

**REVISED - LEGISLATIVE DIGEST**

(4/25/16, Amended in Committee)

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

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

Existing Law

The Charter generally requires private developers of new market-rate housing to provide affordable housing ("Inclusionary Housing") in one of three ways:

- pay a fee equal to 17% to 20% of their project's units to support low-income housing;
- make at least 12% of the on-site housing units affordable; or
- create new affordable units off-site, equal to 17 to 20% of the project's units.

These requirements can be modified if a project meets an exception specified in the Charter (or if the Charter is amended). The Planning Code contains detailed requirements for implementation of these three Inclusionary Housing options, in the Inclusionary Affordable Housing Program set forth in Planning Code Sections 415 *et seq.*

Amendments to Current Law

The ordinance would not take effect unless and until the voters approve amendments to the Charter at the June 7, 2016 election. The ordinance is intended to adopt new Inclusionary Housing obligations following the process set forth in Section 16.110(g) of the proposed Charter amendment. This ordinance would supersede and replace the interim Inclusionary Housing requirements set forth in the proposed Charter amendment.

The legislation provides that the Board would review and consider any recommended changes to the Inclusionary Affordable Housing Program after the completion of the proposed Economic Feasibility Study and the update of the City's Nexus Analysis.

There are 3 components to this ordinance. It sets forth new Inclusionary Housing requirements, requires preparation of an Inclusionary Housing economic feasibility study, and establishes a technical advisory committee to consult with the Controller on the economic feasibility study.

### **New Inclusionary Housing Requirements**

The new Inclusionary Housing requirements will apply to any development project that submits a complete Environmental Evaluation application on or after January 1, 2013. The requirements could be satisfied by payment of a fee, or provision of on-site or off-site Inclusionary Housing:

1. **Affordable Housing Fee:** The development project would pay a fee equivalent to the applicable off-site percentage of the number of units in the principal project:
  - For development projects consisting of 10 dwelling units or more, but less than 25 dwelling units, the percentage would be 20%.
  - For development projects consisting of 25 dwelling units or more, the percentage would be 33%.
2. **On-site Affordable Housing:**
  - The number of affordable units constructed on-site would generally be 12% of all units constructed on the project site for housing development projects consisting of 10 dwelling units or more, but less than 25 dwelling units. The units must be affordable to low-income households.
  - The number of affordable units constructed on-site would generally be 25% of all units constructed on the project site for housing development projects consisting of 25 dwelling units or more, with a minimum of 15% of the units affordable to low-income households and 10% of the units affordable to low- or middle- income households.
3. **Off-site Affordable Housing:**
  - For housing development projects consisting of 10 dwelling units or more but less than 25 units, the number of affordable units constructed off-site would be 20% of the number of units in the principal project.

- For housing development projects consisting of 25 dwelling units or more, the number of affordable units required to be constructed off-site would be 33% of the number of units in the principal project, with 20% of the units affordable to low-income households and 13% of the units affordable to low- or middle-income households.

4. Definitions of low income and middle income households. Low income households shall be defined as households whose total household income does not exceed 55% of Area Median Income for purposes of renting an affordable unit, or 80% of Area Median Income for purposes of purchasing an affordable unit. “Moderate income” and “middle income” households shall mean households whose total household income does not exceed 100% of Area Median Income for purposes of renting an affordable unit, or 120% of Area Median Income for purposes of purchasing an affordable unit. The Small Sites Fund and Program may use Affordable Housing Fees consistent with the income parameters of the Programs, as periodically updated.

5. Temporary Requirements. Any development project that has submitted a complete Environmental Evaluation application prior to January 1, 2013 shall comply with the Affordable Housing Fee requirements, the on-site affordable housing requirements or the off-site affordable housing requirements, as applicable, in effect on January 12, 2016. For development projects that have submitted a complete Environmental Evaluation application on or after January 1, 2013, the ordinance would provide different temporary requirements for certain projects that contain 25 or more dwelling units, and have submitted complete environmental evaluation applications as follows.

On-site Temporary Requirements.

- Submittal of an application prior to January 1, 2014: 13% of the number of units constructed on-site.
- Submittal of an application prior to January 1, 2015: 13.5% of the number of units constructed on-site.
- Submittal of an application on or prior to January 12, 2016: 14.5% of the number of units constructed on-site.

Fee or Off-site Temporary Requirements.

- Submittal of an application prior to January 1, 2014: 25% of the number of units constructed on-site.
- Submittal of an application prior to January 1, 2015: 27.5% of the number of units constructed on-site.
- Submittal of an application on or prior to January 12, 2016: 30% of the number of units constructed on-site.

Exceptions to Temporary Requirements for Payment of a Fee or Provision of Off-Site Affordable Housing. The temporary requirements for payment of the Inclusionary Housing Fee or provision of off-site affordable housing would not apply to buildings over 120 feet in height, except for buildings up to 130 feet in height located both within a special use district and within a height and bulk district that allows a maximum building height of 130 feet.

