

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

October 3, 2022

File No. 221021

Lisa Gibson
Interim Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On September 27, 2022, Supervisor Dorsey introduced the following proposed legislation:

File No. 221021

Ordinance amending the Planning Code to allow projects under Housing Opportunities Mean Equity (HOME-SF) to agree to subject new dwelling units to the rent increase limitations of the Rent Ordinance; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and making findings of public necessity, convenience, and welfare under Planning Code, Section 302.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning
Don Lewis, Environmental Planning

1 [Planning, Administrative Codes - HOME-SF]

2

3 **Ordinance amending the Planning Code to allow projects under Housing Opportunities**
 4 **Mean Equity (HOME-SF) to agree to subject new dwelling units to the rent increase**
 5 **limitations of the Rent Ordinance; affirming the Planning Department's determination**
 6 **under the California Environmental Quality Act; making findings of consistency with**
 7 **the General Plan, and the eight priority policies of Planning Code, Section 101.1; and**
 8 **making findings of public necessity, convenience, and welfare under Planning Code,**
 9 **Section 302.**

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

14

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

16

17 Section 1. Environmental and Planning Code Findings.

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

23 (b) On _____, the Planning Commission, in Resolution No. _____,
 24 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
 25 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The

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

3 (c) Pursuant to Planning Code Section 302, this Board finds that these Planning Code
4 amendments will serve the public necessity, convenience, and welfare for the reasons set
5 forth in Planning Commission Resolution No. _____, and the Board adopts such reasons
6 as its own. A copy of said resolution is on file with the Clerk of the Board of Supervisors in
7 File No. _____ and is incorporated herein by reference.

8
9 Section 2. The Planning Code is hereby amended by revising Sections 206.1 and
10 206.3, to read as follows:

11 **SEC. 206.1. PURPOSE AND FINDINGS.**

12 (a) The purpose of the Affordable Housing Bonus Programs is to facilitate the
13 development and construction of affordable housing in San Francisco. Affordable housing is
14 of paramount statewide concern, and the Legislature has declared that local and state
15 governments have a responsibility to use the powers vested in them to facilitate the
16 improvement and development of housing to make adequate provision for the housing needs
17 of all economic segments of the community, especially families. The Legislature has found
18 that local governments must encourage the development of a variety of types of housing for
19 all income levels, including multifamily rental housing and assist in the development of
20 adequate housing to meet the needs of low- and moderate-income households.

21 (b) Affordable housing is an especially paramount concern in San Francisco. San
22 Francisco has one of the highest housing costs in the nation, but San Francisco's economy
23 and culture rely on a diverse workforce at all income levels. It is the policy of the City to
24 enable these workers to afford housing in San Francisco and ensure that they pay a
25 reasonably proportionate share of their incomes to live in adequate housing and to not have to

1 commute ever-increasing distances to their jobs. The Association of Bay Area Governments
2 determined that San Francisco's share of the Regional Housing Need for January 2015 to
3 June 2022 was the provision of 28,870 new housing units, with 6,234 (or 21.6%) as very low,
4 4,639 (or 16.1%) as low, and 5,460 (or 18.9%) as moderate income units.

5 (c) The Board of Supervisors, and the voters in San Francisco, have long
6 recognized the need for the production of affordable housing. The voters, in some cases, and
7 the Board in others, have adopted measures to address this need, such as *the* mandatory
8 Inclusionary Affordable Housing Ordinance in Planning Code Section 415; the San Francisco
9 Housing Trust Fund, adopted in 2012, which established a fund to create, support and
10 rehabilitate affordable housing, and set aside \$20 million in its first year, with increasing
11 allocations to reach \$50 million a year for affordable housing; the adoption of Proposition K in
12 November 2014, which established as City policy that the City, by 2020, will help construct or
13 rehabilitate at least 30,000 homes, with more than 50% of the housing affordable for middle-
14 income households, and at least 33% as affordable for low- and moderate income
15 households; and the multiple programs that rely on Federal, State and local funding sources
16 as identified in the Mayor's Office of Housing and Community Development Comprehensive
17 Plan. These programs enable the City to work towards the voter-mandated affordable housing
18 goals.

