

File No. 100046

Committee Item No. 4

Board Item No. 30

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date October 25, 2010

Board of Supervisors Meeting

Date November 2, 2010

#### Cmte Board

<input type="checkbox"/>	<input type="checkbox"/>	Motion
<input type="checkbox"/>	<input type="checkbox"/>	Resolution
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Ordinance
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Legislative Digest
<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 type="checkbox"/>	<input type="checkbox"/>	Department/Agency Cover Letter and/or Report
<input type="checkbox"/>	<input type="checkbox"/>	MOU
<input type="checkbox"/>	<input type="checkbox"/>	Grant Information Form
<input type="checkbox"/>	<input type="checkbox"/>	Grant Budget
<input type="checkbox"/>	<input type="checkbox"/>	Subcontract Budget
<input type="checkbox"/>	<input type="checkbox"/>	Contract/Agreement
<input type="checkbox"/>	<input type="checkbox"/>	Form 126 – Ethics Commission
<input type="checkbox"/>	<input type="checkbox"/>	Award Letter
<input type="checkbox"/>	<input type="checkbox"/>	Application
<input type="checkbox"/>	<input checked="" type="checkbox"/>	* Public Correspondence

#### OTHER

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<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Planning Department Environmental Review Determination</u>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Planning Commission Resolution No. 18056</u>
<input type="checkbox"/>	<input type="checkbox"/>	<u> </u>
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Completed by: Alisa Somera

Date October 22, 2010

Completed by: Alisa Somera

Date October 27, 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.) (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 Inclusionary 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, the Planning Commission, in  
4 Resolution No. 18056 approved and recommended for adoption by the Board  
5 this legislation and adopted findings that it is consistent, on balance, with the City's General  
6 Plan and eight priority policies of Planning Code Section 101.1. The Board adopts these  
7 findings as its own. A copy of said Resolution is on file with the Clerk of the Board of  
8 Supervisors in File No. 18056, 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  
12 reasons 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~~  
19 ~~requirements of containing units constructed to satisfy the requirements of Sections 413.5, 413.8,~~  
20 ~~415.4 (Imposition of Requirements), or 415.5 (Affordable Housing Fee), 415.6 (On-Site~~  
21 ~~Alternative), or 415.7 (Off-Site Alternative) of this Article, or receiving funds from the Citywide~~  
22 ~~Affordable Housing Fund.~~

23 "Affordable unit" or "affordable housing unit." A unit that is restricted as affordable  
24 under Section 415 et seq.  
25



1           (2) — "Affordable to a household:" shall mean a purchase price that a household can  
2 afford to pay based on an annual payment for all housing costs, as defined in California Code  
3 of Regulations ("CCR") Title 25, Section 6920, as amended from time to time, of 33 percent of  
4 the combined household annual gross income, assuming a down payment recommended by  
5 the Mayor's Office of Housing in the Procedures Manual, and available financing, or a rent  
6 that does not exceed 30 percent of a household's combined annual gross income. Where  
7 applicable, the purchase price or rent may be adjusted to reflect the absence or existence of a  
8 parking space(s), subject to the Department's policy on unbundled parking for affordable  
9 housing units as specified in the Procedures Manual and amended from time to time. A  
10 ~~purchase price that a household can afford to pay based on an annual payment for all housing~~  
11 ~~costs of 33 percent of the combined household annual net income, a 10 percent down~~  
12 ~~payment, and available financing, or a rent that a household can afford to pay based on an~~  
13 ~~annual payment for all housing costs of 30 percent of the combined annual net income.~~

14           (3) — "Affordable to qualifying households":

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

18           (i) Only to first-time homebuyer households, as defined in this Section;

19           (ii) Only to households with an annual ~~net~~ gross income equal to or less than the  
20 qualifying income limits for that of a household of moderate income, adjusted for household  
21 size; and

22           (iii) Only to households that meet the household size requirements, as defined in the  
23 Procedures Manual;

24           (iv) On the initial sale, aAt or below the maximum purchase price, as defined in this  
25 Section;

(v) On subsequent sales at or below the prices to be determined according to the formula specified in the Procedures Manual in place at the time of the affordable unit owner's purchase, as amended from time to time, such that the units remain affordable to qualifying households. The formula in the Procedures Manual shall permit the seller to include certain allowable capital improvements in the new maximum purchase price. The formula shall include a per unit cap on capital improvements of 10% of the resale price in order to maintain affordability. Special Assessments shall be added to the resale price at an uncapped rate. Capital improvement requests shall be evaluated by the Mayor's Office of Housing according to the formula specified in the Procedures Manual.

(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 gross income equal to or less than the qualifying limits for that of a household of lower income adjusted for household size, as defined in this Section;

(ii) Only households that meet the household size requirements, as defined in the Procedures Manual;

(iii) 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</u> <u>square foot equivalency)</u>	<u>Number 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>

~~(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;~~

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

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

5           (6)——

6           "Area Median Income" or "AMI." The unadjusted median income levels derived from  
7 the Department of Housing and Urban Development ("HUD") on an annual basis for the San  
8 Francisco area, adjusted solely for household size, but not high housing cost area.

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

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

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

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

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

23           (11)——"Balboa Park Community Improvements Program." The program intended to  
24 implement the community improvements identified in the Balboa Park Area Plan, as  
25

1 articulated in the Balboa Park Community Improvements Program Document on file with the  
2 Clerk of the Board.

3 (12)—"Balboa Park Impact Fee." The fee collected by the City to mitigate impacts of  
4 new development in the Balboa Park Program Area, as described in the findings in Section  
5 422.1.

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

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

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

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

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

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

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

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

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

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

15          (23)—"Commission" or "Planning Commission." The San Francisco Planning  
16    Commission.

17          (24)—"Community apartment." As defined in San Francisco Subdivision Code Section  
18    1308(b).

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

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

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

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

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

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

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

10           ~~(32)~~—"Department" or "Planning Department." The San Francisco Planning  
11 Department or the Planning Department's designee, including the Mayor's Office of Housing  
12 and other City agencies or departments.

13           ~~(33)~~—"Designated affordable housing zones." For the purposes of implementing the  
14 Eastern Neighborhoods Public Benefits Fund, shall mean the Mission NCT defined in Section  
15 736 and the Mixed Use Residential District defined in Section 841.

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

19           ~~(35)~~—"Development Fee Collection Unit" or "Unit." The Development Fee Collection  
20 Unit at DBI.

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



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

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

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

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

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

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

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

22       (44)—"Eastern Neighborhoods Public Benefits Program." The program intended to  
23 implement the community improvements identified in the four Area Plans affiliated with the  
24 Eastern Neighborhoods (Central Waterfront, East SoMa, Mission, and Showplace  
25

1 Square/Potrero Hill), as articulated in the Eastern Neighborhoods Public Benefits Program  
2 Document, on file with the Clerk of the Board in File No. 081155.)

3 (45)—"Eastern Neighborhoods Program Area." The Eastern Neighborhoods Plan Area  
4 in Map 1 (Land Use Plan) of the Eastern Neighborhoods Area Plan of the San Francisco  
5 General Plan.

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

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

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

23 (49)—"First eCertificate of eOccupancy." Either a temporary eCertificate of  
24 eOccupancy or a Certificate of Final Completion and Occupancy as defined in San Francisco  
25 Building Code Section 109A, whichever is issued first.

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

3           "First-time homebuyer household." At a minimum, shall be a household in which no  
4     member of the qualifying household may have owned any interest in a dwelling unit for a  
5     three-year period prior to applying to qualify for purchase of a unit restricted as affordable  
6     under the Inclusionary Housing Program. The Procedures Manual may contain additional  
7     requirements as necessary.

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

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

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

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

22          (55)—"Hotel" or "Hotel use." Space within a structure or portion thereof intended or  
23     primarily suitable for rooms, or suites of two or more rooms, each of which may or may not  
24     feature a bathroom and cooking facility or kitchenette and is designed to be occupied by a  
25     visitor or visitors to the City who pays for accommodations on a daily or weekly basis but who

1 do not remain for more than 31 consecutive days. Under this Article "hotel use" shall include  
2 all office and other uses accessory to the renting of guest rooms, but excluding retail uses and  
3 office uses not accessory to the hotel use.

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

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

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

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

18 "Household of low income." For purposes of Section 415 et seq., a household whose  
19 combined annual gross income for all members does not exceed 55 percent of AMI. 60 percent of  
20 median income for the City and County of San Francisco, as calculated by the Mayor's Office  
21 of Housing using data from the United States Department of Housing and Urban Development  
22 (HUD) and adjusted for household size or, if data from HUD is unavailable, calculated by the  
23 Mayor's Office of Housing using other publicly available and credible data and adjusted for  
24 household size.  
25

1       "Household of median income." For purposes of Section 415 et seq., a household whose  
2       combined annual gross income for all members does not exceed 90 percent of AMI. ~~100 percent of~~  
3       ~~the median income for the City and County of San Francisco, as calculated by the Mayor's~~  
4       ~~Office of Housing using data from the United States Department of Housing and Urban~~  
5       ~~Development (HUD) and adjusted for household size or, if data from HUD is unavailable,~~  
6       ~~calculated by the Mayor's Office of Housing using other publicly available and credible data~~  
7       ~~and adjusted for household size.~~

8       "Household of moderate income." For purposes of Section 415 et seq., Aa household  
9       whose combined annual gross income for all members does not exceed 110 percent of AMI. ~~120~~  
10       ~~percent of the median income for the City and County of San Francisco, as calculated by the~~  
11       ~~Mayor's Office of Housing using data from the United States Department of Housing and~~  
12       ~~Urban Development (HUD) and adjusted for household size or, if data from HUD is~~  
13       ~~unavailable, calculated by the Mayor's Office of Housing using other publicly available and~~  
14       ~~credible data and adjusted for household size.~~

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

20       ~~(61)~~—"Housing project." Any development which has residential units as defined in the  
21       Planning Code, including but not limited to dwellings, group housing, independent living units,  
22       and other forms of development which are intended to provide long-term housing to  
23       individuals and households. "Housing project" shall not include that portion of a development  
24       that qualifies as an Institutional Use under the Planning Code. "Housing project" for purposes  
25       of this the Inclusionary Housing Program shall also include the development of live/work units

1 as defined by Section 102.13 of this Code. Housing project for purposes of this the  
2 Inclusionary Housing Program shall mean all phases or elements of a multi-phase or multiple  
3 lot residential development.

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

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

8 (64)—"In-Kind Agreement." An agreement acceptable in form and substance to the  
9 City Attorney and the Director of Planning between a project sponsor and the Planning  
10 Commission, subject to approval by the Planning Commission in its sole discretion, to provide  
11 a specific set of community improvements at a specific phase of construction in lieu of  
12 contribution to the relevant Improvements Fund. The In-Kind Agreement shall also mandate a  
13 covenant of the project sponsor to reimburse all City agencies for their administrative and staff  
14 costs in negotiating, drafting, and monitoring compliance with the In-Kind Agreement. The City  
15 shall also require the project sponsor to provide a letter of credit or other instrument  
16 acceptable in form and substance to the City Attorney and the Planning Department to secure  
17 the City's right to receive payment as described in the preceding sentence.

18 (65)—"Infrastructure." Open space and recreational facilities; public realms  
19 improvements such as pedestrian improvements and streetscape improvements; public transit  
20 facilities; and community facilities such as libraries, child care facilities, and community  
21 centers.

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

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

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

6           "Life of the project." The time during which the development authorized by the  
7 Planning Department or Commission, or any modification of such development, remains in  
8 existence in or upon the subject property and thereby confers benefit upon the subject  
9 property.

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

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

12          ~~(73.1)~~—"Long term housing." Housing intended for occupancy by a person or persons  
13 for 32 consecutive days or longer.

14          ~~(72)~~—"Low income." For purposes of this Article, except as used in Section 415 et  
15 seq., up to 80% of median family income for the San Francisco PMSA, as calculated and  
16 adjusted by the United States Department of Housing and Urban Development (HUD) on an  
17 annual basis, except that as applied to housing-related purposes such as the construction of  
18 affordable housing and the provision of rental subsidies with funds from the SOMA  
19 Stabilization Fund established in Section 418.7, it shall mean up to 60% of median family  
20 income for the San Francisco PMSA, as calculated and adjusted by HUD on an annual basis.

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

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

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

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

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

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

(79) "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:*

<i>Number of Bedrooms (or, for live/work units square foot equivalency)</i>	<i>Number of Persons in Household</i>
---	---



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 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.*

"Mayor's Office of Housing" or "MOH." The Mayor's Office of Housing or its successor.

*(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." Except as used in Section 415 et seq., a 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 adjusted for household size or, if data from HUD is unavailable, as calculated by the Mayor's Office of Housing using other publicly available and credible data and adjusted for household size.

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

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

3           (84)—"MTA." The Municipal Transportation Agency.

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

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

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

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

23          (89)—"Net addition of gross square feet of entertainment space." Gross floor area as  
24 defined in Section 102.9 of this Code to be occupied by, or primarily serving, entertainment  
25 use, less the gross floor area in any structure demolished or rehabilitated as part of the

1 proposed entertainment development project that was used primarily and continuously for  
2 entertainment, hotel, office, research and development, or retail use and was not accessory to  
3 any use other than entertainment, hotel, office, research and development, or retail use, for  
4 five years prior to Commission approval of an entertainment development project subject to  
5 this Article, or for the life of the structure demolished or rehabilitated, whichever is shorter, so  
6 long as such space was subject to Section 413.1 et seq. of this Article or the Interim  
7 Guidelines.

8 (90)—"Net addition of gross square feet of hotel space." Gross floor area as defined in  
9 Section 102.9 of this Code to be occupied by, or primarily serving, hotel use, less the gross  
10 floor area in any structure demolished or rehabilitated as part of the proposed hotel  
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 Commission approval  
13 of a hotel development project subject to this Article, or for the life of the structure demolished  
14 or rehabilitated, whichever is shorter.

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

23 (92)—"Net addition of gross square feet of residential space." Gross floor area as  
24 defined in Section 102.9 of this Code to be occupied by, or primarily serving, residential use,  
25 less the gross floor area in any structure demolished or rehabilitated as part of the proposed

1 residential development project space used primarily and continuously for residential use and  
2 not accessory to any use other than residential use for five years prior to Planning  
3 Commission approval of a development project, subject to this Article, or for the life of the  
4 structure demolished or rehabilitated, whichever is shorter.

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

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

21 ~~(95)~~—"Net addition of gross square feet of retail space." Gross floor area as defined in  
22 Section 102.9 of this Code to be occupied by, or primarily serving, retail use, less the gross  
23 floor area in any structure demolished or rehabilitated as part of the proposed retail  
24 development project that was used primarily and continuously for entertainment, hotel, office,  
25 research and development, or retail use and was not accessory to any use other than

1 entertainment, hotel, office, research and development, or retail use, for five years prior to  
2 Planning Commission approval of a retail development project subject to this Article, or for the  
3 life of the structure demolished or rehabilitated, whichever is shorter.

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

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

16 ~~(98)~~—"Nonprofit organization." An organization organized and operated for nonprofit  
17 purposes within the provisions of California Revenue and Taxation Code Sections 23701--  
18 23710, inclusive, as demonstrated by a written determination from the California Franchise  
19 Tax Board exempting the organization from taxes under Revenue and Taxation Code Section  
20 23701.

21 ~~(99)~~—"Non-Residential development project." Any new construction, addition,  
22 extension, conversion or enlargement, or combination thereof, of an existing structure that  
23 includes any occupied floor area of a non-residential use; provided, however, that for projects  
24 that solely comprise an addition to an existing structure that would add occupied floor area in  
25

1 an amount less than 20 percent of the occupied floor area of the existing structure, the  
2 provisions of this Article shall only apply to the new occupied square footage.

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

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

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

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

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

23 ~~(105)~~—"Office use." Space within a structure or portion thereof intended or primarily  
24 suitable for occupancy by persons or entities which perform, provide for their own benefit, or  
25 provide to others at that location services including, but not limited to, the following:

Professional; banking; insurance; management; consulting; technical; sales; and design; and the non-accessory office functions of manufacturing and warehousing businesses; all uses encompassed within the definition of "office" in Section 219 of this Code; multimedia, software, development, web design, electronic commerce, and information technology; all uses encompassed within the definition of "administrative services" in Section 890.106 of this Code; and all "professional services" as proscribed in Section 890.108 of this Code excepting only those uses which are limited to the Chinatown Mixed Use District.

