

1 [Planning, Administrative Codes - Inclusionary Affordable Housing Fee and Requirements;
2 Preparation of Economic Feasibility Report; Establishing Inclusionary Housing Technical
3 Advisory Committee]

4 **Draft Ordinance amending the Planning and Administrative Codes to increase the**
5 **Inclusionary Affordable Housing fee and other requirements; require the Controller to**
6 **prepare an economic feasibility report regarding the City's inclusionary housing**
7 **requirements and make recommendations by July 31, 2016, and every three years**
8 **thereafter; and establish the Inclusionary Housing Technical Advisory Committee to**
9 **provide advice about the economic feasibility of proposals to set maximum**
10 **economically viable inclusionary housing requirements, and set forth the membership**
11 **and duties of the Advisory Committee; affirming the Planning Department's**
12 **determination under the California Environmental Quality Act; making findings under**
13 **Planning Code, Section 302; and making findings of consistency with the General Plan,**
14 **and the eight priority policies of Planning Code, Section 101.1.**

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

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

23 Section 1. Findings.

24 (a) The Planning Department has determined that the actions contemplated in this
25 ordinance comply with the California Environmental Quality Act (California Public Resources

1 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
2 Supervisors in File No. ____ and is incorporated herein by reference.

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

8 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code
9 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth
10 in Planning Commission Resolution No. _____ and the Board incorporates such reasons
11 herein by reference.

12
13 Section 2. Findings Regarding Inclusionary Affordable Housing Requirements.

14 (a) The amendments to Planning Code Sections 415.1, 415.3, 415.5, 415.6 and 415.7
15 set forth in Section 3 of this Ordinance will become effective only on the effective date of the
16 Charter amendment amending Section 16.110 at the June 7, 2016 election, permitting the
17 City to change the inclusionary affordable housing requirements. In the event the voters do
18 not adopt such Charter amendment, the amendments to Planning Code Sections 415.1,
19 415.3, 415.5, 415.6 and 415.7 set forth in Section 3 of this Ordinance shall have no effect,
20 and the City Attorney shall not cause them to be published in the Municipal Codes.

21 (b) The purpose of this ordinance is to adopt new inclusionary or affordable housing
22 obligations following the process set forth in Section 16.110(g) of the proposed Charter
23 amendment on the ballot at the June 7, 2016 election to revise the City's inclusionary
24 affordable housing requirements. The inclusionary affordable housing obligations set forth in
25 this ordinance will supersede and replace the interim requirements set forth in Section

1 16.110(g) of the Charter amendment, so that the interim requirements will be removed from
2 the Charter pursuant to the requirements set forth in the Charter amendment.

3 (c) In the event the City’s Nexus Analysis in support of the Inclusionary Affordable
4 Housing Program demonstrates that a lower affordable housing fee is lawfully applicable
5 based on an analysis of all relevant impacts, the City may utilize the method of fee calculation
6 supported by the Nexus Analysis in lieu of the requirements set forth in Planning Code
7 Sections 415.3, 415.5, 415.6 and 415.7. The Board of Supervisors may consider
8 amendments to the Inclusionary Affordable Housing requirements following completion of the
9 updated Nexus Analysis.

10
11 Section 3. The Planning Code is hereby amended by revising Sections 415.1, 415.3,
12 415.5, 415.6 and 415.7, to read as follows:

13 **SEC. 415.1 FINDINGS.**

14 A. The Board of Supervisors hereby finds and declares as follows:

15 **Affordable Housing:** The findings in former Planning Code Section 315.2 of the
16 Inclusionary Affordable Housing Ordinance are hereby readopted and updated as follows:

17 * * * *

18 9. The City wants to balance the burden on private property owners with the
19 demonstrated need for affordable housing in the City. The Housing Element calls for the City
20 to review its affordable Inclusionary Housing Program regularly to ensure a fair burden ~~and not~~
21 ~~without~~ constraining new housing production. The Board of Supervisors has reviewed the
22 Inclusionary Housing Program and finds that, for purposes of the Housing Element of the
23 General Plan, the current Affordable Housing Fee ~~—set at the equivalent to providing 20 percent~~
24 ~~of the total number of units as affordable units (or less for projects approved under prior requirements)~~
25 – ensures a more fair burden on all housing development and that it will not constrain new

1 housing production. The Board of Supervisors has reviewed the Inclusionary Housing
2 Program and finds that, for purposes of the Housing Element of the General Plan, a housing
3 project of *five ten* units or more is a larger housing project. Applying the Inclusionary Housing
4 Program requirements to buildings of *five ten* units or more ensures more fair burden on all
5 housing development and will not constrain new housing production.

6 10. The findings of former Planning Code Section 313.2 for the Jobs-Housing
7 Linkage Program, now found in Planning Code Sections 413 *et seq.*, relating to the shortage
8 of affordable housing, the low vacancy rate of housing affordable to persons of lower and
9 moderate income, and the decrease in construction of affordable housing in the City are
10 hereby readopted.

