance with the requirements of Section 415.1 et seq.

12 (f) Process for Revisions of Determination of Requirements. In the event that the
13 Department or the Commission takes action affecting any development project subject to
14 Section 415.1 et seq. and such action is subsequently modified, superseded, vacated, or
15 reversed by the Board of Appeals, the Board of Supervisors, or by court action, the
16 procedures of Section 402(c) shall be followed.

17 SEC. 415.5. ~~COMPLIANCE THROUGH PROVISION OF ON SITE AFFORDABLE~~
18 ~~HOUSING. AFFORDABLE HOUSING FEE (formerly Code Section 315.6)~~

19 Except as provided in Section 415.5(e), all development projects subject to this Program
20 through the application of Section 415.3 shall be required to pay an Affordable Housing Fee subject to
21 the following requirements:

22 (a) Paying a fee to the to the Development Collection Unit at DBI for deposit into the
23 Citywide Affordable Housing Fund for the purposes of that Fund.

24 (b) Amount of Fee. The amount of the fee which may be paid by the project sponsor subject
25 to this Program shall be determined by MOH utilizing the following factors:

1 (1) The number of units equivalent to the applicable percentage of the number of units in the
2 principal project. The applicable percentage shall be 20 percent or the percentage that applied to the
3 project if the project is subject to the requirements of an earlier version of this Program due to the date
4 it submitted its application. For the purposes of this Section, the City shall calculate the fee using the
5 direct fractional result of the total number of units multiplied by the applicable percentage, rather than
6 rounding up the resulting figure as required by Section 415.6 5(a).

7 (2) The affordability gap using data on the cost of construction of residential housing from
8 the "San Francisco Sensitivity Analysis Summary Report: Inclusionary Housing Program" prepared by
9 Keyser Marston Associates, Inc. in August 2006 for the Maximum Annual Rent or Maximum Purchase
10 Price for the equivalent unit sizes. The Department and MOH shall update the technical report from
11 time to time as they deem appropriate in order to ensure that the affordability gap remains current.

12 (3) No later than July 1 of each year, MOH shall adjust the fee and provide a report on its
13 adjustment to the Board of Supervisors. MOH shall provide notice of any fee adjustment on its website
14 at least 30 days prior to the adjustment taking effect. MOH is authorized to develop an appropriate
15 methodology for indexing the fee, based on adjustments in the costs of constructing housing and in the
16 price of housing in San Francisco. The method of indexing shall be published in the Procedures
17 Manual.

18 (c) Notice to Development Fee Collection Unit of Amount Owed. Prior to issuance of the
19 building or site permit for a development project subject to Section 415.5, MOH shall notify the
20 Development Fee Collection Unit at DBI electronically or in writing of its calculation of the amount of
21 the fee owed.

22 (d) Use of Fees. All monies contributed pursuant to this Section shall be deposited in the
23 special fund maintained by the Controller called the Citywide Affordable Housing Fund.

24 (1) Except as provided in subsection (2) below, the receipts in the Fund are hereby
25 appropriated in accordance with law to be used to (1) increase the supply of housing affordable to

1 qualifying households subject to the conditions of this Section, and (2) provide down payment
2 assistance to low and moderate income homebuyers; and (3) pay the expenses of MOH in connection
3 with monitoring and administering compliance with the requirements of the Program. MOH is
4 authorized to use funds in an amount not to exceed \$200,000 every 5 years to conduct follow-up studies
5 under Section 415.9(e) and to update the affordable housing fee amounts as described above in Section
6 415.5(b). All other monitoring and administrative expenses shall be appropriated through the annual
7 budget process or supplemental appropriation for MOH. The fund shall be administered and expended
8 by MOH, which shall have the authority to prescribe rules and regulations governing the Fund which
9 are consistent with this Section.

10 (2) "Small Sites Funds":

11 (A) Designation of funds. MOH shall designate and separately account for 10% of all fees
12 that it receives under Section 415.1 et seq., excluding fees that are geographically targeted such as
13 those in Sections 415.6(a)(1) and 827(b)(C), to support acquisition and rehabilitation of Small Sites
14 ("Small Sites Funds"). MOH shall continue to divert 10 percent of all fees for this purpose until the
15 Small Sites Funds reach a total of \$15 million at which point, MOH will stop designating funds for this
16 purpose. At such time as designated Small Sites Funds are expended and dip below \$15 million, MOH
17 shall start designating funds again for this purpose, such that at no time the Small Sites Funds shall
18 exceed \$15 million. When the total amount of fees paid to the City under Section 415.1 et seq. totals
19 less than \$10 million over the preceding 12 month period, MOH is authorized to temporarily divert
20 funds from the Small Sites Fund for other purposes. MOH must keep track of the diverted funds,
21 however, such that when the amount of fees paid to the City under Section 415.1 et seq. meets or
22 exceeds \$10 million over the preceding 12 month period, MOH shall commit all of the previously
23 diverted funds and 10 percent of any new funds, subject to the cap above, to the Small Sites Fund.

24 (B) Use of Small Sites Funds. The funds shall be used exclusively to acquire or rehabilitate
25 "Small Sites" defined as properties consisting of less than 25 units. Units supported by monies from the

1 fund shall be designated as housing affordable to qualifying households as defined in Section 415.1 for
2 no less than 55 years. Properties supported by the Small Sites Funds must be either (i) rental properties
3 that will be maintained as rental properties; (ii) vacant properties that were formerly rental properties
4 as long as those properties have been vacant for a minimum of two years prior to the effective date of
5 this legislation, (iii) properties that have been the subject of foreclosure or (iv) a Limited Equity
6 Housing Cooperative as defined in Subdivision Code Sections 1399.1 et seq. or a property owned or
7 leased by a non-profit entity modeled as a Community Land Trust.

8 (C) Initial Funds. If, within 18 months from the date of adoption of this ordinance, MOH
9 dedicates an initial one-time contribution of other eligible funds to be used initially as Small Sites
10 Funds, MOH may use the equivalent amount of Small Sites Funds received from fees for other purposes
11 permitted by the Citywide Affordable Housing Fund until the amount of the initial one-time
12 contribution is reached.

13 (D) Annual Report. At the end of each fiscal year, MOH shall issue a report to the Board of
14 Supervisors regarding the amount of Small Sites Funds received from fees under this legislation, and a
15 report of how those funds were used.

16 (E) Intent. In adopting this ordinance regarding Small Sites Funds, the Board of
17 Supervisors does not intend to preclude MOH from expending other eligible sources of funding on
18 Small Sites as described in this Section, or from allocating or expending more than \$15 million of other
19 eligible funds on Small Sites.

20 (e) Lien Proceedings. If, for any reason, the fee imposed pursuant to Section 415.5 remains
21 unpaid following issuance of the first certificate of occupancy, the Development Fee Collection Unit at
22 DBI shall institute lien proceedings to make the entire unpaid balance of the fee, plus interest and any
23 deferral surcharge, a lien against all parcels used for the development project in accordance with
24 Section 408 of this Article and Section 107A.13.15 of the San Francisco Building Code.
25

1 If a housing project is located in an Area Plan with an additional or specific affordable housing
2 requirements such as those set forth in section 416 and 417 or elsewhere in this code, the more specific
3 provisions shall apply in lieu of or in addition to those provided in this Program, as applicable.

4 (f) Alternatives To Payment Of Affordable Housing Fee:

5 (1) Eligibility: A project sponsor must pay the Affordable Housing Fee unless it qualifies
6 for and chooses to meet the requirements of the Program through an alternative provided in this
7 Subsection. The project sponsor may:

8 (A) Submit the 'Affidavit to Establish Eligibility for an Alternative to Affordable Housing
9 Fee' to the Planning Department prior to project approval by the Department or the Commission, as
10 applicable, that any affordable units provided under this Program shall be sold as ownership units and
11 will remain as ownership units for the life of the project; or

12 (B) Submit to the Department a contract demonstrating that the project's on- or off-site units
13 are not subject to the Costa Hawkins Rental Housing Act, California Civil Code Section 1954.50
14 because, under Section 1954.52(b), it has entered into an agreement with a public entity in
15 consideration for a direct financial contribution or any other form of assistance specified in California
16 Governments Code Sections 65915 et seq. and it submits an Acknowledgement of such to the
17 Department; or

18 (C) Enters into a Development Agreement with the City and County of San Francisco under
19 California Government Code Section 65864 et seq. and Chapter 56 of the San Francisco
20 Administrative Code, permitting the project to be eligible for on-site units as an alternative to payment
21 of the Affordable Housing Fee to satisfy the requirements of the Program and obligating the project
22 sponsor to provide the affordable units on-site.

23 (2) If the project sponsor is eligible under Subsection (1) above, the project sponsor may
24 elect to satisfy the requirements of Section 415.5 by one of the alternatives specified in this Section. If a
25 project sponsor is eligible for an alternative, the project sponsor has the choice between the

1 alternatives and the Planning Commission or the Department may not require a specific alternative.
2 The project sponsor must select an alternative before it receives project approvals from the Planning
3 Commission or Department and that alternative will be a condition of project approval and recorded
4 against the property in a Notice of Special Restriction. Notwithstanding the foregoing, if a project
5 sponsor selects an alternative, the project sponsor still has the option to pay the Affordable Housing
6 Fee up to the issuance of the first site or building permit. If a project sponsor fails to elect an
7 alternative before project approval by the Planning Commission or Planning Department or if a
8 project becomes ineligible for an alternative, the provisions of Section 415.5 shall apply. The
9 alternatives are as follows:

10 (A) Constructing units affordable to qualifying households on-site of the principal project
11 pursuant to the requirements of Section 415.6 (on-site alternative)

12 (B) Constructing units affordable to qualifying households at an alternative site within the
13 City and County of San Francisco pursuant to the requirements of Section 415.7 (off-site alternative)

14 (3) Any combination of payment of the affordable housing fee as provided in Section 415.5,
15 construction of on-site units as provided in Section 415.6 or construction of off-site units as provided
16 in Section 415.7, or, provided that the project applicant constructs or pays the fee at the appropriate
17 percentage or fee level required for that option.

18 If at any time, the project sponsor eliminates the on-site or off-site BMR ownership-only units,
19 then the project sponsor must immediately inform the Department and MOH and pay the applicable
20 Affordable Housing Fee plus interest.

21 If the sponsor elects, pursuant to Section 415.4(c), to provide on-site units to satisfy the
22 requirements of Section 415.1 et seq., the development project shall satisfy the following requirements:

23 (a) Number of Units:

24 (1) (A) For any housing development of any height that is located in an area with a specific
25 inclusionary housing requirement, the more specific inclusionary housing requirement shall apply.

1 ~~(B) — Buildings 120 feet in height and under or buildings of over 120 feet in height that do not~~
2 ~~meet the criteria in subsection (C) below: Except as provided in Subsection (C) below, the Department~~
3 ~~shall require for housing projects covered by Section 415.3(a)(1), as a condition of Department~~
4 ~~approval of a project's building permit, and by Section 415.3 (a)(2), (3) and (4), as a Condition of~~
5 ~~Approval of a conditional use or planned unit development permit or as a condition of Department~~
6 ~~approval of a live/work project, that 15 percent of all units constructed on the project site shall be~~
7 ~~affordable to qualifying households so that a project applicant must construct .15 times the total~~
8 ~~number of units produced in the principal project beginning with the construction of the fifth unit. If the~~
9 ~~total number of units is not a whole number, the project applicant shall round up to the nearest whole~~
10 ~~number for any portion of .5 or above.~~

11 ~~(C) — Buildings of over 120 feet in height. Except as provided in subsection (A) above, the~~
12 ~~requirements of this Subsection shall apply to any project that is over 120 feet in height and does not~~
13 ~~require a Zoning Map amendment or Planning Code text amendment related to its project approvals~~
14 ~~which (i) results in a net increase in the number of permissible residential units, or (ii) results in a~~
15 ~~material increase in the net permissible residential square footage as defined in Section 415.3(b)(2) or~~
16 ~~has not received or will not receive a Zoning Map amendment or Planning Code text amendment as~~
17 ~~part of an Area Plan adopted after January 1, 2006 which (i) results in a net increase in the number of~~
18 ~~permissible residential units, or (ii) results in a material increase in the net permissible residential~~
19 ~~square footage as defined in Section 415.3(b)(2). The Department shall require for housing projects~~
20 ~~covered by this Subsection and Section 415.3 (a)(1), as a condition of Department approval of a~~
21 ~~project's building permit, or by this Subsection and by Section 415.3 (a)(2), (3) and (4), as a Condition~~
22 ~~of Approval of a conditional use or planned unit development permit or as a condition of Department~~
23 ~~approval of a live/work project, that 12 percent of all units constructed on the project site shall be~~
24 ~~affordable to qualifying households so that a project applicant must construct .12 times the total~~
25 ~~number of units produced in the principal project beginning with the construction of the fifth unit. If the~~

1 ~~total number of units is not a whole number, the project applicant shall round up to the nearest whole~~
2 ~~number for any portion of .5 or above. Consistent with the conclusions of the MOH study authorized in~~
3 ~~Section 415.9(e), MOH shall recommend and the Board of Supervisors shall consider whether the~~
4 ~~requirements of this Subsection for buildings of over 120 feet in height shall continue or expire after~~
5 ~~approximately five years.~~

6 ~~(2) — If the principal project has resulted in demolition, conversion, or removal of affordable~~
7 ~~housing units renting or selling to households at income levels and/or for a rental rate or sales price~~
8 ~~below corresponding income thresholds for units affordable to qualifying households, the Commission~~
9 ~~shall require that the project applicant replace the number of affordable units removed with units of a~~
10 ~~comparable number of bedrooms or provide that 15 percent of all units constructed as part of the new~~
11 ~~project shall be affordable to qualifying households, whichever is greater.~~

12 ~~(b) — Timing of Construction: On-site inclusionary housing required by this Section 415.5~~
13 ~~must be constructed, completed, and ready for occupancy no later than the market rate units in the~~
14 ~~principal project.~~

15 ~~(c) — Type of Housing: In general, affordable units constructed under this Section 415.5 shall~~
16 ~~be comparable in number of bedrooms, exterior appearance and overall quality of construction to~~
17 ~~market rate units in the principal project. A Notice of Special Restrictions shall be recorded prior to~~
18 ~~issuance of the building or site permit and shall specify the number, location and sizes for all~~
19 ~~affordable units required under this Subsection. The square footage of affordable units and interior~~
20 ~~features in affordable units do not need to be same as or equivalent to those in market rate units in the~~
21 ~~principal project, so long as they are of good quality and are consistent with then-current standards for~~
22 ~~new housing. Where applicable, parking shall be offered to the affordable units subject to the terms and~~
23 ~~conditions of the Department's policy on unbundled parking for affordable housing units as specified in~~
24 ~~the Procedures Manual and amended from time to time. Unless provided otherwise by MOH in writing,~~
25 ~~if the units in the market rate portion of the development are ownership units, then the affordable units~~

1 ~~shall be ownership units and if the market rate units are rental units, then the affordable units shall be~~
2 ~~rental units.~~

3 ~~(d) — Marketing the Units: MOH shall be responsible for overseeing and monitoring the~~
4 ~~marketing of affordable units under this Section. In general, the marketing requirements and~~
5 ~~procedures shall be contained in the Procedures Manual as amended from time to time and shall apply~~
6 ~~to the affordable units in the project. MOH may develop occupancy standards for units of different~~
7 ~~bedroom sizes in the Procedures Manual in order to promote an efficient allocation of affordable units.~~
8 ~~MOH may require in the Procedures Manual that prospective purchasers complete homebuyer~~
9 ~~education training or fulfill other requirements. MOH shall develop a list of minimum qualifications for~~
10 ~~marketing firms that market affordable units under Section 415.1 et seq., referred to the Procedures~~
11 ~~Manual as Below Market Rate (BMR units). The Notice of Special Restrictions or Conditions of~~
12 ~~Approval shall specify that the marketing requirements and procedures contained in the Procedures~~
13 ~~Manual as amended from time to time, shall apply to the affordable units in the project.~~

14 ~~(1) — Lottery: At the initial offering of affordable units in a housing project, MOH must~~
15 ~~require the use of a public lottery approved by MOH to select purchasers or tenants. MOH shall also~~
16 ~~hold a general public lottery and maintain and utilize a list generated from this lottery or utilize a list~~
17 ~~generated from a recent lottery at another similar housing project to fill spaces in units that become~~
18 ~~available for re-sale or occupancy in any housing project subject to this ordinance after the initial~~
19 ~~offering. The list shall be updated from time to time but in no event less than annually to ensure that it~~
20 ~~remains current.~~

21 ~~(2) — Preferences: MOH shall create a lottery system that gives preference to people who live~~
22 ~~or work in San Francisco. MOH shall propose policies and procedures for implementing this~~
23 ~~preference to the Commission for inclusion in the Procedures Manual. Otherwise, it is the policy of the~~
24 ~~Board of Supervisors to treat all households equally in allocating affordable units under this Program.~~