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

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

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

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

"Owner Occupied." A qualified-income owner lives in the affordable unit as his her principle residence and resides in the unit for a minimum period of time set forth in the Procedures Manual

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

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

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



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

4           "Program:" or "Inclusionary Housing Program." The Inclusionary Affordable Housing  
5           Program as detailed in Sections 415 - 417.

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

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

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

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

19          (118)—"Research and development use." Space within any structure or portion thereof  
20          intended or primarily suitable for basic and applied research or systematic use of research  
21          knowledge for the production of materials, devices, systems, information or methods,  
22          including design, development and improvement of products and processing, including  
23          biotechnology, which involves the integration of natural and engineering sciences and  
24          advanced biological techniques using organisms, cells, and parts thereof for products and  
25

1 services, excluding laboratories which are defined as light manufacturing uses consistent with  
2 Section 226 of this Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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~~ 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)—"Visitacion 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* Inclusionary Affordable Housing  
19 Program ("Program" or "Inclusionary Housing Program"). ~~The effective date of these~~  
20 ~~requirements shall be either April 5, 2002, which is the date that the requirements originally~~  
21 ~~became effective, or the date a subsequent modification, if any, became effective.~~

22 The Planning Department and MOH shall periodically publish a Procedures Manual  
23 containing procedures for monitoring and enforcement of the policies and procedures for  
24 implementation of this Program. The Procedures Manual must be made available at the  
25 ~~Zoning Counter of the Department and on the Department's web site.~~ The Procedures Manual

1 shall not be amended, except for an annual update of the affordability housing guidelines,  
2 which reflect updated income limits, prices, and rents, without approval of the Commission or  
3 as otherwise 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~~ Inclusionary Affordable Housing Ordinance are hereby readopted and updated as  
18 follows:

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

21 (a) The availability of housing is of vital statewide importance, and the early  
22 attainment of decent housing and a suitable living environment for every California family is a  
23 priority of the highest order.  
24  
25

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

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

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

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

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

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

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

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

17 The California Legislature requires each local government agency to develop a  
18 comprehensive long-term general plan establishing policies for future development. As  
19 specified in the Government Code (at Sections 65300, 65302(c), and 65583(c)), the plan must  
20 (1) "encourage the development of a variety of types of housing for all income levels,  
21 including multifamily rental housing"; (2) "[a]ssist in the development of adequate housing to  
22 meet the needs of low- and moderate-income households"; and (3) "conserve and improve  
23 the condition of the existing affordable housing stock, which may include addressing ways to  
24 mitigate the loss of dwelling units demolished by public or private action."  
25

2. San Francisco faces a continuing shortage of affordable housing for very low and low-income residents. The San Francisco Planning Department reported that for the ~~four-~~ five-year period between 2000 and 2004 2005 and 2009, 14,397, 8,389 total new housing units were built in San Francisco. This number includes 4,933 3,707 units for low and very low-income households out of a total need of 3,930 6,815 low and very low-income housing units for the same period. According to the state Department of Housing and Community Development, there will be a regional need for 230,743 214,500 new housing units in the nine Bay Area counties from ~~1999 through 2006~~ 2007 to 2014. Of that amount, over 58 percent, or 133,164 125,258 units, are needed for moderate, low and very low-income households. The Association of Bay Area Governments (ABAG) is responsible for ~~dividing~~ allocating the total regional need numbers among its member governments which includes both counties and cities. ABAG estimates that San Francisco's low and very low-income housing production need from 2007 through 2014 is 12,124 ~~1999 through 2006 is 7,370~~ units out of a total new housing need of 20,372 31,193 units, or 36 39 percent of all units built. Within the past ~~five~~ four years, only 23 25 percent of all housing built, or 54 49 percent of the previously projected housing need for low and very low-income housing for the same period, was produced in San Francisco. The production of moderate income rental units also fell short of the ABAG goal. Only 1,093 354 moderate income units were produced over the previous ~~five~~ four years, or ~~four~~ almost 8 percent of all units built, compared to ABAG's call for 26 28 percent of all units to be affordable to households of moderate income. ~~Given the need for 3,007 moderate income units over the four-year period, only 12 percent of the projected need for moderate income units was built.~~

3. In response to the above mandate from the California Legislature and the projections of housing needs for San Francisco, San Francisco has instituted several strategies for producing new affordable housing units. The 2004 Housing Element of the



1 General Plan recognizes the need to support affordable housing production by increasing site  
2 availability by identifying and securing opportunity sites for permanently affordable housing, by  
3 enhancing and by expanding the financial resources available for permanent affordable housing  
4 through coordination at the regional, state, and Federal levels, and by supporting efforts to  
5 produce and manage permanently affordable housing. and capacity for permanently affordable  
6 housing through the inclusion of affordable units in larger housing projects. Further, the City, as  
7 established in the General Plan, seeks to encourage the distribution of affordable housing  
8 throughout all neighborhoods and, thereby, offer diverse housing choices and promote  
9 economic and social integration. The 2004 Housing Element calls for an increase in the  
10 production of new affordable housing for greater economic integration and for the promotion  
11 of integrated neighborhoods with a diversity of housing types provided and a range of housing  
12 options and opportunities income levels. ~~development of mixed income housing to achieve social~~  
13 ~~and cultural diversity. Section 415.1 et seq.~~ Section 415.1 et seq. furthers the goals of the State  
14 Legislature and the General Plan.

15 4. The 2005 2010 Consolidated Plan for July 1, 2000—June 30, 2005 to June 30,  
16 2010, issued by the Mayor's Office of Community Development and the Mayor's Office of  
17 Housing, establishes that extreme housing pressures face San Francisco, particularly in  
18 regard to low- and moderate-income residents. Many elements constrain housing production  
19 in the City. This is especially true of affordable housing. As discussed in the 2004 Housing  
20 Element published by the City Planning Department. San Francisco is largely built out, with  
21 very few large open tracts of land to develop. As noted in the 2000 Consolidated Plan, its  
22 geographical location at the northern end of a peninsula inherently prevents substantial new  
23 development. There is no available adjacent land to be annexed, as the cities located on San  
24 Francisco's southern border are also dense urban areas. Thus new construction of housing is  
25 limited to areas of the City not previously designated as residential areas, infill sites, or to

1 areas with increased density. New market-rate housing absorbs a significant amount of the  
2 remaining supply of land and other resources available for development and thus limits the  
3 supply of affordable housing.

4 There is a great need for affordable rental and owner-occupied housing in the City.  
5 Housing cost burden is one of the major standards for determining whether a locality is  
6 experiencing inadequate housing conditions, defined as households that expend 30 percent  
7 or more of gross income for rent or 35 percent or more of household income for owner costs.  
8 ~~The 2000 Census indicates that 76,600-64,400 renter households earning up to 80 percent of~~  
9 ~~the area median income are cost burdened. Of these, about 25,000 households earn less~~  
10 ~~than 50 percent of AMI and pay more than 50 percent of their income to rent. According to~~  
11 ~~more recent data from the Comprehensive Housing Affordability Study (CHAS) 67.015~~  
12 ~~American Housing Survey, 80,662-80.014 total renter households, or 3443-44 percent, were~~  
13 ~~cost burdened in 2005-07 are cost burdened in 20082003. A significant number of owners are~~  
14 ~~also cost burdened. The 2005-07 CHAS indicates that 46,985 owner households are cost~~  
15 ~~burdened, or 38 percent. According to 2000 Census data, 18,237 of owners are cost-~~  
16 ~~burdened, or 23 percent of all owner households. The 20082003 American Housing Survey~~  
17 ~~indicates that this level has risen to 3929 percent.~~

18 The San Francisco residential real estate market is one of the most expensive in the  
19 United States. In ~~June 2010~~May-2005, the California Association of Realtors reported that the  
20 median priced home in San Francisco was ~~\$670,000~~\$755,000.00. This price is 48-percent  
21 ~~higher than the median priced home one year earlier, 44~~ 115 percent higher than the State of  
22 California median (\$311,950), and ~~266~~365 percent higher than the national average  
23 (\$183,000). While the national homeownership rate is approximately 67.269 percent, only  
24 approximately ~~39~~35 percent of San Franciscans own their own home. The majority of market-  
25 rate homes for sale in San Francisco are priced out of the reach of low and moderate income

1 households. In ~~June 2010~~ May 2005, the average rent for a two-bedroom apartment was  
2 ~~\$2,2302,125,821.00~~, which is affordable to households earning over ~~\$89,20074,000.00~~.

3 These factors contribute to a heavy demand for affordable housing in the City that the  
4 private market cannot meet. For many years, Each year the number of market rate units that  
5 are affordable to low income households has been reduced by rising market rate rents and  
6 sales prices. Although housing prices and rent levels have dropped in recent years, lower  
7 income households still struggle to pay for housing in San Francisco. The number of  
8 households benefiting from rental assistance programs is far below the need established by  
9 the 2000 Census. Because the shortage of affordable housing in the City can be expected to  
10 continue for many years, it is necessary to maintain the affordability of the housing units  
11 constructed by housing developers under this Program. The 2004 Housing Element of the  
12 General Plan recognizes this need, and on of its primary objectives is to protect the  
13 affordability of the existing housing stock. Objective 1 of the Housing Element is to provide  
14 new housing, ~~especially permanently affordable housing, in appropriate locations which meets~~  
15 ~~identified housing needs and takes into account the demand for affordable housing created by~~  
16 ~~employment demand. Objective 6 is to protect the affordability of existing housing, and to~~  
17 ~~ensure that housing developed to be affordable be kept affordable for 50-75 year terms, or~~  
18 ~~even longer if possible.~~ The Housing Element also sets the goal of securing funding and  
19 permanent resources for permanently affordable housing, including innovative programs that  
20 are not solely reliant on traditional mechanisms or capital, including the production of  
21 affordable housing through process and zoning accommodations and support for middle  
22 income housing.

23 In 2004 the National Housing Conference issued a survey entitled "Inclusionary  
24 Zoning: The California Experience." The survey found that as of March 2003, there were 107  
25 cities and counties using inclusionary housing in California, one-fifth of all localities in the

1 state. Overall, the inclusionary requirements were generating large numbers of affordable  
2 units. Only six percent of jurisdictions reported voluntary programs, and the voluntary nature  
3 appears to compromise the local ability to guarantee affordable housing production. While  
4 there was a wide range in the affordability percentage-requirements for inclusionary housing,  
5 ~~the average requirement for affordability in rental developments is 13 percent. Approximately~~  
6 half of all jurisdictions require at least 15 percent to be affordable, and one-quarter require 20  
7 percent or more to be affordable.

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

18 6. The payment of an Affordable Housing Fee by developers of market rate housing is  
19 justified for the reasons stated herein and has identifiable benefits to the City. Because it is not  
20 financially feasible in most circumstances to develop new housing affordable to very-low, low, median  
21 and moderate-income households, the City and County provide direct housing investments to  
22 developers to enable the creation of affordable housing. The Affordable Housing Fee will be used to  
23 help subsidize these development costs and provide administrative support for these programs and  
24 other affordable housing development activities administered by the City and County. Without these  
25 funds, the City and County would be less able to meet its affordable housing needs and the Regional

1 Housing Needs goals established by ABAG and the State of California for the City and County for  
2 2007-20142006-2013.

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

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

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

22 7. Provided project applicants can take these requirements into consideration  
23 when negotiating to purchase land for a housing project, the requirements of Section 415.1 et  
24 seq. are generally financially feasible for project applicants to meet, particularly because of  
25 the benefits being conferred by the City to housing projects under Section 415.1 et seq..

1 Section 406 provides a means by which a project applicant may seek a reduction or waiver of  
2 the Affordable Housing Fee or a reduction or waiver of the alternative the requirements of this  
3 Program these mitigation fees if the project applicant can show that imposition of these  
4 requirements would create an unlawful financial burden.

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

22 9. The City wants to balance the burden on private property owners with the  
23 demonstrated need for affordable housing in the City. ~~For the reasons stated above, the Board of~~  
24 ~~Supervisors thus intends to increase the inclusionary housing requirements for all residential projects.~~  
25 ~~In order to balance the burden on property owners, the Board intends to limit the application of an~~

1 ~~inclusionary housing requirement to 15 percent for housing projects that do not receive any of the~~  
2 ~~benefits described above through the conditional use or planned unit development process, or in~~  
3 ~~live/work projects. A slightly higher percentage will be applied to projects which generally receive~~  
4 ~~benefits through the conditional use or planned unit development process, or in live/work projects.~~ The  
5 2004 Housing Element (Policy 4.2) states: Include affordable units in larger housing  
6 developments. It also calls for the City to review its ~~affordable inclusionary~~ Inclusionary  
7 ~~Housing p~~Program regularly to ensure fair burden and not constrain new housing production.  
8 The Board of Supervisors has reviewed the ~~inclusionary~~ Inclusionary Affordable Housing  
9 Program and finds that, for purposes of the Housing Element of the General Plan, ~~increasing~~  
10 ~~the inclusionary housing requirements~~ the current Affordable Housing Fee – set at the equivalent to  
11 providing 20 percent of the total number of units as affordable units (or less for projects approved  
12 under prior requirements)-- ensures more fair burden on all housing development and will not  
13 constrain new housing production. The Board of Supervisors has reviewed the ~~inclusionary~~  
14 Inclusionary Affordable Housing Program and finds that, for purposes of the Housing Element  
15 of the General Plan, a housing project of five units or more is a larger housing project.  
16 ~~Expanding the inclusionary housing~~ Applying the Inclusionary Affordable Housing Program  
17 requirements to buildings of five units or more ensures more fair burden on all housing  
18 development and will not constrain new housing production.

19 10. The findings of former Planning Code Section 313.2 for the Jobs-Housing  
20 Linkage Program, now found in Planning Code Sections ~~3413~~ et seq., relating to the shortage  
21 of affordable housing, the low vacancy rate of housing affordable to persons of lower and  
22 moderate income, and the decrease in construction of affordable housing in the City are  
23 hereby readopted.

24 11. The Land Use and Economic Development Committee of the Board of  
25 Supervisors held hearings on this legislation on July 12 and 19, 2006. At those hearings, the

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

23 12. The City of San Francisco, under the direction of the Office of the Controller, has  
24 undertaken a comprehensive program of analyses to update its programs and supporting  
25 documentation for many types of fees, including updating nexus analyses in support of



1 development impact fees. At the direction of the Board of Supervisors and as part of this  
2 larger analysis, the City contracted with Keyser Marston Associates to prepare a nexus  
3 analysis in support of the Inclusionary Affordable Inclusionary Housing Program, or an analysis  
4 of the impact of development of market rate housing on affordable housing supply and  
5 demand. The Planning Department and MOH worked closely with the consultant and also  
6 consulted with the Technical Advisory Committee, noted above, comprised of a variety of  
7 experts from the San Francisco housing development and affordable housing advocacy  
8 communities.

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

18 The final study can be found in the Board of Supervisors File and is incorporated by  
19 reference herein. The Board of Supervisors has reviewed the study and staff analysis and  
20 report of the study and, on that basis finds that the study supports the current ~~inclusionary~~  
21 ~~housing~~ requirements of the Inclusionary Affordable Housing Program including, but not limited to,  
22 the primary requirement that project applicants pay the Affordable Housing Fee. Specifically, the  
23 Board finds that this study: identifies the purpose of the fee to mitigate impacts on the demand  
24 for affordable housing in the City; identifies the use to which the fee is to be put as being to  
25 increase the City's affordable housing supply; and establishes a reasonable relationship

1 between the use of the fee for affordable housing and the need for affordable housing and the  
2 construction of new market rate housing. Moreover, the Board finds that the current  
3 ~~inclusionary~~ inclusionary requirements are less than the cost of mitigation and do not include  
4 the costs of remedying any existing deficiencies. The Board also finds that the study  
5 establishes that the current ~~inclusionary~~ inclusionary requirements do not duplicate other city  
6 requirements or fees.

