

1 [Administrative Code - Workforce Housing and Affordable Middle-Income Revenue Bonds]

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3 **Ordinance amending the Administrative Code to permit the issuance of bonds to**
4 **finance the acquisition, development, rehabilitation, or construction of middle-income**
5 **and workforce housing, and to establish ownership, tenancy, affordability, and**
6 **program requirements.**

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

12

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

14

15 Section 1. Findings.

16 (a) The City’s Regional Housing Needs Assessment creates a state-mandated
17 obligation to construct a minimum of 46,000 affordable units by 2030, comprised of at least
18 20,867 units for very low-income households, 12,014 units for low-income households, and
19 13,717 units for moderate-income households.

20 (b) Existing affordable housing programs target funding for very low-income and low-
21 income households, thereby creating a “missing middle” funding gap for middle-income and
22 workforce households.

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1 (c) Middle-income earners such as teachers, healthcare workers, first responders, and
2 public sector employees are vital to the economic and social success of the City, but many
3 middle-income households struggle to find affordable housing in San Francisco.

4 (d) The City suffers from a deficit of affordable housing for many of its residents,
5 including its middle-income residents, despite constructing and preserving more affordable
6 housing per capita than any other city in California.

7 (e) On April 30, 2019, the Board of Supervisors (“Board”) adopted its Resolution No.
8 215-19 to approve the FY 2020-29 Capital Plan and formally recognize housing affordable to
9 low- and moderate-income San Franciscans as integral to the City’s public infrastructure and
10 regular capital planning process.

11 (f) The lack of housing affordable to low- and moderate-income essential workers
12 impacts the City’s economic health, and its resiliency in the face of disaster or other
13 emergencies if first responders cannot afford to live in the City.

14 (g) Market-rate development, which is based on private equity capital’s rates of return,
15 is volatile and tied to economic cycles, and demands rents that leave out middle-income
16 workers from the housing market.

17 (h) The City has an urgent need to address this growing housing affordability crisis for
18 the health, welfare, and safety of its inhabitants.

19 (i) The City is authorized under Section 103 and related provisions of the Internal
20 Revenue Code to issue tax-exempt debt for capital projects with a governmental purpose,
21 including for rental housing projects.

22 (j) The City may also issue tax-exempt debt pursuant to Section 145 and related
23 provisions of the Internal Revenue Code, and loan the proceeds to qualified non-profit entities
24 to acquire, develop, construct, rehabilitate, improve, repair, and equip safe and sanitary
25 affordable housing.

1 **SEC. 43.15.3. FULL AUTHORITY.**

2 *This Article XV is full authority for the issuance of bonds by the City for the purposes described*
3 *herein, and other purposes reasonably related and subordinate to the purposes described herein.*

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5 **SEC. 43.15.4. ADDITIONAL AUTHORITY.**

6 (i) *This Article XV shall be deemed to provide a complete, additional, and alternative*
7 *method for taking the actions authorized thereby, and shall be regarded as supplemental and additional*
8 *to the powers conferred by other laws, including the City's ability to issue debt pursuant to Article*
9 *I of this Chapter 43, and loan the proceeds thereof to an organization of the type described in*
10 *Section 501(c)(3) of the Internal Revenue Code. The issuance of bonds under the provisions of this*
11 *Article need not comply with the requirements of any other law applicable to the issuance of bonds.*

12 (ii) *The purposes authorized hereby may be effectuated and bonds may be issued for any*
13 *such purposes under this Article XV notwithstanding that any other law may provide for such purposes*
14 *or for the issuance of bonds for like purposes and without regard to the requirements, restrictions,*
15 *limitations or other provisions contained in any other law.*

16 (iii) *This Article XV shall not be construed to limit any power the City may have under any*
17 *other State or local law, including the City's ability to issue debt pursuant to Article I of this*
18 *Chapter 43, and loan the proceeds thereof to an organization of the type described in Section*
19 *501(c)(3) of the Internal Revenue Code. Nothing contained in this Article shall be construed to*
20 *prohibit the City from exercising any power granted under any other State or local law.*

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22 **SEC. 43.15.5. DEFINITIONS.**

23 *Unless the context otherwise requires, the terms defined in this Article XV shall have the*
24 *following meanings:*

1 "AMI" (or "Median Income") means the median family income, adjusted for household size, for
2 the San Francisco Metro Fair Market Rent Area published annually by the United States Department of
3 Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.

