

1 [Planning Code - Affordable Housing in Divisadero and Fillmore Neighborhood Commercial  
2 Transit Districts]

3 **Ordinance amending the Planning Code to require payment of a higher affordable**  
4 **housing fee or provide additional affordable housing for certain sites that obtained**  
5 **higher residential development potential as a result of the rezoning of the Divisadero**  
6 **Street Neighborhood Commercial Transit District and the Fillmore Street Neighborhood**  
7 **Commercial Transit District; affirming the Planning Department’s determination under**  
8 **the California Environmental Quality Act; and making findings of consistency with the**  
9 **General Plan, Planning Code, Section 302, and the eight priority policies of Planning**  
10 **Code, Section 101.1.**

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

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

19 Section 1. Findings.

20 (a) The Planning Department has determined that the actions contemplated in this  
21 ordinance comply with the California Environmental Quality Act (California Public Resources  
22 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
23 Supervisors in File No. 151258 and is incorporated herein by reference. The Board affirms  
24 this determination.

25 (b) Pursuant to Planning Code Section 302, this Board finds that the actions  
contemplated in this ordinance will serve the public necessity, convenience, and welfare for

1 the reasons set forth in Planning Commission Resolution No. \_\_\_\_\_ and the Board  
2 incorporates such reasons herein by reference. A copy of the Planning Commission  
3 Resolution No. \_\_\_\_\_ is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_.

4 (c) On \_\_\_\_\_, 2016, the Planning Commission, in Resolution No. \_\_\_\_\_, adopted  
5 findings that the actions contemplated in this ordinance are consistent, on balance, with the  
6 City’s General Plan and eight priority policies of Planning Code Section 101.1. The Board  
7 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the  
8 Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.

9 (d) The City adopted legislation rezoning the area along Divisadero Street between  
10 Haight and O’Farrell Streets to become the Divisadero Neighborhood Commercial Transit  
11 District (“NCT”) in Ordinance No. 127-15 in August 2015, and the area along Fillmore Street  
12 between Bush and McAllister Streets to become the Fillmore NCT in Ordinance No. 126-15 in  
13 August 2015. The rezoning for both NCTs removed any residential density limits based on lot  
14 area, and instead restricted residential uses by physical envelope controls like height, bulk  
15 and setback requirements for each site. This removal of density limits based on lot areas  
16 should afford for greater development on certain sites within each NCT.

17 (e) On November 6, 2012, the voters adopted Proposition C (“Prop C”), The Housing  
18 Trust Fund, which is set forth in San Francisco Charter Section 16.110. Prop C established a  
19 limitation on the Inclusionary Housing Cost Obligation that the City could impose on  
20 residential development projects. Prop C set forth certain exceptions to this limitation,  
21 including but not limited to circumstances in which a project receives a 20% or greater  
22 increase in developable residential uses, as measured by a change in height limits, Floor Area  
23 Ratio limits, or use, over prior zoning, or a 50% or greater increase in residential densities  
24 over prior zoning, through a special use district or other local legislation adopted after  
25

1 November 6, 2012. The Divisadero Street NCT and the Fillmore Street NCT rezonings were  
2 adopted after this date.

3 (f) The City conducted a Nexus Study, performed by Keyser Marston and Associates,  
4 in support of the Inclusionary Affordable Housing Program, or an analysis of the impact of  
5 development of market rate housing on affordable housing supply and demand. The Board of  
6 Supervisors reviewed that nexus study and staff analysis and report of the study and, on that  
7 basis, found that the study supported the inclusionary affordable housing requirements  
8 combined with the additional affordable housing fee set forth in Planning Code Sections 415  
9 *et seq.*, prior to enactment of Prop C. The City is now in the process of updating this nexus  
10 analysis, and the updated nexus analysis is expected to demonstrate a nexus for an  
11 affordable housing fee of approximately 33% for condominium units and from 27% - 28% for  
12 rental housing. The City's Inclusionary Housing Program is not subject to the requirements of  
13 the Mitigation Fee Act, Government Code Sections 66000 *et seq.* Nevertheless, as an  
14 additional support measure, the City prepared a nexus study consistent with the Mitigation  
15 Fee Act to determine whether the Inclusionary Affordable Housing Program was supported by  
16 such analysis.