7 13. The Board of Supervisors recognizes that this Inclusionary ~~Inclusionary~~ Affordable  
8 Housing Program is only one part of the City's overall strategy for providing affordable  
9 housing. The City has spent over \$154 million in capital funds on affordable housing in 2006-  
10 07 of combined expenditures by MOH and San Francisco Redevelopment Agency, but not  
11 including expenditures by the Department of Public Health or the Human Services Agency. At  
12 the very most, only \$22 million of those monies come from contributions from private  
13 developers through this Inclusionary Program or other similar programs. The City expected to  
14 spend over \$78 million on affordable housing in 2007-08 and, the current expectation is that  
15 only \$2.5 million of those monies will come from contributions from private developers through  
16 this ~~Inclusionary~~ Program or other similar programs. The Mayor's Office of Housing committed  
17 over \$54 million in capital funds to affordable housing development in 2009-10. Only \$5  
18 million of those monies came from contributions from private developers through this Program  
19 or other similar programs. The MOH has budgeted approximately \$64 million for affordable  
20 housing development in 2010-11 and the current expectation is that about \$14 million of those  
21 monies will come from contributions from private developers through this Program or other  
22 similar programs.

23 14. While the Board of Supervisors has amended the Inclusionary Affordable  
24 Housing Program to have the primary requirement of the Program be the Affordable Housing  
25 Fee, for continuity and ease of reference the Board finds that the Program should, in name,

1 remain the Inclusionary Affordable Housing Program ("Program" or "Inclusionary Housing  
2 Program").

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

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

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

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

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

<i>Number of Bedrooms</i>	<i>Number of</i>
---------------------------	------------------

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

~~(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:~~

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

~~(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:

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

**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 ~~e~~Conditional ~~u~~Use Authorization or ~~p~~Planned ~~u~~Unit ~~d~~Development;

(2) Requires Commission approval as a ~~e~~Conditional ~~u~~Use Authorization or ~~p~~Planned ~~u~~Unit ~~d~~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 Inclusionary Affordable Housing Program or the City's predecessor inclusionary housing policy, condominium conversion requirements, or other affordable housing program.

(b) The effective date of these requirements shall be either April 5, 2002, which is the date that the requirements originally became effective, or the date a subsequent modification, if any, became operative. The following table is designed to summarize the most significant subsequent modifications to this Program and the dates those modifications went into effect. The Planning Department and the Mayor's Office of Housing shall maintain a record for the public summarizing various amendments to this Program and their effective or operative dates. To the extent there is a conflict between the following table or any summary produced by the Department or MOH and the provisions of the original implementing ordinances, the implementing ordinances shall prevail.

**Table 415.3**

<b><u>Program Modification</u></b>	<b><u>Effective or Operative Date</u></b>
<u>All projects with 5 or more units must participate in the Inclusionary Housing Program Section 415 (changed from a threshold of 10 units).</u>	<u>All projects that submitted an first application on or after July 18, 2006</u>
<u>Affordable Housing Percentages:</u> <ul style="list-style-type: none"><li><u>20% Fee</u></li><li><u>15% on-site*</u></li><li><u>20% off-site*</u></li></ul> <u>*Of total number of units</u>	<u>All projects that submitted an first application on or after July 18, 2006 (except projects which require a rezoning to increase buildable residential units or square footage)</u>

1		
2	<u>On-Site units must be priced and sold at 90%</u>	<u>All projects that receive a first site or building</u>
3	<u>of AMI and rented at 55% of AMI</u>	<u>permit on or after September 9, 2006</u>
4	<u>Project sponsor must select Program</u>	<u>All projects that received Planning</u>
5	<u>compliance option upon project approval and</u>	<u>Commission or Planning Department</u>
6	<u>cannot alter their compliance option</u>	<u>approval on or after September 9, 2006</u>
7	<u>All off-site units must be located within 1 mile</u>	<u>All Projects that receive Planning</u>
8	<u>of the principal project and</u>	<u>Commission or Planning Department</u>
9	<u>Off-site units must be priced and sold at 70%</u>	<u>approval after September 9, 2006</u>
10	<u>of AMI</u>	
11	<u>Lottery preference for applicants living or</u>	<u>All projects that are marketed on or after June</u>
12	<u>working in San Francisco</u>	<u>4, 2007</u>
13	<u>Lottery preference for applicants holding a</u>	<u>All projects that are marketed on or after</u>
14	<u>Certificate of Preference from the</u>	<u>December 30, 2008</u>
15	<u>Redevelopment Agency</u>	
16	<u>Lottery required for all new and resale units</u>	<u>All projects that are marketed on or after</u>
17		<u>September 9, 2006</u>
18	<u>Must provide on-site units as owner-occupied</u>	<u>All projects that submitted an application on</u>
19	<u>only unless specifically exempted pursuant to</u>	<u>or after beginning February 11, 2010</u>
20	<u>Section 415</u>	
21	<u>All off-site units must follow standards set out</u>	<u>Projects that receive Planning Commission or</u>
22	<u>in Procedures Manual</u>	<u>Planning Department approval on or after</u>
23		<u>June 4, 2007</u>

1       Section 415.1 et seq. shall apply to all housing projects that have not received a first  
2 site or building permit construction document on or before the effective date of Section 415.1  
3 et seq. with the following exceptions. Until these application dates take effect as described  
4 below, the provisions of Section 415.1 et seq. as it exists on July 18, 2006 shall govern. The  
5 provisions of Section 415.1 et seq., including the provisions relating to the Affordable Housing  
6 Fee and the alternatives to the payment of the fee, shall become effective immediately upon  
7 adoption of Ordinance No. \_\_\_\_\_ (BOS File No. \_\_\_\_\_) and shall apply to all projects  
8 regardless of application date.

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

14       (2) — The amendments to the percentage requirements of Section 415.1 et seq. that  
15 govern the number of affordable units a housing project is required to provide in Sections  
16 415.5(a) and 415.6(a) and 415.7(a) apply only to housing projects that submit their first  
17 application, including an environmental evaluation application or any other Planning  
18 Department or Building Department application, on or after July 18, 2006. Notwithstanding the  
19 foregoing, the amendments to the percentage requirements of Section 415.1 et seq. also  
20 apply to any project that has not received its final Commission or Department approvals  
21 before July 18, 2006 for housing projects that receive a Zoning Map amendment or Planning  
22 Code text amendment related to their project approvals that (A) results in a net increase in the  
23 number of permissible residential units, or (B) results in a material increase in the net  
24 permissible residential square footage. For purposes of subsection B above a material  
25



1 increase shall mean an increase of 5 percent or more, or an increase in 10,000 square feet or  
2 more, whichever is less.

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

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

9 (c) Section 415.1 et seq., the Inclusionary Housing Program, shall not apply to:

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

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

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

20 (4) Selected projects that are otherwise providing affordable units comparable to or  
21 exceeding the requirements of this program as follows:

22 (A) Qualifying Projects. Projects that meet either of the requirements of subsection  
23 (i) or (ii) below for as long as they meets all of the requirements and conditions of this  
24 subsection.

1 (i) A project using California Debt Limit Allocation Committee (CDLAC) tax-exempt bond  
2 financing as long as the project provides 20 percent of the units as affordable at 50 percent of area  
3 median income for on-site housing or 25 percent of the units as affordable at 50 percent of area median  
4 income for off-site housing.

5 (ii) A 100% affordable housing project in which rents are controlled or regulated by  
6 any government unit, agency or authority, excepting those unsubsidized and/or unassisted  
7 units which are insured by the United States Department of Housing and Urban Development.  
8 The Mayor's Office of Housing must represent to the Planning Commission or Planning  
9 Department that the project meets this requirement.

10 (B) Restrictions. If a project sponsor, takes advantage of this subsection, all of the  
11 rules and regulations of the programs or recorded documents guaranteeing the affordability of  
12 the units shall govern the units and the requirements of this Program shall not apply.

13 (C) Conditions. In order to qualify for this provision, the project sponsor must record  
14 an NSR against the property that provides that, in the event of foreclosure or for any other  
15 reason, the project no longer qualifies as a project meeting the requirements of subsection  
16 (4)(A)(i) or (ii) the project will either:

17 (i) pay the Affordable Housing Fee plus interest from the date the project received  
18 its first construction document for the project if no affordable units were ever provided or, if  
19 affordable units were provided and occupied, then the Affordable Housing Fee with no interest  
20 is due on the date the units were no longer occupied by qualifying households; or

21 (ii) provide the required number of on-site affordable units required at time of  
22 original project approval and that those units shall be subject to all of the requirements of this  
23 Program.

24 (D) In the event that there is a foreclosure or other event triggering the requirements  
25 of subsection (C) above, the project sponsor shall record a new NSR specifying the manner it

1 which it complies with this Program, including but not limited to any specific units restricted as  
2 affordable under (C)(ii). The new NSR shall provide that the units must comply with all of the  
3 requirements of this Program.

4 (d) For projects that have received a first site or building permit prior to the effective  
5 date of Section 415.1 et seq., the requirements in effect prior to the effective date of Section  
6 415.1 et seq. shall apply.

7 **SEC. 415.4 IMPOSITION OF REQUIREMENTS.**

8 (a) Determination of Requirements. The Department shall determine the  
9 applicability of Section 415.1 et seq. to any development project requiring a building or site  
10 permit and, if Section 415.1 is applicable, shall impose any such requirements as a condition  
11 of approval for issuance of the building or site permit. The project sponsor shall supply any  
12 information necessary to assist the Department in this determination.

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

18 (c) Payment of Affordable Housing Fee or Project Sponsor's Eligibility For And Selection  
19 of Alternative: Sponsor's Choice to Fulfill Requirements. Prior to issuance of a building or site  
20 permit first construction document for a development project subject to the requirements of  
21 Section 415.1 et seq., the sponsor of the development project shall pay the Affordable Housing  
22 Fee set forth in Section 415.5 or, if eligible to meet the requirements through an Alternative, shall  
23 select one of the four options listed in Section 415.5(f). below to fulfill their affordable housing  
24 requirements and notify the Department of their choice:

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

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

5           ~~(3) Pay an in-lieu fee to the Development Fee Collection Unit at DBI pursuant to Section~~  
6 ~~415.7.~~

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

10           (d) Department Notice to Development Fee Collection Unit of Sponsor's Choice.  
11 After the sponsor has filled out a Declaration of Intent and, if necessary, an Affidavit of Eligibility  
12 for an Alternative to the Affordable Housing Fee indicating how it will ~~notified the Department of their~~  
13 ~~choice to~~ fulfill the affordable housing requirements of Section 415.1 et seq., the Department  
14 shall immediately notify the Development Fee Collection Unit at DBI of the sponsor's choice.

15           (e) Development Fee Collection Unit Notice to Department Prior to Issuance of the  
16 First Certificate of Occupancy. The Development Fee Collection Unit at DBI shall provide  
17 notice in writing or electronically to the Department prior to issuing the first eCertificate of  
18 eOccupancy for any development project subject to Section 415.1 et seq. that has elected to  
19 fulfill all or part of its requirement with an option other than payment of the Affordable Housing  
20 Fee ~~an in-lieu fee~~. If the Department notifies the Unit at such time that the sponsor has not  
21 satisfied the requirements, the Director of DBI shall deny and all eCertificates of eOccupancy  
22 until the subject project is brought into compliance with the requirements of Section 415.1 et  
23 seq.

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

1 subject to Section 415.1 et seq. and such action is subsequently modified, superseded,  
2 vacated, or reversed by the Board of Appeals, the Board of Supervisors, or by court action,  
3 the procedures of Section 402(c) shall be followed.

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

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

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

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

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

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

24 (3) No later than July 1 of each year, MOH shall adjust the fee and provide a report on its  
25 adjustment to the Board of Supervisors. MOH shall provide notice of any fee adjustment on its website

1 at least 30 days prior to the adjustment taking effect. MOH is authorized to develop an appropriate  
2 methodology for indexing the fee, based on adjustments in the costs of constructing housing and in the  
3 price of housing in San Francisco. The method of indexing shall be published in the Procedures  
4 Manual.

5 (c) Notice to Development Fee Collection Unit of Amount Owed. Prior to issuance of the  
6 building or site permit first construction document for a development project subject to Section  
7 415.5, MOH shall notify the Development Fee Collection Unit at DBI electronically or in writing of its  
8 calculation of the amount of the fee owed.

9 (d) Lien Proceedings. If, for any reason, the Affordable Housing Fee imposed  
10 pursuant to Section 415.5 remains unpaid following issuance of the first Certificate of  
11 Occupancy, the Development Fee Collection Unit at DBI shall institute lien -proceedings to  
12 make the entire unpaid balance of the fee, plus interest and any deferral surcharge, a lien  
13 against all parcels used for the development project in accordance with Section 408 of this  
14 Article and Section 107A.13.15 of the San Francisco Building Code.

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

19 (df) Use of Fees. All monies contributed pursuant to this Section shall be deposited in the  
20 special fund maintained by the Controller called the Citywide Affordable Housing Fund. MOH shall  
21 use the funds in the following manner:

22 (1) Except as provided in subsection (2) below, the receipts in the Fund are hereby  
23 appropriated in accordance with law to be used to:

24 (4a) increase the supply of housing affordable to qualifying households subject to the  
25 conditions of this Section; and

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

9 (2) "Small Sites Funds":

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

23 (B) Use of Small Sites Funds. The funds shall be used exclusively to acquire or rehabilitate  
24 "Small Sites" defined as properties consisting of less than 25 units. Units supported by monies from the  
25 fund shall be designated as housing affordable to qualifying households as defined in Section 415.1 for

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

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

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

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

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



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

5 (g) Alternatives to Payment of Affordable Housing Fee:

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

10 (A) Alternative #1: On-Site Units. Project sponsors may elect to construct units  
11 affordable to qualifying households on-site of the principal project pursuant to the  
12 requirements of Section 415.6.

13 (B) Alternative #2: Off-Site Units. Project sponsors may elect to construct units  
14 affordable to qualifying households at an alternative site within the City and County of San  
15 Francisco pursuant to the requirements of Section 415.7.

16 (C) Alternative #3: Combination. Project sponsors may elect any combination of  
17 payment of the Affordable Housing Fee as provided in Section 415.5, construction of on-site  
18 units as provided in Section 415.6 or construction of off-site units as provided in Section  
19 415.7, provided that the project applicant constructs or pays the fee at the appropriate  
20 percentage or fee level required for that option.

21 (2) Qualifications: If a project sponsor wishes to comply with the Program through  
22 one of the Alternatives described in (1) rather than pay the Affordable Housing Fee, they must  
23 demonstrate that they qualify for the Alternative to the satisfaction of the Department and  
24 MOH. A project sponsor may qualify for an Alternative by the following methods:  
25

1           (i) Method #1 - Ownership Units. All affordable units provided under this Program  
2 shall be sold as ownership units and will remain ownership units for the life of the project.  
3 Project sponsors must submit the 'Affidavit to Establish Eligibility for an Alternative to  
4 Affordable Housing Fee' to the Planning Department prior to project approval by the  
5 Department or the Commission; or

6           (ii) Method #2- Government Financial Contribution. Submit to the Department a  
7 contract demonstrating that the project's on- or off-site units are not subject to the Costa  
8 Hawkins Rental Housing Act, California Civil Code Section 1954.50 because, under Section  
9 1954.52(b), it has entered into an agreement with a public entity in consideration for a direct  
10 financial contribution or any other form of assistance specified in California Government Code  
11 Sections 65915 et seq. and it submits an Affidavit of such to the Department. All such  
12 contracts entered into with the City and County of San Francisco must be reviewed and  
13 approved by the Mayor's Office Housing and the City Attorney's Office. All contracts that  
14 involve 100% affordable housing projects in the residential portion may be executed by the  
15 Mayor or the Director of the Mayor's Office of Housing. Any contract that involves less than  
16 100% affordable housing in the residential portion, may be executed by either the Mayor, the  
17 Director of the Mayor's Office of Housing or, after review and comment by the Mayor's Office  
18 of Housing, the Planning Director; or

19           (iii) Method #3 – Development Agreement. A project sponsor may apply to enter  
20 into a Development Agreement with the City and County of San Francisco under California  
21 Government Code Section 65864 et seq. and Chapter 56 of the San Francisco Administrative  
22 Code, permitting the project to be eligible for on-site units as an alternative to payment of the  
23 Affordable Housing Fee to satisfy the requirements of the Program and obligating the project  
24 sponsor to provide the affordable units on-site.  
25

1           (3) The Planning Commission or the Department may not require a project sponsor  
2 to select a specific Alternative. If a project sponsor elects to meet the Program requirements  
3 through one of the Alternatives described in (1), they must choose it and demonstrate that  
4 they qualify prior to any project approvals from the Planning Commission or Department. The  
5 Alternative will be a condition of project approval and recorded against the property in an  
6 NSR. Notwithstanding the foregoing, if a project sponsor qualifies for an Alternative described  
7 in (1) and elects to construct the affordable units on- or off-site, they must submit the 'Affidavit  
8 to Establish Eligibility for an Alternative to Affordable Housing Fee' based on the fact that the  
9 units will be sold as ownership units. A The project sponsor who has elected to construct  
10 affordable ownership units on- or off-site may only elect to pay the Affordable Housing Fee up  
11 to the issuance of the first construction document if the project sponsor submits a new  
12 Affidavit establishing that the units will not be sold as ownership units. If a project sponsor  
13 fails to choose an Alternative before project approval by the Planning Commission or Planning  
14 Department or if a project becomes ineligible for an Alternative, the provisions of Section  
15 415.5 shall apply.