4 "BMR" means below market rate units.

5 "Bonds" means any bonds, notes, certificates, debentures, leases, or other obligations or
6 evidence of indebtedness issued, incurred, or undertaken by the City pursuant to this Article XV and
7 payable as provided in this Article.

8 "City" means the City and County of San Francisco or any entity controlled by the City and
9 County of San Francisco.

10 "Cost" means the total of all costs incurred by or on behalf of the City to carry out all works
11 and undertakings and to obtain all rights and powers necessary or incident to the acquisition,
12 development, construction, improvement, repair, maintenance, operation, or rehabilitation of a
13 Residence. "Cost" may include all costs of issuance of bonds for such purposes and costs for
14 acquisition, development, construction, improvement, repair, maintenance, operation, or rehabilitation
15 undertaken directly by either the City or a Sponsor.

16 "HUD" means the United States Department of Housing and Urban Development pursuant to
17 Section 8 of the United States Housing Act of 1937.

18 "Indenture" means any indenture, trust agreement, funding loan agreement, pledge and
19 assignment agreement, or other instrument providing for the issuance of and security of bonds.

20 "Median Income" has the same meaning as AMI.

21 "Program Administrator" means the Mayor's Office of Housing and Community Development
22 or its successor agency.

23 "Qualified 501(c)(3) Sponsor" means a Sponsor that has received a determination letter from
24 the Internal Revenue Service qualifying it as an organization of the type described in Section 501(c)(3)
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1 of the Internal Revenue Code, and whose charitable purpose is furthered by the financing, ownership,
2 and operation of a Residence pursuant to this Article XV.

3 "Residence" means real property improved with a structure primarily for residential rental
4 purposes. "Residence" includes real property improved with one or more structures primarily for multi-
5 family residential rental purposes. A Residence may consist of one or more legally subdivided portions
6 of a building and may consist of one or more entire buildings.

7 "Revenues" means any or all of the amounts received by or on behalf of the City: for the
8 payment of principal, interest, and all other charges with respect to a bond or a loan under this Article
9 XV; as payments under a loan, lease, sublease or sale agreement with respect to a Residence; as
10 proceeds received by the City from mortgage, hazard, or other insurance with respect to a Residence or
11 with respect to such a loan (or any property securing such loan), lease, sublease, or sale agreement; all
12 rents, charges, fees, income, and receipts derived by the City from the ownership, operation, or
13 disposition of a Residence; all other rents, charges, fees, income, and receipts derived by the City from
14 the financing of a Residence under this Article XV; any amounts received by the City as investment
15 earnings on moneys deposited in any fund securing bonds and such other legally available moneys; in
16 each case as the same may be pledged or assigned by the City as security for the payment of bonds
17 pursuant to an ordinance, or to any indenture or other financing document authorized by such
18 ordinance .

19 "Sponsor" means any individual, association, corporation, partnership, or other entity which is
20 approved by the City to undertake the acquisition, building, development, construction, rehabilitation,
21 improvement, management, or operation of a Residence pursuant to this Article XV.

22 "Stabilized Occupancy" means the point in time at which (1) all income-restricted units are
23 occupied for the first time, for a new construction Residence acquired or developed with proceeds of
24 bonds, (2) all income-restricted units are occupied for the first time after acquisition of the Residence,
25 for an existing Residence acquired without existing tenants or with tenants to be permanently relocated,

1 or (3) all income-restricted units with existing over-income tenants upon acquisition of the Residence
2 have vacated such units and have been replaced with new tenants, for an existing Residence acquired
3 with existing tenants who will not be permanently relocated.

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5 **TITLE 2 - - RESIDENCES**

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7 **SEC. 43.15.6. LOANS TO QUALIFIED 501(c)(3) SPONSORS.**

8 The City may use the proceeds of bonds to make, purchase, or otherwise contract for the
9 making of, a mortgage loan or other secured loan to a Qualified 501(c)(3) Sponsor, upon such terms
10 and conditions as the City shall deem proper, for the Costs of a Residence.

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12 **SEC. 43.15.7. SURPLUS REVENUES.**

13 Subject to regulations approved by the Citywide Loan Committee pursuant to Section 43.15.13,
14 surplus revenues of a Residence shall be deposited into the Housing Trust Fund, established pursuant
15 to Charter Section 16.110.