11 11. The Land Use and Economic Development Committee of the Board of
12 Supervisors held hearings on ~~this~~ *its earlier adoption of inclusionary housing* legislation on July
13 12 and 19, 2006. At those hearings, the Committee heard testimony from Planning
14 Department staff and consultant Kate Funk of Keyser Marston and Associates regarding a
15 study undertaken at the direction of the Planning Department by the consultant Keyser
16 Marston Associates. The study was entitled Inclusionary Housing Program Sensitivity
17 Analysis, dated July 7, 2006, and was undertaken to examine the economic impacts of
18 adjusted inclusionary requirements on market-rate housing projects ("Sensitivity Analysis").
19 The study can be found in Board File No. 051685 and is incorporated herein by reference.
20 The study was guided by the Planning Department and MOH and informed by a Technical
21 Advisory Committee comprised of a variety of experts from the San Francisco Housing
22 Development and Affordable Housing Advocacy Communities. Planning Department staff
23 presented a report summarizing the findings of the Sensitivity Analysis and the
24 recommendations of the Technical Advisory Committee. That report, dated July 10, 2006, is
25 found in Board File No. 051685 and is incorporated herein by reference. After considering the

1 Sensitivity Analysis and staff report and hearing the recommendations and testimony of the
2 Planning Department, MOH, members of the Technical Advisory Committee, and members of
3 the public including representatives of housing developers, community members, and
4 affordable housing advocates, the Land Use and Economic Development Committee
5 considered various amendments to the legislation. The Committee found, among other things,
6 that it was in the public interest to increase the percentage requirements of the ordinance, but
7 not by as much as originally proposed; to modify the application dates of the ordinance to
8 grandfather more existing projects from the increased percentage requirements, but to make
9 most projects subject to the other requirements of the ordinance; and to require further study
10 on some issues by the Planning Department and MOH.

11 12. The City and County of San Francisco, under the direction of the Office of
12 the Controller, has undertaken a comprehensive program of analyses to update its programs
13 and supporting documentation for many types of fees, including updating nexus analyses in
14 support of development impact fees. At the direction of the Board of Supervisors and as part
15 of this larger analysis, the City contracted with Keyser Marston Associates to prepare a nexus
16 analysis in support of the Inclusionary Affordable Housing Program, or an analysis of the
17 impact of development of market rate housing on affordable housing supply and demand. The
18 Planning Department and MOHCD worked closely with the consultant and also consulted with
19 the Technical Advisory Committee, noted above, comprised of a variety of experts from the
20 San Francisco housing development and affordable housing advocacy communities.

21 The City's current position is that the City's Inclusionary Housing Program is not subject
22 to the requirements of the Mitigation Fee Act, Government Code Sections 66000 *et seq.* While
23 the City does not expect to alter its position on this matter, due to past legislative actions
24 supporting such a study, the Citywide study being undertaken to conduct nexus studies in
25 other areas, and a general interest in determining whether the Inclusionary Housing Program

1 can be supported by a nexus type analysis as an additional support measure, the City
2 contracted to undertake the preparation of a nexus analysis *at this time*.

3 The ~~final~~ 2007 Nexus-study can be found in the Board of Supervisors File No. _____ and is
4 incorporated by reference herein. The Board of Supervisors has reviewed the study and staff
5 analysis and report of the study and, on that basis finds that the study supports the current
6 requirements of the Inclusionary Housing Program including, but not limited to, the primary
7 requirement that project applicants pay the Affordable Housing Fee. Specifically, the Board
8 finds that this study: identifies the purpose of the fee to mitigate impacts on the demand for
9 affordable housing in the City; identifies the use to which the fee is to be put as being to
10 increase the City's affordable housing supply; and establishes a reasonable relationship
11 between the use of the fee for affordable housing and the need for affordable housing and the
12 construction of new market rate housing. Moreover, the Board finds that the current
13 inclusionary requirements are less than the cost of mitigation and do not include the costs of
14 remedying any existing deficiencies. The Board also finds that the study establishes that the
15 current inclusionary requirements do not duplicate other city requirements or fees.

16 13. The Board of Supervisors recognizes that this Inclusionary Housing
17 Program is only one part of the City's overall strategy for providing affordable housing. The
18 Mayor's Office of Housing and Community Development committed over \$54 million in capital
19 funds to affordable housing development in 2009-10. Only \$5 million of those monies came
20 from contributions from private developers through this Program or other similar programs.
21 The MOH has budgeted approximately \$64 million for affordable housing development in
22 2010-11 and the current expectation is that about \$14 million of those monies will come from
23 contributions from private developers through this Program or other similar programs.

24
25 **SEC. 415.3. APPLICATION.**

1 (a) Notwithstanding any other provision to the contrary in this Code, Section 415.1 et
2 seq. shall apply to any housing project that consists of ten or more units where an individual
3 project or a phased project is to be undertaken and where the total undertaking comprises a
4 project with ten or more units, even if the development is on separate but adjacent lots. This
5 provision also applies to housing projects that requires Commission approval of replacement
6 housing destroyed by earthquake, fire or natural disaster only where the destroyed housing
7 included units restricted under the Inclusionary Affordable Housing Program or the City's
8 predecessor inclusionary housing policy, condominium conversion requirements, or other
9 affordable housing program.