1 ~~(e) — Benefits: If the project applicant elects to satisfy the inclusionary housing requirements~~
2 ~~through the production of on-site inclusionary housing in this Section 415.5, the project applicant shall~~
3 ~~be eligible to receive a refund for only that portion of the housing project which is affordable for the~~
4 ~~following fees: a conditional use or other fee required by Section 352 of this Code, if applicable; an~~
5 ~~environmental review fee required by Administrative Code Section 31.46B, if applicable; a building~~
6 ~~permit fee required by the Building Code and by Section 355 of this Code for the portion of the housing~~
7 ~~project that is affordable. The project applicant shall pay the building fee for the portion of the project~~
8 ~~that is market rate.~~

9 ~~The Controller shall refund fees from any appropriated funds to the project applicant on~~
10 ~~application by the project applicant. The application must include a copy of the certificate of~~
11 ~~occupancy for all units affordable to a qualifying household required by the Inclusionary Affordable~~
12 ~~Housing Program. It is the policy of the Board of Supervisors to appropriate money for this purpose~~
13 ~~from the General Fund.~~

14 ~~(f) — Affordable units constructed under Section 415.1 et seq. shall not have received~~
15 ~~development subsidies from any Federal, State or local program established for the purpose of~~
16 ~~providing affordable housing, and shall not be counted to satisfy any affordable housing requirement.~~

17 ~~(g) — Notwithstanding the provisions of Section 415.5(f) above, a sponsor may use California~~
18 ~~Debt Limit Allocation Committee (CDLAC) tax-exempt bonds to help fund its obligations under this~~
19 ~~Section 415.5 as long as it provides 20 percent of the units as affordable at 50 percent of area media~~
20 ~~income for on-site housing. All units provided under this Subsection must meet all of the requirements~~
21 ~~of Section 415.1 et seq. and the Procedures Manual for on-site housing.~~

22 ~~SEC. 415.6. COMPLIANCE THROUGH PROVISION OF OFF-SITE AFFORDABLE~~
23 ~~HOUSING-ON-SITE AFFORDABLE HOUSING ALTERNATIVE (formerly Section 315.4).~~

24 ~~(a) Number of Units: The number of units constructed on-site shall be as follows:~~
25

1 (1) (A) For any housing development of any height that is located in an area with a specific
2 affordable housing requirement set forth in Section 416 and 417 or elsewhere in this Code, the more
3 specific inclusionary housing requirement shall apply; or

4 (B) Buildings 120 feet in height and under or buildings of over 120 feet in height that do not
5 meet the criteria in subsection (C) below: Except as provided in Subsection (C) below, the Department
6 shall require for housing projects covered by Section 415.3(a)(1), as a condition of Department
7 approval of a project's building permit, and by Section 415.3 (a)(2), (3) and (4), as a Condition of
8 Approval of a Conditional Use Authorization or planned unit development permit or as a condition of
9 Department approval of a live/work project, that 15 percent of all units constructed on the project site
10 shall be affordable to qualifying households so that a project applicant must construct .15 times the
11 total number of units produced in the principal project beginning with the construction of the fifth unit.
12 If the total number of units is not a whole number, the project applicant shall round up to the nearest
13 whole number for any portion of .5 or above.

14 (C) Buildings of over 120 feet in height. Except as provided in subsection (A) above, the
15 requirements of this Subsection shall apply to any project that is over 120 feet in height and does not
16 require a Zoning Map amendment or Planning Code text amendment related to its project approvals
17 which (i) results in a net increase in the number of permissible residential units, or (ii) results in a
18 material increase in the net permissible residential square footage as defined in Section 415.3(b)(2) or
19 has not received or will not receive a Zoning Map amendment or Planning Code text amendment as
20 part of an Area Plan adopted after January 1, 2006 which (i) results in a net increase in the number of
21 permissible residential units, or (ii) results in a material increase in the net permissible residential
22 square footage as defined in Section 415.3(b)(2). The Department shall require for housing projects
23 covered by this Subsection and Section 415.3 (a)(1), as a condition of Department approval of a
24 project's building permit, or by this Subsection and by Section 415.3 (a)(2), (3) and (4), as a Condition
25 of Approval of a conditional use or planned unit development permit or as a condition of Department

1 approval of a live/work project, that 12 percent of all units constructed on the project site shall be
2 affordable to qualifying households so that a project applicant must construct .12 times the total
3 number of units produced in the principal project beginning with the construction of the fifth unit. If the
4 total number of units is not a whole number, the project applicant shall round up to the nearest whole
5 number for any portion of .5 or above. Consistent with the conclusions of the MOH study authorized in
6 Section 415.9(e), MOH shall recommend and the Board of Supervisors shall consider whether the
7 requirements of this Subsection for buildings of over 120 feet in height shall continue or expire after
8 approximately five years.

9 (2) If the principal project has resulted in demolition, conversion, or removal of affordable
10 housing units renting or selling to households at income levels and/or for a rental rate or sales price
11 below corresponding income thresholds for units affordable to qualifying households, the Commission
12 or the Department shall require that the project applicant replace the number of affordable units
13 removed with units of a comparable number of bedrooms or provide that 15 percent of all units
14 constructed as part of the new project shall be affordable to qualifying households, whichever is
15 greater.

16 (b) Timing of Construction: On-site affordable housing required by this Section 415.6 must
17 be constructed, completed, and ready for occupancy no later than the market rate units in the principal
18 project.

19 (c) Type of Housing: In general, affordable units constructed under this Section 415.6 shall
20 be comparable in number of bedrooms, exterior appearance and overall quality of construction to
21 market rate units in the principal project. A Notice of Special Restrictions shall be recorded prior to
22 issuance of the building or site permit and shall specify the number, location and sizes for all
23 affordable units required under this Subsection. The square footage of affordable units and interior
24 features in affordable units do not need to be same as or equivalent to those in market rate units in the
25 principal project, so long as they are of good quality and are consistent with then-current standards for

1 new housing. Where applicable, parking shall be offered to the affordable units subject to the terms and
2 conditions of the Department's policy on unbundled parking for affordable housing units as specified in
3 the Procedures Manual and amended from time to time. On-site affordable units shall be ownership
4 units unless the project applicant meets the eligibility requirement of Section 415.5(f).

5 (d) Marketing the Units: MOH shall be responsible for overseeing and monitoring the
6 marketing of affordable units under this Section. In general, the marketing requirements and
7 procedures shall be contained in the Procedures Manual as amended from time to time and shall apply
8 to the affordable units in the project. MOH may develop occupancy standards for units of different
9 bedroom sizes in the Procedures Manual in order to promote an efficient allocation of affordable units.
10 MOH may require in the Procedures Manual that prospective purchasers complete homebuyer
11 education training or fulfill other requirements. MOH shall develop a list of minimum qualifications for
12 marketing firms that market affordable units under Section 415.1 et seq., referred to the Procedures
13 Manual as Below Market Rate (BMR units). The Notice of Special Restrictions or Conditions of
14 Approval shall specify that the marketing requirements and procedures contained in the Procedures
15 Manual as amended from time to time, shall apply to the affordable units in the project.

16 (1) Lottery: At the initial offering of affordable units in a housing project, MOH must
17 require the use of a public lottery approved by MOH to select purchasers or tenants. MOH shall also
18 hold a general public lottery and maintain and utilize a list generated from this lottery or utilize a list
19 generated from a recent lottery at another similar housing project to fill spaces in units that become
20 available for re-sale or occupancy in any housing project subject to this ordinance after the initial
21 offering. The list shall be updated from time to time but in no event less than annually to ensure that it
22 remains current.

23 (2) Preferences: MOH shall create a lottery system that gives preference to people who live
24 or work in San Francisco. MOH shall propose policies and procedures for implementing this

1 preference to the Commission for inclusion in the Procedures Manual. Otherwise, it is the policy of the
2 Board of Supervisors to treat all households equally in allocating affordable units under this Program.

3 (e) Affordable units constructed under Section 415.6 shall not have received development
4 subsidies from any Federal, State or local program established for the purpose of providing affordable
5 housing, and shall not be counted to satisfy any affordable housing requirement.

6 (f) Benefits: If the project applicant is eligible for and elects to satisfy the affordable
7 housing requirements through the production of on-site affordable housing in this Section 415.6, the
8 project applicant shall be eligible to receive a refund for only that portion of the housing project which
9 is affordable for the following fees: a conditional use or other fee required by Section 352 of this Code,
10 if applicable; an environmental review fee required by Administrative Code Section 31.46B, if
11 applicable; a building permit fee required by the Building Code and by Section 355 of this Code for the
12 portion of the housing project that is affordable. The project applicant shall pay the building fee for the
13 portion of the project that is market-rate.

14 The Controller shall refund fees from any appropriated funds to the project applicant on
15 application by the project applicant. The application must include a copy of the certificate of
16 occupancy for all units affordable to a qualifying household required by the Affordable Housing
17 Program. It is the policy of the Board of Supervisors to appropriate money for this purpose from the
18 General Fund.

19 If the project sponsor elects, pursuant to Section 415.4(c) to provide off-site units to satisfy the
20 requirements of Section 415.1 et seq., the development project shall meet the following requirements:

21 (a) Number of Units: The number of units constructed off site shall be as follows:

22 (1) (A) For any housing development of any height that is located in an area with a specific
23 inclusionary housing requirement, the more specific off-site inclusionary housing requirement shall
24 apply.

1 ~~(B) Buildings of 120 feet and under in height or buildings of over 120 feet in height that do~~
2 ~~not meet the criteria in Subsection (C) below: Except as provided in Subsection (A), the for projects~~
3 ~~described in Section 415.3 (a)(1), (2), (3), and (4) 20 percent so that a project applicant must construct~~
4 ~~.20 times the total number of units produced in the principal project beginning with the construction of~~
5 ~~the fifth unit. If the total number of units is not a whole number, the project applicant shall round up to~~
6 ~~the nearest whole number for any portion of .5 or above.~~

7 ~~(C) Buildings of over 120 feet in height. Except as provided in subsection (A) above, the~~
8 ~~requirements of this Subsection shall apply to any project that is over 120 feet in height and does not~~
9 ~~require a Zoning Map amendment or Planning Code text amendment related to its project approvals~~
10 ~~which (i) results in a net increase in the number of permissible residential units, or (ii) results in a~~
11 ~~material increase in the net permissible residential square footage as defined in Section 415.3 (b)(2);~~
12 ~~or has not received or will not receive a Zoning Map amendment or Planning Code text amendment as~~
13 ~~part of an Area Plan adopted after January 1, 2006 which (i) results in a net increase in the number of~~
14 ~~permissible residential units, or (ii) results in a material increase in the net permissible residential~~
15 ~~square footage as defined in Section 415.3 (b)(2). The Department shall require for housing projects~~
16 ~~covered by this Subsection and Section 415.3 (a)(1), as a condition of Planning Department approval~~
17 ~~of a project's building permit, or by this Subsection and by Section 415.3 (a)(2), (3) and (4), as a~~
18 ~~Condition of Approval of a conditional use or planned unit development permit or as a condition of~~
19 ~~Department approval of a live/work project, that 17 percent of all units constructed on the project site~~
20 ~~shall be affordable to qualifying households so that a project applicant must construct .17 times the~~
21 ~~total number of units produced in the principal project beginning with the construction of the fifth unit.~~
22 ~~If the total number of units is not a whole number, the project applicant shall round up to the nearest~~
23 ~~whole number for any portion of .5 or above. Consistent with the conclusions of the MOH study~~
24 ~~authorized in Section 415.9(e), MOH shall recommend and the Board of Supervisors shall consider~~

1 ~~whether the requirements of this Subsection for buildings of over 120 feet in height shall continue or~~
2 ~~expire after approximately five years.~~

3 ~~(b) — Timing of Construction: The project applicant shall insure that the off-site units are~~
4 ~~constructed, completed, and ready for occupancy no later than the market rate units in the principal~~
5 ~~project.~~

6 ~~(c) — Location of off-site housing: The project applicant must insure that off-site units are~~
7 ~~located within one mile of the principal project.~~

8 ~~(d) — Type of Housing: New affordable rental housing and ownership housing affordable to~~
9 ~~households earning less than the median income is greatly needed in San Francisco. The Department~~
10 ~~shall develop Quality Standards for Off-Site Affordable Housing Units and recommend such standards~~
11 ~~to the Commission for adoption as part of the Procedures Manual. All off-site units constructed under~~
12 ~~this Section must be provided as rental housing for the life of the project or, if they are ownership units,~~
13 ~~must be affordable to households earning no more than 80 percent of the median income for the City~~
14 ~~and County of San Francisco. Nothing in this Section shall limit a developer from meeting the~~
15 ~~requirements of this Section through the construction of units in a limited equity or land trust form of~~
16 ~~ownership if such units otherwise meet all of the requirements for off-site housing. In general,~~
17 ~~affordable units constructed under Section 415.6 shall be comparable in number of bedrooms, exterior~~
18 ~~appearance and overall quality of construction to market rate units in the principal project. The total~~
19 ~~square footage of the off-site affordable units constructed under Section 415.6 shall be no less than the~~
20 ~~calculation of the total square footage of the on-site market rate units in the principal project~~
21 ~~multiplied by the relevant on-site percentage requirement for the project specified in Section 415.5 7.~~
22 ~~The Notice of Special Restrictions or Conditions of Approval shall include a specific number of units at~~
23 ~~specified unit sizes including number of bedrooms and minimum square footage for affordable units.~~
24 ~~The interior features in affordable units need not be the same as or equivalent to those in market rate~~
25 ~~units in the principal project, so long as they are consistent with the Planning Department's Quality~~

~~Standards for Off-Site Affordable Housing Units found in the Procedures Manual. Where applicable, parking shall be offered to the affordable units subject to the terms and conditions of the Department's policy on unbundled parking for affordable housing units as specified in the Procedures Manual and amended from time to time. If the residential units in the principal project are live/work units which do not contain bedrooms or are other types of units which do not contain bedrooms separated from the living space, the off-site units shall be comparable in size according to the following equivalency calculation between live/work and units with bedrooms:~~

Number of Bedrooms (or, for live/work units square foot equivalency)	Number of Persons in Household
0 (Less than 600 square feet) —	1 —
1 (601 to 850 square feet) —	2 —
2 (851 to 1,100 square feet) —	3 —
3 (1,101 to 1,300 square feet) —	4 —
4 (More than 1,300 square feet) —	5 —

~~(e) — Marketing the Units: MOH shall be responsible for overseeing and monitoring the marketing of affordable units under this Section. In general, the marketing requirements and procedures shall be contained in the Procedures Manual as amended from time to time and shall apply to the affordable units in the project. MOH may develop occupancy standards for units of different bedroom sizes in the Procedures Manual in order to promote an efficient allocation of affordable units. MOH may require in the Procedures Manual that prospective purchasers complete homebuyer education training or fulfill other requirements. MOH shall develop a list of minimum qualifications for marketing firms that market affordable units under Section 415.1 et seq., referred to the Procedures Manual as Below Market Rate (BMR units). The Notice of Special Restrictions or Conditions of~~

1 ~~Approval shall specify that the marketing requirements and procedures contained in the Procedures~~
2 ~~Manual as amended from time to time, shall apply to the affordable units in the project.~~

3 ~~(1) — Lottery: At the initial offering of affordable units in a housing project, MOH must~~
4 ~~require the use of a public lottery approved by MOH to select purchasers or tenants. MOH shall also~~
5 ~~hold a general public lottery and maintain and utilize a list generated from this lottery or utilize a list~~
6 ~~generated from a recent lottery at another similar housing project to fill spaces in units that become~~
7 ~~available for re-sale or occupancy in any housing project subject to Section 415.1 et seq. after the~~
8 ~~initial offering. The list shall be updated from time to time but in no event less than annually to insure~~
9 ~~that it remains current.~~

10 ~~(2) — Preferences: MOH shall create a lottery system that gives preference to people who live~~
11 ~~or work in San Francisco. MOH shall propose policies and procedures for implementing this~~
12 ~~preference to the Commission for inclusion in the Procedures Manual. Otherwise, it is the policy of the~~
13 ~~Board of Supervisors to treat all households equally in allocating affordable units under this Program.~~

14 ~~(f) — Affordable units constructed under Section 415.6 shall not have received development~~
15 ~~subsidies from any Federal, State or local program established for the purpose of providing affordable~~
16 ~~housing, and shall not be counted to satisfy any affordable housing requirement for the off-site~~
17 ~~development.~~

18 ~~(g) — Notwithstanding the provisions of Section 415.6(f) above, a developer may use~~
19 ~~California Debt Limit Allocation Committee (CDLAC) tax-exempt bonds to help fund its obligations~~
20 ~~under Section 415.1 et seq. as long as it provides 20 percent of the units as affordable at 50 percent of~~
21 ~~area median income for on-site housing or 25 percent of the units as affordable at 50 percent of area~~
22 ~~median income for off-site housing. Except as provided in this subsection, all units provided under this~~
23 ~~Section must meet all of the requirements of Section 415.1 et seq. and the Procedures Manual for either~~
24 ~~on- or off-site housing.~~

1 SEC. 415.7. ~~COMPLIANCE THROUGH BY PAYMENT OF AN IN-LIEU FEE. OFF-SITE~~
2 AFFORDABLE HOUSING ALTERNATIVE (formerly Section 315.5)

3 If the project sponsor is eligible and selects pursuant to Section 415.5(f) to provide off-site units
4 to satisfy the requirements of Section 415.1 et seq., the development project shall meet the following
5 requirements:

6 (a) Number of Units: The number of units constructed off-site shall be as follows:

7 (1) (A) For any housing development of any height that is located in an area with a specific
8 affordable housing requirement, set forth in Sections 416, 417, or elsewhere in this Code, the more
9 specific off-site inclusionary housing requirement shall apply.