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17 **SEC. 43.15.8. AFFORDABILITY REQUIREMENTS.**

18 Residences financed under this Article XV shall meet all the following affordability
19 requirements:

20 (a) The Sponsor, or any other owner of a Residence that is not the City, shall enter into a
21 regulatory agreement with the City for the life of the Residence to restrict occupancy of units to tenants
22 with household income not to exceed 120% of AMI, and monthly rent not to exceed one-twelfth of 30%
23 of 120% of AMI. Nothing in this Article XV shall limit the Board from requiring household incomes and
24 corresponding rent maximums to be lower than the preceding sentence.

1 **(b) Initial rents for qualified households shall not exceed the lesser of: (1) 30% of one-**
2 **twelfth of the applicable annual income limit, or (2) at the election of the Sponsor, either (A) 15%**
3 **below comparable market rent as established by a third-party market study accepted by the City, or (B)**
4 **the average 10% below Small Area Fair Market Rents established by HUD.**

5 **(c) Average income at Stabilized Occupancy in each Residence must be no greater than**
6 **100% of Median Income. Average rents at Stabilized Occupancy in each Residence must be no greater**
7 **than 30% of such average income limit.**

8 **(d) In instances of acquisition, no existing residents shall be involuntarily displaced. Units**
9 **will be made available to households meeting the income restrictions applicable to the Residence upon**
10 **voluntary vacancy of each such unit. Any existing tenants who elect to income-certify after the**
11 **acquisition of a Residence will have their rent adjusted to the applicable affordability levels. If a**
12 **Residence is subject to Administrative Code Chapter 37 (the Residential Rent Stabilization and**
13 **Arbitration Ordinance, or “Rent Ordinance”) prior to acquisition, units will continue to be subject to**
14 **the Rent Ordinance and excluded from the regulatory agreement until the earlier of: (1) the existing**
15 **tenant voluntarily vacating the unit, or (2) the existing tenant income-certifying and executing a new**
16 **lease under the requirements of the regulatory agreement.**

17 **(e) Annual rent increases shall not exceed the lesser of the annual percentage change of**
18 **100% of AMI from the previous year or 4% of the existing rent.**

19
20 **SEC. 43.15.9. RENTS AND CHARGES.**

21 **The City may fix rents, payments, fees, charges, and interest rates for financing under this**
22 **Article XV and may agree to revise from time to time such rents, payments, fees, charges, and interest**
23 **rates to reflect changes in interest rates on bonds, losses due to defaults, or changes in other expenses**
24 **related to this Article, including City administrative expenses, in each case subject to Section 43.15.8**
25 **and other applicable laws.**

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2 **SEC. 43.15.10. SECURITY FOR BONDS OR LOANS TO QUALIFIED 501(c)(3)**

3 **SPONSORS.**

4 *The City may grant deeds of trust or mortgages as security for repayment of bonds, and may*
5 *hold deeds of trust as security for loans made to Qualified 501(c)(3) Sponsors under this Article XV,*
6 *and may pledge or assign the same as security for repayment of bonds. Such deeds of trust, mortgages*
7 *or security interests, or any other interest of the City in any Residence, may be assigned to, and held on*
8 *behalf of the City by, any bond purchaser, collateral agent, or bank or trust company appointed to act*
9 *as trustee by the City in any ordinance or indenture providing for the issuance of bonds.*

10
11 **SEC. 43.15.11. PROFESSIONAL SERVICES.**

12 *The City may contract for such housing development services, construction management,*
13 *engineering, architectural, financial, accounting, property management, asset management, appraisal,*
14 *consulting, or other professional services as may be necessary in the judgment of the City to further the*
15 *purposes of this Article XV.*

16
17 **SEC. 43.15.12. PUBLIC WORKS REQUIREMENTS INAPPLICABLE; PUBLIC POWER.**

18 *(a) Except as specifically provided in this Article XV, the acquisition, development,*
19 *construction, improvement, repair, maintenance, or rehabilitation of a Residence financed under this*
20 *Article shall not be subject to any requirements relating to buildings, works, or improvements owned or*
21 *operated by the City under Administrative Code Chapter 6; and any requirement of public competitive*
22 *bidding or other procedural restriction imposed on the award of contracts for acquisition,*
23 *development, construction, improvement, repair, maintenance, or rehabilitation of a City building,*
24 *work, or improvement or to the lease, sublease, sale, or other disposition of City property under*
25 *Chapter 6 shall not be applicable to any action taken under this Article.*