10 (b) ~~The effective date of these requirements shall be either April 5, 2002, which is the date that~~
11 ~~the requirements originally became effective, or the date a subsequent modification, if any, became~~
12 ~~operative. The following table is designed to summarize the most significant subsequent modifications~~
13 ~~to this Program and the dates those modifications went into effect. The Planning Department and the~~
14 ~~Mayor's Office of Housing shall maintain a record for the public summarizing various amendments to~~
15 ~~this Program and their effective or operative dates. To the extent there is a conflict between the~~
16 ~~following table or any summary produced by the Department or MOH and the provisions of the~~
17 ~~original implementing ordinances, the implementing ordinances shall prevail. The requirements set~~
18 ~~forth in Planning Code Sections 415.5, 415.6 and 415.7 shall apply to certain development projects~~
19 ~~consisting of twenty-five dwelling units or more during a limited period of time as follows.~~

20 (1) If a development project is eligible and elects to provide on-site affordable housing,
21 the development project shall provide the following amounts of on-site affordable housing. All other
22 requirements of Planning Code Sections 415.1 et seq. shall apply.

23 (A) Any development project that has submitted a complete Environmental
24 Evaluation application prior to January 1, 2014, and is eligible and elects to provide on-site units

1 pursuant to 415.5(g), shall provide affordable units in the amount of 13% of the number of units
2 constructed on-site.

3 (B) Any development project that has submitted a complete Environmental
4 Evaluation application prior to January 1, 2015, and is eligible and elects to provide on-site units
5 pursuant to 415.5(g), shall provide affordable units in the amount of 13.5% of the number of units
6 constructed on-site.

7 (C) Any development project that has submitted a complete Environmental
8 Evaluation application prior to January 12, 2016 and is eligible and elects to provide on-site units
9 pursuant to 415.5(g), shall provide affordable units in the amount of 14.5% of the number of units
10 constructed on-site.

11 (D) Any development project that submits an Environmental Evaluation
12 application after January 12, 2016 shall comply with the requirements set forth in Planning Code
13 Section 415.5, 415.6 and/or 415.7, as applicable.

14 (E) Notwithstanding the provisions set forth in Subsections 415.3(b)(1)(A), (B)
15 and (C) herein, if a development project is (1) located in a UMU Zoning District and proposes to
16 eliminate a Production, Distribution and Repair (PDR) use, as defined in Planning Code Section 102,
17 or (2) located in the Mission NCT Zoning District, or (3) located in the South of Market Youth and
18 Family Zoning District, and is eligible and elects to provide on-site units pursuant to 415.5(g), such
19 development project shall comply with the on-site requirements set forth in Section 415.7 and shall not
20 be eligible to use the lower inclusionary housing requirements set forth in this Section 415.3(b).

21 (2) If a development project pays the Affordable Housing Fee or is eligible and elects
22 to provide off-site affordable housing, the development project shall provide the following fee amount
23 and amounts of off-site affordable housing during the limited periods of time set forth below. All other
24 requirements of Planning Code Sections 415.1 et seq. shall apply.

1 (A) Any development project that has submitted a complete Environmental
2 Evaluation application prior to January 1, 2014, shall pay a fee or provide off-site housing in an
3 amount equivalent to 25% of the number of units constructed on-site.

4 (B) Any development project that has submitted a complete Environmental
5 Evaluation application prior to January 1, 2015, shall pay a fee or provide off-site housing in an
6 amount equivalent to 27.5% of the number of units constructed on-site.

7 (C) Any development project that has submitted a complete Environmental
8 Evaluation application prior to January 12, 2016 shall pay a fee or provide off-site housing in an
9 amount equivalent to 30% of the number of units constructed on-site.

10 (D) Any development project that submits an Environmental Evaluation
11 application after January 12, 2016 shall comply with the requirements set forth in Planning Code
12 Section 415.5, 415.6 and/or 415.7, as applicable.

13 (E) Notwithstanding the provisions set forth in Subsections 415.3(b)(2)(A), (B)
14 and (C) herein, if a development project proposes a building whose height is measured to be 120 feet or
15 greater, such development project shall pay a fee or provide off-site housing in an amount equivalent to
16 33% of the number of units constructed on-site.

17 (F) Notwithstanding the provisions set forth in Subsections 415.3(b)(2)(A), (B)
18 and (C) herein, if a development project is (1) located in a UMU Zoning District and proposes to
19 eliminate a Production, Distribution and Repair (PDR) use, as defined in Planning Code Section 102,
20 or (2) located in the Mission NCT Zoning District, or (3) located in the South of Market Youth and
21 Family Zoning District, and is eligible and elects to provide off-site units pursuant to 415.5(g), such
22 development project shall comply with the requirements set forth in Sections 415.5 and 415.6 and shall
23 not be eligible to use the lower inclusionary housing requirements set forth in this Section 415.3(b).

(3) Any development project that constructs on-site or off-site affordable housing units as set forth in this Section 415.3(b) shall diligently pursue completion of such units. In the event the project sponsor does not procure a building permit or site permit for construction of the affordable housing units by December 7, 2018, the development project shall comply with the inclusionary affordable housing requirements set forth in Planning Code Sections 415.5, 415.6 and/or 415.7, as applicable.