16           (4) If at any time, the project sponsor eliminates the on-site or off-site affordable  
17 ownership-only units, then the project sponsor must immediately inform the Department and  
18 MOH and pay the applicable Affordable Housing Fee plus interest and any applicable  
19 penalties provided for under this Code. If a project sponsor requests a modification to its  
20 conditions of approval for the sole purpose of complying with this Section, the Planning  
21 Commission shall be limited to considering issues related to Section 415 et seq. in  
22 considering the request for modification.

23           (f) — Alternatives To Payment Of Affordable Housing Fee:  
24  
25

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

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

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

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

19           (2) ~~If the project sponsor is eligible under Subsection (1) above, the project sponsor~~  
20 ~~may elect to satisfy the requirements of Section 415.5 by one of the alternatives specified in~~  
21 ~~this Section. If a project sponsor is eligible for an alternative, the project sponsor has the~~  
22 ~~choice between the alternatives and the Planning Commission or the Department may not~~  
23 ~~require a specific alternative. The project sponsor must select an alternative before it receives~~  
24 ~~project approvals from the Planning Commission or Department and that alternative will be a~~  
25 ~~condition of project approval and recorded against the property in a Notice of Special~~

1 ~~Restriction. Notwithstanding the foregoing, if a project sponsor selects an alternative and, the~~  
2 ~~project sponsor still has the option to pay the Affordable Housing Fee up to the issuance of~~  
3 ~~the first site or building permit. If a project sponsor fails to elect an alternative before project~~  
4 ~~approval by the Planning Commission or Planning Department or if a project becomes~~  
5 ~~ineligible for an alternative, the provisions of Section 415.5 shall apply. The alternatives are as~~  
6 ~~follows:~~

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

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

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

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

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

21 ~~(a) Number of Units:~~

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 inclusionary housing requirement shall apply.~~

24 ~~(B) Buildings 120 feet in height and under or buildings of over 120 feet in height that do not~~  
25 ~~meet the criteria in subsection (C) below: Except as provided in Subsection (C) below, the Department~~

1 shall require for housing projects covered by Section 415.3(a)(1), as a condition of Department  
2 approval of a project's building permit, and by Section 415.3 (a)(2), (3) and (4), as a Condition of  
3 Approval of a conditional use or planned unit development permit or as a condition of Department  
4 approval of a live/work project, that 15 percent of all units constructed on the project site shall be  
5 affordable to qualifying households so that a project applicant must construct .15 times the total  
6 number of units produced in the principal project beginning with the construction of the fifth unit. If the  
7 total number of units is not a whole number, the project applicant shall round up to the nearest whole  
8 number for any portion of .5 or above.

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

1 ~~Section 415.9(e), MOH shall recommend and the Board of Supervisors shall consider whether the~~  
2 ~~requirements of this Subsection for buildings of over 120 feet in height shall continue or expire after~~  
3 ~~approximately five years.~~

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

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

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

1           ~~(d) — 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 this ordinance after the initial~~  
17 ~~offering. The list shall be updated from time to time but in no event less than annually to ensure that it~~  
18 ~~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           ~~(e) — Benefits: If the project applicant elects to satisfy the inclusionary housing requirements~~  
24 ~~through the production of on-site inclusionary housing in this Section 415.5, the project applicant shall~~  
25 ~~be eligible to receive a refund for only that portion of the housing project which is affordable for the~~



1 following fees: a conditional use or other fee required by Section 352 of this Code, if applicable; an  
2 environmental review fee required by Administrative Code Section 31.46B, if applicable; a building  
3 permit fee required by the Building Code and by Section 355 of this Code for the portion of the housing  
4 project that is affordable. The project applicant shall pay the building fee for the portion of the project  
5 that is market rate.

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

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

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

19 SEC. 415.6. COMPLIANCE THROUGH PROVISION OF OFF-SITE AFFORDABLE  
20 HOUSING-ON-SITE AFFORDABLE HOUSING ALTERNATIVE (formerly Section 315.4).

21 If a project sponsor is eligible and selects to provide on-site units pursuant to Section  
22 415.5(g), the development project shall meet the following requirements:

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

24 (1) The number of units constructed on-site is determined by which of the following  
25 categories a project is in as follows:

1       (A) Specific geographic areas. For any housing development of any height that is located  
2 in an area with a specific affordable housing requirement set forth in Section 416 and 417 or elsewhere  
3 in this Code, the more 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 pPlanned uUnit dDevelopment permit or as a  
9 condition of Department approval of a live/work project, that 15 percent of all units constructed on the  
10 project site shall be affordable to qualifying households so that a project applicant sponsor must  
11 construct .15 times the total number of units produced in the principal project beginning with the  
12 construction of the fifth unit. If the total number of units is not a whole number, the project applicant  
13 sponsor shall round up to the nearest 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  
25 Condition of Approval of a eConditional uUse Authorization or pPlanned uUnit dDevelopment

1 ~~permit~~ or as a condition of Department approval of a live/work project, that 12 percent of all units  
2 constructed on the project site shall be affordable to qualifying households so that a project applicant  
3 sponsor applicant must construct .12 times the total number of units produced in the principal project  
4 beginning with the construction of the fifth unit. If the total number of units is not a whole number,  
5 the project applicant sponsor shall round up to the nearest whole number for any portion of .5 or  
6 above. Consistent with the conclusions of the MOH study authorized in Section 415.9(e), MOH shall  
7 recommend and the Board of Supervisors shall consider whether the requirements of this Subsection  
8 for buildings of over 120 feet in height shall continue or expire after approximately five years from  
9 April 24, 2007.

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

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

20 (c) Type of Housing: All on-site units constructed under this Section must be  
21 provided as ownership units unless the project sponsor meets the eligibility requirement of  
22 Section 415.5(g). In general, affordable units constructed under this Section 415.6 shall be  
23 comparable in number of bedrooms, exterior appearance and overall quality of construction to market  
24 rate units in the principal project. A Notice of Special Restrictions shall be recorded prior to issuance  
25 of the building or site permit first construction document and shall specify the number, location and

1 sizes for all affordable units required under this Subsection. The interior features in affordable units  
2 should be generally the same as those of the market rate units in the principal project, but  
3 need not be the same make, model or type of such item as long as they are of good and new  
4 quality and are consistent with then-current standards for new housing. The square footage of  
5 affordable units and interior features in affordable units do not need to be same as or equivalent to  
6 those in market rate units in the principal project, so long as they are of good quality and are it is  
7 consistent with then-current standards for new housing. Where applicable, parking shall be offered to  
8 the affordable units subject to the terms and conditions of the Department's policy on unbundled  
9 parking for affordable housing units as specified in the Procedures Manual and amended from time to  
10 time. On-site affordable units shall be ownership units unless the project applicant meets the eligibility  
11 requirement of Section 415.5(fg).

12 (d) Marketing the Units: MOH shall be responsible for overseeing and monitoring the  
13 marketing of affordable units under this Section. In general, the marketing requirements and  
14 procedures shall be contained in the Procedures Manual as amended from time to time and shall apply  
15 to the affordable units in the project. MOH may develop occupancy standards for units of different  
16 bedroom sizes in the Procedures Manual in order to promote an efficient allocation of affordable units.  
17 MOH may require in the Procedures Manual that prospective purchasers complete homebuyer  
18 education training or fulfill other requirements. MOH shall develop a list of minimum qualifications for  
19 marketing firms that market affordable units under Section 415.1 et seq., referred to the Procedures  
20 Manual as Below Market Rate (BMR units). No developer marketing units under the Program  
21 shall be able to market affordable units except through a firm meeting all of the minimum  
22 qualifications. The Notice of Special Restrictions or Conditions of Approval shall specify that the  
23 marketing requirements and procedures contained in the Procedures Manual as amended from time to  
24 time, shall apply to the affordable units in the project.

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

9           (2) Preferences: MOH shall create a lottery system that gives preference first to  
10 Residential Certificate of Preference Holders under the San Francisco Redevelopment  
11 Agency's Property Owner and Occupant Preference Program, as reprinted September 11,  
12 2008 and effective October 1, 2008 and on file with the Clerk of the Board in File No. 080521,  
13 who meet the qualifications of the Program, and second to people who live or work in San  
14 Francisco who meet the qualifications of the Program. MOH shall propose policies and  
15 procedures for implementing these preferences to the Planning Commission for inclusion in  
16 the Procedures Manual. MOH shall create a lottery system that gives preference to people  
17 who live or work in San Francisco. MOH shall propose policies and procedures for  
18 implementing this preference to the Commission for inclusion in the Procedures Manual.  
19 Otherwise, it is the policy of the Board of Supervisors to treat all households equally in allocating  
20 affordable units under this Program.

21           (e) Individual aAffordable units constructed under Section 415.6 as part of an on-site  
22 project shall not have received development subsidies from any Federal, State or local program  
23 established for the purpose of providing affordable housing, and shall not be counted to satisfy any  
24 affordable housing requirement. Other units in the same on-site project may have received such  
25

1 subsidies. In addition, subsidies may be used to deepen the affordability of an affordable unit  
2 beyond the level of affordability required by this Program.

3 (f) Benefits: If the project applicant sponsor is eligible for and elects to satisfy the  
4 affordable housing requirements through the production of on-site affordable housing in this Section  
5 415.6, the project applicant sponsor shall be eligible to receive a refund for only that portion of the  
6 housing project which is affordable for the following fees: a Conditional Use Authorization or other  
7 fee required by Section 352 of this Code, if applicable; an environmental review fee required by  
8 Administrative Code Section 31.46B, if applicable; a building permit fee required by the Building Code  
9 and by Section 355 of this Code for the portion of the housing project that is affordable. The project  
10 applicant sponsor shall pay the building fee for the portion of the project that is market-rate.

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

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

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

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

22 (B) Buildings of 120 feet and under in height or buildings of over 120 feet in height that do  
23 not meet the criteria in Subsection (C) below: Except as provided in Subsection (A), the for projects  
24 described in Section 415.3 (a)(1), (2), (3), and (4) 20 percent so that a project applicant must construct  
25 20 times the total number of units produced in the principal project beginning with the construction of

1 ~~the fifth unit. If the total number of units is not a whole number, the project applicant shall round up to~~  
2 ~~the nearest whole number for any portion of .5 or above.~~

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

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

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

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

(1) — Lottery: At the initial offering of affordable units in a housing project, MOH must require the use of a public lottery approved by MOH to select purchasers or tenants. MOH shall also hold a general public lottery and maintain and utilize a list generated from this lottery or utilize a list

1 generated from a recent lottery at another similar housing project to fill spaces in units that become  
2 available for re-sale or occupancy in any housing project subject to Section 415.1 et seq. after the  
3 initial offering. The list shall be updated from time to time but in no event less than annually to insure  
4 that it remains current.

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

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

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

20 SEC. 415.7. — COMPLIANCE THROUGH BY PAYMENT OF AN IN-LIEU FEE. OFF-SITE  
21 AFFORDABLE HOUSING ALTERNATIVE (formerly Section 315.5)

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

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

1           (1) \_\_\_\_\_

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

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

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

1 sponsor must construct .17 times the total number of units produced in the principal project  
2 beginning with the construction of the fifth unit. If the total number of units is not a whole number,  
3 the project applicant sponsor shall round up to the nearest whole number for any portion of .5 or  
4 above. Consistent with the conclusions of the MOH study authorized in Section 415.9(e), MOH shall  
5 recommend and the Board of Supervisors shall consider whether the requirements of this Subsection  
6 for buildings of over 120 feet in height shall continue or expire after approximately five years from  
7 April 24, 2007.

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

11 (c) Location of off-site housing: The project applicant sponsor must insure that off-site  
12 units are located within one mile of the principal project. Notwithstanding the foregoing, each year  
13 25% of off-site units may be constructed outside of the one-mile radius. These units shall be  
14 called "citywide off-site units" and may be constructed anywhere in the City, subject to the  
15 limitations below. In determining the allowable number of citywide off-site units, each fiscal  
16 year MOH shall take the average number of off-site units receiving a first certificate of  
17 occupancy over the past five years. In determining the average, MOH shall not include any  
18 year where no off-site units received a first certificate of occupancy. MOH shall publish the  
19 allowable number of citywide off-site units for a given year on July 1 of each year. The  
20 Planning Department, in consultation with MOH, shall then grant permission to a project  
21 applicant to use citywide off-site units on a first come, first serve basis until the maximum  
22 allowable number of citywide off-site units is reached. If the maximum number of allowable  
23 citywide off-site units is not used in a given year, the citywide off-site units shall be carried  
24 over to the next fiscal year. If a project applicant does not receive a first certificate of  
25 occupancy for a citywide off-site unit within 2 years of the date the Planning Department

1 grants permission for the citywide off-site unit, then the Zoning Administrator shall have the  
2 authority to revoke the permission to use the citywide offsite unit and to grant those units to  
3 another project applicant. Citywide off-site units shall not be built in districts zoned M-1 or M-2,  
4 or within a quarter mile of a high concentration of public housing units. A high concentration of  
5 public housing units shall mean a development or developments that consist of 200 or more  
6 publicly owned and operated affordable housing units.

7 (d) Type of Housing: New affordable rental housing and ownership housing  
8 affordable to households earning less than the median income is greatly needed in San  
9 Francisco. The Department shall develop Quality Standards for Off-Site Affordable Housing  
10 Units and recommend such standards to the Commission for adoption as part of the  
11 Procedures Manual. All off-site units constructed under this Section must be provided as ownership  
12 housing for the life of the project unless the project applicant meets the eligibility requirement of  
13 Section 415.5(fg) and- must be affordable to households earning no more than 80-70 percent of the  
14 AMI median income for the City and County of San Francisco. Nothing in this Section shall limit  
15 a developer project sponsor from meeting the requirements of this Section through the construction  
16 of units in a limited equity or land trust form of ownership if such units otherwise meet all of the  
17 requirements for off-site housing. In general, affordable units constructed under Section 415.7 shall be  
18 comparable in number of bedrooms, exterior appearance and overall quality of construction to market  
19 rate units in the principal project. The total square footage of the off-site affordable units constructed  
20 under Section 415.7 shall be no less than the calculation of the total square footage of the on-site  
21 market-rate units in the principal project multiplied by the relevant on-site percentage requirement for  
22 the project specified in Section 415.7. The Notice of Special Restrictions or Gconditions of Aapproval  
23 shall include a specific number of units at specified unit sizes - including number of bedrooms and  
24 minimum square footage - for affordable units. The interior features in affordable units should  
25 generally be the same as those of the market rate units in the principalle project but need not

be the same make model or type of such item as long as they are of new and good quality and are consistent with then-current standards for new housing and need not be the same as or equivalent to those in market rate 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:

<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 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>

(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

1 education training or fulfill other requirements. MOH shall develop a list of minimum qualifications for  
2 marketing firms that market affordable units under Section 415.1 et seq., referred to the Procedures  
3 Manual as Below Market Rate (BMR units). No project sponsor marketing units under the  
4 Program shall be able to market BMR units except through a firm meeting all of the minimum  
5 qualifications. The Notice of Special Restrictions or Conditions of Approval shall specify that the  
6 marketing requirements and procedures contained in the Procedures Manual as amended from time to  
7 time, shall apply to the affordable units in the project.