19 (d) Historically, in the United States and San Francisco, affordable housing requires
20 high levels of public subsidy, including public investment and reliance on public dollars. Costs
21 to subsidize an affordable housing unit vary greatly depending on a number of factors, such
22 as household income of the residents, the type of housing, and the cost ~~to acquire~~ of land
23 acquisition. Currently, MOHCD estimates that the level of subsidy for an affordable housing
24 unit is approximately \$350,000 per unit. Given this high cost per unit, San Francisco can only
25

1 meet its affordable housing goals through a combination of increased public dollars dedicated
2 to affordable housing and other tools that do not rely on public money.

3 (e) Development incentives are a long standing zoning tool that enable_s cities to
4 encourage private development projects to provide public benefits including affordable
5 housing. By offering increased development potential, a project sponsor can offset the
6 expenses necessary to provide additional public benefits. In 1979, the State of California
7 adopted the Density Bonus Law, Government Code section 65915 et seq. which requires that
8 density bonuses and other concessions and incentives be offered to projects that provide a
9 minimum amount of on-site affordable housing.

10 (f) In recognition of the City's affordable housing goals, including the need to
11 produce more affordable housing without the need for public subsidies, the Planning
12 Department contracted with David Baker Architects and Seifel Consulting to determine a
13 menu of zoning modifications and development bonuses that could offset a private
14 developer's costs of providing various levels of additional on-site affordable housing. These
15 experts analyzed various parcels in San Francisco, to determine the conditions in which a
16 zoning accommodation would be necessary to achieve additional density. The analysis
17 modeled various zoning districts and lot size configurations, consistent with current market
18 conditions and the City's stated policy goals, including to achieve a mix of unit types, including
19 larger units that can accommodate larger households. These reports are on file in Board of
20 Supervisors File No. 160687.

21 (g) Based on these reports, the Planning Department developed four programs to
22 provide options by which developers can include additional affordable units on-site through
23 increased density and other zoning or design modifications. These programs are the HOME-
24 SF Program, the 100 Percent Affordable Housing Bonus Program, the Analyzed State Density
25 Bonus Program and the Individually Requested Bonus Program. The HOME-SF Program can

1 also be used by developers who agree to subject the units to the San Francisco Rent Stabilization and
2 Arbitration Ordinance (Chapter 37 of the Administrative Code) (“the Rent Ordinance”).

3 (h) The goal of the HOME-SF Program is to increase affordable housing production,
4 especially housing affordable to middle income households. Housing for middle income
5 households in San Francisco is necessary to stabilize San Francisco’s households and
6 families, ensure income and household diversity in the long term population of San Francisco,
7 and reduce transportation impacts of middle income households working in San Francisco.
8 Middle income households do not traditionally benefit from public subsidies. The goal of the
9 HOME-SF Program is also to increase the number of units in San Francisco that will be subject to rent
10 control under San Francisco’s Rent Ordinance. The City adopted its Rent Ordinance in 1979, and the
11 Rent Ordinance has been critical in safeguarding tenants from excessive rent increases and evictions
12 without just cause. Rent control serves as an important policy tool to stabilize communities and
13 prevent displacement.

14 (i) The 100 Percent Affordable Housing Bonus Program provides additional
15 incentives for developers of 100% affordable housing projects, thereby reducing the overall
16 cost of such developments on a per unit basis.

17 (j) The Affordable Housing Bonus Program also establishes a clear local process for
18 all projects seeking the density bonuses guaranteed through the State Density Bonus Law.
19 The State Analyzed Program provides an expedited process for projects that comply with a
20 pre-determined menu of incentives, concessions and waivers of development standards that
21 the Department has determined can appropriately respond to neighborhood context without
22 causing adverse impacts on public health and safety, and provide affordable units through the
23 City’s already-established Inclusionary Housing Program. Projects requesting density or
24 concessions, incentives and waivers outside of the City’s preferred menu may seek a density
25 bonus consistent with State law in the Individually Requested Density Bonus Program.

1 (k) San Francisco’s small business community is an integral part of San Francisco’s
2 neighborhood commercial corridors, local economy, and rich culture. San Francisco is
3 committed to maintaining small businesses in its neighborhoods. For this reason, the HOME-
4 SF Program acknowledges the need for general assistance and support for any business that
5 might be impacted. Developments using the Affordable Housing Bonus Program will generally
6 produce additional commercial spaces which may enhance existing commercial corridors. The
7 Office of Economic and Workforce Development (OEWD), in coordination with the Office of
8 Small Business, currently coordinate on referrals to and deployment of a range of services to
9 small businesses including but not limited to: small business consulting, lease negotiation
10 assistance, small business loans, ADA Certified Access Specialists (CASp) inspection
11 services, legacy business registry, façade improvement assistance, commercial corridor
12 management, grants and assessments, relocation and broker services for production,
13 distribution and repair (PDR) businesses, business permit assistance, and coordination with
14 city agencies.

