

1 [Initiative Ordinance - Planning Code - City Housing Balance Requirement]

2  
3 **Motion ordering submitted to the voters an Ordinance amending the Planning Code to**  
4 **establish in the approval and construction of new housing, a balance of 70%-30%**  
5 **between market rate housing and affordable housing; and to require a conditional use**  
6 **permit for new market rate housing if the balance of affordable housing is not**  
7 **maintained, at an election to be held on November 4, 2014; and making environmental**  
8 **findings.**

9  
10 MOVED, That the Planning Department has determined that the actions contemplated  
11 in this ordinance comply with the California Environmental Quality Act (California Public  
12 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the  
13 Board of Supervisors in File No. 140740 and is incorporated herein by reference; and be it

14 MOVED, That the Board of Supervisors hereby submits the following ordinance to the  
15 voters of the City and County of San Francisco, at an election to be held on November 4,  
16 2014.

17  
18 **Ordinance amending the Planning Code to establish, in the approval and construction**  
19 **of new housing, a balance of 70%-30% between market rate housing and affordable**  
20 **housing; and to require a conditional use permit for new market rate housing if the**  
21 **balance of affordable housing is not maintained.**

22 NOTE: **Unchanged Code text and uncodified text** are in plain font.  
23 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
24 **Deletions to Codes** are in ~~strikethrough italics Times New Roman font~~.  
25 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code subsections or parts of tables.

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

2 Section 1. The Planning Code is hereby amended by adding new Subsection 303(q),  
3 to read as follows:

4 **SEC. 303. CONDITIONAL USES.**

5 \* \* \* \*

6 (q) Citywide Housing Balance.

7 (1) Findings and Purpose.

8 (A) The City's rent-controlled and permanently affordable housing stock serves  
9 very low, low, and moderate income families, long-time residents, elderly seniors and disabled persons,  
10 and others who cannot affordable market rate housing. The City seeks to preserve the balance between  
11 market rate housing production and affordable housing production because decent housing for every  
12 San Franciscan is of vital importance. Attainment of the City's housing goals requires the cooperative  
13 participation of government and the private sector to expand housing opportunities for San  
14 Franciscans at all economic levels.

15 (B) The purpose of this citywide housing balance requirement is to encourage a  
16 balanced approach in the permitting and construction of new affordable and market rate housing  
17 citywide; to ensure new housing is available to all income levels and housing need types; to preserve  
18 the mixed income character of the City and its neighborhoods; to offset the withdrawal of existing  
19 housing units from rent stabilization; to ensure the availability of land and encourage the deployment  
20 of resources to provide sufficient housing affordable to households of very low, low, and moderate  
21 incomes; to ensure adequate housing for families, seniors and the disabled community; to ensure that  
22 data related to meeting citywide affordable housing targets and to affordable housing production by  
23 Planning Neighborhood informs the approval process for new housing development; and to enable  
24 public participation in determining the appropriate mix of new housing approvals.

1                                (C) For tenants in unsubsidized housing, affordability is often preserved by the  
2       San Francisco Residential Rent Stabilization and Arbitration Ordinance, San Francisco Administrative  
3       Code Chapter 37 et seq., limitations on the size of allowable rent increases during a tenancy. As  
4       documented in the "Budget and Legislative Analyst's October 2013 Policy Analysis Report on Tenant  
5       Displacement," San Francisco has been and is experiencing a rise in the number of units withdrawn  
6       from rent control. Such rises often accompany periods of sharp increases in property values and  
7       housing prices. From 1998 through 2013, citywide a total of 13,027 no-fault evictions (i.e., evictions in  
8       which the tenant had not violated any lease terms, but the owner sought to regain possession of the  
9       unit) were reported by the Rent Board. Total evictions of all types have increased by 38.2% between  
10       Rent Board Years (i.e., March through February) 2010-2013. These numbers do not capture the large  
11       number of owner buyouts of tenants, which the City does not record and which contribute further to the  
12       loss of rent-controlled units from the housing market. Units withdrawn from rent control need to be  
13       incorporated into calculations of the affordable housing performance citywide.

14                              (D) Pursuant to Government Code Section 65584, the Association of Bay Area  
15       Governments (ABAG), in coordination with the California State Department of Housing and  
16       Community Development (HCD), determines the Bay Area's regional housing need based on regional  
17       trends, projected job growth, and existing needs. The regional housing needs assessment (RHNA)  
18       determination includes production targets addressing housing needs of a range of household income  
19       categories. ABAG has projected that at least 39% of new housing demands will be from low and very  
20       low income households (households earning under 80% of area median income), and another 22%  
21       should be affordable to households of moderate means (earning between 80% and 120% of area  
22       median income). The remaining 39% of housing demand is driven by households making at or above  
23       120% of median income.

24                              (E) Objective 1 of the San Francisco Housing Element states that the City  
25       should "identify and make available for development adequate sites to meet the City's housing needs,

1 especially permanently affordable housing." Objective 7 states that San Francisco's projected  
2 affordable housing needs far outpace the capacity for the City to secure subsidies for new affordable  
3 units.