10 (B) Buildings of 120 feet and under in height or buildings of over 120 feet in height that do
11 not meet the criteria in Subsection (C) below: Except as provided in Subsection (A), the for projects
12 described in Section 415.3 (a)(1), (2), (3), and (4) 20 percent so that a project applicant must construct
13 .20 times the total number of units produced in the principal project beginning with the construction of
14 the fifth unit. If the total number of units is not a whole number, the project applicant shall round up to
15 the nearest whole number for any portion of .5 or above.

16 (C) Buildings of over 120 feet in height. Except as provided in subsection (A) above, the
17 requirements of this Subsection shall apply to any project that is over 120 feet in height and does not
18 require a Zoning Map amendment or Planning Code text amendment related to its project approvals
19 which (i) results in a net increase in the number of permissible residential units, or (ii) results in a
20 material increase in the net permissible residential square footage as defined in Section 415.3 (b)(2);
21 or has not received or will not receive a Zoning Map amendment or Planning Code text amendment as
22 part of an Area Plan adopted after January 1, 2006 which (i) results in a net increase in the number of
23 permissible residential units, or (ii) results in a material increase in the net permissible residential
24 square footage as defined in Section 415.3 (b)(2). The Department shall require for housing projects
25 covered by this Subsection and Section 415.3 (a)(1), as a condition of Planning Department approval

1 of a project's building permit, or by this Subsection and by Section 415.3 (a)(2), (3) and (4), as a
2 Condition of Approval of a conditional use or planned unit development permit or as a condition of
3 Department approval of a live/work project, that 17 percent of all units constructed on the project site
4 shall be affordable to qualifying households so that a project applicant must construct .17 times the
5 total number of units produced in the principal project beginning with the construction of the fifth unit.
6 If the total number of units is not a whole number, the project applicant shall round up to the nearest
7 whole number for any portion of .5 or above. Consistent with the conclusions of the MOH study
8 authorized in Section 415.9(e), MOH shall recommend and the Board of Supervisors shall consider
9 whether the requirements of this Subsection for buildings of over 120 feet in height shall continue or
10 expire after approximately five years.

11 (b) Timing of Construction: The project applicant shall insure that the off-site units are
12 constructed, completed, and ready for occupancy no later than the market rate units in the principal
13 project.

14 (c) Location of off-site housing: The project applicant must insure that off-site units are
15 located within one mile of the principal project.

16 (d) Type of Housing: New affordable rental housing and ownership housing affordable to
17 households earning less than the median income is greatly needed in San Francisco. The Department
18 shall develop Quality Standards for Off-Site Affordable Housing Units and recommend such standards
19 to the Commission for adoption as part of the Procedures Manual. All off-site units constructed under
20 this Section must be provided as ownership housing for the life of the project unless the project
21 applicant meets the eligibility requirement of Section 415.5(f) and must be affordable to households
22 earning no more than 80 percent of the median income for the City and County of San Francisco.
23 Nothing in this Section shall limit a developer from meeting the requirements of this Section through
24 the construction of units in a limited equity or land trust form of ownership if such units otherwise meet
25 all of the requirements for off-site housing. In general, affordable units constructed under Section 415.7

1 shall be comparable in number of bedrooms, exterior appearance and overall quality of construction to
2 market rate units in the principal project. The total square footage of the off-site affordable units
3 constructed under Section 415.7 shall be no less than the calculation of the total square footage of the
4 on-site market-rate units in the principal project multiplied by the relevant on-site percentage
5 requirement for the project specified in Section 415.7. The Notice of Special Restrictions or Conditions
6 of Approval shall include a specific number of units at specified unit sizes - including number of
7 bedrooms and minimum square footage - for affordable units. The interior features in affordable units
8 need not be the same as or equivalent to those in market rate units in the principal project, so long as
9 they are consistent with the Planning Department's Quality Standards for Off-Site Affordable Housing
10 Units found in the Procedures Manual. Where applicable, parking shall be offered to the affordable
11 units subject to the terms and conditions of the Department's policy on unbundled parking for
12 affordable housing units as specified in the Procedures Manual and amended from time to time. If the
13 residential units in the principal project are live/work units which do not contain bedrooms or are
14 other types of units which do not contain bedrooms separated from the living space, the off-site units
15 shall be comparable in size according to the following equivalency calculation between live/work and
16 units with bedrooms:

<u>Number of Bedrooms (or, for live/work units square foot</u> <u>equivalency)</u>	<u>Number</u> <u>of Persons in</u> <u>Household</u>
<u>0 (Less than 600 square feet)</u>	<u>1</u>
<u>1 (601 to 850 square feet)</u>	<u>2</u>
<u>2 (851 to 1,100 square feet)</u>	<u>3</u>
<u>3 (1,101 to 1,300 square feet)</u>	<u>4</u>
<u>4 (More than 1,300 square feet)</u>	<u>5</u>

1 (e) Marketing the Units: MOH shall be responsible for overseeing and monitoring the
2 marketing of affordable units under this Section. In general, the marketing requirements and
3 procedures shall be contained in the Procedures Manual as amended from time to time and shall apply
4 to the affordable units in the project. MOH may develop occupancy standards for units of different
5 bedroom sizes in the Procedures Manual in order to promote an efficient allocation of affordable units.
6 MOH may require in the Procedures Manual that prospective purchasers complete homebuyer
7 education training or fulfill other requirements. MOH shall develop a list of minimum qualifications for
8 marketing firms that market affordable units under Section 415.1 et seq., referred to the Procedures
9 Manual as Below Market Rate (BMR units). The Notice of Special Restrictions or Conditions of
10 Approval shall specify that the marketing requirements and procedures contained in the Procedures
11 Manual as amended from time to time, shall apply to the affordable units in the project.

12 (1) Lottery: At the initial offering of affordable units in a housing project, MOH must
13 require the use of a public lottery approved by MOH to select purchasers or tenants. MOH shall also
14 hold a general public lottery and maintain and utilize a list generated from this lottery or utilize a list
15 generated from a recent lottery at another similar housing project to fill spaces in units that become
16 available for re-sale or occupancy in any housing project subject to Section 415.1 et seq. after the
17 initial offering. The list shall be updated from time to time but in no event less than annually to insure
18 that it remains current.

19 (2) Preferences: MOH shall create a lottery system that gives preference to people who live
20 or work in San Francisco. MOH shall propose policies and procedures for implementing this
21 preference to the Commission for inclusion in the Procedures Manual. Otherwise, it is the policy of the
22 Board of Supervisors to treat all households equally in allocating affordable units under this Program.

23 (f) Affordable units constructed under Section 415.7 shall not have received development
24 subsidies from any Federal, State or local program established for the purpose of providing affordable
25

1 housing, and shall not be counted to satisfy any affordable housing requirement for the off-site
2 development.

3 ~~If the project sponsor elects, pursuant to Section 415.4(c), to pay an in-lieu fee to satisfy the~~
4 ~~requirements of Section 415.1 et seq., the sponsor shall pay the in-lieu fee to the Development Fee~~
5 ~~Collection Unit at DBI for use by MOH prior to issuance of the first construction document, with an~~
6 ~~option for the project sponsor to defer payment to prior to issuance of the first certificate of occupancy~~
7 ~~upon agreeing to pay a deferral surcharge that would be deposited into the Citywide Affordable~~
8 ~~Housing Fund in accordance with Section 107A.13.3 of the San Francisco Building Code.~~

9 (a) ~~Amount of Fee. The amount of the fee shall be determined by MOH utilizing the~~
10 ~~following factors:~~

11 (1) ~~The number of units required by Section 415.6. For the purposes of this section, the City~~
12 ~~shall calculate the fee using the direct fractional result of the total number of units multiplied by the~~
13 ~~percentage of off-site housing required, rather than rounding up the resulting figure as required by~~
14 ~~Section 415.5(a).~~

15 (2) ~~The affordability gap using data on the cost of construction of residential housing from~~
16 ~~the "San Francisco Sensitivity Analysis Summary Report: Inclusionary Housing Program" prepared by~~
17 ~~Keyser Marston Associates, Inc. in August 2006 for the Maximum Annual Rent or Maximum Purchase~~
18 ~~Price for the equivalent unit sizes. The Department and MOH shall update the technical report from~~
19 ~~time to time as they deem appropriate in order to ensure that the affordability gap remains current.~~

20 (3) ~~No later than July 1 of each year, MOH shall adjust the in-lieu fee payment option and~~
21 ~~provide a report on its adjustment to the Board of Supervisors. MOH shall provide notice of any fee~~
22 ~~adjustment on its website at least 30 days prior to the adjustment taking effect. MOH is authorized to~~
23 ~~develop an appropriate methodology for indexing the fee, based on adjustments in the costs of~~
24 ~~constructing housing and in the price of housing in San Francisco. The method of indexing shall be~~
25 ~~published in the Procedures Manual.~~

1 ~~(b)——Notice to Development Fee Collection Unit of Amount Owed. Prior to issuance of the~~
2 ~~building or site permit for a development project subject to Section 415.7, MOH shall notify the~~
3 ~~Development Fee Collection Unit at DBI electronically or in writing of its calculation of the amount of~~
4 ~~the in-lieu fee owed.~~

5 ~~(c)——Use of In-Lieu Fees. All monies contributed pursuant to this section shall be deposited in~~
6 ~~the special fund maintained by the Controller called the Citywide Affordable Housing Fund. The~~
7 ~~receipts in the Fund are hereby appropriated in accordance with law to be used to (1) increase the~~
8 ~~supply of housing affordable to qualifying households subject to the conditions of this Section, and (2)~~
9 ~~pay the expenses of MOH in connection with monitoring and administering compliance with the~~
10 ~~requirements of the Program. MOH is authorized to use funds in an amount not to exceed \$200,000~~
11 ~~every 5 years to conduct follow up studies under Section 415.9(e)) and to update the in-lieu fee~~
12 ~~amounts as described above in Section 415.7(a). All other monitoring and administrative expenses~~
13 ~~shall be appropriated through the annual budget process or supplemental appropriation for MOH. The~~
14 ~~fund shall be administered and expended by MOH, which shall have the authority to prescribe rules~~
15 ~~and regulations governing the Fund which are consistent with this Section.~~

16 ~~(d)——Lien Proceedings. If, for any reason, the in-lieu fee imposed pursuant to Section 415.7~~
17 ~~remains unpaid following issuance of the first certificate of occupancy, the Development Fee Collection~~
18 ~~Unit at DBI shall institute lien proceedings to make the entire unpaid balance of the fee, plus interest~~
19 ~~and any deferral surcharge, a lien against all parcels used for the development project in accordance~~
20 ~~with Section 408 of this Article and Section 107A.13.15 of the San Francisco Building Code.~~

21 SEC. 415.8. DURATION AND MONITORING OF AFFORDABILITY (formerly Section
22 315.7).

23 (a) All units constructed pursuant to Sections 415.6 5 (on-site alternative) and 415.7 6
24 (off-site alternative) must be ownership units and remain as ownership units for the life of the
25 project ~~occupied in the case of ownership units or occupied by qualified households in the case of~~

1 ~~rental units~~, and shall not remain vacant for a period exceeding 60 days without the written
2 consent of MOH. All units constructed pursuant to Sections 415. ~~6~~5 and 415. ~~7~~6 must remain
3 affordable to qualifying households for the life of the project. The income levels specified in
4 the Notice of Special Restrictions and/or Conditions of Approval for the project shall be the
5 required income percentages for the life of the project.

6 (b) The Commission or the Department shall require all housing projects subject to
7 Section 415.1 et seq. to record a Notice of Special Restrictions with the Recorder of the City
8 and County of San Francisco. The Notice of Special Restrictions must incorporate the
9 affordability restrictions. All projects described in Section 415.3 (a)(1) and 415.3 (a)(3) must
10 incorporate all of the requirements of this Section 415. ~~8~~7 into the Notice for Special
11 Restrictions, including any provisions required to be in the Conditions of Approval for housing
12 projects described in Section 415.3 (a)(2). These Section 415.3 (a)(2) projects which are
13 housing projects which go through the conditional use or planned unit development process
14 shall have Conditions of Approval. The Conditions of Approval shall specify that project
15 applicants shall adhere to the marketing, monitoring, and enforcement procedures outlined in
16 the Procedures Manual, as amended from time to time, in effect at the time of project
17 approval. The Commission shall file the Procedures Manual in the case file for each project
18 requiring inclusionary housing pursuant to this Program. The Procedures Manual will be
19 referenced in the Notice of Special Restrictions for each project.

20 (c) Any affordable rental units permitted by the Commission to be converted to
21 ownership units must satisfy the requirements of the Procedures Manual, as amended from
22 time to time, including that the units shall be sold at restricted sales prices to households
23 meeting the income qualifications specified in the Notice of Special Restrictions or Conditions
24 of Approval, with a right of first refusal for the occupant(s) of such units at the time of
25

1 conversion. Upon conversion to ownership, the units are subject to the 50-year rolling resale
2 restrictions, as described in Section 415.8(a).

3 (d) For ownership units approved pursuant to Sections 415.6 or 415.7, the Notice of
4 Special Restrictions or Conditions of Approval will include provisions restricting resale prices
5 and purchaser income levels according to the formula specified in the Procedures Manual, as
6 amended from time to time. In the case that subordination of the Affordability Conditions
7 contained in a recorded Notice of Special Restrictions may be necessary to ensure the Project
8 Applicant's receipt of adequate construction and/or permanent financing for the project, or to
9 enable first time home buyers to qualify for mortgages, the project applicant may follow the
10 procedures for subordination of affordability restrictions as described in the principal project's
11 Conditions of Approval and in the Procedures Manual. A release following foreclosure or other
12 transfer in lieu of foreclosure may be authorized if required as a condition to financing
13 pursuant to the procedures set forth in the Procedures Manual.

14 Purchasers of affordable units shall secure the obligations contained in the Notice of
15 Special Restrictions or Conditions of Approval by executing and delivering to the City a
16 promissory note secured by a deed of trust encumbering the applicable affordable unit as
17 described in the Procedures Manual or by an alternative means if so provided for in the
18 Procedures Manual, as amended from time to time.

19 SEC. 416 (formerly Section 315.4(a)(1)(i)). MARKET AND OCTAVIA AREA PLAN
20 AFFORDABLE HOUSING REQUIREMENT FEE. Sections 416.1 through 416.5, hereafter
21 referred to as Section 416.1 et seq., set forth the requirements and procedures for the Market
22 and Octavia Area Plan Affordable Housing Fee. The effective date of these requirements shall
23 be either May 30, 2008, which is the date that the requirements originally became effective, or
24 the date a subsequent modification, if any, became effective.

25 SEC. 416.1. FINDINGS. The Board of Supervisors hereby finds that:

1 A. The additional affordable housing requirements of this Section are supported by
2 the Nexus Study performed by Keyser Marston and Associates referenced in Section
3 415.1(11) and found in Board File No. 081152. The Board of Supervisors has reviewed the
4 study and staff analysis and report of the study and, on that basis, finds that the study
5 supports the current affordable inclusionary housing requirements combined with the additional
6 affordable housing fee. Specifically, the Board finds that the study: (1) identifies the purpose
7 of the additional fee to mitigate impacts on the demand for affordable housing in the City; (2)
8 identifies the use to which the additional fee is to be put as being to increase the City's
9 affordable housing supply; and (3) establishes a reasonable relationship between the use of
10 the additional fee for affordable housing and the need for affordable housing and the
11 construction of new market rate housing. Moreover, the Board finds that the current affordable
12 inclusionary requirements combined with the additional fee are less than the cost of mitigation
13 and do not include the costs of remedying any existing deficiencies. The Board also finds that
14 the study establishes that the current affordable inclusionary requirements and additional fee
15 do not duplicate other City requirements or fees.

16 B. Furthermore, the Board finds that generally an account has been established,
17 funds appropriated, and a construction schedule adopted for affordable housing projects
18 funded through the Affordable inclusionary Housing program. The Affordable Housing Fee
19 ~~additional fee or the in-lieu fees and the additional fee~~ will reimburse the City for expenditures on
20 affordable housing that have already been made.

21 C. A major Market and Octavia Area Plan objective is to direct new market rate
22 housing development to the area. That new market rate development will greatly outnumber
23 both the number of units and potential new sites within the plan area for permanently
24 affordable housing opportunities. The City and County of San Francisco has adopted a policy
25 in its General Plan to meet the affordable housing needs of its general population and to

1 require new housing development to produce sufficient affordable housing opportunities for all
2 income groups, both of which will not be met by the projected housing development in the
3 plan area. In addition, the "Draft Residential Nexus Analysis City and County of San
4 Francisco" of December 2006 indicates that market rate housing itself generates additional
5 lower income affordable housing needs for the workforce needed to serve the residents of the
6 new market rate housing proposed for the plan area. In order to meet the demand created for
7 affordable housing by the specific policies of the Plan and to be consistent with the policy of
8 the City and County of San Francisco it is found that an additional affordable housing fee
9 need be included on all market rate housing development in the Plan Area with priority for its
10 use being given to the Plan area.