15
16 **SEC. 206.3. HOUSING OPPORTUNITIES MEAN EQUITY - SAN FRANCISCO**
17 **PROGRAM.**

18 (a) **Purpose.** This Section 206.3 sets forth the HOME-SF Program. The HOME-SF
19 Program or “HOME-SF” provides benefits to project sponsors of housing projects that *either*
20 *(1) set aside residential units onsite at below market rate rent or sales price in an amount*
21 *higher than the amount required by the Inclusionary Housing Ordinance, or (2) agree to subject*
22 *all units in the project, except for units required by the Inclusionary Housing Ordinance, to the San*
23 *Francisco Rent Stabilization and Arbitration Ordinance (Chapter 37 of the Administrative Code).* The
24 purpose of HOME-SF is to expand the number of below market rate units produced in San
25 Francisco and provide housing opportunities to a wider range of incomes than traditional

1 affordable housing programs, such as the City's Inclusionary Affordable Housing Program,
2 Planning Code Sections 415 et seq., which typically provide housing only for very low, low or
3 moderate income households, and to expand the number of units in San Francisco that are subject
4 to rent control. For projects that elect to provide additional on-site below market rate units, ~~The~~
5 ~~purpose of~~ HOME-SF also ~~is to~~ provide_s an alternative method of complying with the on-site
6 inclusionary option set forth in Section 415.6. HOME-SF allows market-rate projects to match
7 the City's ~~shared~~ Proposition K (November 2014) housing goals that 50% of new housing
8 constructed or rehabilitated in the City by 2020 be within the reach of working middle class
9 San Franciscans, and that at least 33% be affordable for low and moderate income
10 households, and the Housing Element of the General Plan's finding that rent control has been critical
11 to protecting low- and moderate-income residents from being at risk of eviction and displacement.

12 (b) **Applicability.** A HOME-SF Project under this Section 206.3 shall be
13 a project that:

14 (1) contains three or more residential units, as defined in Section 102, not
15 including any Group Housing as defined in Section 102, efficiency dwelling units with reduced
16 square footage defined in Section 318, and Density Bonus Units permitted through this
17 Section 206.3, or any other density bonus;

18 (2) is located in any zoning district that: (A) is not designated as an RH-1 or
19 RH-2 Zoning District; and (B) establishes a maximum dwelling unit density through a ratio of
20 number of units to lot area, including RH-3, RM, RC, C-2, Neighborhood Commercial, Named
21 Neighborhood Commercial, and SoMa Mixed Use Districts; but only if the SoMa Mixed Use
22 District has a density measured by a maximum number of dwelling units per square foot of lot
23 area; (C) is not in the North of Market Residential Special Use District, Planning Code Section
24 249.5, until the Affordable Housing Incentive Study is completed at which time the Board will
25 review whether the North of Market Residential Special Use District should continue to be

1 excluded from this Program. The Study will explore opportunities to support and encourage
2 the provision of housing at the low, moderate, and middle income range in neighborhoods
3 where density controls have been eliminated. The goal of this analysis is to incentivize
4 increased affordable housing production levels at deeper and wider ranges of AMI and larger
5 unit sizes in these areas through 100% affordable housing development as well as below
6 market rate units within market rate developments; (D) is not located within the boundaries of
7 the Northeastern Waterfront Area Plan south of the centerline of Broadway; and (E) is not
8 located on property under the jurisdiction of the Port of San Francisco;

9 (3) is not seeking and receiving a density or development bonus under the
10 provisions of California Government Code Sections 65915 et seq., Planning Code Section
11 207, Section 124(f), Section 202.2(f), 304, or any other State or local program that provides
12 development bonuses;

13 (4) includes at least 135% of the Base Density as calculated under Planning
14 Code Section 206.5;

15 (5) consists of new construction, and excluding any project that includes an
16 addition to an existing structure;