4 (F) In 2012, the City enacted the "Housing Preservation and Production  
5 Ordinance," Ordinance No. 237-12, codified in Administrative Code Section 10E.4, to require  
6 Planning Department staff to regularly report data on progress toward meeting San Francisco's  
7 quantified production goals for different household income levels as provided in the General Plan's  
8 Housing Element. The data on the number of units in all stages of the housing production process at  
9 various affordability levels is required to be included in staff reports on all proposed projects of five  
10 residential units or more and in quarterly housing production reports to the Planning Commission.  
11 Planning Department staff has long tracked the number of affordable housing units and total number of  
12 housing units built throughout the City and in specific areas. As the private market has embarked  
13 upon, and City officials have urged, an ambitious program to produce significant amounts of new  
14 housing in the City, recognizing that there is limited remaining available land, it is essential to assess  
15 the impact of the approval of new housing developments on the availability of land for affordable  
16 housing development and to encourage the deployment of resources to provide affordable housing.

17 (2) Definitions. For purposes of this Planning Code Subsection 303(q), the following  
18 definitions shall apply:

19 "Affordable housing" is housing affordable to households of very low, low or moderate  
20 income.

21 "Cumulative housing balance ratio" shall be the proportion of all new housing units  
22 affordable to households of very low, low or moderate income households to the total number of  
23 housing units for a Housing Balance period of ten years, beginning with year 2006 and up to ten years  
24 following that date, prior to the most recent calendar quarter. The calculation of housing units shall  
25 include all units in projects that have been constructed or obtained a site or building permit within the

1 Housing Balance period. The calculation of affordable housing units shall include all new units in 100  
2 percent affordable housing projects that have been entitled, obtained a site or building permit, or have  
3 been constructed, existing units that were previously not restricted by deed or regulatory agreement  
4 that acquired for preservation as permanently affordable housing at the time of acquisition as  
5 determined by MOHCD, all on-site and off-site inclusionary units as defined in Planning Code Section  
6 415 et seq. that have been constructed or obtained a site or building permit, minus the number of  
7 affordable housing units that may have been lost, including but not limited to those units withdrawn  
8 from rent control (except those units otherwise converted into permanently affordable housing), within  
9 the Housing Balance period. Notwithstanding the foregoing, the calculation of affordable housing units  
10 may include all new units in 100 percent affordable housing projects that obtained site control as  
11 determined by MOHCD; however affordable units counted as “site control” but not entitled within six  
12 years, may no longer be used for the calculation of the cumulative housing balance ratio, and may not  
13 be counted again once they obtain entitlements or permits. The Housing Balance ratio shall be  
14 expressed as a percentage, obtained by dividing the affordable housing units by the total number of  
15 new housing units within the Housing Balance period. The Board of Supervisors, by legislation, may  
16 revise this methodology to determine the cumulative housing balance.

17 “Households of very low, low, or moderate income” are households earning up to 120  
18 percent of Area Median Income, as defined in Charter Section 16.110(b).

19 “MOHCD” is the Mayor’s Office of Housing and Community Development, or its  
20 successor agency.

21 “Unit withdrawn from rent control” is a unit that has been subject to rent control under  
22 the San Francisco Residential Rent Stabilization and Arbitration Ordinance but that a property owner  
23 removes permanently from the rental market through: (a) condominium conversion pursuant to  
24 Administrative Code Section 37.9(a)(9), (b) demolition or permanent removal pursuant to  
25

1 Administrative Code Section 37.9(a)(10), or (c) the Ellis Act pursuant to Administrative Code Section  
2 37.9(a)(13). It shall not include removal through Administrative Code Section 37.9(a)(8).

3 (3) **Conditional Use Authorization Required.** Approval of a conditional use shall be  
4 required for any housing project when the Planning Department determines that the City's cumulative  
5 housing balance ratio, as defined herein, is less than 30 percent at the time of the project's  
6 Environmental Application. The following projects are exempted from this requirement: housing  
7 projects with less than 25 units; housing projects that use California Debt Limit Allocation Committee  
8 (CDLAC) tax-exempt bond financing and four percent tax credits under the Tax Credit Allocation  
9 Committee (TCAC) and in which not less than 20 percent of the on-site units are affordable housing;  
10 additions to existing buildings; rehabilitations of historic buildings; affordable housing as defined in  
11 this Subsection; and projects within any area subject to a Development Agreement that already  
12 requires an overall minimum of 30 percent of units to be affordable to very low, low, and moderate  
13 income households. Property located in a Redevelopment Area or on Treasure Island shall be included  
14 in the calculation of the cumulative housing balance ratio, but the conditional use permit requirements  
15 set forth in this Subsection 303(q) shall not apply to such property as long as the applicable  
16 Redevelopment Plan or Treasure Island Development Agreement remain in effect.