11 SEC. 416.2. DEFINITIONS. See Section 401 of this Article.

12 SEC. 416.3. APPLICATION OF AFFORDABLE HOUSING FEE REQUIREMENT. The
13 requirements of Sections 415.1 through 415.9 shall apply in the Market and Octavia Plan Area
14 in addition to the following additional affordable housing requirement:

15 (a) Amount of fee: All development projects that have not received Department or
16 Commission approval as of the effective date of May 30, 2008 and that are subject to the
17 ~~Residential Inclusionary~~ Affordable Housing Program shall pay an additional Affordable
18 Housing Fee per square foot of Residential Space Subject to the Community Improvements
19 Impact Fee as follows; \$8.00 in the Van Ness Market Special Use District; \$4.00 in the NCT
20 District; and \$0.00 in the RTO District.

21 (b) Other Fee Provisions. This additional Affordable Housing Fee shall be subject
22 to the inflation adjustment provisions of Section 409 and the waiver and reduction provisions
23 of Section 421.4. This additional affordable housing fee may not be met through the in-kind
24 provision of community improvements or Community Facilities (Mello Roos) financing options
25 of Sections 426.3(e) and (f).

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

7 (d) Timing of payment. The Market and Octavia Plan Area Affordable Housing Fee
8 shall be paid before the City issues a first construction document, with an option for the
9 project sponsor to defer payment to prior to issuance of the first certificate of occupancy upon
10 agreeing to pay a deferral surcharge in accordance with Section 107A.13.3 of the San
11 Francisco Building Code.

12 SEC. 416.4. IMPOSITION OF AFFORDABLE HOUSING FEE REQUIREMENT.

13 (a) Determination of Requirements. The Department shall determine the
14 applicability of Section 416.1 et seq. to any development project requiring a building or site
15 permit and, if Section 416.1 et seq. is applicable, shall impose any such requirements as a
16 condition of approval for issuance of the building or site permit. The project sponsor shall
17 supply any information necessary to assist the Department in this determination.

18 (b) Department Notice to Development Fee Collection Unit of Fee Requirements.
19 After the Department has made its final determination regarding the application of the
20 affordable housing requirements to a development project pursuant to Section 416.1 et seq., it
21 shall immediately notify the Development Fee Collection Unit at DBI of the applicable
22 affordable housing fee amount in addition to the other information required by Section 402(b)
23 of this Article.

24 (c) Process for Revisions of Determination of Requirements. In the event that the
25 Department or the Commission takes action affecting any development project subject to

1 Section 416.1 et seq. and such action is subsequently modified, superseded, vacated, or
2 reversed by the Board of Appeals, the Board of Supervisors, or by court action, the
3 procedures of Section 402(c) of this Article shall be followed.

4 SEC. 416.5. USE OF FUNDS. The additional affordable housing requirement specified
5 in this Section for the Market and Octavia Plan Area shall be paid into the Citywide Affordable
6 Housing Fund, but the funds shall be separately accounted for. MOH shall expend the funds
7 according to the following priorities: First, to increase the supply of housing affordable to
8 qualifying households in the Market and Octavia Plan Area; second, to increase the supply of
9 housing affordable to qualifying households within 1 mile of the boundaries of the Plan Area;
10 third, to increase the supply of housing affordable to qualifying households in the City and
11 County of San Francisco. The funds may also be used for monitoring and administrative
12 expenses subject to the process described in Section 415.7(c).

13 SEC. 417 (formerly Section 315.4(a)(1)(ii)). EASTERN NEIGHBORHOODS AREA
14 PLAN ~~ALTERNATE AFFORDABLE HOUSING~~ REQUIREMENT IN LIEU FEE. Sections 417.1
15 through 417.5, hereafter referred to as Section 417.1 et seq., set forth the requirements and
16 procedures for the Eastern Neighborhoods Area Plan Alternate Affordable Housing ~~In-Lieu~~
17 Fee. The effective date of these requirements shall be either January 19, 2009, which is the
18 date that the requirements originally became effective, or the date a subsequent modification,
19 if any, became effective.

20 SEC. 417.1. FINDINGS. The Board of Supervisors hereby finds that:

21 A. The fee provisions of this Section are equivalent to or less than the fees for
22 developments of over 20 units previously adopted by the Board in Ordinance No. 051685 and
23 060529 and are also supported by the Nexus Study performed by Keyser Marston and
24 Associates referenced in Section 415.1(11) and found in Board File No. 081152. The Board of
25 Supervisors has reviewed the study and staff analysis prepared by the MOH dated July 24,

1 2008 in Board File No. 081152 and, on that basis, finds that the study supports the current
2 proposed changes to the inclusionary housing requirements for projects of 20 units or less in
3 the Eastern Neighborhood Area Plan. Specifically, the Board finds that the study and staff
4 memo: (1) identifies the purpose of the additional fee to mitigate impacts on the demand for
5 affordable housing in the City; (2) identifies the use to which the additional fee is to be put as
6 being to increase the City's affordable housing supply; and (3) establishes a reasonable
7 relationship between the use of the additional fee for affordable housing and the need for
8 affordable housing and the construction of new market rate housing. Moreover, the Board
9 finds that the new affordable housing-inclusionary requirements are less than the cost of
10 mitigation and do not include the costs of remedying any existing deficiencies. The Board also
11 finds that the study establishes that the inclusionary requirements do not duplicate other City
12 requirements or fees.

13 B. Furthermore, the Board finds that generally an account has been established,
14 funds appropriated, and a construction schedule adopted for affordable housing projects
15 funded through the Affordable-Inclusionary Housing program and the in lieu fees will reimburse
16 the City for expenditures on affordable housing that have already been made.

17 C. The Board finds that small scale development faces a number of challenges in
18 the current development climate, including limited access to credit and often, a higher land
19 cost per unit for the small sites on which they develop. Because of these and other variations
20 from larger-scale development, they operate under a somewhat unique development model
21 which cannot be fully encapsulated within the constraints of the Eastern Neighborhoods
22 Financial Analysis, prepared to assess the financial feasibility of increasing housing
23 requirements and impact fees in the Plan Areas. To address these challenges, the Board
24 finds that a number of slight modifications to the affordable housing requirements of the
25

1 Eastern Neighborhoods, to apply to small projects (defined as 20 units or fewer, or less than
2 25,000 gross square feet) are appropriate.

3 SEC. 417.2. DEFINITIONS. See Section 401 of this Article.

4 "Gross square footage" shall have the meaning set forth in Section 102.9.

5 "Eastern Neighborhood Controls" shall have the meaning set forth in Section 175.6.
6 Application.

7 SEC. 417.3. APPLICATION OF AFFORDABLE HOUSING FEE REQUIREMENT.

8 (a) Application. The alternate ~~A~~affordable ~~H~~housing ~~in-lieu~~ Ffee described in this
9 Section shall only apply to development projects that are subject to the Eastern Neighborhood
10 Controls, consist of 20 units or less or less than 25,000 gross square feet, and are subject to
11 the requirements of Sections 415 through 415.9 and 419, and any stated exceptions
12 elsewhere in this Code, including the specific provisions in Section 419.

13 (b) Amount of Fee. Any sponsor of a development projects subject to this Section
14 may choose to pay an alternate in-lieu fee equal to \$40.00 per gross square foot of net new
15 residential development instead of the standard in-lieu fee requirements set forth in Section
16 415.7 as follows.

17 (c) Calculation of Gross Square Feet of Residential Area. The calculation of gross
18 square feet shall not include nonresidential uses, including any retail, commercial, or PDR
19 uses, and all other space used only for storage and services necessary to the operation or
20 maintenance of the building itself.

21 (d) Timing of Payment. The Eastern Neighborhoods Alternate Affordable Housing
22 Fee project applicant shall be paid to the Development Fee Collection Unit at DBI prior to
23 issuance of the first construction document, with an option for the project sponsor to defer
24 payment to prior to issuance of the first certificate of occupancy upon agreeing to pay a
25

1 deferral surcharge that would be deposited into the Citywide Affordable Housing Fund in
2 accordance with Section 107A.13.3 of the San Francisco Building Code.

3 SEC. 417.4. IMPOSITION OF AFFORDABLE HOUSING FEE REQUIREMENT.

4 (a) Determination of Requirements. The Department shall determine the
5 applicability of Section 417.1 et seq. to any development project requiring a building or site
6 permit and, if Section 417.1 et seq. is applicable, shall impose any such requirements as a
7 condition of approval for issuance of the building or site permit. The project sponsor shall
8 supply any information necessary to assist the Department in this determination.

9 (b) Department Notice to Development Fee Collection Unit of Fee Requirements.
10 After the Department has made its final determination regarding the application of the
11 affordable housing requirements to a development project pursuant to Section 417.1 et seq., it
12 shall immediately notify the Development Fee Collection Unit at DBI of the applicable
13 affordable housing fee amount in addition to the other information required by Section 402(b)
14 of this Article.

15 (c) Process for Revisions of Determination of Requirements. In the event that the
16 Department or the Commission takes action affecting any development project subject to
17 Section 417.1 et seq. and such action is subsequently modified, superseded, vacated, or
18 reversed by the Board of Appeals, the Board of Supervisors, or by court action, the
19 procedures of Section 402(c) shall be followed.

20 SEC. 417.5. USE OF FUNDS. The Eastern Neighborhoods Area Plan Alternate
21 Affordable Housing In-Lieu Fee shall be paid into the Citywide Affordable Housing Fund, but the
22 funds shall be separately accounted for. MOH shall expend the funds according to the
23 following priorities: First, to increase the supply of housing affordable to qualifying households
24 in the Eastern Neighborhoods Project Areas; second, to increase the supply of housing
25 affordable to qualifying households within 1 mile of the boundaries of the Eastern

1 Neighborhoods Project Areas; third, to increase the supply of housing affordable to qualifying
2 households in the City and County of San Francisco. The funds may also be used for
3 monitoring and administrative expenses subject to the process described in Section 415.6(c).

4 Section 3: The San Francisco Planning Code is hereby amended by amending Section
5 827 to read as follows:

6 **SEC. 827. - RINCON HILL DOWNTOWN RESIDENTIAL MIXED USE DISTRICT (RH-**
7 **DTR).**

8 The Rincon Hill Downtown Residential Mixed Use District (RH-DTR), the boundaries of
9 which are shown in Section Map No. 1 of the Zoning Map, is established for the purposes set
10 forth below.

11 The RH-DTR District is adjacent to the southern edge of the downtown, generally
12 bounded by Folsom Street, the Bay Bridge, the Embarcadero, and Essex Street. High-density
13 residential uses and supporting commercial and institutional uses are allowed and
14 encouraged within the limits set by height, bulk, and tower spacing controls. Folsom Street is
15 intended to develop as the neighborhood commercial heart of the Rincon Hill and Transbay
16 neighborhoods, and pedestrian-oriented uses are required on the ground floor. Individual
17 townhouse dwelling units with ground floor entries directly to the street are required on streets
18 that will become primarily residential, including First, Fremont, Beale, Main, and Spear
19 Streets.

20 While lot coverage is limited for all levels with residential uses that do not face onto
21 streets or alleys, traditional rear yard open spaces are not required except in the limited
22 instances where there is an existing pattern of them, such as smaller lots on the Guy Place
23 block. Specific height, bulk, and setback controls establish appropriate heights for both towers
24 and mid-rise podium development and ensure adequate spacing between towers in order to
25 establish a neighborhood scale and ensure light and air to streets and open spaces. Setbacks

are required where necessary to provide transition space for ground floor residential uses and to ensure sunlight access to streets and open spaces. Off-street parking must be located below grade.

Given the need for services and open space resulting from new development, projects will provide or contribute funding for the creation of public open space and community facilities as described in the Rincon Hill Area Plan of the General Plan. The Rincon Hill Streetscape Plan, part of the Area Plan, proposes to enhance and redesign most streets in the district to create substantial new open space amenities, improve pedestrian conditions, and improve the flow of local traffic and transit. Detailed standards for the provision of open spaces, mid-block pathways, and residential entries are provided to ensure that new buildings contribute to creating a public realm of the highest quality in Rincon Hill.

Table 827

RINCON HILL DOWNTOWN RESIDENTIAL MIXED USE

DISTRICT ZONING CONTROL TABLE

			Rincon Hill Downtown Residential Mixed Use District Zoning
No.	Zoning Category	§ References	Controls
Building and Siting Standards			
.10	Height and Bulk	§§ 102.12, 105, 106, 250—252, 260, 270	Varies 45—550 feet. For height limits, see Zoning Map 1H and § 263.19; for bulk controls, see § 270(e);
.11	Lot Size <i>[Per Development]</i>	§§ 890.56, 121	No limit
.12	Rear Yard/Site Coverage	§ 136	100 percent lot coverage permitted; up to 80 percent for parcels that front the north side of Guy Place and for all parcels at residential levels where not all units face onto streets or alleys. § 825(b)(1) and 827(a)(4).
.13	Setbacks	Ground Floor Residential Design Guidelines	Building setback of 3 to 10 ft. for all buildings except towers on Spear, Main, Beale, Fremont, and First Streets. § 827(a)(2) and (6). Upper-story setback of 10 ft. required above

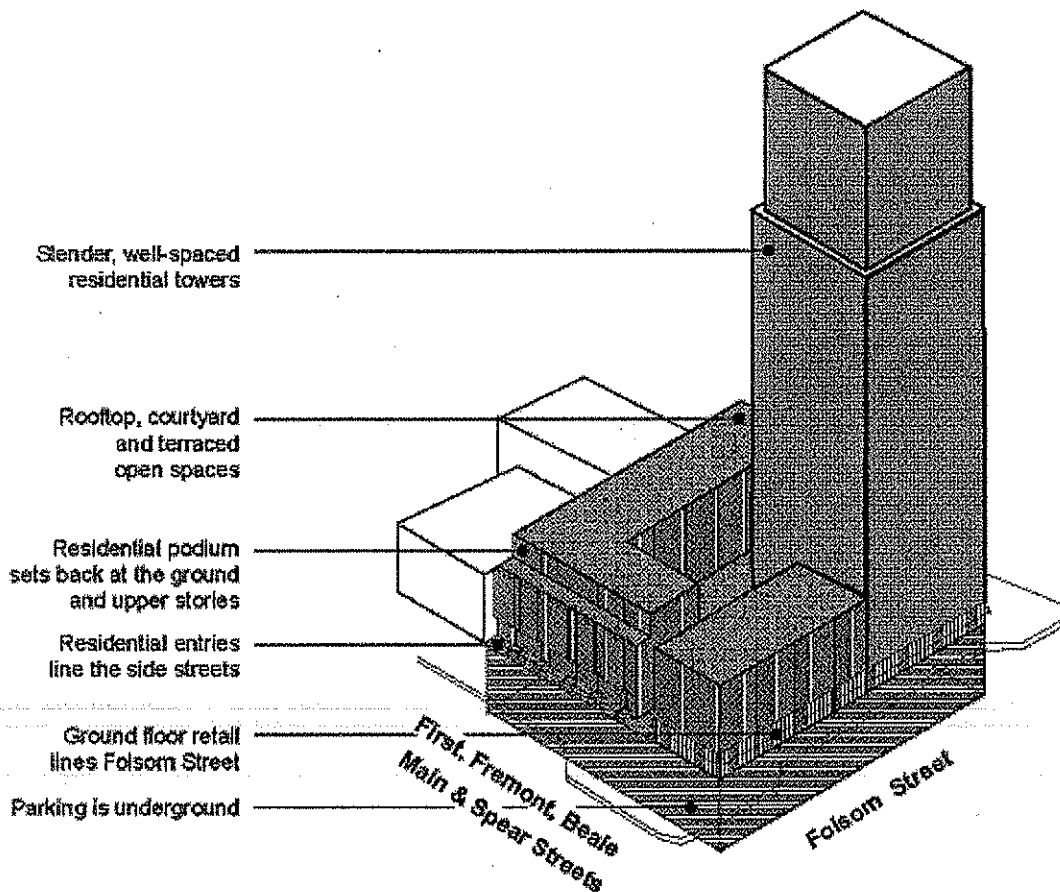
			a height of 65 feet on both sides of Spear, Main, Beale, Fremont, and First Streets. § 827(a)(5). Sun access plane setback of 50 degrees for all buildings 85' and lower on the south side of east-west mid-block pathways. § 827(a)(5).
.14	Street-Facing Uses	§§ 145.1, 145.4, Ground Floor Residential Design Guidelines	Active uses required on all street frontages. See §§ 145.1, 825(b). Ground-level residential or commercial requirements based on location. See §§ 145.4 and 827(a)(2).
.15	Parking and Loading Access: Prohibition	§ 155(r)	Prohibited on Folsom Street from Essex Street to The Embarcadero. § 827 (a)(8) and 155(r)
.16	Parking and Loading Access: Siting and Dimensions	§§ 145.14, 151.1, 155(r)	No parking permitted aboveground, except on sloping sites. Parking access limited to two openings, max. 11' wide each, loading access limited to one 15' opening. § 825(b)(7) and 827(a)(8).
.17	Awning	§ 890.21	P, § 136.2(a)
.18	Canopy	§ 890.24	P, § 136.2(b)
.19	Marquee	§ 890.58	P, § 136.2(c)
Non-Residential Standards and Uses			
.20	Required Residential to Non-Residential Use Ratio	§ 102.10	Non-residential uses limited to occupiable sf per 6 occupiable sf devoted to residential uses. § 825(c)(2).
.21	Use Size [Non-Residential]	§§ 890.130, 145.14	P for non-residential uses up to 25,000 sq. ft., C above. No individual ground floor tenant may occupy more than 75' of frontage for a depth of 25' from Folsom Street. §§ 145.14.
.22	Open Space	§§ 135, 135.3	1 sq. ft. of publicly-accessible open space for every 50 sq. ft. of non-residential use over 10,000 sq. ft. § 135.3
.23	Off-Street Parking [Office uses]	§§ 150, 151, 151.1, 153—157, 204.5	None Required. Parking that is accessory to office space limited to 7% of GFA.
.24	Off-Street Parking [Non-Residential, other than office uses]	§§ 150, 151, 151.1, 153—157, 204.5	None Required. Parking limited as described in Section 151.1.
.25	Off-Street Freight	§§ 150, 152.2,	None Required. Loading maximums