17 (g) The 2015 rezoning of the Divisadero and Fillmore NCTs will allow a 20% or greater  
18 increase in developable residential density, as measured by a change in height limits, Floor  
19 Area Ratio limits, or use, over prior zoning, on certain sites contained within the two NCTs.  
20 Prop C would allow imposition of a higher Inclusionary Housing Cost Obligation because the  
21 rezoning took place after November 6, 2012 and results in higher development potential for  
22 certain sites located within both NCTs.

23  
24 Section 2. The Planning Code is hereby amended by adding Section 428, including  
25 Sections 428.1, 428.2, 428.3, 428.4, and 428.5, to read as follows:

1           **SEC. 428. DIVISADERO STREET NCT AND FILLMORE STREET NCT AFFORDABLE**  
2 **HOUSING FEE AND REQUIREMENTS.**

3           Sections 428.1 through 428.5, hereafter referred to as Section 428.1 et seq., set forth the  
4 requirements and procedures for the Divisadero Street and Fillmore Street Neighborhood Commercial  
5 Transit Districts Affordable Housing Fee.

6           **SEC. 428.1. FINDINGS.**

7           The Board of Supervisors hereby finds that:

8           (a) The additional affordable housing fee requirement of this Section 428.1 et seq. is supported  
9 by the Nexus Study performed by Keyser Marston and Associates referenced in Planning Code Section  
10 415.1(11) and found in Board File No. 081152. The Board of Supervisors has reviewed the study and  
11 staff analysis and report of the study and, on that basis, finds that the study supports the current  
12 inclusionary affordable housing requirements combined with the additional affordable housing fee and  
13 requirements set forth in this Section 428.1 et seq. Specifically, the Board finds that the study: (1)  
14 identifies the purpose of the additional fee and requirements to mitigate impacts on the demand for  
15 affordable housing in the City; (2) identifies the use to which the additional fee would be put as being  
16 to increase the City's affordable housing supply; and (3) establishes a reasonable relationship between  
17 the use of the additional fee for affordable housing and the need for affordable housing and the  
18 construction of new market rate housing. The study identified a different nexus for ownership housing  
19 and rental housing, and the City has consistently determined not to treat the two kinds of housing  
20 differently. Thus the affordable housing fee and requirements are based upon the nexus for rental  
21 housing. Moreover, the current inclusionary affordable requirements combined with the additional fee  
22 provided herein are less than the cost of mitigation, as identified in the nexus study, and determines  
23 that this amount provides a margin for possible calculation differences among projects and analyses.  
24 The affordable housing fee and requirements do not include the costs of remedying any existing  
25 deficiencies and do not duplicate other City requirements or fees.

1 (b) An account has been established, funds appropriated, and a construction schedule adopted  
2 for affordable housing projects funded through the Inclusionary Affordable Housing Program. The  
3 Affordable Housing Fee will reimburse the City for expenditures on affordable housing that have  
4 already been made and that will be made in the future.

5 (c) A major objective of the Divisadero Street and Fillmore Street NCTs, set forth in Planning  
6 Code Sections 746 and 747, respectively, is to encourage and promote development that enhances the  
7 walkable, mixed-use character of the corridor and surrounding neighborhoods and to encourage  
8 housing development in new buildings above the ground floor. New market rate housing development  
9 could outnumber both the number of units and potential new sites within the area for permanently  
10 affordable housing opportunities. The City has adopted a policy in its General Plan to meet the  
11 affordable housing needs of its general population and to require new housing development to produce  
12 sufficient affordable housing opportunities for all income groups, both of which goals are not likely to  
13 be met by the potential housing development in the area. In addition, the Nexus Study indicates that  
14 market rate housing itself generates additional lower income affordable housing needs for the  
15 workforce needed to serve the residents of the new market rate housing proposed for the area. To meet  
16 the demand created for affordable housing by the Divisadero Street NCT and Fillmore Street NCT  
17 zoning and to be consistent with the policy of the City, additional affordable housing requirements  
18 should be included for all market rate housing development in these NCTs, with priority for its use  
19 being given to the area.