(4) Any development project that seeks to utilize a density bonus under State law shall provide on-site affordable units in the amount of 25% of the number of units constructed on-site and shall consult with the Planning Department about how to achieve this amount of inclusionary affordable housing.

(5) The minimum affordability requirement shall not apply to any project that (1) is located on a site for which a height limit increase has been approved by a vote of the electors of the City and County of San Francisco prior to January 12, 2016 to satisfy the requirements of Administrative Code Section 61.5.1 or (2) has entered into a development agreement or other similar binding agreement with the City as of January 12, 2016.

Table 415.3

<i>Program Modification</i>	<i>Effective or Operative Date</i>
<i>All projects with 5 or more units must participate in the Inclusionary Housing Program Section 415 (changed from a threshold of 10 units).</i>	<i>All projects that submitted a first application on or after July 18, 2006.</i>
<i>Threshold changed back to 10 units or more such that the Section 415 et seq. no longer applies to</i>	<i>Any 5-9 unit project, regardless of when it submitted a first application, that has not received a first</i>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

<i>buildings of 5-9 units.</i>	<i>construction document as of January 15, 2013.</i>
<p><i>Affordable Housing Percentages:</i></p> <ul style="list-style-type: none"> • <i>20% Fee</i> • <i>12% on-site*</i> • <i>20% off-site*</i> <p><i>*Of total number of units (Percentages may vary in specific Area Plans or Special Use Districts. Please refer to those applicable Code Sections.)</i></p>	<p><i>All projects that submitted a first application on or after July 18, 2006 (For off-site and fee: except buildings of over 120 feet in height that meet the requirements of Section 415.7(a)(1)(C))</i></p>
<i>On Site units must be priced and sold at 90% of AMI and rented at 55% of AMI</i>	<i>All projects that receive a first site or building permit on or after September 9, 2006</i>
<i>Project sponsor must select Program compliance option upon project approval and cannot alter their compliance option</i>	<i>All projects that received Planning Commission or Planning Department approval on or after September 9, 2006</i>
<i>All off-site units must be located within 1 mile of the principal project and Off-site units must be priced and sold at 70% of AMI</i>	<i>All Projects that receive Planning Commission or Planning Department approval after September 9, 2006</i>
<i>Lottery preference for applicants living or working in San Francisco</i>	<i>All projects that are marketed on or after June 4, 2007</i>
<i>Lottery preference for applicants holding a Certificate of Preference from the Redevelopment Agency</i>	<i>All projects that are marketed on or after December 30, 2008</i>

<p>1 Lottery required for all new and resale units</p>	<p>All projects that are marketed on or after September 9, 2006</p>
<p>2 3 Must provide on-site units as owner-occupied only 4 unless specifically exempted pursuant to Section 5 415</p>	<p>All projects beginning February 11, 2010</p>
<p>6 7 All off-site units must follow standards set out in 8 Procedures Manual</p>	<p>Projects that receive Planning Commission or Planning Department approval on or after June 4, 2007</p>

9 * * * *

10
11 ~~(d) For projects that have received a first site or building permit prior to the effective date of~~
12 ~~Section 415.1 et seq., the requirements in effect prior to the effective date of Section 415.1 et seq. shall~~
13 ~~apply.~~

14 ~~(e) In November 2012 the voters amended the Charter by adopting Proposition C "The~~
15 ~~Affordable Housing Trust Fund and Housing Production Incentives" which is, in part, codified as~~
16 ~~Charter Section 16.110 ("Proposition C"). To the extent that there is any inconsistency between the~~
17 ~~provisions of Proposition C and Sections 415 et seq. or any other Planning Code provisions,~~
18 ~~the provisions of Proposition C shall control.~~

19 **SEC. 415.5. AFFORDABLE HOUSING FEE.**

20 Except as provided in Section 415.5(g), all development projects subject to this
21 Program shall be required to pay an Affordable Housing Fee subject to the following
22 requirements:

23 (a) **Payment of a Fee.** The fee is due and payable to the Development Fee Collection
24 Unit at DBI for deposit into the Citywide Affordable Housing Fund at the time of and in no
25

1 event later than issuance of the first construction document, with an option for the project
2 sponsor to defer payment to prior to issuance of the first certificate of occupancy upon
3 agreeing to pay a deferral surcharge that would be deposited into the *Downtown Park Citywide*
4 *Affordable Housing* Fund, in accordance with Section 107A.13.15 of the San Francisco Building
5 Code.

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

8 (1) The number of units equivalent to the applicable off-site percentage of the
9 number of units in the principal project. The applicable percentage shall be *20 percent for*
10 *housing development projects consisting of ten dwelling units or more, but with less than twenty-five*
11 *dwelling units and 30 percent for buildings whose height is measured to be less than 120 feet, or 33*
12 *percent for buildings whose height is measured to be 120 feet or greater,* or the percentage that
13 applied to the project if the project is subject to the requirements of an earlier version of this
14 Program due to the date it submitted its application or that percentage required in certain
15 Special Use Districts or Area Plans. For the purposes of this Section, the City shall calculate
16 the fee using the direct fractional result of the total number of units multiplied by the applicable
17 percentage, rather than rounding up the resulting figure as required by Section 415.6(a).