	Loading	153—155, 204.5	described in Section 152.2.
26	All Non-Residential Uses Permitted, except as described below. §825(c)(1)(A)		
27	Drive-Up Facility	§ 890.30	NP
28	Walk-Up Facility	§ 890.140	P if recessed 3 ft. C otherwise.
29	Hospital or Medical Center	§ 124.1, 890.44	C
30	Other Institutions	§ 890.50	C
31	Public Use	§ 890.80	C
32	Movie Theater	§ 890.64	C
33	Nighttime Entertainment	§§ 102.17, 803.5(g)	C
34	Adult Entertainment	§ 890.36	NP
35	Massage Establishment	§ 890.60 Article 29 Health Code	C
36	Automobile Parking Lot, Community Commercial	§§ 890.9, 156, 160	NP
37	Automobile Parking Garage, Community Commercial	§ 890.10, 160	C, per the criteria of Section 157.1
38	Automotive Gas Station	§ 890.14	NP
39	Automotive Service Station	§ 890.18, 890.19	NP
40	Automotive Repair	§ 890.15	NP
41	Automotive Wash	§ 890.20	NP
42	Automotive Sale or Rental	§ 890.13	C
43	Mortuary	§ 890.62	C
44	Hours of Operation	§ 890.48	C. 2 a.m.—6 a.m.
45	Business Sign	§§ 602—604, 608.1, 608.2	P. § 607.2(f)
45a	Tobacco Paraphernalia Establishments	§ 890.123	C
Residential Standards and Uses			

1	.46	Residential Use	§ 890.88	P
2	.47	Residential Density, Dwelling Units	§ 890.88(a)	No Limit. § 207.5(d) Unit Mix Required § 207.6
3	.48	Residential Density, Group Housing	§ 890.88(b)	No Limit. §§ 207.5 (d)
4	.49	Usable Open Space [Per Residential Unit]	§ 135, 136	75 sq. ft. per unit; up to 50% may be provided off-site if publicly accessible. § 135 and 827(a)(9).
5	.50	Accessory Off-Street Parking, Residential	§§ 151.1, 153— 157, 159—160, 204.5	None Required. Up to one car per 2 dwelling units permitted; up to one car per dwelling unit per procedures and criteria of Sections 151.1 825(b)(7) and 827 (a)(8).
6	.51	Residential Conversions	§ 790.84, Ch. 41 Admin. Code	C
7	.52	Residential Demolition		C
8	.53	Fringe Financial Service	§§ 249.35, 890.113	P subject to the restrictions set forth in Section 249.35, including, but not limited to, the proximity restrictions set forth in Subsection 249.35(c)(3).

(a) **Building Standards.**

(1) **Development Concept.** The development concept is for podium development up to 85 feet in height, with slender residential towers spaced to provide ample light and air to the district. New development will contribute to the creation of a substantial amount of public open space, as well as provide private common areas, courtyards, and balconies. Streets will be improved to provide widened sidewalks with substantial public open space. Ground floor uses will be pedestrian-oriented in character, consisting primarily of retail on Folsom Street, and individual townhouse-style residential units on First, Fremont, Beale, Main, and Spear Streets, as well as on alleys and mid-block pathways. Parking will be located below grade, and building utilities (loading bays, service doors, garage doors) will be located in sidewalk vaults or on secondary frontages.



(2) **Street-Facing Use Requirements.** Pedestrian-oriented retail, residential, institutional uses, and community services are required ground floor uses on all street facing frontages, except for the minimum frontage required for fire doors, parking and loading access, and other utilities.

(A) **Required Ground Floor Retail Spaces.** For frontages facing Folsom Street, ground floor space suitable for retail use is required for no less than 75 percent of all frontages, as specified in Section 145.4.

(B) **Required Individual Ground Floor Residential Units.** For building frontages facing Fremont, First, Main, Beale and Spear Streets more than 60 feet from an intersection with Folsom, Harrison, or Bryant Streets, and for building frontages facing Guy Place and Lansing Street, individual ground floor residential units with direct pedestrian access to the

sidewalk are required at intervals of no greater than 25 feet, except where residential lobbies, parking and loading access, utilities, and open space are necessary and provided pursuant to the allowances of Section 827 and other sections of this Code. Individual ground floor residential units are also encouraged along Harrison Street, Bryant Street, and alleys and mid-block pedestrian paths where appropriate.

Figure 827(B): Frontages Where Ground Floor Retail Uses Are Required.

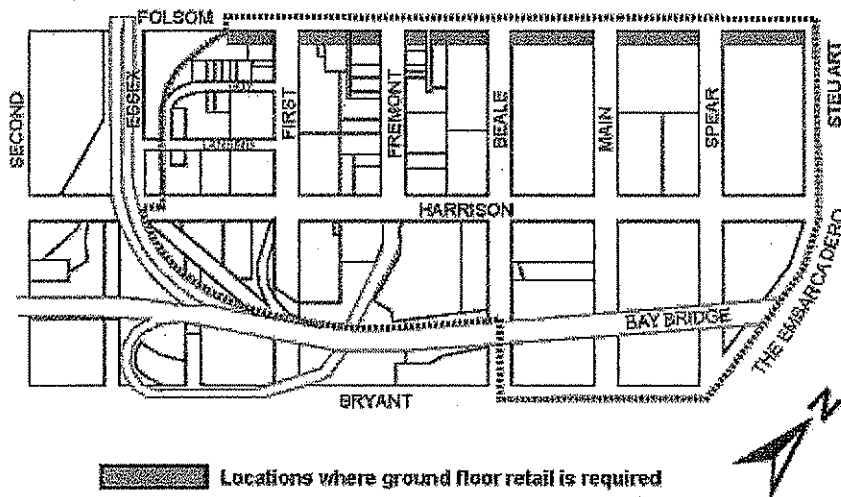
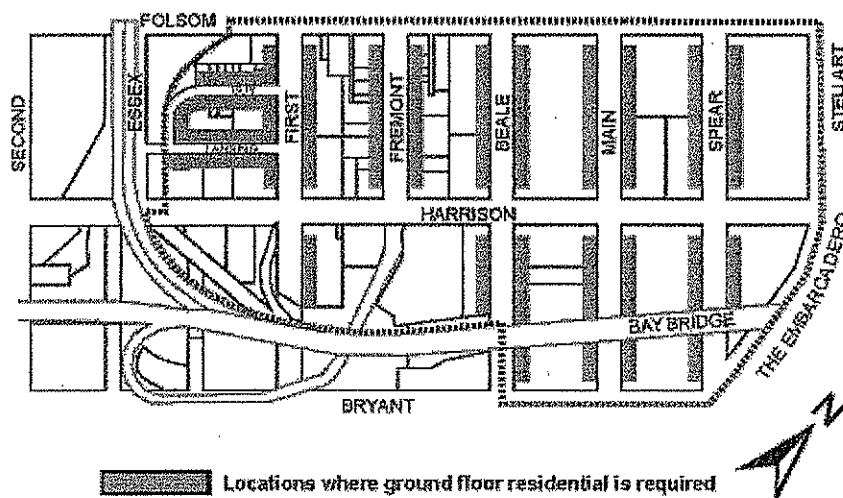


Figure 827: Frontages Where Ground Floor Residential Users/Entries Are Required.



1 **(3) Required Streetwall.** Building area below 85 feet in height is required to be built
2 to 100 percent of all property lines facing public rights-of-way, except where setbacks are
3 required by this Section and except where publicly accessible open space is provided
4 according to the provisions of this Section. Recesses, insets and breaks between buildings
5 are permitted to provide vertical articulation to the facade, provided the overall integrity of the
6 streetwall is maintained.

7 **(4) Lot Coverage.** Lots fronting only on the north side of Guy Place are permitted
8 up to 80 percent lot coverage.

9 **(5) Upper Story Setback.** To ensure adequate sunlight to streets, alleys, and
10 pedestrian pathways, upper story setbacks are required as follows:

11 **(A)** All buildings are required to set back at least 10 feet above a height of 65 feet
12 along Spear, Main, Beale, Fremont and First Streets. This requirement shall not apply to
13 street frontage occupied by a building taller than 85 feet. This upper story setback
14 requirement shall also not apply to the first 60 linear feet of frontage from corners at Folsom,
15 Harrison, and Bryant Streets.

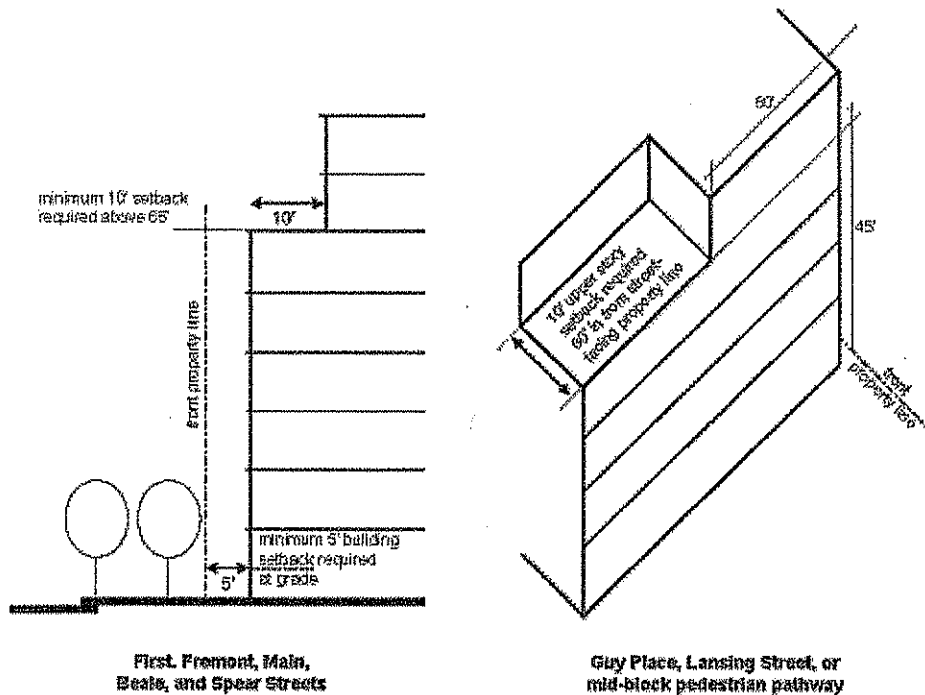
16 **(B)** Buildings greater than 60 linear feet from a major street along Guy Place,
17 Lansing Street, and any proposed or existing private or public mid-block pedestrian pathways,
18 are required to be set back at least 10 feet above 45 feet in height from said right-of-way.

19 **(C)** In order to increase sun access to mid-block pathways and uses along such
20 pathways, all building frontage on the southeast side of mid-block pathways not occupied by a
21 building taller than 85 feet must set back upper stories by 10 feet above a building height of
22 45 feet. For projects on the south side of a mid-block pedestrian pathway taller than 65 feet,
23 an additional upper story setback of 10 feet is required above a building height of 65 feet.

24 **(i) Modifications.** For any lot on the north side of a required mid-block pedestrian
25 pathway, a modification from the required upper story setback of 10 feet above a height of 45

feet may be granted according to the provisions of Section 309.1, provided that, in total, the building is set back by a volume equal to what would be required by meeting the standard in (C) above, and the modification would substantially improve the accessibility, design and character of the mid-block pedestrian pathway.

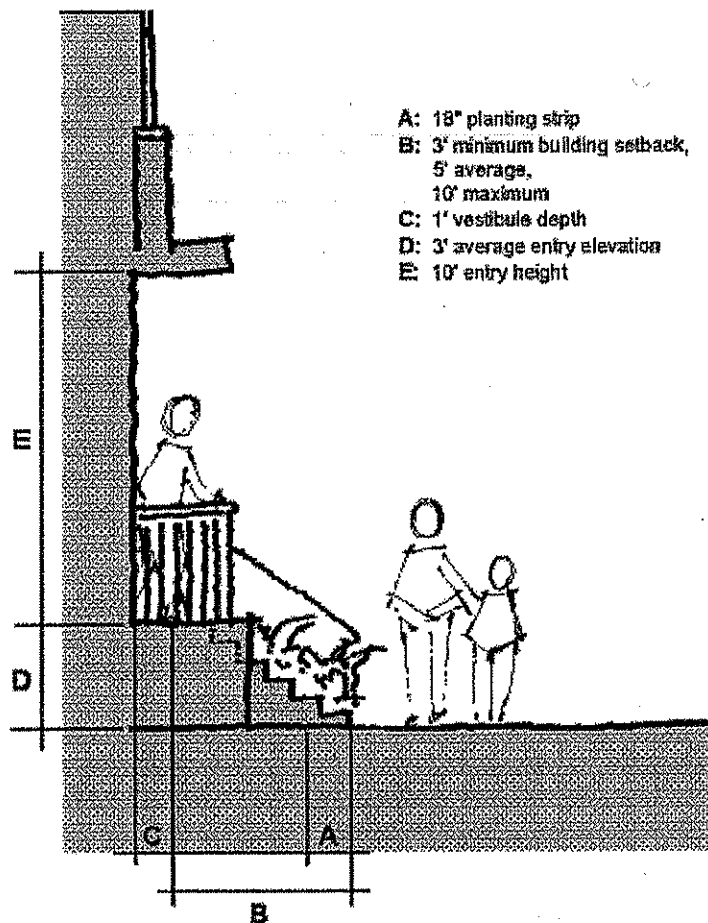
Figure 827(D): Required Upper Story Stepbacks



(6) Ground Floor Residential Units. Where ground floor residential units are required along Spear, Main, Beale, Fremont, and First Streets, the design standards of the Ground Floor Residential Design Guidelines apply. Ground floor residential units along Guy Place and Lansing Street, within the footprint of towers taller than 105 feet, and those that are proposed in locations where they are not required, are encouraged to meet the standards in this subsection to the greatest degree possible.

1 **(7) Ground Floor Commercial Design.** Ground floor commercial spaces must
2 meet the standards set in Section 145.1 and 145.4.
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4
5
6
7

8 **Figure 827(E): Ground Floor Commercial Frontages**



8 **(8) Off- Street Parking and Loading.**

1 **(A) Parking and Loading Access.**

2 (i) **Width of openings.** The maximum permitted width of all combined parking and
3 loading openings on Guy Place and Lansing Street for any single project is 20 feet.

4 (ii) **Folsom Street.** Access to off-street parking is not permitted on Folsom Street
5 for lots with frontage on another street. For lots fronting solely on Folsom Street, access to
6 parking on a Folsom Street frontage is permitted only through the processes established by
7 Section 309.1 by demonstrating that every effort has been made to minimize negative impact
8 on the pedestrian quality of the street. Loading may not be accessed from Folsom Street.

9 **(9) Open Space.**

10 (1) In addition to the standards of Section 135, open space intended to fulfill the
11 requirements of off-site or publicly-accessible open space may include streetscape
12 improvements with landscaping and pedestrian amenities on Guy Place and Lansing Street,
13 beyond basic street tree planting or street lighting as otherwise required by this Code, in
14 accordance with the Streetscape Plan of the Rincon Hill Area Plan.

15 **(10) Streetscape Standards.**

16 **(A) Sidewalk Treatments.**

17 (i) For all frontages abutting a public sidewalk, the project sponsor is required to
18 install sidewalk widening, street trees, lighting, decorative paving, seating and landscaping in
19 accordance with the Streetscape Plan of the Rincon Hill Area Plan, developed by the Planning
20 Department and approved by the Board of Supervisors.