17 (6) complies with the on-site Inclusionary Affordable Housing option set forth in
18 Planning Code Section 415.6; ~~provided however, that~~ If the project elects to provide HOME-SF
19 Units as set forth in subsection (c)(1)(A), the project shall comply with the on-site Inclusionary
20 Affordable Housing option set forth in Planning Code Section 415.6, provided however, that the
21 percentage of affordable units and the required affordable sales price or affordable rents set
22 forth in Section 415.6(a) shall be as provided in ~~this~~ Section 206.3(c)(1)(A), or Section 206.3(f),
23 as applicable;

24 (7) if any retail use is demolished or removed, does not include a Formula
25 Retail use, as defined in Section 303.1, unless the retail use demolished or removed was also

1 a Formula Retail Use, or was one of the following uses: Gas Stations, Private or Public
2 Parking Lots, Financial Services, Fringe Financial Services, Self Storage, Motel, Automobile
3 Sales or Rental, Automotive Wash, Mortuaries, Adult Business, Massage Establishment,
4 Medical Cannabis Dispensary, and Tobacco Paraphernalia Establishment, as those uses are
5 defined in Planning Code Section 102;

6 (8) if located north of the centerline of Post Street and east of the centerline of
7 Van Ness Avenue, all otherwise eligible HOME-SF Projects shall only be permitted on:

8 (A) lots containing no existing buildings; or

9 (B) lots equal to or greater than 12,500 square feet where existing
10 buildings are developed to less than 20% of the lot's principally permitted buildable gross floor
11 area as determined by height limits, rear yard requirements, and required setbacks; and

12 (9) if the City enacts an ordinance directing the Planning Department to study
13 the creation of a possible area plan wholly or partially located in Supervisorial District 9,
14 HOME-SF Projects shall not be permitted in any area in Supervisorial District 9 listed in the
15 ordinance until such time as the City enacts the area plan.

16 (c) **HOME-SF Project Eligibility Requirements.** To receive the development
17 bonuses granted under this Section 206.3, a HOME-SF Project must meet all of the following
18 requirements:

19 (1) Agree to either:

20 (A) Except as limited in application by subsection (f), ~~provide~~ provide 30% of
21 units in the HOME-SF Project as HOME-SF Units, as defined herein. The HOME-SF Units
22 shall be restricted for the Life of the Project and shall comply with all of the requirements of
23 the Procedures Manual authorized in Section 415 except as otherwise provided herein.
24 Twelve percent of HOME-SF Units that are Owned Units shall have an average affordable
25 purchase price set at 80% of Area Median Income; 9% shall have an average affordable

1 purchase price set at 105% of Area Median Income; and 9% shall have an average affordable
2 purchase price set at 130% of Area Median Income. Twelve percent of HOME-SF Units that
3 are rental units shall have an average affordable rent set at 55% of Area Median Income; 9%
4 shall have an average affordable rent set at 80% of Area Median Income; and 9% shall have
5 an average affordable rent set at 110% of Area Median Income. All HOME-SF Units must be
6 marketed at a price that is at least 20% less than the current market rate for that unit size and
7 neighborhood, and MOHCD shall reduce the Area Median Income levels set forth herein in
8 order to maintain such pricing. As provided for in subsection (e), the Planning Department and
9 MOHCD shall amend the Procedures Manual to provide policies and procedures for the
10 implementation, including monitoring and enforcement, of the HOME-SF Units; or,

11 (B) Subject all new Dwelling Units, except for any Affordable Units as defined in
12 Planning Code Section 401, to the San Francisco Residential Rent Stabilization and Arbitration
13 Ordinance (Chapter 37 of the Administrative Code) as may be amended from time to time.

14 (2) Demonstrate to the satisfaction of the Environmental Review Officer that the
15 HOME-SF Project does not:

16 (A) cause a substantial adverse change in the significance of an historic
17 resource as defined by California Code of Regulations, Title 14, Section 15064.5;

18 (B) create new shadow in a manner that substantially affects outdoor
19 recreation facilities or other public areas; and

20 (C) alter wind in a manner that substantially affects public areas;

21 (3) All HOME-SF units shall be no smaller than the minimum unit sizes set forth by
22 the California Tax Credit Allocation Committee as of May 16, 2017. In addition,
23 notwithstanding any other provision of this Code, HOME-SF projects shall provide a minimum
24 dwelling unit mix of (A) at least 40% two and three bedroom units, including at least 10% three
25 bedroom units, or (B) any unit mix which includes some three bedroom or larger units such