20 (d) The Divisadero Street NCT and Fillmore Street NCT rezonings will allow greater  
21 residential development on certain sites within the NCTs, and the amount of the Inclusionary Housing  
22 Cost Obligation may be increased consistent with Charter Section 16.110 if the City determines that a  
23 site within the NCTs would allow greater residential development, consistent with the exceptions set  
24 forth in Charter Section 16.110(h)(1)(B).

1           **SEC. 428.2. DEFINITIONS.**

2           See Section 401 of this Article.

3           **SEC. 428.3. APPLICATION OF AFFORDABLE HOUSING FEE REQUIREMENT.**

4           (a) **Applicability.** In the event that the Planning Department determines that the residential  
5 development potential on a site within the Divisadero Street NCT or the Fillmore Street NCT has been  
6 increased through the adoption of the NCT rezoning set forth in Ordinance Nos. 126-15 and 127-15  
7 consistent with certain exceptions set forth in Charter Section 16.110(h)(1)(B), the requirements of  
8 Planning Code Sections 415.1 through 415.9 shall apply, except that the following affordable housing  
9 requirements shall be applied to such residential development:

10                   (1) **Fee.** For a development project that is subject to the Residential Inclusionary  
11 Affordable Housing Program, the development project shall pay an affordable housing fee equivalent  
12 to a requirement to provide 25% of the units in the principal project as affordable units, using the  
13 method of fee calculation set forth in Section 415.5(b).

14                   (2) **On-Site Housing.** If the project sponsor of a housing development project elects to  
15 construct units affordable to qualifying households on-site of the principal project as set forth in  
16 Section 415.5(g), the project sponsor shall construct 23% of all units constructed on the project site as  
17 affordable housing and shall comply with all otherwise applicable requirements of Section 415.6.

18                   (3) **Off-Site Housing.** If the project sponsor of a housing development project elects to  
19 provide units affordable to qualifying households off-site of the principal project as set forth in  
20 Planning Code Section 415.5(g), the project sponsor shall construct or cause to be constructed  
21 affordable housing equal to 25% of all units constructed on the principal project site as affordable  
22 housing and shall comply with all otherwise applicable requirements of Section 415.7.

23                   (b) **Exemption for Affordable Housing.** A project applicant shall not pay the affordable  
24 housing fee for any space designated as a below market rate unit under Section 415.1 et seq., the  
25 Citywide Inclusionary Affordable Housing Program, or any other residential unit that is designated as

1 an affordable housing unit under a Federal, State, or local restriction in a manner that maintains  
2 affordability for a term no less than 50 years.

3 (c) **Timing of Payment.** The Affordable Housing Fee shall be paid at the time of and in no  
4 event later than the City issues a first construction document, with an option for the project sponsor to  
5 defer payment to prior to issuance of the first certificate of occupancy upon agreeing to pay a deferral  
6 surcharge in accordance with Section 107A.13.3 of the San Francisco Building Code.

7 **SEC. 428.4. IMPOSITION OF AFFORDABLE HOUSING REQUIREMENTS.**

8 (a) **Determination of Requirements.** The Planning Department shall determine the  
9 applicability of Planning Code Section 428.1 et seq. to any development project requiring a first  
10 construction document and, if Section 428.1 et seq. is applicable, shall impose any such requirements  
11 as a condition of approval for issuance of the first construction document. The project sponsor shall  
12 supply any information necessary to assist the Department in this determination.