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

16 (2) Preferences: MOH shall create a lottery system that gives preference first to  
17 Residential Certificate of Preference Holders under the San Francisco Redevelopment  
18 Agency's Property Owner and Occupant Preference Program, as reprinted September 11,  
19 2008 and effective October 1, 2008 and on file with the Clerk of the Board in File No. 080521,  
20 who meet the qualifications of the Program, and second to people who live or work in San  
21 Francisco who meet the qualifications of the Program. MOH shall propose policies and  
22 procedures for implementing these preferences to the Planning Commission for inclusion in  
23 the Procedures Manual. MOH shall propose policies and procedures for implementing this  
24 preference to the Commission for inclusion in the Procedures Manual. Otherwise, it is the policy  
25

1 of the Board of Supervisors to treat all households equally in allocating affordable units under this  
2 Program.

3 (f) Individual affordable units constructed as part of a larger off-site project under  
4 Section 415.7 shall not have received development subsidies from any Federal, State or local program  
5 established for the purpose of providing affordable housing, and shall not be counted to satisfy any  
6 affordable housing requirement for the off-site development. Other units in the same off-site project  
7 may receive such subsidies. In addition, subsidies may be used to deepen the affordability of  
8 an affordable unit beyond the level of affordability required by this Program.

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

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

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

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



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

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

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

22           ~~(d) — Lien Proceedings. If, for any reason, the in lieu fee imposed pursuant to Section 415.7~~  
23 ~~remains unpaid following issuance of the first certificate of occupancy, the Development Fee Collection~~  
24 ~~Unit at DBI shall institute lien proceedings to make the entire unpaid balance of the fee, plus interest~~  
25

1 ~~and any deferral surcharge, a lien against all parcels used for the development project in accordance~~  
2 ~~with Section 408 of this Article and Section 107A.13.15 of the San Francisco Building Code.~~

3 SEC. 415.8. DURATION AND MONITORING OF AFFORDABILITY (formerly Section  
4 315.7).

5 (a) For any units permitted under the Program:

6 (1) All units constructed pursuant to Sections 415.6 5 (on-site alternative) and 415.7 6  
7 (off-site alternative) must be owner-occupied, as defined in the Procedures Manual, in the case  
8 of ownership units or occupied by qualified households in the case of rental units. ship units  
9 ~~and remain as ownership units for the life of the project. occupied in the case of ownership units~~  
10 ~~or occupied by qualified households in the case of rental units,~~

11 (2) Units and shall not remain vacant for a period exceeding 60 days without the  
12 written consent of MOH.

13 (3) All units constructed pursuant to Sections 415.6 5 and 415.7 6 must remain  
14 affordable to qualifying households for the life of the project.

15 (4) The income levels specified in the Notice of Special Restrictions and/or  
16 Cconditions of Aapproval for the project shall be the required income percentages for the life  
17 of the project.

18 (5) The Commission or the Department shall require all housing projects subject to  
19 Section 415.1 et seq. to record a Notice of Special Restrictions with the Recorder of the City  
20 and County of San Francisco. The Notice of Special Restrictions must incorporate the  
21 affordability restrictions. All projects described in Section 415.3 (a)(1) and 415.3 (a)(3) must  
22 incorporate all of the requirements of this Section 415.8 7 into the Notice for Special  
23 Restrictions, including any provisions required to be in the Cconditions of Aapproval for  
24 housing projects described in Section 415.3 (a)(2). These Section 415.3 (a)(2) projects which  
25 are housing projects which go through the conditional use or planned unit development

1 process shall have Conditions of Approval. The Conditions of Approval shall specify that  
2 project applicants shall adhere to the marketing, monitoring, and enforcement procedures  
3 outlined in the Procedures Manual, as amended from time to time, in effect at the time of  
4 project approval. The Commission shall file the Procedures Manual in the case file for each  
5 project requiring inclusionary housing pursuant to this Program. The Procedures Manual will  
6 be referenced in the Notice of Special Restrictions for each project.

7 (b) For any units permitted to be ownership units under the Program, the Mayor's  
8 Office of Housing shall:

9 (1) establish and implement a process for reselling an affordable unit in the  
10 Procedures Manual:

11 (2) provide that owners may not change title on the unit without review and approval  
12 by MOH and according to guidelines published in the Procedures Manual.

13 (3) provide that owners must comply with refinancing procedures and limitations as  
14 published in the Procedures Manual.

15 (4) provide that, in order to retain all units restricted as affordable under this  
16 Program within the City's affordable housing stock, the specific procedures for passing an  
17 affordable unit through inheritance are contained in the Procedures Manual. All transfers  
18 through inheritance must be reviewed and approved by MOH and, in all cases, the heir must  
19 acknowledge and agree to the provisions of the Program. The following households may  
20 inherit the ability to occupy a unit restricted under this Program: (1) a spouse or registered  
21 domestic partner, regardless of income; or (2) a child of the owner if the child is a qualifying  
22 household for the unit. If the heir qualifies under one of these categories, the heir must  
23 occupy the unit or the heir must market and sell the unit at the restricted price through a public  
24 lottery process and retain the proceeds from the sale. If the heir does not qualify to occupy  
25

1 the unit, the heir must market and sell the unit at the restricted price to a qualified buyer  
2 through a public lottery process. The heir would retain the proceeds of such sale.

3 (e5) Any affordable rental units permitted by the Commission to be converted to  
4 ownership units must satisfy the requirements of the Procedures Manual, as amended from  
5 time to time, including that the units shall be sold at restricted sales prices to households  
6 meeting the income qualifications specified in the Notice of Special Restrictions or  
7 Conditions of Approval, with a right of first refusal for the occupant(s) of such units at the  
8 time of conversion. Upon conversion to ownership, the units are subject to the resale and  
9 other restrictions of this Program for the life of the project, as defined in the Notice of Special  
10 Restrictions or conditions of approval for the Project. Upon conversion to ownership, the units  
11 are subject to the 50-year rolling resale restrictions, as described in Section 415.8(a).

12 (d6) For ownership units approved pursuant to Sections 415.6 or 415.7, the Notice of  
13 Special Restrictions or Conditions of Approval will include provisions restricting resale  
14 prices and purchaser income levels according to the formula specified in the Procedures  
15 Manual, as amended from time to time. In the case that subordination of the Affordability  
16 Conditions contained in a recorded Notice of Special Restrictions may be necessary to ensure  
17 the Project Applicant's receipt of adequate construction and/or permanent financing for the  
18 project, or to enable first time home buyers to qualify for mortgages, the project applicant may  
19 follow the procedures for subordination of affordability restrictions as described in the principal  
20 project's Conditions of Approval and or in the Procedures Manual. A release following  
21 foreclosure or other transfer in lieu of foreclosure may be authorized if required as a condition  
22 to financing pursuant to the procedures set forth in the Procedures Manual.

23 (7) Purchasers of affordable units shall secure the obligations contained in the  
24 Notice of Special Restrictions or Conditions of Approval by executing and delivering to the  
25 City a promissory note secured by a deed of trust encumbering the applicable affordable unit

1 as described in the Procedures Manual or by an alternative means if so provided for in the  
2 Procedures Manual, as amended from time to time.

3 (8) Procedures For Units Unable To Resell.

4 The Board of Supervisors finds that certain requirements of this Program and the  
5 Procedures Manual may create hardship for owners of affordable units restricted under this  
6 Program. However, the Board also recognizes that the requirements of this Program are  
7 important to preserve the long-term affordability of units restricted under the Program. In  
8 order to allow some relief for owners of affordable units during a time of economic downturn,  
9 but to provide the maximum protection for the long-term affordability of the units, the Board  
10 directs MOH to analyze the following three issues and, if it deems appropriate, to propose  
11 amendments to the Procedures Manual to address the issues:

12 (1) — Waiver of Re-sale Requirements: The Board recognizes that the risk to low and  
13 moderate income homeowners during times of economic downturn can increase the risk of  
14 default and foreclosure of units restricted under this Program. The Board directs MOH to  
15 study ways to reduce such risks in the below market rate unit context and, if it deems  
16 appropriate, to make recommendations to the Planning Commission to amend the Procedures  
17 Manual to allow MOH discretion, in certain limited circumstances, to waive requirements for  
18 owners of affordable units unable to resell their unit in a timely manner. Such amendments to  
19 the Procedures Manual may include, but are not limited to, authorizing MOH to make one or  
20 more allowances for owners of affordable units unable to resell such as: (1) a one-time waiver  
21 of the first-time homebuyer rule for the purchasing household; (2) a one-time waiver of  
22 qualifying household size requirements for the purchasing household; (3) and a one-time  
23 waiver of owner occupancy rules to allow a temporary rental; and (4) a one-time modification  
24 of the asset test for the new buyer household. MOH and the Commission shall set forth  
25 criteria for granting such allowances such as establishing a minimum time that the units must

1 have been advertised by MOH without selling, or criteria related to unusual economic or  
2 personal circumstances of the owner.

3       (2) ~~— Waiver of Maximum Qualifying Income Level For New Buyers: The Board~~  
4 ~~recognizes that the current Program provides that the income of a new buyer of a below~~  
5 ~~market rate household cannot exceed the maximum income for a household of median~~  
6 ~~income. Due to older pricing mechanism used for some affordable units, however, the resale~~  
7 ~~price of an affordable unit subject to the Program is sometimes higher than the price~~  
8 ~~affordable to a household at median income. This situation makes it difficult, if not impossible,~~  
9 ~~for certain current owners of below market rate units to sell their units. In order to minimize~~  
10 ~~this situation, the Board directs MOH to study ways to address this issue and, if it deems~~  
11 ~~appropriate, to make recommendations to the Commission to amend the Procedures Manual~~  
12 ~~to allow MOH to assist homeowners who are unable to secure a buyer for their resale unit.~~  
13 ~~Such amendments may include allowing MOH discretion to increase the qualifying income~~  
14 ~~level for the unit by up to 20% above the maximum income limit currently allowed by the~~  
15 ~~Program. MOH and the Commission shall establish limits to this or a similar proposal such~~  
16 ~~as: providing a maximum percentage for the increase above the maximum income limit~~  
17 ~~currently allowed; providing that the increase may only be granted on a one-time basis; and~~  
18 ~~requiring the owner to clearly establish that the affordable unit being resold at the original~~  
19 ~~purchase price plus commission and any eligible capital improvements or special~~  
20 ~~assessments is unaffordable to a household at the income limit currently allowed.~~

21       (3) ~~— Procedures for Addressing Units Priced Close to Market Rate:~~

22       ~~The Board recognizes that the current economic climate has led to an increase in the~~  
23 ~~number of market rate units in San Francisco selling at market prices that are close to the~~  
24 ~~below market rate prices set by MOH. While the City acknowledges that such units may form~~  
25 ~~an important part of the City's middle income housing stock, the situation poses issues related~~

1 to the application of the Inclusionary Housing Program because developers and owners of  
2 affordable units have a hard time attracting qualified buyers who are reluctant to choose a  
3 restricted affordable unit over a market rate unit in the same building or neighborhood.

4 In order to address this situation and encourage the continued development of such  
5 naturally affordable units, the Board directs MOH to study ways to address this issue and, if it  
6 deems appropriate, to make recommendations to the Commission to amend the Procedures  
7 Manual to allow MOH to establish different procedures for units that have a below market rate  
8 price set by MOH that is close to the market rate price of comparable units. MOH shall  
9 examine whether it is in the City's interest to permit such units to sell at a market rate price  
10 under certain conditions such as: (1) the unit has a comparable market rate price that is close  
11 to the below market rate prices set by MOH; (2) the unit requires a fee payment that would  
12 greatly exceed the opportunity cost of selling the unit at the below market rate price; (3) the  
13 unit is sold to a qualifying household; (4) the new owner of the affordable unit could resell the  
14 unit to a higher income household than the initial qualifying level allowed and at a maximum  
15 resale price that would exceed the resale price generally set by MOH for current resale units  
16 under the program; (5) the owner of the affordable unit who resells the unit would share any  
17 appreciation above a certain percent with MOH; and (6) the project sponsor or qualified  
18 affordable owner would sign an affidavit stating the affordable unit prices would be within a  
19 certain percentage range of the market rate units and be required to offer the units as typical  
20 affordable units should the spread increase at the time of marketing and selling the market  
21 rate units.

22 (c) For any units permitted to be rental units under the Program, the MOH shall  
23 establish:

24 (1) restrictions on lease changes and propose such restrictions to the Commission  
25 for inclusion in the Procedures Manual.

1           (2) additional eligibility criteria for subleasing and propose such restrictions to the  
2 Commission for inclusion in the Procedures Manual.

3           (3) criteria for continued eligibility for occupied rental units and propose such  
4 restrictions to the Commission for inclusion in the Procedures Manual.

5           (4) criteria for homeownership status and propose such restrictions to the  
6 Commission for inclusion in the Procedures Manual.

7           (5) criteria for granting affordable rental households the right of first refusal in  
8 purchasing an affordable unit that is converted from rental to ownership and propose such  
9 restrictions to the Commission for inclusion in the Procedures Manual.

10           **SEC. 415.9. ENFORCEMENT PROVISIONS AND MONITORING OF PROGRAM.**

11           (a) A first construction document or first eCertificate of eOccupancy, whichever  
12 applies, shall not be issued by the Director of DBI to any unit in the principal project until all of  
13 the affordable housing requirements of Sections 415.1 et seq. are satisfiedsatisfied.

14           (b) If, after issuance of the first eCertificate of eOccupancy, the Commission  
15 or Department determines that a project sponsor has failed to comply with any requirement in  
16 Section 415.1 et seq. or any reporting requirements detailed in the Procedures Manual, or has  
17 violated the Notice of Special Restrictions, the Commission, Department, or DBI may, until the  
18 violation is cured, (a) revoke the eCertificate of eOccupancy for the principal project or  
19 required affordable units, (b) impose a penalty on the project pursuant to Section 176(c) of  
20 this Code, and/or (c) the Zoning Administrator may enforce the provisions of Section 415.1 et  
21 seq. through any means provided for in Section 176 of this Code.

22           (c) The Department shall notify MOH of any housing project subject to the  
23 requirements of Section 415.1 et seq., including the name of the project sponsor and the  
24 number and location of the affordable units, within 30 days of the Department's approval of a  
25 building, or site permit for the project. MOH shall provide all project sponsors with information



1 concerning the City's first time home-buyer assistance programs and any other related  
2 programs MOH shall deem relevant to the ~~Residential~~ Inclusionary Affordable Housing  
3 Program.

4 (d) The Department shall, as part of the annual Housing Inventory, report to  
5 the Board of Supervisors on the results of Section 415.1 et seq. including, but not limited to, a  
6 report on the following items:

7 (1) The number of, location of, and project applicant for housing projects  
8 which came before the Commission for a ~~e~~Conditional ~~u~~Use Authorization or ~~p~~Planned ~~u~~Unit  
9 ~~d~~Development ~~permit~~, and the number of, location of, and project applicant for housing  
10 projects which were subject to the requirements of Section 415.1 et seq.;

11 (2) The number of, location of, and project sponsor for housing projects  
12 which applied for a waiver, adjustment, or reduction from the requirements of Section 415.1 et  
13 seq. pursuant to Section 406 of this Article, and the number of, location of, and project  
14 sponsor for housing projects which were granted such a waiver, adjustment, or reduction and,  
15 if a reduction, to what percentage;

16 (3) The number of, location of, and project sponsor for every housing project  
17 to which Section 415.1 et seq. applied and the number of market rate units and the number of  
18 affordable on- and off-site units provided, including the location of all of the affordable units;  
19 and

20 (e) A study is authorized to be undertaken under the direction of MOH  
21 approximately every five years to update the requirements of Section 415.1 et seq. MOH shall  
22 make recommendations to the Board of Supervisors and the Commission regarding any  
23 legislative changes. MOH shall specifically evaluate the different inclusionary housing  
24 requirements for developments of over 120 feet approximately five years from the enactment  
25

1 of the requirement or as deemed appropriate by MOH. MOH shall coordinate this report with  
2 the five-year evaluation by the Director of Planning required by Section 410 of this Article.