1 that 50% of all bedrooms within the HOME-SF Project are provided in units with more than
2 one bedroom. Larger units should be distributed on all floors, and prioritized in spaces
3 adjacent to open spaces or play yards. Units with two or three bedrooms are encouraged to
4 incorporate family friendly amenities. Family friendly amenities shall include, but are not
5 limited to, bathtubs, dedicated cargo bicycle parking, dedicated stroller storage, open space
6 and yards designed for use by children. HOME-SF Projects are not eligible to modify this
7 requirement under Planning Code Section 328 or any other provision of this Code;

8 (4) Does not demolish, remove or convert any residential units; and

9 (5) Includes at the ground floor level active uses, as defined in Section 145.1,
10 at the same square footages as any neighborhood commercial uses demolished or removed,
11 unless the Planning Commission has granted an exception under Section 328.

12 * * * *

13 (e) **Implementation.**

14 (1) **Application.** An application to participate in the HOME-SF Program shall
15 be submitted with the first application for approval of a Housing Project and processed
16 concurrently with all other applications required for the Housing Project. The application shall
17 be submitted on a form prescribed by the City and shall include at least the following
18 information:

19 (A) A full plan set, including a site plan, elevations, sections, and floor
20 plans, showing total number of units, number of and location of HOME-SF Units, *if any*; and a
21 draft Regulatory Agreement;

22 (B) The requested development bonuses and/or zoning modifications
23 from those listed in subsection (d).

1 (C) A list of all on-site family friendly amenities. Family friendly amenities
2 shall include, but are not limited to, dedicated cargo bicycle parking, dedicated stroller
3 storage, open space and yards designed for use by children.

4 (D) Documentation that the applicant has provided written notification to
5 all existing commercial or residential tenants that the applicant intends to develop the property
6 pursuant to this section 206.3 and has provided any existing commercial tenants with a copy
7 of the Office of Economic and Workforce Development's Guide to Small Business Retention
8 and Relocation Support. Any affected commercial tenants shall be given priority processing
9 similar to the Department's Community Business Priority Processing Program, as adopted by
10 the Planning Commission on February 12, 2015, under Resolution Number 19323, to support
11 relocation of such business in concert with access to relevant local business support
12 programs.

13 * * * *

14 (5) **Regulatory Agreements.** Recipients of development bonuses under this
15 Section 206.3 shall enter into a Regulatory Agreement with the City, as follows.

16 (A) The terms of the agreement shall be acceptable in form and content
17 to the Planning Director, the Director of MOHCD, and the City Attorney. The Planning Director
18 shall have the authority to execute such agreements.

19 (B) Following execution of the agreement by all parties, the completed
20 Regulatory Agreement, or memorandum thereof, shall be recorded and the conditions filed
21 and recorded on the Housing Project.

22 (C) The approval and recordation of the Regulatory Agreement shall
23 take place prior to the issuance of the First Construction Document. The Regulatory
24 Agreement shall be binding to all future owners and successors in interest.

1 (D) The Regulatory Agreement shall be consistent with the guidelines of
2 the City's Inclusionary Housing Program and shall include at a minimum the following:

3 (i) The total number of dwelling units approved for the Housing
4 Project, including the number of HOME-SF Units, if any, or other restricted units;

5 (ii) A description of the household income group to be
6 accommodated by the HOME-SF Units, if any, and the standards for determining the
7 corresponding Affordable Rent or Affordable Sales Price. If required by the Procedures
8 Manual, the project sponsor must commit to completing a market survey of the area before
9 marketing HOME-SF Units;

10 (iii) The location, dwelling unit sizes (in square feet), and number
11 of bedrooms of the HOME-SF Units, if any;

12 (iv) Term of use restrictions for the life of the project;

13 (v) A schedule for completion and occupancy of HOME-SF Units,
14 if any;

15 (vi) A description of any Concession, Incentive, waiver, or
16 modification, ~~if any~~, being provided by the City;

17 (vii) A description of remedies for breach of the agreement (the
18 City may identify tenants or qualified purchasers as third party beneficiaries under the
19 agreement); ~~and~~

20 (viii) Other provisions to ensure implementation and compliance
21 with this Section; ~~and~~

22 (ix) for projects that elect to proceed under Section 206.3(c)(1)(B), a
23 statement that the units included in such project, except for any Affordable Units as defined in Planning
24 Code Section 401, are not subject to the Costa-Hawkins Rental Housing Act (California Civil Code
25 Sections 1954.50 et seq.) because under Section 1954.52(b), the property owner has entered into and

1 agreed to the terms of the agreement with the City in consideration for additional density and
2 modifications to the Planning Code, or other direct financial contribution or forms of assistance
3 specified in California Government Code Sections 65915 et seq.