17 Whether a project is subject to a Conditional Use requirement under this Section 303(q) shall  
18 be determined at the time the Environmental Application for the project is submitted to the Department  
19 of Building Inspection or the Planning Department. If a project has submitted an Environmental  
20 Application prior to January 1, 2015, such project shall not be subject to the provisions of this  
21 Subsection 303(q).

22 If the Planning Department is unable to ascertain the most recent quarter's current ratio or has  
23 not made public the Housing Balance report for the quarter, a Conditional Use authorization shall be  
24 required for any proposed housing project filing an Environmental Application in that quarter, except  
25

1 those market rate projects otherwise exempt from this Subsection 303(q), until such a time as an  
2 updated Cumulative Housing Balance Ratio is made public by the Planning Department.

3 (4) **Conditional Use Authorization Criteria.** In addition to the applicable criteria set  
4 forth in Section 303 and, if applicable, Section 316, as such sections may be amended from time to  
5 time, the Planning Commission shall consider the following criteria when it considers approval of a  
6 conditional use for a housing project: a) whether, and to what extent, approval of the project, in  
7 conjunction with projects previously entitled will cause or exacerbate the displacement of households  
8 of very low, low, or moderate income, senior, family, disabled or other special needs populations from  
9 the immediate neighborhood, either by displacing their existing housing, or by contributing to  
10 economic conditions (including but not limited to rising housing costs) that make it infeasible for very  
11 low, low or moderate incomes residents to continue to reside in the City and/ or the immediate  
12 neighborhood; and b) notwithstanding the above considerations, any project that provides affordable  
13 housing units in addition to the amount required by the base zoning, through such mechanisms as a  
14 density bonus, zoning incentives or off-site partnership with an affordable housing developer, shall be  
15 presumed to meet the criteria of this subsection for approval .

16 In granting any conditional use, the Planning Commission shall make an explicit finding  
17 that, despite any citywide failure to have authorized sufficient affordable housing units and secured  
18 sufficient development sites to meet the City's fair share of the Regional Housing Needs Allocation and  
19 the quantified housing production goals of the City's General Plan Housing Element and/or to meet the  
20 City's cumulative housing balance ratio target of at least 30 percent, and despite any impact the  
21 proposed project may have on displacing households of very low, low, or moderate income from the  
22 immediate neighborhood, the project nonetheless promotes the general health and welfare in the City.  
23 Any additional conditional use criteria related to this Subsection 303(q) can be added by legislative  
24 action by the Board of Supervisors.

1                   **(5) Department Reports.** *Within 30 days of the effective date of the Initiative Ordinance*  
2 *creating this Subsection 303(q), Planning Department staff shall calculate the cumulative housing*  
3 *balance ratio for the most recent quarter citywide, by Supervisorial District and by immediate Planning*  
4 *Neighborhood, report it to the Planning Commission and Board of Supervisors as the Housing Balance*  
5 *Report, and publish it on the Planning Department's website on a page devoted to housing balance.*  
6 *With each new project authorization in the City, Planning Department staff shall continuously update*  
7 *the cumulative housing balance ratio, and within 15 days of the end of each calendar quarter shall*  
8 *report on the Cumulative Housing Balance citywide, by Supervisorial District, and by Planning*  
9 *Neighborhood, to the Planning Commission and Board of Supervisors, along with the other quarterly*  
10 *reporting requirements of Administrative Code section 10E.4(b)(2), and publish it on the Planning*  
11 *Department's website on a page devoted to housing balance. The Housing Balance Report shall be*  
12 *incorporated into the Annual Planning Commission Housing Hearing and Annual Report to the Board*  
13 *of Supervisors required in Administrative Code Chapter 10E.4.*

14                   **(6) City's contribution of funds to the Mayor's Office of Housing and Community**  
15 **Development.** *If the cumulative housing balance falls below 30 percent in any given quarter, the City*  
16 *shall consider the option of contributing additional funds to MOHCD or its successor agency in order*  
17 *to fund development of new affordable units, in order to maintain the cumulative housing balance at or*  
18 *above the 30 percent threshold. This contribution of additional funds can only be used for sites/units that*  
19 *are not counted in the cumulative balance ratio. Following a contribution, the calculation of affordable*  
20 *housing units for the purpose of the cumulative housing balance shall be increased by a number equal*  
21 *to the contribution divided by the average per unit contribution by MOHCD to each 100% new*  
22 *construction affordable housing project funded in whole or in part by MOH over the past 6 years. Any*  
23 *unit that is not currently included within the affordable housing calculation and whose site control*  
24 *and/or development has been funded by this contribution shall not be included in future calculations of*  
25



1 affordable housing units. The Board of Supervisors may amend this subsection (6) from time to time by  
2 legislation.

3  
4 APPROVED AS TO FORM:

5 DENNIS J. HERRERA, City Attorney

6  
7 By: \_\_\_\_\_

JUDITH A. BOYAJIAN  
Deputy City Attorney

8  
9 n:\legana\as2014\1400140\00934670.doc