3 (f) MOH shall evaluate its monitoring system for affordable units created  
4 under this Section and shall compare its system with that of the San Francisco  
5 Redevelopment Agency with the goal of establishing, to the extent feasible, a single  
6 monitoring system for all inclusionary affordable housing units located in the City and County  
7 of San Francisco. ~~Within 6 months of the effective date of Section 415.1 et seq.,~~ MOH shall  
8 make any changes to its monitoring system necessary to bring its monitoring system into  
9 conformity with the system of the Redevelopment Agency, or, if necessary, MOH shall make  
10 recommendations to the Board of Supervisors to amend Section 415.1 et seq. in order to  
11 implement improvements to the monitoring system. If it is necessary to amend the Procedures  
12 Manual to change its monitoring system to comply with this Section, MOH may make any  
13 changes necessary to the Procedures Manual to comply with this Section 415.9(f). For  
14 purposes of this Section 415.9(f) only and on a one-time basis, MOH may amend the  
15 Procedures Manual without obtaining approval from the Commission. If MOH determines that  
16 some or all of the aspects of its system are more effective than the Redevelopment Agency's  
17 system, it shall inform the Board of Supervisors and recommend that the Board urge the  
18 Redevelopment Agency to conform its procedures to the City's.

19 (g) Annual or Bi-annual Monitoring:

20 (1) MOH shall monitor and require occupancy certification for affordable  
21 ownership and rental units on an annual or bi-annual basis, as outlined in the Procedures  
22 Manual.

23 (2) MOH may require the owner of an affordable rental unit, the owner's  
24 designated representative, or the tenant in an affordable unit to verify the income levels of the  
25 tenant on an annual or bi-annual basis, as outlined in the Procedures Manual.

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

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

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

23           B.     Furthermore, the Board finds that generally an account has been established,  
24 funds appropriated, and a construction schedule adopted for affordable housing projects  
25 funded through the Inclusionary Affordable ~~inclusionary~~ Housing program. The Affordable

1 ~~Housing Fee additional fee or the in lieu fees and the additional fee~~ will reimburse the City for  
2 expenditures on affordable housing that have already been made.

3 C. A major Market and Octavia Area Plan objective is to direct new market rate  
4 housing development to the area. That new market rate development will greatly outnumber  
5 both the number of units and potential new sites within the plan area for permanently  
6 affordable housing opportunities. The City and County of San Francisco has adopted a policy  
7 in its General Plan to meet the affordable housing needs of its general population and to  
8 require new housing development to produce sufficient affordable housing opportunities for all  
9 income groups, both of which will not be met by the projected housing development in the  
10 plan area. In addition, the "Draft Residential Nexus Analysis City and County of San  
11 Francisco" of December 2006 indicates that market rate housing itself generates additional  
12 lower income affordable housing needs for the workforce needed to serve the residents of the  
13 new market rate housing proposed for the plan area. In order to meet the demand created for  
14 affordable housing by the specific policies of the Plan and to be consistent with the policy of  
15 the City and County of San Francisco it is found that an additional affordable housing fee  
16 need be included on all market rate housing development in the Plan Area with priority for its  
17 use being given to the Plan area.

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

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

22 (a) Amount of fee: All development projects that have not received Department or  
23 Commission approval as of the effective date of May 30, 2008 and that are subject to the  
24 ~~Residential Inclusionary~~ Inclusionary Affordable Housing Program shall pay an additional  
25 ~~Affordable Housing Fee~~ per square foot of Residential Space Subject to the Community

1 Improvements Impact Fee as follows; \$8.00 in the Van Ness Market Special Use District;  
2 \$4.00 in the NCT District; and \$0.00 in the RTO District.

3 (b) Other Fee Provisions. This additional ~~A~~affordable ~~H~~housing ~~F~~fee shall be subject  
4 to the inflation adjustment provisions of Section 409 and the waiver and reduction provisions  
5 of Section 421.4. This additional ~~a~~Affordable ~~h~~Housing ~~f~~Fee may not be met through the in-  
6 kind provision of community improvements or Community Facilities (Mello Roos) financing  
7 options of Sections 426.3(e) and (f).

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

14 (d) Timing of payment. The Market and Octavia Plan Area Affordable Housing Fee  
15 shall be paid before the City issues a first construction document, with an option for the  
16 project sponsor to defer payment to prior to issuance of the first ~~e~~Certificate of ~~e~~CCupancy  
17 upon agreeing to pay a deferral surcharge in accordance with Section 107A.13.3 of the San  
18 Francisco Building Code.

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

20 (a) Determination of Requirements. The Department shall determine the  
21 applicability of Section 416.1 et seq. to any development project requiring a building or site  
22 permit and, if Section 416.1 et seq. is applicable, shall impose any such requirements as a  
23 condition of approval for issuance of the building or site permit. The project sponsor shall  
24 supply any information necessary to assist the Department in this determination.  
25

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

7 (c) Process for Revisions of Determination of Requirements. In the event that the  
8 Department or the Commission takes action affecting any development project subject to  
9 Section 416.1 et seq. and such action is subsequently modified, superseded, vacated, or  
10 reversed by the Board of Appeals, the Board of Supervisors, or by court action, the  
11 procedures of Section 402(c) of this Article shall be followed.

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

21 SEC. 417 (formerly Section 315.4(a)(1)(ii)). EASTERN NEIGHBORHOODS AREA  
22 PLAN ~~ALTERNATE AFFORDABLE HOUSING REQUIREMENT IN LIEU FEE~~. Sections 417.1  
23 through 417.5, hereafter referred to as Section 417.1 et seq., set forth the requirements and  
24 procedures for the Eastern Neighborhoods Area Plan Alternate Affordable Housing ~~In Lieu~~  
25 Fee. The effective date of these requirements shall be either January 19, 2009, which is the

1 date that the requirements originally became effective, or the date a subsequent modification,  
2 if any, became effective.

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

4 A. The fee provisions of this Section are equivalent to or less than the fees for  
5 developments of over 20 units previously adopted by the Board in Ordinance No. 051685 and  
6 060529 and are also supported by the Nexus Study performed by Keyser Marston and  
7 Associates referenced in Section 415.1(11) and found in Board File No. 081152. The Board of  
8 Supervisors has reviewed the study and staff analysis prepared by the MOH dated July 24,  
9 2008 in Board File No. 081152 and, on that basis, finds that the study supports the current  
10 proposed changes to the inclusionary housing requirements for projects of 20 units or less in  
11 the Eastern Neighborhood Area Plan. Specifically, the Board finds that the study and staff  
12 memo: (1) identifies the purpose of the additional fee to mitigate impacts on the demand for  
13 affordable housing in the City; (2) identifies the use to which the additional fee is to be put as  
14 being to increase the City's affordable housing supply; and (3) establishes a reasonable  
15 relationship between the use of the additional fee for affordable housing and the need for  
16 affordable housing and the construction of new market rate housing. Moreover, the Board  
17 finds that the new inclusionary affordable housing~~-inclusionary~~ requirements are less than the  
18 cost of mitigation and do not include the costs of remedying any existing deficiencies. The  
19 Board also finds that the study establishes that the inclusionary requirements do not duplicate  
20 other City requirements or fees.

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

1 C. The Board finds that small scale development faces a number of challenges in  
2 the current development climate, including limited access to credit and often, a higher land  
3 cost per unit for the small sites on which they develop. Because of these and other variations  
4 from larger-scale development, they operate under a somewhat unique development model  
5 which cannot be fully encapsulated within the constraints of the Eastern Neighborhoods  
6 Financial Analysis, prepared to assess the financial feasibility of increasing housing  
7 requirements and impact fees in the Plan Areas. To address these challenges, the Board  
8 finds that a number of slight modifications to the affordable housing requirements of the  
9 Eastern Neighborhoods, to apply to small projects (defined as 20 units or fewer, or less than  
10 25,000 gross square feet) are appropriate.

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

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

13 "Eastern Neighborhood Controls" shall have the meaning set forth in Section 175.6.

14 Application.

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

16 (a) Application. The alternate Affordable Housing ~~in-lieu~~ Fee described in this  
17 Section shall only apply to development projects that are subject to the Eastern Neighborhood  
18 Controls, consist of 20 units or less or less than 25,000 gross square feet, and are subject to  
19 the requirements of Sections 415 through 415.9 and 419, and any stated exceptions  
20 elsewhere in this Code, including the specific provisions in Section 419.

21 (b) Amount of Fee. Any sponsor of a development projects subject to this Section  
22 may choose to pay an alternate ~~in-lieu~~ fee equal to \$40.00 per gross square foot of net new  
23 residential development instead of the standard ~~in-lieu~~ Affordable Housing fee requirements  
24 set forth in Section 415.75 as follows.



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

5 (d) Timing of Payment. The Eastern Neighborhoods Alternate Affordable Housing  
6 Fee project applicant shall be paid to the Development Fee Collection Unit at DBI prior to  
7 issuance of the first construction document, with an option for the project sponsor to defer  
8 payment to prior to issuance of the first certificate of occupancy upon agreeing to pay a  
9 deferral surcharge that would be deposited into the Citywide Affordable Housing Fund in  
10 accordance with Section 107A.13.3 of the San Francisco Building Code.

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

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

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

23 (c) Process for Revisions of Determination of Requirements. In the event that the  
24 Department or the Commission takes action affecting any development project subject to  
25 Section 417.1 et seq. and such action is subsequently modified, superseded, vacated, or

1 reversed by the Board of Appeals, the Board of Supervisors, or by court action, the  
2 procedures of Section 402(c) shall be followed.

3 SEC. 417.5. USE OF FUNDS. The Eastern Neighborhoods Area Plan Alternate  
4 Affordable Housing In-Lieu Fee shall be paid into the Citywide Affordable Housing Fund, but the  
5 funds shall be separately accounted for. MOH shall expend the funds according to the  
6 following priorities: First, to increase the supply of housing affordable to qualifying households  
7 in the Eastern Neighborhoods Project Areas; second, to increase the supply of housing  
8 affordable to qualifying households within 1 mile of the boundaries of the Eastern  
9 Neighborhoods Project Areas; third, to increase the supply of housing affordable to qualifying  
10 households in the City and County of San Francisco. The funds may also be used for  
11 monitoring and administrative expenses subject to the process described in Section  
12 415.6(e)5(e).

13 Section 3: The San Francisco Planning Code is hereby amended by amending Section  
14 827 to read as follows:

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

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

20 The RH-DTR District is adjacent to the southern edge of the downtown, generally  
21 bounded by Folsom Street, the Bay Bridge, the Embarcadero, and Essex Street. High-density  
22 residential uses and supporting commercial and institutional uses are allowed and  
23 encouraged within the limits set by height, bulk, and tower spacing controls. Folsom Street is  
24 intended to develop as the neighborhood commercial heart of the Rincon Hill and Transbay  
25 neighborhoods, and pedestrian-oriented uses are required on the ground floor. Individual

townhouse dwelling units with ground floor entries directly to the street are required on streets that will become primarily residential, including First, Fremont, Beale, Main, and Spear Streets.

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

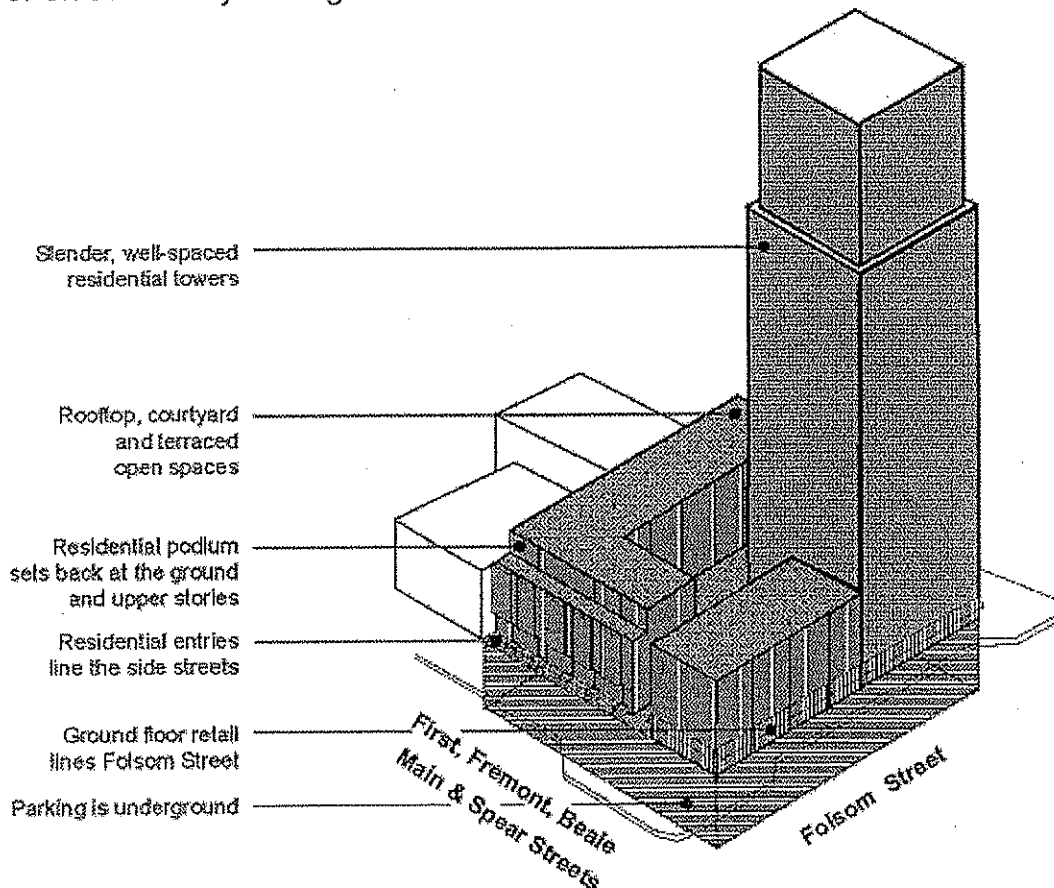
1	.21	Use Size [Non-Residential]	§§ 890.130, 145.14	P for non-residential uses up to 25,000 sq. ft., C above. No individual ground floor tenant may occupy more than 75' of frontage for a depth of 25' from Folsom Street. §§ 145.14.
2				
3	.22	Open Space	§§ 135, 135.3	1 sq. ft. of publicly-accessible open space for every 50 sq. ft. of non-residential use over 10,000 sq. ft. § 135.3
4				
5	.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.
6				
7	.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.
8				
9	.25	Off-Street Freight Loading	§§ 150, 152.2, 153—155, 204.5	None Required. Loading maximums described in Section 152.2.
10				
11	.26	All Non-Residential Uses Permitted, except as described below. §825(c)(1)(A)		
12	.27	Drive-Up Facility	§ 890.30	NP
13	.28	Walk-Up Facility	§ 890.140	P if recessed 3 ft. C otherwise.
14	.29	Hospital or Medical Center	§ 124.1, 890.44	C
15	.30	Other Institutions	§ 890.50	C
16	.31	Public Use	§ 890.80	C
17	.32	Movie Theater	§ 890.64	C
18	.33	Nighttime Entertainment	§§ 102.17, 803.5(g)	C
19	.34	Adult Entertainment	§ 890.36	NP
20	.35	Massage Establishment	§ 890.60 Article 29 Health Code	C
21	.36	Automobile Parking Lot, Community Commercial	§§ 890.9, 156, 160	NP
22	.37	Automobile Parking Garage, Community Commercial	§ 890.10, 160	C, per the criteria of Section 157.1
23				
24	.38	Automotive Gas Station	§ 890.14	NP
25	.39	Automotive Service	§ 890.18, 890.19	NP

	Station		
.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
<b>Residential Standards and Uses</b>			
.46	Residential Use	§ 890.88	P
.47	Residential Density, Dwelling Units	§ 890.88(a)	No Limit. § 207.5(d) Unit Mix Required § 207.6
.48	Residential Density, Group Housing	§ 890.88(b)	No Limit. §§ 207.5 (d)
.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).
.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).
.51	Residential Conversions	§ 790.84, Ch. 41 Admin. Code	C
.52	Residential Demolition		C
.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.