4 (f) **Temporary provisions.** To facilitate the construction of HOME-SF projects that
5 elect to include HOME SF Units under subsection (c)(1)(A), and based on information from the
6 inclusionary housing study prepared for the Divisadero and Fillmore Neighborhood
7 Commercial Transit District, in Board of Supervisors File No. 151258, and the Office of the
8 Controller's Inclusionary Housing Working Group final report (February 2016), the HOME-SF
9 program shall include development incentives as specified in this subsection (f) based on the
10 amount and level of affordability provided in this subsection (f). For any development project
11 that has submitted a complete Development Application prior to January 1, 2020, subsections
12 (c)(1)(A) and (d)(1), (d)(2), and (d)(3) shall not apply, and the provisions in this subsection (f)
13 shall apply. For any development project that submits a complete Development Application on
14 or after January 1, 2020, this subsection (f) shall apply until such time as it may be amended
15 based on the Triennial Economic Feasibility Analysis established in Section 415.10. This
16 subsection (f) shall not apply to HOME-SF projects that elect to proceed under subsection (c)(1)(B).

17 (1) **HOME-SF Project Eligibility Requirements.** To receive the
18 development bonuses granted under this Section 206.3, a HOME-SF Project must provide a
19 percentage of units, in the amounts set forth in section 206.3(f)(2)(A), (B), or (C), as HOME-
20 SF Units, as defined in Section 206.2. The HOME-SF Units shall be restricted for the Life of
21 the Project and shall comply with all of the requirements of the Procedures Manual authorized
22 in Section 415 except as otherwise provided in this Section 206.3. All HOME-SF Units must
23 be marketed at a price that is at least 20% less than the current market rate for that unit size
24 and neighborhood, and MOHCD shall reduce the Area Median Income levels set forth in this
25 Section 206.3 in order to maintain such pricing. As provided for in subsection (e), the Planning

1 Department and MOHCD shall amend the Procedures Manual to provide policies and
2 procedures for the implementation, including monitoring and enforcement, of the HOME-SF
3 Units;

4 * * * *

5
6 Section 3. Chapter 37 of the Administrative Code is hereby amended by revising
7 Sections 37.2 and 37.3, to read as follows:

8
9 **SEC. 37.2. DEFINITIONS.**

10 * * * *

11 (r) **Rental Units.** All residential dwelling units in the City *and County of San Francisco*
12 together with the land and appurtenant buildings thereto, and all housing services, privileges,
13 furnishings, and facilities supplied in connection with the use or occupancy thereof, including
14 garage and parking facilities.

15 * * * *

16 The term "rental units" shall not include:

17 * * * *

18 (4) Except as provided in subsections (A)-(~~DE~~), dwelling units whose rents are
19 controlled or regulated by any government unit, agency, or authority, excepting those
20 unsubsidized and/or unassisted units which are insured by the United States Department of
21 Housing and Urban Development; provided, however, that units in unreinforced masonry
22 buildings which have undergone seismic strengthening in accordance with Building Code
23 Chapters 16B and 16C shall remain subject to the Rent Ordinances to the extent that the
24 ordinance is not in conflict with the seismic strengthening bond program or with the program's
25 loan agreements or with any regulations promulgated thereunder;

1 * * * *

2 (E) The term “rental units” shall include any new dwelling units created pursuant to
3 the HOME-SF Program set forth in Section 206.3(c)(1)(B) of the Planning Code.