13 (b) **Department Notice to Development Fee Collection Unit of Fee Requirements.** After the  
14 Department has made its final determination regarding the application of the affordable housing  
15 requirements to a development project pursuant to Section 428.1 et seq., it shall immediately notify the  
16 Development Fee Collection Unit at DBI of the applicable affordable housing fee amount in addition to  
17 the other information required by Planning Code Section 402(b).

18 (c) **Process for Revisions of Determination of Requirements.** If the Department or the  
19 Commission takes action affecting any development project subject to Section 428.1 et seq. and such  
20 action is subsequently modified, superseded, vacated, or reversed by the Board of Appeals, the Board  
21 of Supervisors, or a court, the procedures of Planning Code Section 402(c) shall be followed.

22 **SEC. 428.5. USE OF FUNDS.**

23 The additional affordable housing requirement specified in this Section 428.1 et seq. for the  
24 Divisadero Street NCT and the Fillmore Street NCT shall be paid into the Citywide Affordable Housing  
25 Fund, established in Administrative Code Section 10.100-49, but the funds shall be separately

1 accounted for. The Mayor's Office of Housing and Community Development shall expend the funds  
2 according to the following priorities: First, to increase the supply of housing affordable to qualifying  
3 households in the Divisadero Street NCT and the Fillmore Street NCT; second, to increase the supply  
4 of housing affordable to qualifying households within one mile of the boundaries of the Divisadero  
5 Street NCT and the Fillmore Street NCT; and third, to increase the supply of housing affordable to  
6 qualifying households in the City. The funds may also be used for monitoring and administrative  
7 expenses subject to the process described in Planning Code Section 415.5(f).

8

9 Section 3. The Planning Code is hereby amended by revising Sections 746 and 747,  
10 to read as follows:

11 **SEC. 746. DIVISADERO STREET NEIGHBORHOOD COMMERCIAL TRANSIT**  
12 **DISTRICT.**

13 The Divisadero Street Neighborhood Commercial Transit District ("Divisadero Street  
14 NCT") extends along Divisadero Street between Haight and O'Farrell Streets. Divisadero  
15 Street's dense mixed-use character consists of buildings with residential units above ground-  
16 story commercial use. Buildings typically range in height from two to four stories with  
17 occasional one-story commercial buildings. The district has an active and continuous  
18 commercial frontage along Divisadero Street for most of its length. Divisadero Street is an  
19 important public transit corridor and throughway street. The commercial district provides  
20 convenience goods and services to the surrounding neighborhoods as well as limited  
21 comparison shopping goods for a wider market.

22 The Divisadero Street NCT controls are designed to encourage and promote  
23 development that enhances the walkable, mixed-use character of the corridor and  
24 surrounding neighborhoods. Rear yard requirements above the ground story and at residential  
25 levels preserve open space corridors of interior blocks. Housing development in new buildings



1 is encouraged above the ground story. Existing residential units are protected by limitations  
2 on demolition and upper-story conversions.

3 Consistent with Divisadero Street's existing mixed-use character, new commercial  
4 development is permitted at the ground and second stories. Most neighborhood-serving  
5 businesses are strongly encouraged. Controls on new Formula Retail uses are consistent with  
6 Citywide policy for Neighborhood Commercial Districts; Eating and Drinking and  
7 Entertainment uses are confined to the ground story. The second story may be used by some  
8 retail stores, personal services, and medical, business and professional offices. Additional  
9 flexibility is offered for second-floor Eating and Drinking, Entertainment, and Trade Shop uses  
10 in existing non-residential buildings to encourage the preservation and reuse of such  
11 buildings. Hotels are monitored at all stories. Limits on late-night activity, drive-up facilities,  
12 and other automobile uses protect the livability within and around the district, and promote  
13 continuous retail frontage.