18 (2) The affordability gap using data on the cost of construction of residential
19 housing and the Maximum Purchase Price for the equivalent unit size. *As of the effective date of*
20 *this Ordinance No. 62-13, MOH shall use construction cost data from the "San Francisco*
21 *Inclusionary Housing Program Financial Analysis 2012" prepared by Seifel Consulting.* The
22 Department and MOHCD shall update the technical report from time to time as they deem
23 appropriate in order to ensure that the affordability gap remains current.

24 (3) No later than January 1 of each year *following the effective date of this*
25 *Ordinance No. 62-13,* MOHCD shall adjust the fee. *No later than December 1 following the effective*

1 ~~date of this Ordinance No. 62-131 of each year,~~ MOHCD shall provide the Planning Department,
2 DBI, and the Controller with information on the adjustment to the fee so that it can be included
3 in the Planning Department's and DBI's website notice of the fee adjustments and the
4 Controller's Citywide Development Fee and Development Impact Requirements Report
5 described in Section 409(a). MOHCD is authorized to develop an appropriate methodology for
6 indexing the fee, based on adjustments in the cost of constructing housing and the Maximum
7 Purchase Price for the equivalent unit size. The method of indexing shall be published in the
8 Procedures Manual.

9 * * * *

10
11 **SEC. 415.6. ON-SITE AFFORDABLE HOUSING ALTERNATIVE.**

12 If a project sponsor is eligible and elects to provide on-site units pursuant to Section
13 415.5(g), the development project shall meet the following requirements:

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

15 (1) The number of units constructed on-site shall generally be 12% for housing
16 development projects consisting of ten dwelling units or more, but with less than twenty-five dwelling
17 units and 25% of all units constructed on the project site for housing development projects
18 consisting of twenty-five dwelling units or more, with a minimum of 15% of the units affordable to low-
19 and very low-income households and another 10% of the units affordable to very low, low- or middle
20 income households. The Department shall require ~~for housing projects covered by Section~~
21 ~~415.3(a)(1),~~ as a condition of Department approval of a project's building permit, or ~~by Section~~
22 ~~415.3(a)(2), (3) and (4),~~ as a condition of approval of a Conditional Use Authorization or
23 Planned Unit Development or as a condition of Department approval of a live/work project,
24 that ~~12-25~~ percent of all units constructed on the project site shall be affordable to qualifying
25 households so that a project sponsor must construct ~~12~~ .25 times the total number of units

1 produced in the principal project. If the total number of units is not a whole number, the project
2 sponsor shall round up to the nearest whole number for any portion of .5 or above.

3 (2) **Specific Geographic Areas.** For any housing development that is located
4 in an area with a specific affordable housing requirement set forth in a Special Use District or
5 in any other section of the Code such as Section 419, the ~~more specific~~ higher housing
6 requirement shall apply ~~as long as it is consistent with Charter Section 16.110.~~

7 (3) If the principal project has resulted in demolition, conversion, or removal of
8 affordable housing units renting or selling to households at income levels and/or for a rental
9 rate or sales price below corresponding income thresholds for units affordable to qualifying
10 households, the Commission or the Department shall require that the project sponsor replace
11 the number of affordable units removed with units of a comparable number of bedrooms or
12 provide that ~~12~~ 25 percent of all units constructed as part of the new project shall be affordable
13 to qualifying households, whichever is greater.

14 ~~(4) Already Approved Projects. Charter Section 16.110(g)(3) contains procedures for~~
15 ~~certain projects that have been approved but that have not received their first construction document as~~
16 ~~defined in Section 107A.13.1 of the San Francisco Building Code by January 1, 2013 to modify their~~
17 ~~conditions of approval under limited circumstances.~~

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

21 (c) **Type of Housing.** All on-site units constructed under this Section must be
22 provided as ownership units unless the project sponsor meets the eligibility requirement of
23 Section 415.5(g). All on-site units must be Affordable to Qualifying Households. In general,
24 affordable units constructed under this Section 415.6 shall be comparable in number of
25 bedrooms, exterior appearance and overall quality of construction to market rate units in the

1 principal project. A Notice of Special Restrictions shall be recorded prior to issuance of the
2 first construction document and shall specify the number, location and sizes for all affordable
3 units required under this Subsection. The interior features in affordable units should be
4 generally the same as those of the market rate units in the principal project, but need not be
5 the same make, model or type of such item as long as they are of good and new quality and
6 are consistent with then-current standards for new housing. The square footage of affordable
7 units do not need to be *the* same as or equivalent to those in market rate units in the principal
8 project, so long as it is consistent with then-current standards for new housing. Where
9 applicable, parking shall be offered to the affordable units subject to the terms and conditions
10 of the Department's policy on unbundled parking for affordable housing units as specified in
11 the Procedures Manual and amended from time to time. On-site affordable units shall be
12 ownership units unless the project applicant meets the eligibility requirement of Section
13 415.5(9).