1 **(b) The Public Utilities Commission shall supply electricity to a Residence financed**
2 **pursuant to this Article XV unless the Program Administrator determines, based on the feasibility**
3 **assessment described in Administrative Code Section 99.2, that the cost of City electricity service**
4 **imposes significant additional capital or operating costs to the acquisition, development,**
5 **improvement, repair, maintenance, rehabilitation, construction, or operation of such**
6 **Residence.**

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8 **SEC. 43.15.13. PROGRAM ADMINISTRATOR; REGULATIONS.**

9 **(a) The Program Administrator is responsible for the administration of this Article XV,**
10 **subject to any rules and regulations promulgated, pursuant to this Article. The Program Administrator,**
11 **in consultation with the Controller's Office of Public Finance, shall prepare and submit to the Citywide**
12 **Loan Committee for approval, rules and regulations permitted under this Article, including but not**
13 **limited to rules and regulations for underwriting standards, surplus revenues, credit enhancement, and**
14 **Sponsor fees.**

15 **(b) Regulations for Income Certification Process.**

16 **(1) Incomes shall be certified only through providing one year's tax returns and a**
17 **voluntary statement of assets, except as otherwise required by a public subsidy.**

18 **(2) Initial credit and rental background checks shall be conducted concurrently**
19 **with initial income certification.**

20 **(3) Applicants shall be approved or denied within 20 business days of a**
21 **determination of preference made pursuant to Administrative Code Chapter 47.**

22 **(4) Recertification shall be limited to once every five years, unless otherwise**
23 **required by law.**

1 Article XVI of the California Constitution. Bonds issued under the provisions of this Article XV shall
2 not be deemed to constitute a debt or liability of the City or a pledge of the faith and credit of the City
3 but shall be payable solely from specified Revenues, moneys, and assets. The issuance of bonds shall
4 not directly, indirectly, or contingently obligate the City to levy or pledge any form of taxation or to
5 make any appropriation for their payment.

6 (b) All bonds shall contain on their face a statement to the following effect: Neither the faith
7 and credit nor the taxing power of the City is pledged to the payment of the principal of or premium or
8 interest on this bond.

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10 **SEC. 43.15.17. COST OF ISSUANCE; RESERVE FUNDS; CAPITALIZED BOND**

11 **INTEREST.**

12 In determining the amount of bonds to be issued, the City may include all costs of the issuance
13 of such bonds, reserve funds, and capitalized bond interest.

14
15 **SEC. 43.15.18. LEGISLATION AND BOND TERMS.**

16 (a) Notwithstanding any other ordinance, the Board of Supervisors by ordinance may take
17 any and all actions necessary to authorize, issue, and repay the bonds, including, but not limited to,
18 modifying schedules of rents, loan payments, rates, and charges to provide for the payment and
19 retirement of such bonds.

20 (b) Bonds may be issued as serial bonds, term bonds, finance leases, installment payment
21 obligations, loans, notes, certificates of participation, or pass-through certificates, or any combination
22 thereof. Bonds shall be authorized by ordinance by the Board of Supervisors and shall bear such date
23 or dates; mature at such time or times; bear interest at such fixed or variable rate or rates; be payable
24 at such time or times; be in such denominations; be in such form, either coupon or registered; carry
25 such registration privileges; be executed in such manner; be payable in lawful money of the United

1 States of America at such place or places; and be subject to such terms of redemption and have such
2 other terms and conditions as such ordinance, or any indenture authorized by such ordinance to be
3 entered into by the City, may provide. Bonds may be sold at either public or private sale and for such
4 prices as the City shall determine. Interest on bonds may be excluded or included from gross income of
5 the owners thereof for federal income tax purposes.