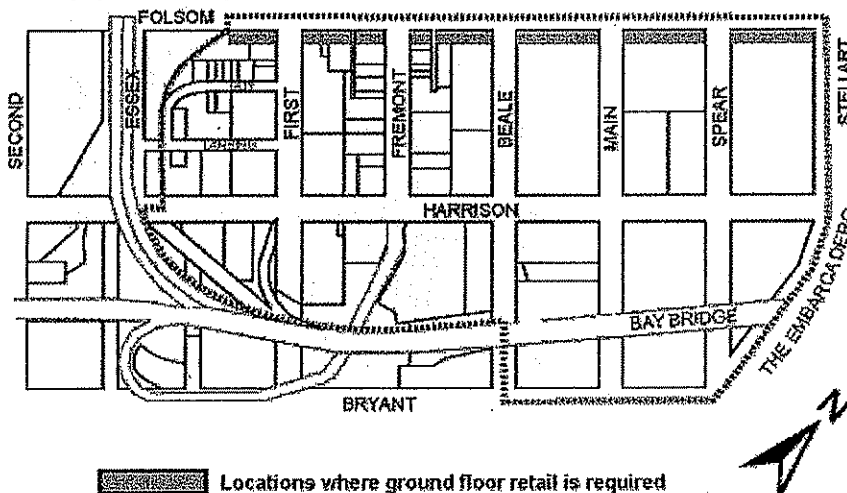
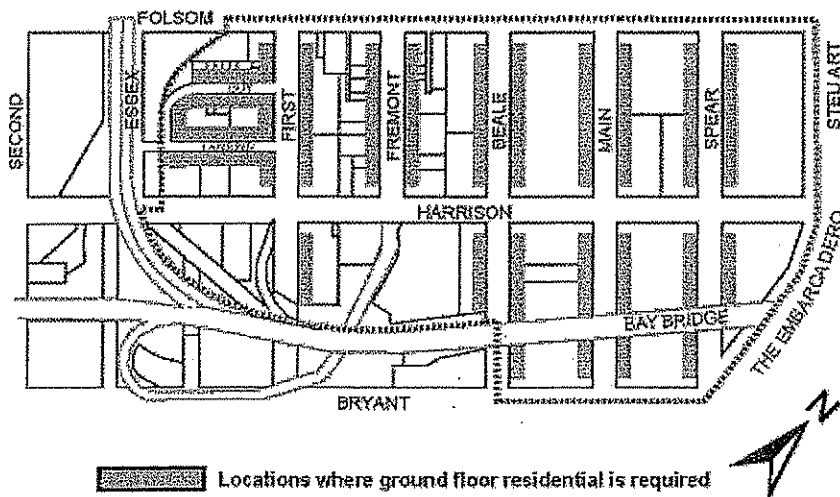


Figure 827: Frontages Where Ground Floor Residential Users/Entries Are Required.





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

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

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

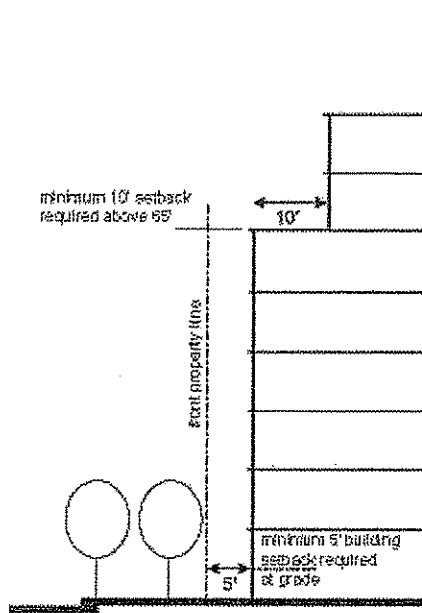
(A) All buildings are required to set back at least 10 feet above a height of 65 feet along Spear, Main, Beale, Fremont and First Streets. This requirement shall not apply to street frontage occupied by a building taller than 85 feet. This upper story setback requirement shall also not apply to the first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

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

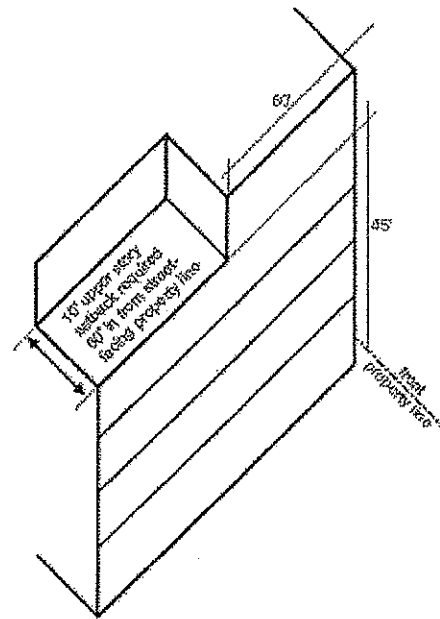
4 (C) In order to increase sun access to mid-block pathways and uses along such  
5 pathways, all building frontage on the southeast side of mid-block pathways not occupied by a  
6 building taller than 85 feet must set back upper stories by 10 feet above a building height of  
7 45 feet. For projects on the south side of a mid-block pedestrian pathway taller than 65 feet,  
8 an additional upper story setback of 10 feet is required above a building height of 65 feet.

9 (i) **Modifications.** For any lot on the north side of a required mid-block pedestrian  
10 pathway, a modification from the required upper story setback of 10 feet above a height of 45  
11 feet may be granted according to the provisions of Section 309.1, provided that, in total, the  
12 building is set back by a volume equal to what would be required by meeting the standard in  
13 (C) above, and the modification would substantially improve the accessibility, design and  
14 character of the mid-block pedestrian pathway.

15 **Figure 827(D): Required Upper Story Stepbacks**  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



First, Fremont, Main,  
Beale, and Spear Streets

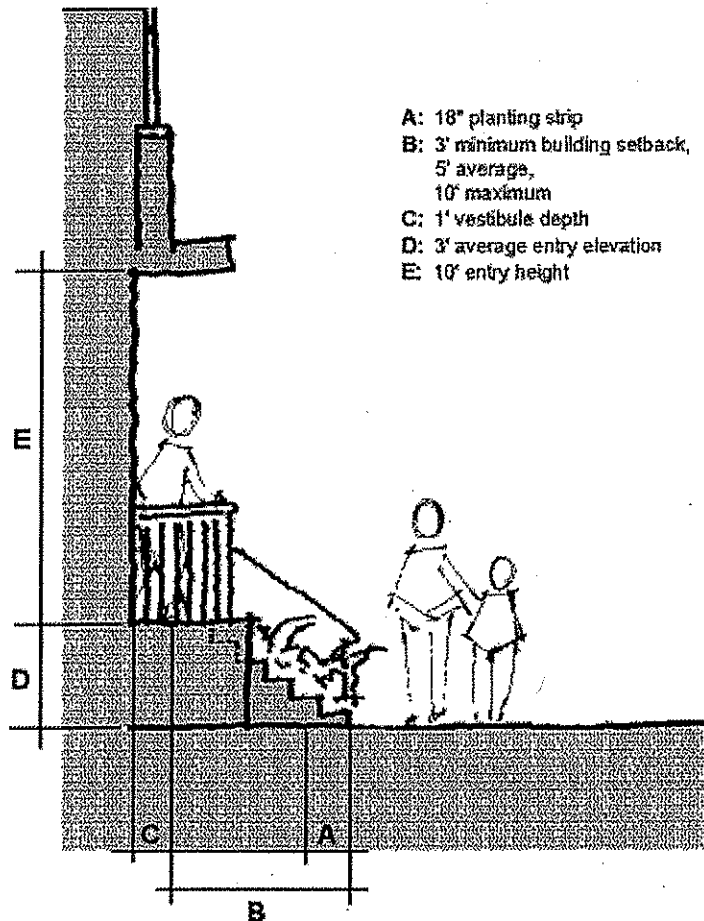


Guy Place, Lansing Street, or  
mid-block pedestrian pathway

(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.

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

Figure 827(E): Ground Floor Commercial Frontages



(8) Off- Street Parking and Loading.

(A) Parking and Loading Access.

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

(ii) **Folsom Street.** Access to off-street parking is not permitted on Folsom Street for lots with frontage on another street. For lots fronting solely on Folsom Street, access to parking on a Folsom Street frontage is permitted only through the processes established by

1 Section 309.1 by demonstrating that every effort has been made to minimize negative impact  
2 on the pedestrian quality of the street. Loading may not be accessed from Folsom Street.

3 (9) **Open Space.**

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

9 (10) **Streetscape Standards.**

10 (A) **Sidewalk Treatments.**

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

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

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

24 (iv) The Streetscape Plan and any Commission requirement pursuant to subsection  
25 (ii) shall require the abutting property owner or owners to hold harmless the City and County

1 of San Francisco, its officers, agents, and employees, from any damage or injury caused by  
2 reason of the design, construction or maintenance of the improvements, and shall require the  
3 owner or owners or subsequent owner or owners of the respective property to be solely liable  
4 for any damage or loss occasioned by any act.

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

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

10 (B) **Mid-Block Pedestrian Pathways.** For developments on Assessor's Blocks  
11 3744—3748, the Commission may require, pursuant to Section 309.1, the applicant to provide  
12 a mid-block pedestrian pathway for the entire depth of their property where called for by the  
13 Rincon Hill Area Plan of the General Plan. This pathway shall be designed in accordance with  
14 the standards of this Section.

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

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

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

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

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

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

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

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

3 (HH) Be provided with ample pedestrian lighting to ensure pedestrian comfort and  
4 safety;

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

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

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

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

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

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

24 (b) **Uses.**  
25

1           (1)     **Housing Requirement for Residential Developments.** The requirements of  
2 Sections ~~415.315~~ through ~~415.9 315.9~~ shall apply in the RH-DTR subject to the following  
3 exceptions:

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

8           (B)     Below-market-rate units as required by Sections ~~415.315~~ through ~~415.9 315.9~~  
9 that are built off-site must be built within the area bounded by Market Street, the  
10 Embarcadero, King Street, Division Street, and South Van Ness Avenue.

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

16          (D)     ~~Fifty percent (50%) of the below market rate units as required by Section 315 through~~  
17 ~~315.9 that are built on or off site must be provided as rental units for the life of the project, as defined~~  
18 ~~in Planning Code Section 315.7(a).~~

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

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

24                 SEC. 56.2. - PURPOSE AND APPLICABILITY.



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

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

### 19 **SEC. 56.3. - DEFINITIONS.**

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

21 (a) "Affordable housing development" shall mean for purposes of Section  
22 56.2(b)(1), any housing development which has a minimum of 30 percent of its units  
23 affordable to low income households, and a total of 60 percent of its units affordable to  
24 households, as defined by the U.S. Census, whose immediate household income does not  
25 exceed 120 percent of the median household income for the San Francisco Primary

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

16 (b) "Applicant/Developer" shall mean a person or entity who has legal or equitable  
17 interest in the real property which is the subject of the proposed or executed development  
18 agreement for an "affordable housing development" or a "large multi-phase and/or mixed-use  
19 development," as those terms are defined herein, or such person's or entity's authorized  
20 agent or successor in interest; provided, however, that an entity which is subject to the  
21 requirements of City Planning Code Section 304.5 relating to institutional master plans does  
22 not qualify as an applicant for a development agreement.

23 (c) "Collateral agreement" shall mean a written contract entered into by the  
24 applicant/developer and/or governmental agencies with other entities (including, but not  
25 limited to, community coalitions) for the purpose of having said entities provide for and

1 implement social, economic, or environmental benefits or programs; provided, however, that  
2 such term does not include agreements between the applicant/developer or governmental  
3 agencies and (1) construction contractors and subcontractors, (2) construction managers, (3)  
4 material suppliers, and (4) architects, engineers, and lawyers for customary architectural,  
5 engineering or legal services.

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

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

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

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

19 (h) "Material modification" shall mean any proposed amendment or modification to  
20 either a proposed development agreement approved by the Commission, or a previously  
21 executed development agreement, which amendment or modification is otherwise required by  
22 the terms of the development agreement, which changes any provision thereof regarding the  
23 following: (1) duration of the agreement; (2) permitted uses of the subject property; (3) density  
24 or intensity of the permitted uses; (4) location, height or size of any structures, buildings, or  
25 major features; (5) reservation or dedication of land; (6) any conditions, terms, restrictions and

1 requirements relating to subsequent discretionary actions as to design, improvements,  
2 construction standards and specifications; (7) any other condition or covenant relating to the  
3 financing or phasing of the development which substantially modifies the use of the property,  
4 the phasing of the development, or the consideration exchanged between the parties as  
5 recited in the proposed development agreement; (8) the type, number, affordability level,  
6 and/or tenure of any proposed affordable housing as well as any change as to performance of  
7 such public benefits, including but not limited to timing, phasing, method of performance or  
8 parties involved; or (9) any other terms or conditions of the development agreement if the  
9 development agreement provides that amendment of said specified term or condition would  
10 be a material modification.

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

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

18 SEC. 56.20. - FEE.

19 In order to defray the cost to the City and County of San Francisco of preparing,  
20 adopting, and amending a development agreement, a fee shall be charged and collected in  
21 accord with the procedures described below:  
22

23 (a) Cost Estimate and Application Report. The reasonable costs to the various  
24 departments of the City and County of San Francisco including, but not limited to, the Planning  
25 Department ~~of City Planning~~, the Department of Public Works, the Mayor's Office of Housing

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

15 The Director shall also prepare a report for the Commission and Board describing the  
16 application, the anticipated public benefits listed in the application pursuant to Section 56.4(b),  
17 and the projected time schedule for development agreement negotiations.  
18

19 (b) Commission and Board of Supervisors Consideration. The Commission shall  
20 recommend to the Board of Supervisors that a fee be imposed of a specified amount after  
21 reviewing the cost estimate prepared by the Director and conducting a public hearing  
22 pursuant to Section 56.4(c). If the Board of Supervisors approves the fee amount by  
23 resolution, the fee shall be paid within 30 days after the effective date of the resolution. The  
24 fee shall be paid in a single installment or, at the discretion of the Director, in four equal  
25

1 installments, payable periodically over the estimated time frame for which the estimated  
2 budget has been prepared, with the first installment due within 30 days after the effective date  
3 of the fee resolution.

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

17 (d) Development Agreement Fund. There is hereby created a Development  
18 Agreement Fund wherein all funds received under the provisions of this section shall be  
19 deposited. All expenditures from the Fund shall be for purposes of reviewing the application  
20 for, or proposed material modification to, a development agreement and preparing the  
21 documents necessary to the approval of the development agreement, or a material  
22 modification thereto. Up to 50 percent of the annual cost estimate is hereby deemed  
23 appropriated for such purposes if the applicant/developer chooses to prepay such amount  
24 pursuant to Subsection (c) above. All other funds are subject to the budget and fiscal powers  
25

1 of the Board of Supervisors. Interest earned on such amounts deposited in said Fund shall  
2 accrue to the Fund for the purposes set forth herein. Upon the execution of a development  
3 agreement, or withdrawal by an applicant/developer of its application, any unexpended or  
4 unobligated portion of the fee paid by the applicant/developer shall be returned to the  
5 applicant/developer.

6 (e) Waiver for Affordable Housing. The Board of Supervisors may, by resolution,  
7 waive all or a portion of the fee required pursuant to this section for affordable housing  
8 developments, as that term is defined in Section 56.3, only if it finds that such waiver is  
9 necessary to achieve such affordable housing development.  
10

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

14 (g) Not Applicable to Rental Housing With On-Site Affordable Housing Units. The hearings  
15 and fee required pursuant to this section shall not apply to development agreements entered into with  
16 project sponsors of rental housing developments with on-site affordable housing units as that term is  
17 defined in Section 56.3(j) if the provision of on-site affordable housing units is the primary purpose of  
18 the Development Agreement.  
19

20  
21 APPROVED AS TO FORM:  
22 DENNIS J. HERRERA, City Attorney

23 By:   
24 Susan Cleveland-Knowles  
25 Deputy City Attorney

Mayor Newsom, Supervisor Chiu  
BOARD OF SUPERVISORS

**LEGISLATIVE DIGEST**  
(Revised 10/25/2010)

[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 Inclusionary 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 Inclusionary 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.