14 * * * *

15
16 **SEC. 415.7. OFF-SITE AFFORDABLE HOUSING ALTERNATIVE.**

17 If the project sponsor is eligible and selects pursuant to Section 415.5(g) to provide off-
18 site units to satisfy the requirements of Section 415.1 *et seq.*, the project sponsor shall notify
19 the Planning Department and the Mayor's Office of Housing and Community Development
20 ("MOHCD") of its intent as early as possible. The Planning Department and MOHCD shall
21 provide an evaluation of the project's compliance with this Section prior to approval by the
22 Planning Commission or Planning Department. The development project shall meet the
23 following requirements:

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

1 (1) (A) For any housing development ~~of any height~~ that is located in an area
2 with a specific affordable housing requirement, set forth in Section 419, or elsewhere in this
3 Code, the ~~more specific~~ higher off-site housing requirement shall apply.

4 (B) The number of units constructed off-site shall be 33 percent, with 20% of
5 the units affordable to low- and very low-income households and 13% of the units affordable to middle-
6 income households, so that a project applicant shall construct .33 times Buildings of 120 feet and under
7 in height or buildings of over 120 feet in height that do not meet the criteria in Subsection (C) below:
8 Except as provided in Subsection (A), the Department shall require for housing projects described in
9 Section 415.3(a)(1), (2), (3), and (4) projects consisting of ten dwelling units or more but less than
10 twenty five shall be 20 percent so that a project applicant must construct .20 times the total number of
11 units produced in the principal project. If the total number of units is not a whole number, the
12 project applicant shall round up to the nearest whole number for any portion of .5 or above.

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

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

8 (b) **Timing of Construction:** The project sponsor shall ~~insure~~ ensure that the off-site
9 units are constructed, completed, ready for occupancy, and marketed no later than the market
10 rate units in the principal project. In no case shall the Principal Project receive its first
11 certificate of occupancy until the off-site project has received its first certificate of occupancy.

12 (c) **Location of off-site housing:** The ~~project sponsor must insure that~~ off-site units ~~are~~
13 shall be located within one mile of the principal project.

14 (d) **Type of Housing:** All off-site units constructed under this Section must be
15 provided as ownership housing for the life of the project unless the project applicant meets the
16 eligibility requirement of Section 415.5(g). If offered for ownership, all off-site units must be
17 affordable to households earning no more than 70 percent of the AMI, or if offered for rent,
18 Affordable to Qualifying Households at the rental level. Nothing in this Section shall limit a
19 project sponsor from meeting the requirements of this Section through the construction of
20 units in a limited equity or land trust form of ownership if such units otherwise meet all of the
21 requirements for off-site housing. A project sponsor may acquire an existing building that is not
22 currently and primarily in residential use to fulfill all or part of the requirements set forth in this
23 Section 415.7. In general, affordable units constructed or otherwise provided under Section
24 415.7 shall be comparable in number of bedrooms, exterior appearance and overall quality of
25 construction to market rate units in the principal project. The total square footage of the off-

1 site affordable units constructed or otherwise provided under Section 415.7 shall be no less
 2 than the calculation of the total square footage of the on-site market-rate units in the principal
 3 project multiplied by the relevant on-site percentage requirement for the project specified in
 4 Section 415.7. The Notice of Special Restrictions or conditions of approval shall include a
 5 specific number of units at specified unit sizes - including number of bedrooms and minimum
 6 square footage - for affordable units. The interior features in affordable units should generally
 7 be the same as those of the market rate units in the principal project but need not be the
 8 same make model or type of such item as long as they are of new and good quality and are
 9 consistent with then-current standards for new housing and so long as they are consistent
 10 with the "Quality Standards for Off-Site Affordable Housing Units" found in the Procedures
 11 Manual. Where applicable, parking shall be offered to the affordable units subject to the terms
 12 and conditions of the Department's policy on unbundled parking for affordable housing units
 13 as specified in the Procedures Manual and amended from time to time. If the residential units
 14 in the principal project are live/work units which do not contain bedrooms or are other types of
 15 units which do not contain bedrooms separated from the living space, the off-site units shall
 16 be comparable in size according to the following equivalency calculation between live/work
 17 and units with bedrooms:

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

18
 19
 20
 21
 22
 23
 24
 25
 * * * *

1
2 Section 4. The Planning Code is hereby amended by adding Section 415.10, to read
3 as follows:

4 **SEC. 415.10. ECONOMIC FEASIBILITY STUDY TO MAXIMIZE HOUSING**

5 **AFFORDABILITY.**

6 **(a) Findings.**

7 *San Francisco continues to experience a housing crisis that requires a broad spectrum*
8 *of land use and financing tools to address. The Housing Element of the City's General Plan calls for*
9 *38% of all new housing production to be affordable for lower income households below 80% of area*
10 *median income and 19% of new housing affordable to be built for moderate/middle income households*
11 *up to 120% of area median income. San Francisco's inclusionary housing program, which requires*
12 *housing developers to provide affordable units as part of their projects, is a critical component of the*
13 *City's programs to expand affordable housing options. The Inclusionary Housing program is one of the*
14 *City's tools for increasing affordable housing dedicated to lower income San Franciscans without*
15 *using public subsidies, and in particular it is a useful tool for creating any affordable housing to meet*
16 *the growing need of moderate/middle income households.*