21 (ii) Prior to approval by the Board of Supervisors of a Streetscape Plan for Rincon
22 Hill, the Planning Commission, through the procedures of Section 309.1, shall require an
23 applicant to install sidewalk widening, street trees, lighting, decorative paving, seating, and
24 landscaping in keeping with the intent of the Rincon Hill Area Plan of the General Plan and in
25 accordance with subsections (iii)—(vi) below.

1 (iii) Sidewalk treatments shall comply with any applicable ordinances and with any
2 applicable regulation of the Art Commission, the Department of Public Works and the Bureau
3 of Light, Heat and Power of the Public Utility Commission regarding street lighting, sidewalk
4 paving, and sidewalk landscaping.

5 (iv) The Streetscape Plan and any Commission requirement pursuant to subsection
6 (ii) shall require the abutting property owner or owners to hold harmless the City and County
7 of San Francisco, its officers, agents, and employees, from any damage or injury caused by
8 reason of the design, construction or maintenance of the improvements, and shall require the
9 owner or owners or subsequent owner or owners of the respective property to be solely liable
10 for any damage or loss occasioned by any act.

11 (v) Notwithstanding the provisions of this Section, an applicant shall apply for all
12 required permits for changes to the legislated sidewalk widths and street improvements and
13 pay all required fees.

14 (vi) The owner of the property is required to maintain all those improvements other
15 than lighting.

16 (B) **Mid-Block Pedestrian Pathways.** For developments on Assessor's Blocks
17 3744—3748, the Commission may require, pursuant to Section 309.1, the applicant to provide
18 a mid-block pedestrian pathway for the entire depth of their property where called for by the
19 Rincon Hill Area Plan of the General Plan. This pathway shall be designed in accordance with
20 the standards of this Section.

21 (i) **Design.** The design of the pathway shall meet the following minimum
22 requirements:

23 (AA) Have a minimum width of 20 feet from building face to building face;

24 (BB) Have a minimum clear walking width of 10 feet free of any obstructions.

1 (CC) Be open to the sky and free from all encroachments for that entire width, except
2 for those permitted in front setbacks by Section 136 of this Code;

3 (DD) Provide such ingress and egress as will make the area easily accessible to the
4 general public;

5 (EE) Be protected from uncomfortable wind, as called for elsewhere in this Code;

6 (FF) Be publicly accessible, as defined elsewhere in this Section;

7 (GG) Be provided with special paving, furniture, landscaping, and other amenities that
8 facilitate pedestrian use;

9 (HH) Be provided with ample pedestrian lighting to ensure pedestrian comfort and
10 safety;

11 (II) Be free of any changes in grade or steps not required by the natural topography
12 of the underlying hill; and

13 (JJ) Be fronted by active ground floor uses, such as individual townhouse residential
14 units, to the greatest extent possible.

15 (ii) Prior to issuance of a permit of occupancy, informational signage directing the
16 general public to the pathway shall be placed in a publicly conspicuous outdoor location at
17 street level stating its location, the right of the public to use the space and the hours of use,
18 and the name and address of the owner or owner's agent responsible for maintenance.

19 (iii) The owner of the property on which the pathway is located shall maintain it by
20 keeping the area clean and free of litter and keeping in a functional and healthy state any
21 street furniture, lighting and/or plant material that is provided.

22 (iv) Notwithstanding the provisions of this subsection, an applicant shall obtain all
23 required permits for changes to the legislated sidewalk and street improvements and pay all
24 required fees.
25

(v) The property owner or owners must hold harmless the City and County of San Francisco, its officers, agents, and employees, from any damage or injury caused by reason of the design, construction or maintenance of the improvements, and shall require the owner or owners or subsequent owner or owners of the respective property to be solely liable for any damage or loss occasioned by any act.

(b) **Uses.**

(1) **Housing Requirement for Residential Developments.** The requirements of Sections ~~415 315~~ through ~~415.9 315.9~~ shall apply in the RH-DTR subject to the following exceptions:

(A) If constructed on-site, a minimum of 12 percent of the total units constructed, and if constructed off-site, a minimum of 17 percent of the total units constructed, shall be affordable to and occupied by qualifying persons and families as defined elsewhere in this Code.

(B) Below-market-rate units as required by Sections ~~415 315~~ through ~~415.9 315.9~~ that are built off-site must be built within the area bounded by Market Street, the Embarcadero, King Street, Division Street, and South Van Ness Avenue.

(C) No less than fifty percent (50%) of the fees that are paid due to development in the Rincon Hill Area Plan under Section 415 et seq. (formerly Section 315.4(e)(2) and 315.6) shall be paid into the Citywide Affordable Housing Fund, but the funds shall be separately accounted for and designated exclusively to increase the supply of affordable housing in the SOMA area.

(D) ~~Fifty percent (50%) of the below market rate units as required by Section 315 through 315.9 that are built on or off site must be provided as rental units for the life of the project, as defined in Planning Code Section 315.7(a).~~

1 ~~(E)~~—The Mayor's Office of Housing must submit a resolution to the Board of
2 Supervisors with a plan for the use of all *in-lieu Affordable Housing Fee* payments generated
3 from the Rincon Hill Plan prior to any expenditure of the Funds.

4 Section 4: The San Francisco Administrative Code is hereby amended by amending
5 Sections 56.2, 56.3, and 56.20 to read as follows:

6 **SEC. 56.2. - PURPOSE AND APPLICABILITY.**

7 (a) The purpose of this Chapter is to strengthen the public planning process by
8 encouraging private participation in the achievement of comprehensive planning goals and
9 reducing the economic costs of development. A development agreement reduces the risks
10 associated with development, thereby enhancing the City's ability to obtain public benefits
11 beyond those achievable through existing ordinances and regulations. To accomplish this
12 purpose the procedures, requirements and other provisions of this Chapter are necessary to
13 promote orderly growth and development (such as, where applicable and appropriate,
14 provision of housing, employment and small business opportunities to all segments of the
15 community including low income persons, minorities and women), to ensure provision for
16 adequate public services and facilities at the least economic cost to the public, and to ensure
17 community participation in determining an equitable distribution of the benefits and costs
18 associated with development.

19 (b) Such agreements shall only be used for (1) affordable housing developments or
20 (2) large multi-phase and/or mixed-use developments involving public improvements,
21 services, or facilities installations, requiring several years to complete, as defined below in
22 Section 56.3, or a housing development with a minimum of 1,000 units, as defined below in
23 Section 56.3; or (3) rental housing developments with on-site affordable units, as defined below in
24 Section 56.3.

25 **SEC. 56.3. - DEFINITIONS.**

1 The following definitions shall apply for purposes of this Chapter:

2 (a) "Affordable housing development" shall mean for purposes of Section
3 56.2(b)(1), any housing development which has a minimum of 30 percent of its units
4 affordable to low income households, and a total of 60 percent of its units affordable to
5 households, as defined by the U.S. Census, whose immediate household income does not
6 exceed 120 percent of the median household income for the San Francisco Primary
7 Metropolitan Statistical Area, with the remaining 40 percent of its units unrestricted as to
8 affordability. For purposes of this definition of "affordable housing development," "low income"
9 shall mean the income of households, as defined by the U.S. Census whose immediate
10 household income does not exceed 80 percent of the median household income for the San
11 Francisco Primary Metropolitan Statistical Area. "Median household income" for the San
12 Francisco Primary Metropolitan Statistical Area shall be as determined by the U.S.
13 Department of Housing and Urban Development and adjusted according to the determination
14 of that Department and published from time to time. In the event that such income
15 determinations are no longer published by the Department of Housing and Urban
16 Development, median household income shall mean the median gross yearly income of a
17 household in the City and County of San Francisco, adjusted for household size, as published
18 periodically by the California Department of Housing and Community Development. Such
19 affordable housing development may include neighborhood commercial facilities which are
20 physically and financially an integral part of the affordable housing project and which will
21 provide services to local residents.

22 (b) "Applicant/Developer" shall mean a person or entity who has legal or equitable
23 interest in the real property which is the subject of the proposed or executed development
24 agreement for an "affordable housing development" or a "large multi-phase and/or mixed-use
25 development," as those terms are defined herein, or such person's or entity's authorized

1 agent or successor in interest; provided, however, that an entity which is subject to the
2 requirements of City Planning Code Section 304.5 relating to institutional master plans does
3 not qualify as an applicant for a development agreement.

4 (c) "Collateral agreement" shall mean a written contract entered into by the
5 applicant/developer and/or governmental agencies with other entities (including, but not
6 limited to, community coalitions) for the purpose of having said entities provide for and
7 implement social, economic, or environmental benefits or programs; provided, however, that
8 such term does not include agreements between the applicant/developer or governmental
9 agencies and (1) construction contractors and subcontractors, (2) construction managers, (3)
10 material suppliers, and (4) architects, engineers, and lawyers for customary architectural,
11 engineering or legal services.

12 (d) "Commission" shall mean the ~~City~~ Planning Commission.

13 (e) "Director" shall mean the Director of the Planning Department.

14 (f) "Housing development with a minimum of 1,000 units" shall mean a proposed
15 residential development project which: (1) is on a site which exceeds two and one-half acres
16 in area, (2) includes two or more buildings to be constructed on the site, and (3) includes a
17 proposal for constructing or participating in providing, either off-site or on-site, public
18 improvements, facilities, or services beyond those achievable through existing ordinances and
19 regulations.

20 (g) "Large multi-phase and/or mixed-use development" shall mean a proposed
21 development project which: (1) is on a site which exceeds five acres in area, (2) includes two
22 or more buildings to be constructed sequentially on the site, and (3) includes a proposal for
23 constructing or participating in providing, either off-site or on-site, public improvements,
24 facilities, or services beyond those achievable through existing ordinances and regulations.
25

1 (h) "Material modification" shall mean any proposed amendment or modification to
2 either a proposed development agreement approved by the Commission, or a previously
3 executed development agreement, which amendment or modification is otherwise required by
4 the terms of the development agreement, which changes any provision thereof regarding the
5 following: (1) duration of the agreement; (2) permitted uses of the subject property; (3) density
6 or intensity of the permitted uses; (4) location, height or size of any structures, buildings, or
7 major features; (5) reservation or dedication of land; (6) any conditions, terms, restrictions and
8 requirements relating to subsequent discretionary actions as to design, improvements,
9 construction standards and specifications; (7) any other condition or covenant relating to the
10 financing or phasing of the development which substantially modifies the use of the property,
11 the phasing of the development, or the consideration exchanged between the parties as
12 recited in the proposed development agreement; (8) the type, number, affordability level,
13 and/or tenure of any proposed affordable housing as well as any change as to performance of
14 such public benefits, including but not limited to timing, phasing, method of performance or
15 parties involved; or (9) any other terms or conditions of the development agreement if the
16 development agreement provides that amendment of said specified term or condition would
17 be a material modification.

18 (i) "Minor modification" shall mean any amendment or modification to the
19 development agreement which relates to any provision not deemed to be a "material
20 modification."

21 (j) "Rental housing developments with on-site affordable units" shall mean a proposed
22 residential development project the project sponsor of which covenants to provide on-site units to
23 satisfy the Affordable Housing Program, as set forth in Planning Code Sections 415-417, as an
24 alternative to payment of the Affordable Housing Fee.

25 SEC. 56.20. - FEE.

1 In order to defray the cost to the City and County of San Francisco of preparing,
2 adopting, and amending a development agreement, a fee shall be charged and collected in
3 accord with the procedures described below:

4 (a) Cost Estimate and Application Report. The reasonable costs to the various
5 departments of the City and County of San Francisco including, but not limited to, the Planning
6 Department ~~of City Planning~~, the Department of Public Works, the Mayor's Office of Housing
7 ~~and Economic Development~~, the Real Estate Department and the City Attorney's Office for staff
8 time, necessary consultant services and associated costs of materials and administration will
9 vary according to the size and complexity of the project. Accordingly, upon receipt of an
10 application for a development agreement, the Planning Department ~~of City Planning~~, after
11 consultation with the applicant/developer, any other parties identified in the application as
12 parties to the proposed development agreement, and the affected City and County
13 departments, shall prepare an estimated budget of the reasonable costs to be incurred by the
14 City and County (1) in the preparation and adoption of the proposed development agreement,
15 and (2) in the preparation of related documents where the costs incurred are not fully funded
16 through other City fees or funds; provided, however, that if the projected time schedule
17 exceeds one year, then the estimated budget shall be prepared for the initial 12-month period
18 only, and the estimated budgets for any subsequent 12-month time periods shall be prepared
19 prior to the end of the prior 12-month period.

20 The Director shall also prepare a report for the Commission and Board describing the
21 application, the anticipated public benefits listed in the application pursuant to Section 56.4(b),
22 and the projected time schedule for development agreement negotiations.
23
24
25

1 (b) Commission and Board of Supervisors Consideration. The Commission shall
2 recommend to the Board of Supervisors that a fee be imposed of a specified amount after
3 reviewing the cost estimate prepared by the Director and conducting a public hearing
4 pursuant to Section 56.4(c). If the Board of Supervisors approves the fee amount by
5 resolution, the fee shall be paid within 30 days after the effective date of the resolution. The
6 fee shall be paid in a single installment or, at the discretion of the Director, in four equal
7 installments, payable periodically over the estimated time frame for which the estimated
8 budget has been prepared, with the first installment due within 30 days after the effective date
9 of the fee resolution.
10

11 (c) Deposit. The applicant/developer may prepay up to 50 percent of the amount of
12 the fee (as calculated in the Director's estimated budget) into a Development Agreement Fund
13 established for that purpose to enable the affected City Departments and agencies to begin
14 work on the application. Such funds shall be deemed appropriated for the purposes identified
15 in the cost estimate, and shall be credited against the final fee amount specified in the fee
16 resolution if such resolution is ultimately adopted by the Board of Supervisors. If the Board
17 fails to adopt such fee resolution, then the Controller shall return any prepaid funds remaining
18 unexpended or unobligated to the applicant/developer. If the Board approves a fee amount
19 which is less than the amount which the applicant/developer prepaid, then the Controller shall
20 return that portion of the difference between the fee amount and the prepaid funds which
21 remains unexpended or unobligated to the applicant/developer.
22

23 (d) Development Agreement Fund. There is hereby created a Development
24 Agreement Fund wherein all funds received under the provisions of this section shall be
25

1 deposited. All expenditures from the Fund shall be for purposes of reviewing the application
2 for, or proposed material modification to, a development agreement and preparing the
3 documents necessary to the approval of the development agreement, or a material
4 modification thereto. Up to 50 percent of the annual cost estimate is hereby deemed
5 appropriated for such purposes if the applicant/developer chooses to prepay such amount
6 pursuant to Subsection (c) above. All other funds are subject to the budget and fiscal powers
7 of the Board of Supervisors. Interest earned on such amounts deposited in said Fund shall
8 accrue to the Fund for the purposes set forth herein. Upon the execution of a development
9 agreement, or withdrawal by an applicant/developer of its application, any unexpended or
10 unobligated portion of the fee paid by the applicant/developer shall be returned to the
11 applicant/developer.
12

13 (e) Waiver for Affordable Housing. The Board of Supervisors may, by resolution,
14 waive all or a portion of the fee required pursuant to this section for affordable housing
15 developments, as that term is defined in Section 56.3, only if it finds that such waiver is
16 necessary to achieve such affordable housing development.
17

18 (f) Other Fees. Payment of fees charged under this section does not waive the fee
19 requirements of other ordinances. The fee provisions set forth herein are not intended to
20 address fees or funding for parties to collateral agreements.
21

22 (g) Not Applicable to Rental Housing With On-Site Affordable Housing Units. The hearings
23 and fee required pursuant to this section shall not apply to development agreements entered into with
24 project sponsors of rental housing developments with on-site affordable housing units as that term is
25

1 defined in Section 56.3(j) if the provision of on-site affordable housing units is the primary purpose of
2 the Development Agreement.

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

5 By:



6 Susan Cleveland-Knowles
7 Deputy City Attorney
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LEGISLATIVE DIGEST

[Planning Code, Administrative Code – Amending Inclusionary Housing Ordinance]

Ordinance amending the Planning Code and Administrative Code by amending the Residential Inclusionary Affordable Housing Program, Planning Code Section 415 et seq. (formerly Code Section 315 et seq.) (the "Program") to change the name of the Program to the Affordable Housing Program and to require all project applicants to pay the Affordable Housing Fee unless they are eligible for an alternative; making other amendments to the Program including expanding the uses of the Citywide Affordable Housing Fund, deleting provisions relating to certain requirements for off-site units, and deleting provisions requiring a refund of fees after issuance of certificate of occupancy; amending Sections 416 and 417 to make conforming amendments to the Affordable Housing Program; amending Section 827 to delete the requirement that 50% of on- or off-site affordable housing units provided under Section 415 et seq. in the Rincon Hill Area Plan be provided as rental; amending the Administrative Code by amending Chapter 56 related to Development Agreements to create certain exceptions from its requirements for rental housing developments with on-site inclusionary units; and making findings including findings under the California Environmental Quality Act.