14 If the Planning Department determines that any site proposed for residential development and  
15 located within the Divisadero Street NCT has received a 20% or greater increase in developable  
16 residential gross floor area or a 50% or greater increase in residential densities over prior zoning as a  
17 result of the rezoning of the Divisadero Street NCT in Ordinance No. 127-15 or any subsequent  
18 rezoning, or meets the terms of an exception set forth in Charter Section 16.110(h)(1)(B), any  
19 development project that is subject to the Residential Inclusionary Affordable Housing Program on  
20 such site shall pay the Affordable Housing Fee, or provide one of the Alternatives to Payment of the  
21 Affordable Housing Fee, set forth in Planning Code Sections 415 et seq., except that the amount of the  
22 Affordable Housing Fee or Alternatives to Payment of the Affordable Housing Fee shall be modified as  
23 set forth in Planning Code Section 428.1 et seq.

24 \* \* \* \*

1           **SEC. 747. FILLMORE STREET NEIGHBORHOOD COMMERCIAL TRANSIT**  
2 **DISTRICT.**

3           The Fillmore Street Neighborhood Commercial Transit District ("Fillmore Street  
4 NCT") extends along Fillmore Street between Bush and McAllister Streets. Fillmore Street's  
5 dense mixed-use character consists of buildings with residential units above ground-story  
6 commercial use. Buildings range in height from one-story commercial buildings to high-rise  
7 towers. Fillmore Street and Geary Boulevard are important public transit corridors. The  
8 commercial district provides convenience goods and services to the surrounding  
9 neighborhoods as well as shopping, cultural, and entertainment uses that attract visitors from  
10 near and far.

11           The Fillmore Street NCT controls are designed to encourage and promote  
12 development that enhances the walkable, mixed-use character of the corridor and  
13 surrounding neighborhoods. Rear yard requirements at residential levels preserve open space  
14 corridors of interior blocks. Housing development in new buildings is encouraged above the  
15 ground story. Existing residential units are protected by limitations on demolition and upper-  
16 story conversions.

17           Consistent with Fillmore Street's existing mixed-use character, new commercial  
18 development is permitted at the ground and second stories. Most neighborhood- and visitor-  
19 serving businesses are strongly encouraged. Controls on new Formula Retail uses are  
20 consistent with Citywide policy for Neighborhood Commercial Districts; Eating and Drinking  
21 and entertainment uses are confined to the ground story. The second story may be used by  
22 some retail stores, personal services, and medical, business, and professional offices.  
23 Parking and hotels are monitored at all stories. Limits on drive-up facilities and other  
24 automobile uses protect the livability within and around the district and promote continuous  
25 retail frontage.

1 If the Planning Department determines that any site proposed for residential development and  
2 located within the Fillmore Street NCT has received a 20% or greater increase in developable  
3 residential gross floor area or a 50% or greater increase in residential densities over prior zoning as a  
4 result of the rezoning of the Fillmore Street NCT in Ordinance No. 126-15 or any subsequent rezoning,  
5 or meets the terms of an exception set forth in Charter Section 16.110(h)(1)(B), any development  
6 project that is subject to the Residential Inclusionary Affordable Housing Program on such site shall  
7 pay the Affordable Housing Fee, or provide one of the Alternatives to Payment of the Affordable  
8 Housing Fee, set forth in Planning Code Sections 415 et seq., except that the amount of the Affordable  
9 Housing Fee or Alternatives to Payment of the Affordable Housing Fee shall be modified as set forth in  
10 Planning Code Section 428.1 et seq.

11 \* \* \* \*

12 Section 4. Effective Date. This ordinance shall become effective 30 days after  
13 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
14 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
15 of Supervisors overrides the Mayor’s veto of the ordinance.

16  
17 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
18 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
19 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
20 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
21 additions, and Board amendment deletions in accordance with the “Note” that appears under

22 //  
23 //  
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1 the official title of the ordinance.

2

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

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6 By: \_\_\_\_\_  
7 KATE H. STACY  
8 Deputy City Attorney

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