17 *The City adopted an Inclusionary Housing ordinance in 2002 that set requirements on market*
18 *rate development to include affordable units at 12% of the total for the first time. The inclusionary*
19 *program successfully resulted in more than 2,000 units of below-market, permanently affordable*
20 *housing since its adoption. The City prepared a Nexus Study in 2007 in support of the program. The*
21 *report demonstrated the necessary affordable housing in order to mitigate the impacts of market rate*
22 *housing, and the inclusionary requirements were increased to 15% of total units. The City's*
23 *inclusionary housing requirements are codified in Section 415 of the Planning Code. The City is now*
24 *in the process of updating that nexus analysis.*

1 In 2011, Governor Jerry Brown dissolved the State Redevelopment Agency, which was the
2 City's primary permanent funding stream for affordable housing. In 2012, in response to this loss, the
3 voters amended the San Francisco Charter to create the Affordable Housing Trust Fund, which
4 included a provision to lower the on-site inclusionary requirement to 12%. In November 2014, in
5 response to an escalating housing crisis, the voters passed Proposition K, which set forth a policy
6 directive to the City to provide additional affordable housing in the amount of 33% of its overall
7 housing production to low- to moderate-income households and 17% to middle-income households.

8 The Board of Supervisors has proposed to the voters a Charter amendment that will appear on
9 the June 7, 2016 ballot. The Charter amendment would authorize the City to enact by ordinance
10 subsequent changes to the inclusionary housing requirements, including changes to the minimum or
11 maximum inclusionary or affordable housing obligations applicable to market rate housing projects.

12 On March 1, 2016, the Board of Supervisors unanimously adopted Resolution No. XXX
13 declaring that (1) it shall be City policy to maximize the economically feasible percentage of affordable
14 inclusionary housing in market rate housing development to create housing for lower and
15 moderate/middle income households; (2) if the voters adopt the proposed Charter amendment on June
16 7, the Board intends to adopt a future ordinance requiring the Controller and other City departments to
17 conduct a periodic economic study to maximize affordability in the City's inclusionary housing
18 requirements; and (3) the future ordinance would create an advisory committee to ensure that the
19 economic study is the result of a transparent and inclusive public process.

20 The purpose of this Section 415.10 is to study how to set inclusionary housing obligations in
21 San Francisco at the maximum economically feasible amount in market rate housing development to
22 create housing for lower-, moderate- and middle-income households, and with guidance from the City's
23 Nexus Study, which should be periodically updated.

24 (b) **Triennial Economic Feasibility Analysis.** With the support of independent consultants as
25 deemed appropriate by the Controller and with advice on setting qualifications and criteria for

1 consultant selection from the Inclusionary Housing Technical Advisory Committee established in
2 Administrative Code Chapter 5, Article XXIX, the Controller, in consultation with relevant City
3 Departments and the Inclusionary Housing Technical Advisory Committee, shall conduct a feasibility
4 study of the City's inclusionary affordable housing obligations set forth in Planning Code Section 415
5 et seq., including but not limited to the affordable housing fee and on-site and off-site alternatives, and
6 shall submit a report to the Board of Supervisors by July 31, 2016 and by October 31 for subsequent
7 years. Thereafter, the Controller, in consultation with the Department and the Inclusionary Housing
8 Technical Advisory Committee, shall repeat this process at least every 36 months, or more frequently
9 as deemed necessary by the Controller in response to a significant shift in economic or market
10 conditions.

11 (c) **Elements of the Economic Feasibility Analysis.** The economic feasibility analysis required
12 by subsection (b) of this Section 415.10 shall include sensitivity analyses of key economic parameters
13 that can vary significantly over time, such as, but not limited to: interest rates; capitalization rates;
14 equity return rates; land prices; construction costs; project scale, available state and federal housing
15 finance programs including Low Income Housing Tax Credits readily available for market rate
16 housing; tax-exempt bond financing; Federal Housing Administration and U.S. Department of Housing
17 and Urban Development mortgage insurance; available City or local housing finance programs, such
18 as Enhanced Infrastructure District (EIFD) and tax increments; zoning changes that increase or
19 decrease development potential; variable City exactions, including community benefit fees, capacity
20 charges, community facilities districts; and public-private partnership development agreements where
21 applicable and other factors as deemed reasonably relevant.

22 (d) **Report to Board of Supervisors.** The Board of Supervisors will review the feasibility
23 analyses, as well as periodic updates to the City's Nexus Study evaluating the necessary affordable
24 housing in order to mitigate the impacts of market rate housing. The Board of Supervisors, in its sole
25 and absolute discretion, will review these feasibility analyses within three months of issuance and will

1 consider legislative amendments to the City’s Inclusionary Housing in-lieu fees, on-site, off-site or
2 other alternatives recommended by the Controller and/or the Planning Commission adjusting levels of
3 inclusionary or affordable housing obligations and income levels based on the feasibility analyses and
4 with guidance from the City’s Nexus Study, with the objective of maximizing affordable Inclusionary
5 Housing in market rate housing production. Updates to the City’s Inclusionary Housing requirements
6 shall address affordable housing fees, onsite affordable housing and off-site affordable housing, as well
7 as the provision of affordable housing available to low-income households at or below 55% of Area
8 Median Income for rental units and up to 80% of Area Median Income for ownership units, and
9 moderate/middle-income households from 80% to 120% of Area Median Income.