Existing Law

The Residential Inclusionary Affordable Housing Program, Planning Code Section 415 et seq. ("Program") currently requires all residential developments of 5 units or more to provide 15 percent of the units on-site of the development as affordable units. The Program also gives all developers the option to meet the Program requirements through the provision of 20% of the units as affordable off-site units or to pay an in lieu fee equivalent to the number of off-site units. All in lieu fees are paid to the Citywide Affordable Housing Fund. The funds can be used to increase the supply of affordable housing and for certain "small sites" projects subject to various limitations. The Program also currently provides that, in general, applicants must insure that off-site units are located within a one mile radius of the principal project but that 25% of off-site units constructed per year shall be permitted by the Planning Department to be located outside of that radius. The Program provides that the City shall refund fees under certain circumstances including a provision that allows for a proportionate refund of in lieu fees after a certificate of occupancy is issued and during the life of the project. The Rincon Hill Area Plan provisions of the Planning Code contain requirements that differ from the Program including, but not limited to a requirement that 50% of all on- or off-site affordable units must be provided as rental units. The Development Agreement ordinance (Administrative Code Chapter 56) requires an initial hearing at the Board of Supervisors to set a budget and fee for a development agreement.

Amendments to Current Law

The Amendments to the Program would change the primary requirement of the Program such that all developers would be required to pay an Affordable Housing Fee ("fee"). The fee would be set at the same level as the current in lieu fee. Only developers who can meet certain requirements would be eligible for the alternative to provide on- or off-site affordable units. There are three ways to become eligible to provide units on- or off-site as an alternative to payment of the fee: (1) Insure that the on- or off-site units will be provided as ownership units; (2) Provide a contract to the City demonstrating that the on- or off-site units are exempt from the Costa Hawkins Rent Control Act, Civil Code Section 1954.50 et seq.; or (3) enter into a Development Agreement with the City to provide on-site units. In addition, the uses of the Citywide Affordable Housing Fund would be expanded to include providing down payment assistance to low and moderate income homebuyers. The amendments delete the exception to the rule that all off-site units need to be built within one mile of the principal project. The amendments retain refunds for projects that do not obtain their certificate of occupancy but delete a refund provision that requires refunds after issuance of a certificate of occupancy through the life of the project. The amendments delete the Rincon Hill Area Plan requirement that 50% of all on- or off-site affordable units must be provided as rental units. The amendments to the Development Agreement ordinance allow for a waiver of an initial hearing at the Board of Supervisors and a fee for the Development Agreement if the primary purpose of a Development Agreement is to provide on-site affordable units.

On July 27, 2010 the sponsors introduced Revised Interim Controls and this substitute legislation (Draft Revised Permanent Controls) to address the fact that in Ordinances Nos. 0107-10 and 0108-10 the Board of Supervisors subsequently adopted the "Development Fee Collection Procedure; Administrative Fee" and the "Development Impact and In-Lieu Fees" ordinances. These subsequently adopted ordinances made amendments to the Building Code and Planning Code and, to some extent, amended the same provisions of the Planning Code covered by Interim Control Resolution 36-10 and the Draft Permanent Controls including, but not limited to, moving Sections 315 et seq. to Sections 415 et seq. in a new Article IV of the Planning Code. In order to conform Interim Controls Resolution 36-10 with Ordinances 0107-10 and 0108-10, the Board introduce the Revised Interim Controls and Draft Revised Permanent Controls. The Revised Interim Controls and Draft Revised Permanent Controls are not intended to alter the substance of Interim Controls Resolution 36-10, but incorporate the newly enacted language of Ordinance No. 0108-10. The Draft Revised Permanent Controls are being simultaneously introduced and substituted in Board File No. 100046.

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

January 15, 2010

File No. 100046

Bill Wycko
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Mr. Wycko:

On January 12, 2010, Mayor Newsom introduced the following proposed legislation:

File: 100046

Ordinance amending the Planning Code by amending the Residential Inclusionary Affordable Housing Program, Section 315 et seq. (the "Program") to change the name of the Program to the Affordable Housing Program and to require all project applicants to pay the Affordable Housing fee unless they are eligible for an alternative; making other amendments to the Program including expanding the uses of the Citywide Affordable Housing Fund, deleting provisions relating to certain requirements for off-site units, and deleting provisions requiring a refund of fees after issuance of certificate of occupancy; amending Section 827 to delete the requirement that 50% of on- or off-site affordable housing units provided under Section 315 et seq. in the Rincon Hill Area Plan be provided as rental; and making findings including findings under the California Environmental Quality Act.

The legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script that reads "Alisa Somera".

By: Alisa Somera, Committee Clerk
Land Use & Economic Development Committee

Attachment

cc: Nannie Turrell, Major Environmental Analysis
Brett Bollinger, Major Environmental Analysis

Environmental Review Referral

*No. 4 a project per CEQA
Guidelines Sections 15060(c)(3)
and 15378.
Nannie R. Turrell
January 2010*



SAN FRANCISCO PLANNING DEPARTMENT

April 2, 2010

Ms. Angela Calvillo, Clerk
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Re: Transmittal of Planning Department Case Number 2010.0050T:
Affordable Housing Program
Board File Number 10-0046
Planning Commission Recommendation: Approval with Modifications

Dear Ms. Calvillo,

On March 25th the San Francisco Planning Commission (hereinafter "Commission") conducted duly noticed public hearings at a regularly scheduled meeting to consider the proposed Ordinance.

The proposed Ordinance would amend San Francisco Planning Code Section 315 et al; to do the following:

1. Change the name of the *Residential Inclusionary Housing Affordable Program* to the *Affordable Housing Program*;
2. Require all project applicants to pay the Affordable Housing fee unless they are eligible for an alternative;
3. Making other amendments to the program including:
 - a. Expanding the uses of the Citywide Affordable Housing Fund,
 - b. Deleting provisions relating to certain requirements of off-site units, and
 - c. Deleting provisions requiring a refund of fees after issuance of certificate of occupancy;
4. Amending Section 827 of the Rincon Hill Area Plan to delete the requirement that 50% of on – or off- site affordable housing units provided under Section 315 be provided as rental; and
5. Amending the Administrative Code Chapter 56 (Development Agreements) to allow Development Agreements between the City and a project sponsor if there will be developments with on-site inclusionary rental housing units.

The proposed changes have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2).

At the March 25th hearing, the Commission voted to recommend approval with modifications of the proposed Ordinance.

The proposed modifications are outlined in the attached documents, labeled "Attachment C" and "Attachment C.2", respectively.

Please find attached documents relating to the Commission's action. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,



John Rahaim
Director of Planning

cc: Mayor Newsom
Supervisor Chiu
Mayors Office of Housing

Attachments (one copy of the following):

Planning Commission Resolution No. 18056

Attachment C

Attachment C.2

Planning Commission Executive Summary for Case No. 2010.0050T



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 18056

HEARING DATE: MARCH 25, 2010

CONTINUED FROM: FEBRUARY 25, 2010

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Project Name: Amendments relating to Planning Code Section 315:
Amending the Affordable Housing Program
Case Number: 2010.0050T [Board File No. 10-0046 and 10-0046-2]
Initiated by: Mayor Newsom & Supervisor Chiu /
BF 10-0046 Introduced January 12, 2010
BF 10-0046-2 Substitute Ord. Introduced January 26, 2010
Staff Contact: Tara Sullivan, Legislative Affairs
tara.sullivan@sfgov.org, 415-558-6257
Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395
90-day Deadline: April 28, 2010
Recommendation: Recommend Approval With Modifications

RECOMMENDING THAT THE BOARD OF SUPERVISORS APPROVE WITH MODIFICATIONS THE PROPOSED ORDINANCE THAT WOULD AMEND SAN FRANCISCO PLANNING CODE SECTION 315 ET. ALL TO CHANGE THE RESIDENTIAL INCLUSIONARY AFFORDABLE HOUSING PROGRAM TO THE AFFORDABLE HOUSING PROGRAM AND TO REQUIRE ALL PARTICIPANTS TO PAY AN AFFORDABLE HOUSING FEE UNLESS THEY ARE ELIGIBLE FOR AN ALTERNATIVE; MAKING OTHER AMENDMENTS TO THE PROGRAM; AMENDING SECTION 827 OF THE RINCON HILL AREA PLAN AND CHAPTER 56 OF THE ADMINISTRATIVE CODE TO CONFORM TO THE CHANGES TO THE AFFORDABLE HOUSING PROGRAM.

PREAMBLE

Whereas, on January 12, 2010, Mayor Newsom and Supervisor Chiu introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 10-0046; and

Whereas, on January 26, 2010 substitute legislation was introduced under Board File Number 10-0046-2 that would amend San Francisco Planning Code Section 315 et al, to do the following:

1. Change the name of the *Residential Inclusionary Housing Affordable Program* to the *Affordable Housing Program*;

2. Require all project applicants to pay the Affordable Housing fee unless they are eligible for an alternative;
3. Making other amendments to the program including:
 - a. Expanding the uses of the Citywide Affordable Housing Fund,
 - b. Deleting provisions relating to certain requirements of off-site units, and
 - c. Deleting provisions requiring a refund of fees after issuance of certificate of occupancy;
4. Amending Section 827 of the Rincon Hill Area Plan to delete the requirement that 50% of on – or off- site affordable housing units provided under Section 315 be provided as rental; and
5. Amending the Administrative Code Chapter 56 (Development Agreements) to allow Development Agreements between the City and a project sponsor if there will be developments with on-site inclusionary rental housing units; and

Whereas, the Commission received a letter from the Mayor's Office of Housing (Exhibit C attached), that described additional modifications requested to the proposed Ordinance; and

Whereas, on February 25, 2010 the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance;

Whereas, the proposed zoning changes have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2); and

Whereas, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties; and

Whereas, the all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

Whereas, the Commission has reviewed the proposed Ordinance; and

MOVED, that the Commission hereby recommends that the Board of Supervisors recommend approval of the proposed Ordinance with the modifications described in Exhibit C and adopts the attached Draft Resolution to that effect.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. San Francisco's Inclusionary Affordable Housing Policy was first adopted by the Planning Commission in 1992, and in 2002 the City formally adopted this policy as a part of the Planning Code (Section 315).
2. In August 2006, the Board of Supervisors passed changes to the Planning Code that significantly amended Section 315 (BOS File No. 05-1685), with trailing legislation passed in April 2007 (BOS File No. 06-1529), clarifying portions of Section 315.
3. In late 2009 the Second District Court of Appeals published its decision in *Palmer/Sixth Street Properties vs. City of Los Angeles*, which held that the California Costa-Hawkins Rental Housing Act preempts a Los Angeles requirement mandating, as a condition of development, that a portion of newly constructed dwelling units be rented at low-income rents.
The proposed Ordinance, in part, responds to the *Palmer* case. The Mayor's Office of Housing and the Department have been working together to update the Planning Code so that it is more in line with that decision. Under the proposed ordinance, the Affordable Housing Program will be modified to a fee-based program and will no longer contain any requirement to build affordable units. A development that is subject to Section 315 must pay an affordable housing fee that is equivalent to "the applicable percentage of the number of units in the principal project. (The applicable percentage shall be 20% [unless otherwise stated].)"
4. It is important to note that neither the fee requirements nor the percentages of on or off-site housing are being amended with this legislation.
5. The Commission has been working closely with the Mayor's Office of Housing to ensure that there are no adverse impacts to Section 315, the ability for affordable housing continue to be constructed in San Francisco, or in the Mayor's Office of Housing's ability to run the program.
6. Therefore, the Commission strongly supports the proposed legislation, and recommends approval of the proposed Ordinance.
7. **General Plan Compliance.** The proposed Ordinance is, on balance, consistent with the following Objectives and Policies of the General Plan:

I. HOUSING ELEMENT INTRODUCTION

THE OBJECTIVES AND POLICIES DETAILED BELOW ADDRESS THE STATE'S, THE REGION'S AND THE CITY'S GOALS OF ACHIEVING DECENT, SUITABLE, AND AFFORDABLE HOUSING FOR CURRENT AND FUTURE SAN FRANCISCANS. INCREASING THE CITY'S HOUSING STOCK, PROTECTING AND CONSERVING EXISTING UNITS, AND ENCOURAGING HOUSING CHOICE ARE OBJECTIVES PREDICATED ON AFFORDABILITY..

OBJECTIVE 5

INCREASE THE EFFECTIVENESS AND EFFICIENCY OF THE CITY'S AFFORDABLE HOUSING PRODUCTION SYSTEM.

POLICY 5.1

Prioritize affordable housing projects in the planning review and approval processes, and work with the development community to devise methods of streamlining housing projects.

POLICY 5.2

Support efforts of for-profit and non-profit organizations and other community-based groups and expand their capacity to produce and manage permanently affordable housing.

POLICY 5.3

Create greater public awareness about the quality and character of affordable housing projects and generate community-wide support for new affordable housing.

POLICY 5.4

Coordinate governmental activities related to affordable housing.

The proposed Ordinances updates Section 315 to create the Affordable Housing Program. The Commission has been working closely with the Mayor's Office of Housing to ensure that there are no adverse impacts from the amendments to Section 315 including impacts on the ability for affordable housing to continue to be constructed in San Francisco, or on the Mayor's Office of Housing's ability to run the program and strongly supports the proposed Ordinance.

1. The proposed replacement project is generally consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

- A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

The proposed Ordinance will not impact existing neighborhood-serving retail uses or opportunities for employment in or ownership of such businesses.

- B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

The proposed Ordinance will have no impact to neighborhood character.

- C) The City's supply of affordable housing will be preserved and enhanced:

The proposed Ordinance will have no adverse effects on the City's supply of affordable housing.

- D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

The proposed Ordinance would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

Preparedness against injury and loss of life in an earthquake is unaffected by the proposed Ordinance.

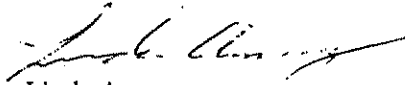
- G) That landmark and historic buildings will be preserved:

Landmarks and historic buildings would be unaffected by the proposed amendments.

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed amendments.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on March 25, 2010.


Linda Avery
Commission Secretary

AYES: Miguel, Olague, Borden, Lee, Antonini, Sugaya, Moore

NAYS:

ABSENT:

ADOPTED: March 25, 2010



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change

HEARING DATE: MARCH 25, 2010
CONTINUED FROM: FEBRUARY 25, 2010

1650 Mission St.
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Project Name: Amendments relating to Planning Code Section 315:
Amending the Affordable Housing Program
Case Number: 2010.0050T [Board File No. 10-0046 and 10-0046-2]
Initiated by: Mayor Newsom & Supervisor Chiu /
BF 10-0046 Introduced January 12, 2010
BF 10-0046-2 Substitute Ord. Introduced January 26, 2010
Staff Contact: Tara Sullivan, Legislative Affairs
tara.sullivan@sfgov.org, 415-558-6257
Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395
90-day Deadline: April 28, 2010
Recommendation: Recommend Approval With Modifications

PLANNING CODE AMENDMENT

The proposed Ordinance would amend Planning Code Section 3.15 to do the following:

1. Change the name of the *Residential Inclusionary Housing Affordable Program* to the *Affordable Housing Program*;
2. Require all project applicants to pay the Affordable Housing fee unless they are eligible for an alternative;
3. Making other amendments to the program including:
 - a. Expanding the uses of the Citywide Affordable Housing Fund,
 - b. Deleting provisions relating to certain requirements related to off-site units, and
 - c. Deleting provisions requiring a refund of fees after issuance of certificate of occupancy;
4. Amending Section 827 of the Rincon Hill Area Plan to delete the requirement that 50% of on – or off- site affordable housing units provided under Section 315 be provided as rental; and
5. Amending the Administrative Code Chapter 56 (Development Agreements) to allow Development Agreements between the City and a project sponsor to facilitate developments with on-site inclusionary rental housing units.

The Way It Is Now:

All projects that involve five or more new dwelling units must participate in the *Residential Inclusionary Affordable Housing Program* contained in Section 315 of the Planning Code. Currently the Planning Code allows for affordable housing requirements to be fulfilled in three ways:

- 315.4: On-Site Housing Requirements and Benefits. A building that will be 120 feet in height and under must provide on-site below market rate units ("BMR") equal to 15% of the total number of units. A building that will be over 120 feet in height must provide on-site BMR units equal to 12% of units. Buildings within the Market-Octavia and Eastern Neighborhood Area Plans have additional requirements. Buildings within Van Ness-Market Downtown Special Use District (adopted with the Market-Octavia Area Plan) that will be more than 120 feet in height must meet the 15% on-site affordable inclusionary housing requirements and must provide 50% of this housing within the proposed building. Projects within the Rincon Hill Area Plan that provide on- or off-site affordable housing must provide 50% of the requirement as rental housing.
- 315.5: Off-Site Housing Development. As an alternative to the on-site requirement, a new project may provide off-site BMR units equal to 20% of the total of the number of units. These units must be located within one mile of the principal project. At the project applicant's option, any project may elect to participate in this alternative at or before the project's hearing at the Planning Commission.
- 315.6: In-Lieu Fee. As an alternative to the on-site requirement, a project sponsor may pay an in-lieu fee to the Mayor's Office of Housing ("MOH") equivalent to 20% of the total number of units proposed in the principal project. At the project applicant's option, any project may elect to participate in this alternative at or before the project's hearing at the Planning Commission.