6. Temporary Requirements for UMU and SOMA Youth & Families Zoning Districts.

On-site Temporary Requirements. Development projects shall comply with the on-site requirements applicable within such Zoning Districts, as they existed on January 12, 2016, plus the following additional amounts of on-site affordable units:

- if the development project has submitted a complete Environmental Evaluation application prior to January 1, 2014, the Project Sponsor shall provide additional affordable units in the amount of 1% of the number of units constructed on-site.
- if the development project has submitted a complete Environmental Evaluation application prior to January 1, 2015, the Project Sponsor shall provide additional affordable units in the amount of 1.5% of the number of units constructed on-site.
- if the development project has submitted a complete Environmental Evaluation application on or prior to January 12, 2016, the Project Sponsor shall provide additional affordable units in the amount of 2% of the number of units constructed on-site.

Fee, Land Dedication or Off-site Temporary Requirements. Any development project that pays the Affordable Housing Fee or is eligible and elects to provide off-site affordable housing pursuant to Section 415.5(g), or elects to comply with a land dedication alternative, such development project shall comply with the fee, off-site or land dedication requirements applicable within the 2 zoning districts, plus the following additional amounts for the Affordable Housing Fee or for land dedication or off-site affordable units:

- if the development project has submitted a complete Environmental Evaluation application prior to January 1, 2014, the Project Sponsor shall pay an additional fee, or provide additional land dedication or off-site affordable units, in an amount equivalent to 5% of the number of units constructed on-site.
- if the development project has submitted a complete Environmental Evaluation application prior to January 1, 2015, the Project Sponsor shall pay an additional fee, or provide additional land dedication or off-site affordable units, in an amount equivalent to 7.5% of the number of units constructed on-site.
- if the development project has submitted a complete Environmental Evaluation application on or prior to January 12, 2016, the Project Sponsor shall pay an additional fee, or provide additional land dedication or off-site affordable units, in an amount equivalent to 10% of the number of units constructed on-site.
- A development project shall not pay a fee or provide off-site units in a total amount greater than the equivalent of 33% of the number of units constructed on-site.

7. General Exceptions. The new Inclusionary Housing requirements contained in Sections 415.5, 415.6, and 415.7, as well as the temporary requirements contained in Section 415.3(b), would not apply to (1) any mixed use project that is located in a special use district for which a height limit increase has been approved by the voters prior to January 12, 2016 to satisfy the requirements of Administrative Code Section 61.5.1, or (2) any mixed use project that has entered into a development agreement or other similar binding agreement with the City as of January 12, 2016; or (3) any housing development project that has procured a final first discretionary development entitlement approval, which shall mean approval following any administrative appeal to the relevant City board, on or before January 12, 2016.

8. Deadline to Procure Construction Permit. Any development project that constructs on-site or off-site affordable housing units as set forth in 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 Sections 415.5, 415.6, and 415.7, as applicable. This deadline shall be extended in the event of any litigation seeking to invalidate the City's approval of such project, for the duration of the litigation.

9. Higher Fee Applies. During the limited period of time in which the provisions of Section 415.3(b) apply, for any housing development that is located in an area with a specific affordable housing requirement set forth in an Area Plan or a Special Use District, or in any other section of the Code such as Section 419, with the exception of the UMU Zoning District or in the South of Market Youth and Family Zoning District, the higher of the affordable housing requirement set forth in such Area Plan or Special Use District or in Section 415.3(b) shall apply. Any affordable housing impact fee paid pursuant to an Area Plan or Special Use District shall be counted as part of the calculation of the inclusionary housing requirements contained in Planning Code Sections 415.1 et seq.

#### **Economic Feasibility Study**

The ordinance would require the Controller to study the economic feasibility of the City's inclusionary housing requirements and produce a report by July 31, 2016, and by October 31 every three years thereafter. The Board must consider the report within three months and consider legislative amendments to the City's Inclusionary Housing in-lieu fees, on-site, off-site, or other alternatives recommended by the Controller and/or the Planning Commission adjusting levels of inclusionary or affordable housing obligations and income levels based on the feasibility analyses and with guidance from the City's Nexus Study, with the objective of maximizing affordable Inclusionary Housing in market rate housing production.

**Technical Advisory Committee**

The ordinance would require the creation of a Technical Advisory Committee, consisting of eight members. The Mayor and the Board of Supervisors would each appoint four members. The Advisory Committee would provide input to the Controller, the Mayor, the Planning Department, and the Board of Supervisors regarding the content of the economic feasibility analysis. The Advisory Committee would hold technical workshops to evaluate the fiscal feasibility of various inclusionary housing fees and on-site and off-site alternatives.

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