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7 **SEC. 43.15.19. BOND PROVISIONS.**

8 Any ordinance authorizing any bonds or any issue of bonds, or any indenture authorized by
9 such ordinance to be entered into by the City, may contain provisions respecting any of the following
10 terms and conditions, which shall be a part of the contract with the holders of such bonds:

11 (a) The terms, conditions, and form of such bonds and the interest and principal to be paid
12 thereon;

13 (b) Limitations on the uses and purposes to which the proceeds of sale of such bonds may be
14 applied, and the pledge or assignment of such proceeds to secure the payment of such bonds;

15 (c) Limitations on the issuance of additional parity bonds, the terms upon which additional
16 parity bonds may be issued and secured, and the refunding of outstanding bonds;

17 (d) The setting aside of reserves, sinking funds, and other funds and the regulation and
18 disposition thereof;

19 (e) The pledge or assignment of all or any part of the Revenues and of any other moneys or
20 assets legally available therefor and the use and disposition of such Revenues, moneys, and assets;

21 (f) Limitation on the use of Revenues for operations, administration, or other expenses of
22 the City;

23 (g) Investment of Revenues and the proceeds of bonds;
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1 (h) Specification of the acts or omissions to act which shall constitute a default in the duties
2 of the City to holders of such bonds, and providing the rights and remedies of such holders in the event
3 of default, including any limitations on the right of action by individual bondholders;

4 (i) The appointment of a corporate trustee to act on behalf of the City and the holders of its
5 bonds, the pledge or assignment of loans, deeds of trust, mortgages, leases, subleases, sale contracts,
6 and any other contracts to such trustee, and the rights of such trustee;

7 (j) The procedure, if any, by which the terms of any contract with bondholders may be
8 amended or abrogated, the amount of such bonds the holders of which must consent thereto, and the
9 manner in which such consent may be given; and

10 (k) Any other provisions which the Board of Supervisors by ordinance may deem
11 reasonable and proper for the purposes of this Article XV and the security of the bondholders.

12
13 **SEC. 43.15.20. PLEDGE OF REVENUES, MONEY OR ASSETS; LIEN.**

14 Any pledge of Revenues or other moneys or assets pursuant to this Article XV shall be valid and
15 binding from the time such pledge is made. Revenues, moneys, and assets so pledged and thereafter
16 received by the City shall immediately be subject to the lien of such pledge without any physical
17 delivery thereof or further act; and the lien of any such pledge shall be valid and binding as against all
18 parties having claims of any kind in tort, contract, or otherwise against the City, irrespective of
19 whether such parties have notice thereof. Neither the ordinance, nor any indenture by which a pledge is
20 created need be filed or recorded except in the records of the Clerk of the Board of Supervisors.

21
22 **SEC. 43.15.21. NO PERSONAL LIABILITY.**

23 Neither the members of the Board of Supervisors, the officers or employees of the City, nor any
24 person executing any bonds shall be liable personally on the bonds or be subject to any personal
25 liability or accountability by reason of the issuance thereof.

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SEC. 43.15.22. PURCHASE OF BONDS BY CITY.

The City shall have the power out of any funds available therefor to purchase its bonds. The City may hold, pledge, cancel, or resell such bonds, subject to and in accordance with agreements with the bondholders.

SEC. 43.15.23. REFUNDING BONDS.

The City may issue bonds under this Article XV for the purpose of refunding any bonds then outstanding.

SEC. 43.15.24. VALIDITY OF BONDS.

The validity of the authorization and issuance of any bonds is not dependent on and shall not be affected in any way by any proceedings taken by the City for the approval of any financing or the entering into of any agreement, or by the failure to provide financing or enter into any agreement, for which bonds are authorized to be issued under this Article XV.

TITLE 4 - - SUPPLEMENTAL PROVISIONS

SEC. 43.15.25. LIBERAL CONSTRUCTION.

This Article XV, being necessary for the welfare of the City and its inhabitants, shall be liberally construed to effect its purposes.

SEC. 43.15.26. OMISSIONS NOT TO AFFECT VALIDITY OF BONDS.

Any omission of any officer or the City in proceedings under this Article XV or any other defect in the proceedings shall not invalidate such proceedings or the bonds issued pursuant to this Article.

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SEC. 43.15.27. ARTICLE CONTROLLING.

To the extent that the provisions of this Article XV are inconsistent with the provisions of any other ordinance, the provisions of this Article shall be deemed controlling.

SEC. 43.15.28. SEVERABILITY.

If any part of this Article XV or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, such invalidity shall not affect any other part or application of this Article which can be given effect without the invalid part or application; and to this end the provisions of this Article are declared to be severable. The Board of Supervisors hereby declares that, regardless of such a holding, it would have adopted and passed this Article and each title, section, subsection, sentence, clause, phrase, and word therein, and application thereof, unaffected by such a holding.

Section 3. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor’s veto of the ordinance.

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: /s/ KENNETH D. ROUX
KENNETH D. ROUX
Deputy City Attorney

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