4
5 **SEC. 37.3. RENT LIMITATIONS.**

6 (a) Rent Increase Limitations for Tenants in Occupancy. Landlords may impose rent
7 increases upon tenants in occupancy only as provided below and as provided by subsections
8 37.3(d) and 37.3(g):

9 * * * *

10 (d) **Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50. et seq.).**

11 Consistent with the Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50. et seq.)
12 and regardless of whether otherwise provided under Chapter 37:

13 (1) **Property Owner Rights to Establish Initial and All Subsequent Rental**
14 **Rates for Separately Alienable Parcels.**

15 (A) An owner ~~of~~ residential real property may establish the initial and
16 all subsequent rental rates for a dwelling or a unit which is alienable separate from the title to
17 any other dwelling unit or is a subdivided interest in a subdivision as specified in subdivision
18 (b), (d), or (f) of Section 11004.5 of the California Business and Professions Code. The
19 owner's right to establish subsequent rental rates under this paragraph shall not apply to a
20 dwelling or unit where the preceding tenancy has been terminated by the owner by notice
21 pursuant to California Civil Code Section 1946 or has been terminated upon a change in the
22 terms of the tenancy noticed pursuant to California Civil Code Section 827; in such instances,
23 the rent increase limitation provisions of Chapter 37 shall continue to apply for the duration of
24 the new tenancy in that dwelling or unit.

25 * * * *

1 (D) An owner's right to establish subsequent rental rates under subsection
2 37.3(d)(1) shall not apply to a dwelling unit that is created pursuant to the HOME-SF Program set
3 forth in Section 206.3(c)(1)(B) of the Planning Code.

4 * * * *

5 **(g) New Construction and Substantial Rehabilitation.**

6 (1) An owner of a residential dwelling or unit which is newly constructed and
7 first received a certificate of occupancy after the effective date of Ordinance No. 276-79 (June
8 13, 1979), or which the Rent Board has certified has undergone a substantial rehabilitation,
9 may establish the initial and all subsequent rental rates for that dwelling or unit, except:

10 (A) where rent restrictions apply to the dwelling or unit under
11 Sections 37.3(d) or 37.3(f);

12 (B) where the dwelling or unit is a replacement unit under
13 Section 37.9A(b);

14 (C) as provided for certain categories of Accessory Dwelling Units under
15 Section 37.2(r)(4)(D); ~~and~~

16 (D) as provided in a development agreement entered into by the City
17 under Administrative Code Chapter 56.; and

18 (E) as provided for certain categories of new dwelling units under Section
19 37.2(r)(4)(E).

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

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

7

8 APPROVED AS TO FORM:
9 DAVID CHIU, City Attorney

10 By: /s/AUDREY WILLIAMS PEARSON
11 AUDREY WILLIAMS PEARSON
 Deputy City Attorney

12 n:\legana\as2022\2300033\01630755.docx

13

14

15

16

17

18

19

20

21

22

23

24

25

LEGISLATIVE DIGEST

[Planning, Administrative Codes - HOME-SF]

Ordinance amending the Planning Code to allow projects under Housing Opportunities Mean Equity (HOME-SF) to agree to subject new dwelling units to the rent increase limitations of the Rent Ordinance; affirming the Planning Department’s determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and making findings of public necessity, convenience, and welfare under Planning Code, Section 302.

Existing Law

Home Ownership Means Equity – San Francisco (HOME-SF) is one of the density bonus programs in Planning Code Section 206, and allows density bonuses and zoning code modifications for projects that agree to provide inclusionary housing at levels above that required by the Inclusionary Housing Ordinance in Planning Code section 415. Currently under HOME-SF, projects must provide between 20% and 30% of units as on-site affordable units, and in exchange receive form-based density and up to two stories of additional height, as well as modifications to Planning Code requirements such as rear yard, open space, parking and loading.

Generally, under the Costa-Hawkins Rental Housing Act, California Civil Code section 1954.50 *et seq.*, landlords may set the initial and subsequent rental rate upon the vacancy of a rental unit for units constructed after 1995. San Francisco’s implementation of Costa-Hawkins is set forth in Administrative Code Section 37, the San Francisco Rent Stabilization and Arbitration Ordinance (the Rent Ordinance). There are exceptions to Costa-Hawkins, including when an owner has agreed by contract with a public entity in consideration for “forms of assistance specified in [the State Density Bonus Law].” Under that exception, in exchange for density bonuses, waivers, and concessions and incentives, a developer can agree to subject newly constructed units to rent control.

Amendments to Current Law

This ordinance would expand the HOME-SF program to project sponsors who agree to subject the residential units in the development to rent control under the Rent Ordinance. Instead of providing additional on-site affordable units, projects would comply with the inclusionary housing ordinance, and subject the remaining units to rent control.