On October 18, 2010 additional amendments were made at the Land Use Committee and again on October 25, 2010 additional amendments were made including the deletion of amendments proposed on October 18 (shown in strikethrough below). In general, these changes respond to the recent economic downturn and its effect on units in the Inclusionary

Housing Program and updates to the Program suggested by the Mayor's Office of Housing.  
The amendments include:

- Procedures for Units Unable to Sell Due to Economic Downturn: The downturn in the economy has resulted in areas of the City where the below market rate (BMR) price is close to the unrestricted market rate price, resulting in an ability of owners to sell their BMR units. The amendments would authorize MOH to request changes to the Procedures Manual from the Planning Commission to provide for a waiver of certain re-sale requirements including one-time waivers of first-time homebuyer requirements, household size requirements, owner occupancy rules, or the asset test for new buyers, or an increase in the qualifying income level.
  - For BMR units where the price is inherently close to the market rate, exemptions from the ordinance would be permitted to allow certain units to (1) resell the unit to a higher income household at a higher price than the ordinance now allows; and (2) the owner who resells the unit would share appreciation above a certain percent with MOH.
- Amendments to lottery preferences related to Certificate of Preference holders to conform to earlier legislation on this issue;
- Amendments related to inheritance of BMR units;
- Clarifying resale lottery procedures;
- Increase the maximum capital improvements cap;
- Provide that projects receiving California Debt Limit Allocation Committee financing and 100% affordable housing projects as defined will be exempt from the ordinance as long as they meet the requirements of those programs.
- Expand the language related to use of fees;
- Clarify the language prohibiting affordable units under the Program to have received federal subsidies;
- other administrative and technical changes to update the findings, correct errors and conform with the Procedures Manual.

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, 4<sup>th</sup> 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 22, 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 25<sup>th</sup> 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 25<sup>th</sup> 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

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

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

*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.*

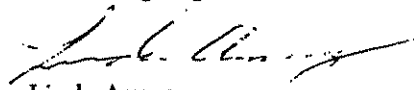
- G) That landmark and historic buildings will be preserved:

*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.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

*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 Act<sup>1</sup> 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.

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<sup>1</sup> 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.<sup>2</sup>

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 Act<sup>3</sup> 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.

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<sup>2</sup> Planning Code Section 827(b)(D).

<sup>3</sup> 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,<sup>4</sup> 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.<sup>5</sup> 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.

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<sup>4</sup> California Civil Code Section 1954.54(b).

<sup>5</sup> 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.

<b>RECOMMENDATION:</b>	<b>Recommendation of Approval</b>
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### 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 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.



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



*File 100046*  
*10/18/10 - Presented*  
*and Distributed*  
*in Committee*  
GAVIN NEWSOM  
MAYOR

DOUGLAS SHOEMAKER  
DIRECTOR

To: Land Use Committee  
San Francisco Board of Supervisors

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

Re: Proposed Changes to the Inclusionary Affordable Housing Program Ordinance

Date: 10/18/10

In response to recent challenges in the courts to other inclusionary housing programs in California and the recent downturn of the economy, the Mayor's Office of Housing proposes the following additional changes to the Inclusionary Affordable Housing Program ("Program"), Planning Code Section 415. These changes will allow the Mayor's Office of Housing to more effectively respond all stakeholders and to ensure the continuing success of the Program.

MOH presented the substance of these amendments to the Planning Commission on March 25, 2010. The original amendments included the following: (1) requiring all projects to pay an affordable housing fee unless eligible for an alternative; (2) expanding the uses of Citywide Affordable Housing Fund; (3) deleting provisions relating to the location of off-site units; (4) deleting a Rincon Hill provision regarding rental units; (5) amending the Development Agreement ordinance; and making CEQA findings.

Several of the proposed amendments are described in detail below, followed by a shorter list of the remaining amendments that either typographical or are amendments made to conform the Procedures Manual and the Planning Code.

**New Proposed Procedures for Units Unable to Sell or Resell**

The downturn in the economy has resulted in areas in the City where the restricted, or Below Market Rate ("BMR"), price is close to or, in some instances, below the unrestricted market price of units in the same area. This has led to hardship for some BMR owners who have been unable to resell. Similarly, the program has had an increase in units facing foreclosure due to job losses and the inability of some owners to find new employment in the area, while at the same time they have been less able to sell their units which they can no longer afford.

MOH proposes two categories of amendments to address issues raised for the Inclusionary Housing Program by the economic downturn:

1. Procedures for Units Unable to Resell: Waiver of Re-sale Requirements

The way it is now:

Certain requirements of the Inclusionary Housing Program and 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; BMR households must be at least as many people as bedrooms in the unit; a BMR household must meet an asset test in addition to an earned income test; and the unit must resell to a household whose income is no higher than the income level designated for the unit.

However, these rules sometimes prevent interested buyers from being qualified to purchase BMR resale units because they are unable to sell. During economic downturns, especially, this narrowing of the pool of potential buyers can harm households who may need to sell their units in a timely manner in order to avoid default or foreclosure.

The way it would be:

MOH proposes to amend Sections 415.8 (a) (8) (1) and (2) of the Proposed Ordinance to allow MOH to propose to the Planning Commission a future change to the Procedures Manual that would give MOH discretion, in certain limited circumstances, to waive certain requirements for BMR owners unable to resell their unit in a timely manner. If an amendment to the Procedures Manual is approved by the Commission, MOH could potentially have discretion to make one or more allowances limited to the following:

- (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) a one-time waiver of owner occupancy rules to allow a temporary rental;
- (4) a one-time modification of the asset test for the new buyer household; and
- (5) a one-time increase of the qualifying income level for the unit by up to 20% above the maximum income limit currently allowed in the ordinance. This would apply in cases where a BMR unit being resold at the original purchase price is unaffordable to a household at median income.

MOH and the Planning Commission shall set forth criteria for granting such allowances such as establishing a minimum time that the units must have been advertised by MOH without selling, or criteria related to unusual economic or personal circumstances of the owner.

## 2. Procedures for Units Unable to Sell or Resell: Procedures for Addressing Units Priced Close to Market Rate

The way it is now:

Often the prices of both BMR units and market-rate units are so close that there is little incentive for the BMR units to be purchased. This lack of incentive results in a developer (or owner of an existing BMR units) not being able to sell the unit.

Furthermore, many new units would require the developer to make a fee payment that would greatly exceed the opportunity cost of selling the unit at the below market rate price. 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 or neighborhood.

The way it would be:

MOH proposes to amend Sections 415.8 (a) (8) (3) of the Proposed Ordinance to allow MOH to propose to the Planning Commission a future change to the Procedures Manual that would let MOH establish different procedures for units that have a BMR price that is close to the market-rate price of comparable units. In order to determine whether such an amendment to the Procedures Manual is warranted, MOH shall examine whether it is in the City's interest to permit such units to sell at a market-rate price under certain conditions such as:

- (1) the unit has a comparable market-rate price that is close to the below market rate prices set by the MOH;
- (2) the unit requires a fee payment that would greatly exceed the opportunity cost of selling the unit at the below market rate price;
- (3) the unit is sold to a qualifying household;
- (4) 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 MOH for current resale units under the Program;
- (5) the BMR owner who resells the unit would share any appreciation above a certain percent with MOH; and
- (6) the project sponsor or BMR owner would sign an affidavit stating the BMR prices would be within a certain percentage range of the market rate units and be required to offer the units as typical BMR units should the spread increase at the time of marketing and selling the market rate units.

### **Additional Amendments**

MOH proposes the following amendments to address some issues raised by community stakeholders.

#### **Lottery Preference**

MOH proposes to amend Sections 415.6 (d) (2) & 415.7 (e) (2) of the Proposed Ordinance to allow MOH to propose to the Planning Commission a lottery system that gives preference first to Residential Certificate of Preference Holders under the San Francisco Redevelopment Agency's Property Owner and Occupant Preference Program, as reprinted September 11, 2008 and effective October 1, 2008 and on file with the Clerk of the Board in File No. 080521, who meet the qualifications of the Program, and second to people who live or work in San Francisco who meet the qualifications of the Program. MOH shall propose policies and procedures for implementing these preferences to the Planning Commission for inclusion in the Procedures Manual.

## Inheritance

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 households only. MOH proposes to amend Section 415.8 (b) (4) of 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 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:

- (1) a spouse or registered domestic partner, regardless of income;
- (2) a child of the owner if the child qualifies as a low- to 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 and retain the proceeds of the sale.

## Resale Lottery List Clarification

All BMR units are first offered to qualifying households through a lottery system. 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 may slow down the resale process for BMR sellers.

MOH proposes to amend Sections 415.6 (d) (1) & 415.7 (e) (1) of the Proposed Ordinance to clarify the fact that MOH shall continue to hold an initial lottery for all BMR resale units but that MOH will not maintain an ongoing list 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 or resale.

## Capital Improvements Cap

Since 2007, the regulations for the Program have allowed sellers to capture up to 7% of their resale price for capital improvements they have made on their units. The policy behind the cap is to balance the interests of current BMR unit owners who wish to recoup eligible expenses for upkeep and maintenance (which MOH encourages) with the interests of future BMR unit buyers in terms of maintaining affordability.

MOH proposes to amend Section 401 ("definitions") of the Proposed Ordinance to amend the definition of "Affordable to a Household" to describe and increase the cap to 10% cap on capital

improvements. MOH believes that 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.

#### Exemptions for Affordable Housing Projects

On- and off-site BMR projects are allowed to use California Debt Limit Allocation Committee (CDLAC) financing to meet their Section 415 obligation as long as they offer a certain percentage of units above those required under Section 415. Thus, developments that are in this program are exempt from the Inclusionary Housing Program.

MOH proposes to amend Section 415.3 c (4) to clarify fact that CDLAC and 100% affordable projects are exempt from Section 415 as long as they continue to operate under the rules of these programs. These units will be monitored under their respective programs but will be subject to all Section 415 requirements should they at any time fail to be governed by these affordable housing programs.

#### Update Fee Usage Language

MOH proposes to amend Section 415.5 (d) (1) to clarify the use of fees for affordable housing to allow for MOH to "provide assistance to low and moderate income homebuyers."

#### Clarify Government Subsidies

MOH proposes to amend Section 415 to clarify that the prohibition on federal, state and local subsidies is (1) a per unit test and (2) that subsidies can be used to deepen the affordability of a BMR unit below that required by the Ordinance.

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

##### **Amendments under Section 401: Definitions**

Delete definition of "Affordable Housing Project."

Clarify definition of "Affordable to a Household." When Section 315 was moved to Section 415 in July 2010, ownership and rental definitions were removed. The new definition will also allow MOH to set the down payment requirement in the Procedures Manual.

Clarify definition of "Affordable to Qualifying Households" to confirm that "qualifying households" for ownership units are first-time homebuyer households only; clarify that MOH reviews "gross" rather than "net" income for both ownership and rental BMR applicants; clarify that household size requirements will be laid out in Procedures Manual for both ownership and rental units; clarify that resale pricing process for ownership units will be laid out in Procedures Manual; raise capital improvements cap for resale ownership units to 10% of baseline resale price.

Clarify "Allowable Average Purchase Price" to return to original Section 315 ownership and rental definitions that were removed in original version of Section 401.

Clarify "Allowable Average Rent" to return to original Section 315 ownership and rental definitions that were removed in original version of Section 401.

Define "AMI" as "the unadjusted median income levels derived from the Department of Housing and Urban Development ("HUD") on an annual basis for the San Francisco area, adjusted solely for household size, but not high housing cost area."

Replace "first site or building permit" through Section 415 (as defined in Section 401) with "first construction document" to synchronize with Section 401.

Define "First-time Homebuyer Household" as at a minimum, a household in which no member of the qualifying household may have owned any interest in a dwelling unit for a three-year period prior to applying to qualify for purchase of a unit restricted as affordable under this Program. The ordinance would allow the Procedures Manual to contain additional requirements as necessary."

Clarify "Household of Low Income, Median Income and Moderate Income" to state that a low-income household is 55% of AMI; a median income household is 90% of AMI; and that a moderate income household is 110% of AMI.

Define "Life of project" as "the time during which the development authorized by the Planning Department or Commission, or any modification of such development, remains in existence in or upon the subject property and thereby confers benefit upon the subject property."

Amend "Maximum Annual Purchase Price" and "Maximum Annual Rent" to return to original Section 315 ownership and rental definitions that were removed in original version of Section 401.

Define "MOH" as "the Mayor's Office of Housing or its successor."

Clarify the fact that Section 415 is exempt from "Low Income" and "Middle Income" definitions applicable to other Article IV fees and programs.

Define "Owner-occupied" as "a BMR owner who lives in the BMR unit as his her principle residence and resides in the unit for a minimum period of time set forth in the Procedures Manual."

Define "Program" or "Inclusionary Housing Program" as "the Residential Inclusionary Affordable Housing Program as detailed in Sections 415 – 417."

### **Sections 415 to 415.8**

Rearranged content of Sections 415.5 – 415. 7: Section 415.5 becomes Section 415.6; Section 415.6 becomes 415.7; and Section 415.7 becomes 415.5.

Amend Section 415 to remove effective date language and move it to Section 415.3.

Amend Section 415 to clarify that the Procedures Manual is found on the Planning Department website only.

Amend Section 415.1 to update Section 415 et seq. findings.

Amend Section 415.3 to add in a table summarizing the most significant subsequent modifications to the Program and the date those modifications went into effect.

Amend Section 415.5 (f) (1) (B) to clarify who signs Costa-Hawkins agreements. Project sponsors who enter into a Costa-Hawkins agreement are except from the Section 415 Program. However, Section 415.5 (f)(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. The amendment provides that MOH will review all such contracts and that Mayor or Director of MOH may execute contracts that involve 100% affordable housing projects in the residential portion. Any contract that involves less than 100% affordable housing in the residential portion may be executed by either the Mayor, the Director of the Mayor's Office of Housing or the Planning Director."

Amend Section 415.5 (f) (2) to clarify that project sponsors may qualify to pay the fee either after Planning Department or Planning Commission approval if they are no longer providing on or off-site ownership units. Change from on- or off-site to fee requires a new affidavit that will be filed on the property.

Amend Section 415.5 to (f) (3) to clarify that project sponsors who failed to provide BMR units but had elected that option as a condition of their approval must pay the Affordable Housing Fee plus any applicable penalties in addition to interest. Also clarify that a sponsor requesting a modification of Conditions of Approval must go back to the Commission but that the Planning Commission need only review the Section 415 approvals and not the entire project.

Amend Section 415.6 (c) to clarify the fact that the type of housing produced under Section 415.6 must be ownership unless the project sponsor qualifies for an alternative.

Amend Section 415.7 (c) to remove rule that 25% of off-site units can be outside of square radius of principal project.

Amend Section 415.7 (d) to clarify fact that the AMI target for off-site ownership units is 70% of AMI.

Amend Section 415.8 by organizing the section into ownership and rental provisions.

Amend Section 415.8 (a) (1) to clarify occupancy rules for owner and rental units.

Amend Sections 415.8 (b) (1) (2) (3) and (4) 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 the Procedures Manual.

Amend section 415.8 (b) (6) to clarify the fact that upon conversion of BMR units from rental to ownership, a BMR unit is subject to the restriction period as identified in the original Notice of Special Restrictions for the project.

Amend Section 415.8 (c) (1) to clarify the fact that the MOH can set rules for lease changes, subleasing, monitoring, and other rental approval criteria such as homeownership status in the Procedures Manual.

Amend Section 415.8 (g) (1) to state that the MOH's BMR monitoring can be bi-annual rather than annual.

Amend Sections 415.6 (b) & 415.7 (d) stating that marketing firms must meet minimum qualifications as outlined by MOH. When Section 315 was moved to Section 415 in July 2010, this requirement was removed.

Amend Sections 415.6 (c) & 415.7 (d) to clarify that that the interior features of on-site BMR units must be comparable to the interior features of market-rate units but can be of a different make and model as long as they are of good quality, etc.

Amend Sections 415.6 (d) (1) & 415.7 (e) (1) to clarify lottery requirements and process.  
Amend Section 415.6 (a)(1)(b) and (c) and 415.7 (a) (1) (B) and C) to clarify that the off-site unit count is 20% of the total unit count in building, not a count that begins with the 5th unit.

Amend Sections 415.6 (e) and 415.7 (f) to clarify the fact that only BMR units cannot receive development subsidies, but that all other market-rate units in the building can receive development subsidies.