The Way It Would Be:

In late 2009 the Second District Court of Appeals published its decision in *Palmer/Sixth Street Properties vs. City of Los Angeles*, which held that the California Costa-Hawkins Rental Housing Act¹ preempts a Los Angeles requirement mandating, as a condition of development, that a portion of newly constructed dwelling units be rented at low-income rents.

The proposed Ordinance, in part, responds to the *Palmer* case and emphasizes that the program is an impact fee requirement. Under the proposed ordinance, all projects subject to Section 315 must pay an affordable housing fee. There are only limited ways, described in more detail below, to qualify for a waiver to be permitted to provide on- or off-site affordable units. It is important to note that neither the fee requirements nor the percentages of on or off-site housing are being amended with this legislation.

¹ California Civil Code Section 1954.50-1954.535.

The proposed ordinance would also eliminate the requirement in the Rincon Hill Area Plan that fifty percent (50%) of the below market rate units that are built on or off-site must be provided as rental units for the life of the project.²

Chapter 56 of the Administrative Code will also be amended to allow Development Agreements to be entered into between the City and a project sponsor when a residential development project contains on-site affordable housing units. Currently the Administrative Code limits Development Agreements to affordable housing developments or larger multi-phase projects.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATION

The Department recommends that the Commission recommend *approval with the modifications identified by the Mayor's Office of Housing in Exhibit B* of the proposed Ordinance and adopt the attached Draft Resolution to that effect.

BASIS FOR RECOMMENDATION

San Francisco's Inclusionary Affordable Housing Policy was first adopted by the Planning Commission in 1992. This policy required that all housing projects with 10 or more units or planned unit developments ("PUD") provide 10% of the total number of units as affordable housing. In 2002 the City formally adopted this policy as a part of the Planning Code (Section 315) and strengthened the policy to apply to *all* housing projects with 10 or more units (there were also additional requirements for projects that needed a conditional use authorization or a PUD).

In August 2006, the Board of Supervisors passed changes to the Planning Code that significantly amended Section 315 (BOS File No. 05-1685). It increased the requirements for all projects, lowered the threshold to five or more new dwelling units to participate in the program and required 15% of all on-site units and 20% of off-site units to be affordable. It also added the one-mile radius requirement for developers choosing the off-site option. Trailing legislation was passed in April 2007 (BOS File No. 06-1529), which clarified portions of Section 315.

As mentioned above, in late 2009 the Second District Court of Appeals published its decision in *Palmer/Sixth Street Properties vs. City of Los Angeles*, which held that the California Costa-Hawkins Rental Housing Act³ preempts a Los Angeles requirement mandating, as a condition of development, that a portion of newly constructed dwelling units be rented at low-income rents.

² Planning Code Section 827(b)(D).

³ California Civil Code Section 1954.50-1954.535.

The proposed Ordinance, in part, responds to the *Palmer* case. The Mayor's Office of Housing and the Department have been working together to update the Planning Code so that it is more in line with that decision.

The Affordable Housing Program will be modified to a fee-based program and will no longer contain any requirement to build affordable units. A development that is subject to Section 315 must pay an affordable housing fee that is equivalent to "the applicable percentage of the number of units in the principal project. (The applicable percentage shall be 20% [unless otherwise stated].)".

While the primary mechanism of the program is an affordable housing fee to the Mayor's Office of Housing, it should also be noted that there are circumstances where a project sponsor may qualify to choose an alternative – to build on-site or off-site affordable units. If the developer chooses to sell the new residential units rather than rent them, then the developer may build the affordable units on or off-site instead. Further, if the project is exempt from the Costa-Hawkins Act because it has received a direct financial contribution from the government pursuant to the Costa-Hawkins Act,⁴ participates in California Debt Limit Allocation Committee tax-exempt bonds, or enters into a Development Agreement with the City, then the project sponsor may elect to build affordable housing units on site or off site.

There are a few modifications to the Affordable Housing Program that the Mayor's Office of Housing and the Department request. Exhibit C is a letter from the Mayor's Office of Housing that details the requested changes. In summary, the first requested change would be a modification to Sections 315.2 (Findings) and 315.4 (Affordable Housing Fee) to allow the Mayor's Office of Housing to use the Affordable Housing Fees to assist in the creation of affordable housing and for down payment assistance to low and moderate income buyers.⁵ The second MOH requested modification is to delete the provision in Section 315.5 (Off-Site Housing Development) that 25% of all off-site units may be constructed outside of the mandated one-mile radius. The last modification being forwarded is to delete provisions requiring a refund of fees after issuance of certificate of occupancy. The Department supports the modifications as described in Exhibit C.

The Department has been working closely with the Mayor's Office of Housing to ensure that there are no adverse impacts from the amendments to Section 315 including impacts on the ability for affordable housing to continue to be constructed in San Francisco, or on the Mayor's Office of Housing's ability to run the program. As such, the Department strongly supports the proposed legislation, which updates Section 315 to create the Affordable Housing Program.

ENVIRONMENTAL REVIEW

The proposal to amend the San Francisco Planning Code Section 315 would result in no physical impact on the environment. The proposed amendment is exempt from environmental review under Section 15060(c)(2) of the CEQA Guidelines.

⁴ California Civil Code Section 1954.54(b).

⁵ Section 315.2(6).

PUBLIC COMMENT

As of the date of this report, the Planning Department has received no letters in support or opposition to the proposal from the public.

RECOMMENDATION: Recommendation of Approval

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Draft Board of Supervisors Ordinance (BOS File No. 10-0046-2)
- Exhibit C: Letter from Mayor's Office of Housing Requesting Additional Modifications

MAYOR'S OFFICE OF HOUSING
CITY AND COUNTY OF SAN FRANCISCO



GAVIN NEWSOM
MAYOR

DOUGLAS SHOEMAKER
DIRECTOR

To: San Francisco Planning Commission

From: Chandra Egan, Program Manager
Myrna Melgar, Director of Homeownership Programs

Re: Proposed Changes to the Inclusionary Affordable Housing Program Ordinance

Date: 2/17/10

In an effort to update and enhance the Below Market Rate (BMR) Affordable Housing Program, the Mayor's Office of Housing proposes the following additional changes to the Inclusionary Affordable Housing Program ordinance.

Allowance for Temporary, One-time Procedures for BMR Units Unable to Resell

The way it is now:

A number of rules set forth in the ordinance and in the Procedures Manual ensure that the BMR units offer affordable, high-quality housing and not investment opportunities. In particular, BMR units must be purchased by first-time homebuyers; owner-occupied at all times with a limited allowance for renting; and households purchasing BMR units must be at least as many people as bedrooms in the unit. However, these rules sometimes prevent interested buyers from being qualified to purchase BMR resale units. During economic downturns especially, this narrowing of the pool of potential buyers can harm households that may need to sell their unit.

The way it would be:

To assist homeowners in avoiding risk of default and foreclosure during economic downturns, MOH proposes to amend the ordinance and the corresponding Procedures Manual to allow MOH discretion, in certain limited circumstances, to waive certain requirements for BMR owners unable to resell their unit in a timely manner. These procedures would only be applied to units advertised by MOH for over a 4 month period without selling and whose owners are financially burdened or must relocate out of the area for a new employment opportunity. MOH would have discretion to make one or more allowances limited to the following three allowances: (1) a one-time waiver of the first-time homebuyer rule for the purchasing household; (2) a one-time waiver of qualifying household size requirements for the purchasing household; (3) and a one-time waiver of owner occupancy rules.

Allowance for One-time Lifting of Qualifying Income Levels for BMR Units Reselling at an Unaffordable Price

The way it is now:

BMR units may be resold to qualifying buyers whose income is at or below the income levels set forth in the Notice of Special Restrictions or Planning Approvals for the unit. In all cases, the income of the new buyer household cannot exceed 120% of median income per the current ordinance. In some cases, however, the resale price of a BMR unit is higher than the price affordable even to a household at 120% of median income. In the case of an owner earning appreciation, it is assumed that the owner can lower the price until it becomes affordable. In cases where the owner is reselling his unit at a price no higher than that paid for the unit, and where that price is not affordable to a household at 120% of median income, that owner would be required to lower his resale price below what he paid for the unit and not recoup even his initial investment.

The way it would be:

Allow MOH the authority to increase the qualifying income level for the unit by up to 20% above the maximum income limit currently allowed in the ordinance on a one-time basis in cases where a BMR unit being resold at the original purchase price is unaffordable to a household at 120% of median income.

Affordable Market Rate Units

The way it is now:

Some market rate efficiency units in San Francisco sell at a price that is close to the below market rate prices set by the Mayor's Office of Housing and require an in lieu fee payment that would greatly exceed the opportunity cost of selling the unit at the below market rate. In essence, these units are naturally affordable on the outset and, therefore, have a hard time attracting BMR buyers who are reluctant to choose a restricted BMR unit over a market rate unit in the same building.

The way it would be:

Allow MOH to establish procedures for allowing efficiency units to sell at a market-rate price as long as the unit: (1) has a market-rate price that is close to the below market rate prices set by the Mayor's Office of Housing; (2) requires an in lieu fee payment that would greatly exceed the opportunity cost of selling the unit at the below market rate price; and (3) is sold to a qualifying household. The new BMR owner could resell the unit to a higher income household than the initial qualifying level allowed and at a maximum resale price that would exceed the resale price generally set by the Mayor's Office of Housing for current resale units under the program.

Resale Lottery List Clarification

The way it is now:

The current ordinance states that MOH shall maintain a waitlist from the initial lottery or other process for new BMR units. However, MOH believes that the maintenance of an ongoing "waitlist" for its BMR units is not beneficial to BMR owners or buyers because such lists often

become "stale" quickly, are staff-intensive in their maintenance, and slow down the resale process for BMR sellers.

The way it would be:

Amend sections 315.5 (e) (1) and 315.6 (e) (1) to clarify the fact that MOH shall continue to hold an initial lottery for all BMR resale units but that MOH will not maintain a list generated from the lottery for new BMR units or by any other means to identify buyers for resale BMR units or any other units. All new and resale units shall be subject to a new lottery at the time of sale.

First-time Homebuyer Rule

Amend Sections (16) (17) and (17A) to further define a household as a "first-time homebuyer" household. A first-time homebuyer household is defined as a household in which no member of the qualifying household must have owned any interest in a dwelling unit for a three-year period prior to applying to qualify for purchase of a BMR unit.

Update Fee Usage Language

Clarify use of fees for affordable housing. Instead of "provide downpayment assistance to low and moderate income homebuyers" say "provide assistance to low and moderate income homebuyers."

Administrative Changes (typographical errors; changes to conform to the Procedures Manual and/or prior amendments)

Amend definition (3) (iii) to add a missing word. The line should read "On subsequent sales at or below the prices to be determined by the Director of the Mayor's Office of Housing.... "

Amend section 315.7 (c) to clarify the fact that upon conversion from rental to ownership, a BMR unit will be restricted for the life of the project or for the restriction period as identified in the Notice of Special Restrictions and/or Conditions of Approval for the project.

Update sections 315.5 (e) (2) and 315.6 (e) (2) to reflect the lottery preference for Certificate of Preference (COP) holders preference established in Ordinance #232-08. COP holders are primarily households displaced by Agency action in Redevelopment Project Areas during the 1960's and 1970's, but may also include other persons displaced by Agency action.

Attachment C.2

To: San Francisco Planning Commission

From: Chandra Egan, Program Manager
Myrna Melgar, Director of Homeownership Programs

Re: Additional Proposed Changes to the Inclusionary Affordable Housing Program Ordinance

Date: 3/25/10

In an effort to update and enhance the Below Market Rate (BMR) Affordable Housing Program, the Mayor's Office of Housing proposed a number of changes to the proposed Affordable Housing Program ordinance ("Proposed Ordinance"). These changes are included in the packet prepared for the March 25, 2010 Planning Commission Meeting.

In addition to the change already proposed, the Mayor's Office of Housing proposes to make the following changes to the Proposed Ordinance.

Capital Improvements Cap

The way it is now:

The regulations for the Affordable Housing Program ("Program") have since 2007 included a cap on the amount of capital improvements a BMR owner can recoup at the time of resale. Currently the Procedures Manual provides for a cap of 7% of the resale price. The policy behind the cap is to balance the interests between our current BMR unit owners who wish to recoup eligible expenses for upkeep and maintenance (which we encourage) with the interests of future BMR unit owners in terms of maintaining affordability. The Procedures Manual also allows for BMR unit owners to recoup an uncapped amount of homeowner initiated special assessments. The ordinance, however, did not specify any particular cap on the amount of capital improvement expenditures that can be added to a seller's resale price nor did it reference the amount of special assessments to be recouped.

The way it will be:

MOH proposes to amend Section 315.1 (3)(A)(iii) to be consistent with the Procedures Manual, and will increase the cap to 10% cap on capital improvements. A 10% cap is a more reasonable allowance given the fact that BMR units under the Program are now as old as 1992. The increased cap will encourage homeowners to maintain their units for the next owner. The exemption for special assessments will remain uncapped.

The 10% cap will go into effect immediately for all projects approved under the Program.

Attachment C.2

Authority to Sign Contracts

The way it is now:

Section 315.4(i)(1)(B) of the Proposed Ordinance neglected to specify what City official held the authority to sign a contract with the project sponsor indicating that the project's on- or off-site units are not subject to the Costa Hawkins Rental Housing Act, California Civil Code Section 1954.50 because, under Section 1954.52(b), it has entered into an agreement with a public entity in consideration for a direct financial contribution or any other forms of assistance specified in California Government Code Sections 65915 et seq.

The way it will be:

MOH proposes that an amendment to Section 315.4(i)(1)(B) state that: "all such contracts entered into with the City and County of San Francisco must be reviewed and approved by the Mayor's Office Housing. All contracts that involve 100% affordable housing projects in the residential portion may be executed by the Director of the Mayor's Office of Housing. Any contract that involves less than 100% affordable housing in the residential portion may be executed by either the Director of the Mayor's Office of Housing or, after review and comment by the Mayor's Office of Housing, the Planning Director."

Inheritance

The way it is now:

The current provisions of the Program – including lottery and other marketing requirements and rules regarding who may acquire a BMR unit – indicate that there are limits on how a BMR unit owner may transfer his or her ownership interest, including in the context of inheritance. Furthermore, BMR units are restricted under the Notice of Special Restrictions recorded on each project providing BMR units, indicating that the BMR unit must be occupied by qualified tenants only.

The way it will be:

MOH proposes to amend the Proposed Ordinance to clarify the specific procedures for passing a BMR unit through inheritance and to make corresponding amendments to the Procedures Manual. The procedures for passing a BMR unit through inheritance would include a rule that all transfers through inheritance must be reported to and approved by MOH and, in all cases, the heir must acknowledge and agree to the provisions of the BMR Program. The Proposed Ordinance would clarify that the following households may inherit the right to occupy a BMR unit: (i) a spouse or registered domestic partner, regardless of income; (ii) a child of the owner if the child qualifies as a low- or moderate-income household depending on the designation of the unit. Any heir who does not qualify in one of these categories may market and sell the unit at the BMR price through a public lottery process. The heir will retain the proceeds of the sale. Any heir who is eligible must agree, like any other BMR unit owner, to occupy the unit. If the heir chooses not to occupy the unit, the heir may market and sell the BMR unit at the BMR Price through a public lottery process. The heir will retain the proceeds of the sale.

Attachment C.2

Administrative Changes (typographical errors; changes to conform to the Procedures Manual and/or prior amendments)

In the memo dated 2/17/10, MOH proposes amending Sections (16) (17) and (17A) to further define a household as a "first-time homebuyer" household. This clarification corresponds to the existing Procedures Manual. A first-time homebuyer household is defined as a household in which no member of the qualifying household must have owned any interest in a dwelling unit for a three-year period prior to applying to qualify for purchase of a BMR unit. We propose adding this change to Section 315.1 (3) (A) and 315.1 (13) instead.

Amend Sections 315.5 (b) and 315.6 (b) to clarify that, in addition to being constructed, completed, and ready for occupancy no later than the market rate units, the BMR units must also be marketed at the same time as market rate units.

Strengthen Sections 315.5 (c) and 315.6 (c) to clarify that the interior features of on-site BMR units must be comparable to the interior features of market rate but can be of a different make and model as long as they are of good quality, etc.

Amend Sections 315.5 (e) and 315.6 (e) regarding minimum marketing requirements to remove deadline language regarding the establishment of marketing guidelines.

Amend Section 315.6 (c) to clarify the fact that on-site units must be sold at 100% of median income on average.

Amend Section 315.7 (a) to align the ordinance with the Procedures Manual by clarifying that the resale process; restrictions on title transfer; and restrictions on owner refinancing are outlined in Manual.

Amend Section 315.7 (c) to clarify the fact that the Mayor's Office Housing can set rules for lease changes and subleasing in the Manual

Amend Section 315.8 (a) to point out the correct sections of the code.

Amend Section 315.8 (g) (1) to state that monitoring can be bi-annual rather than annual.