10
11 Section 5. The Administrative Code is hereby amended by adding Article XXIX,
12 Sections 5.29-1 through 5.29-7, to Chapter 5, to read as follows:

13 **ARTICLE XXIX:**

14 **INCLUSIONARY HOUSING TECHNICAL ADVISORY COMMITTEE**

15 **Sec. 5.29-1. Creation of Advisory Committee.**

16 **Sec. 5.29-2. Findings.**

17 **Sec. 5.29-3. Membership.**

18 **Sec. 5.29-4. Organization and Terms of Office.**

19 **Sec. 5.29-5. Duties.**

20 **Sec. 5.29-6. Meetings and Procedures.**

21 **Sec. 5.29-7. Sunset.**

22 **SEC. 5.29-1. CREATION OF ADVISORY COMMITTEE.**

23 The Board of Supervisors hereby establishes the Inclusionary Housing Technical Advisory
24 Committee (the “Advisory Committee”) of the City and County of San Francisco.

25 **SEC. 5.29-2. FINDINGS.**

1 The Board of Supervisors intends that the economic feasibility analysis required by Planning
2 Code Section 415.10 shall be prepared through a transparent and inclusive public process that will
3 include the Advisory Committee. The feasibility study inputs and assumptions should be based on
4 documented and verifiable costs of housing development over the full course of a business cycle.

5 **SEC. 5.29-3. MEMBERSHIP.**

6 The Advisory Committee shall consist of eight members. All members shall have experience
7 and expertise in development finance. The Board of Supervisors shall appoint members to Seats 1
8 through 4, and the Mayor shall appoint members to Seats 5 through 8.

9 **SEC. 5.29-4. ORGANIZATION AND TERMS OF OFFICE.**

10 (a) Each member shall serve at the pleasure of the member's appointing authority. Each
11 member appointed to the Advisory Committee in 2016 shall serve until three months after the date the
12 Controller produces the first economic feasibility analysis required by Planning Code Section 415.10,
13 at which point the member's term shall expire. The Board of Supervisors and the Mayor shall appoint
14 new members to the Advisory Committee in anticipation of each subsequent economic feasibility
15 analysis by the Controller, and those members' terms shall similarly expire three months after the date
16 the Controller produces the economic feasibility analysis required by Planning Code Section 415.10.
17 Members shall not hold over after the expiration of their terms.

18 (b) If a vacancy occurs in any seat on the Advisory Committee, the appointing authority for
19 the vacated seat shall appoint a successor to that seat.

20 (c) Members of the Advisory Committee shall receive no compensation from the City for
21 servicing on the Advisory Committee.

22 (d) Any member who misses three regular meetings of the Advisory Committee without the
23 express approval of the Advisory Committee at or before each missed meeting shall be deemed by
24 operation of law to have resigned from the Advisory Committee ten days after the third unapproved
25 absence. The Advisory Committee shall inform the appointing authority of the resignation.

1 (e) The Controller's Office shall provide clerical and administrative support and staffing
2 for the Advisory Committee.

3 **SEC. 5.29-5. DUTIES.**

4 (a) The Advisory Committee shall provide input and advice to the Controller, the Mayor, the
5 Planning Department and the Board of Supervisors regarding the content of the economic feasibility
6 analysis required by Planning Code Section 415.10. The Advisory Committee shall hold technical
7 workshops to evaluate the fiscal feasibility of various inclusionary housing fees and on-site and off-site
8 alternatives, including evaluating a range of project types, inclusionary percentages, and resident
9 income levels, and assessing whether fiscal feasibility varies within the City across different
10 neighborhoods. The Advisory Committee may, but is not required to, prepare written reports.

11 (b) All City departments, commissions, boards, and agencies shall cooperate with the
12 Advisory Committee in conducting its business.

13 **SEC. 5.29-6. MEETINGS AND PROCEDURES.**

14 The Advisory Committee shall hold a regular meeting not less than once every four months until
15 the sunset date set forth in Section 5.29-7.

16 **SEC. 5.29-7. SUNSET.**

17 The Board of Supervisors and Mayor intend the Advisory Committee to last until the enactment
18 of an ordinance removing this Article XXIX from the Administrative Code. Notwithstanding Rule 2.21
19 of the Board of Supervisors Rules of Order, which provides that advisory bodies created by the Board
20 should sunset within three years, the Board intends the Advisory Committee to exist for longer than
21 three years.

22
23 Section 6. Severability. Clauses of this ordinance are declared to be severable, and if
24 any provision or clause of this ordinance or the application thereof is held to be
25

1 unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such
2 invalidity shall not affect other provisions of this ordinance.

3
4 Section 7. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
5 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
6 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
7 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
8 additions, and Board amendment deletions in accordance with the “Note” that appears under
9 the official title of the ordinance.

10
11 Section 8. Effective Date. This ordinance shall become effective 30 days after
12 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
13 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
14 of Supervisors overrides the Mayor’s veto of the ordinance.

15 APPROVED AS TO FORM:
16 DENNIS J. HERRERA, City Attorney

17 By: _____
18 KATE H. STACY
19 Deputy City Attorney

20 n:\legana\as2016\1600550\01089929.docx