

BOARD of SUPERVISORS



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May 18, 2016

File No. 160510

Sarah Jones  
Environmental Review Officer  
Planning Department  
1650 Mission Street, Ste. 400  
San Francisco, CA 94103

Dear Ms. Jones:

On May 10, 2016, Supervisor Wiener introduced the following proposed legislation:

**File No. 160510**

**Ordinance amending the Planning Code to change the requirement from five to two years that Student Housing be owned or leased by an educational institution to be exempt from the Inclusionary Housing Program; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of public necessity, convenience, and welfare under Planning Code, Section 302, and of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

  
By: Andrea Ausberry, Assistant Clerk  
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning  
Jeanie Poling, Environmental Planning

1 [Planning Code - Student Housing Exemption from Inclusionary Housing Requirements]

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3 **Ordinance amending the Planning Code to change the requirement from five to two**  
4 **years that Student Housing be owned or leased by an educational institution to be**  
5 **exempt from the Inclusionary Housing Program; affirming the Planning Department's**  
6 **determination under the California Environmental Quality Act; and making findings of**  
7 **public necessity, convenience, and welfare under Planning Code, Section 302, and of**  
8 **consistency with the General Plan, and the eight priority policies of Planning Code,**  
9 **Section 101.1.**

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

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

18 Section 1. Findings. The Board of Supervisors of the City and County of San Francisco  
19 hereby finds and determines that:

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. \_\_\_ and is incorporated herein by reference. The Board affirms this  
24 determination.

25 (b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_,  
adopted findings that the actions contemplated in this ordinance are consistent, on balance,

1 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The  
2 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of  
3 the Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.

4 (c) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_,  
5 approved this ordinance, recommended it for adoption by the Board of Supervisors, and  
6 adopted findings that it will serve the public necessity, convenience, and welfare. Pursuant to  
7 Planning Code Section 302, the Board adopts these findings as its own. A copy of said  
8 Resolution is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_, and is  
9 incorporated herein by reference.

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11 Section 2. The Planning Code is hereby amended by revising Section 415.3(c)(5), to  
12 read as follows:

13 **SEC. 415.3. APPLICATION.**

14 \* \* \* \*

15 (c) Section 415.1 et seq., the Inclusionary Housing Program, shall not apply to:

16 \* \* \* \*

17 (5) A Student Housing project that meets all of the following criteria:

18 (A) The building or space conversion does not result in loss or  
19 conversion of existing housing, including but not limited to rental housing and dwelling units;

20 (B) An institutional master plan (IMP) pursuant to Section 304.5 is on file  
21 with the Planning Department prior to the issuance of any building permit or alteration permit  
22 in connection with the creation of the Student Housing project, and, in addition to the  
23 requirements of Section 304.5, such IMP shall describe:

24 (i) to the extent such information is available, the type and  
25 location of housing used by its students;

1 (ii) any plans for the provision of Student Housing; and  
2 (iii) the Educational Institution's need for student housing to  
3 support its program; and  
4 (iv) the percentage of its students, on an average annual basis,  
5 that receive some form of need-based assistance ~~as described in (113B)~~.

6 (C) The Mayor's Office of Housing and Community Development (MOHCD)  
7 is authorized to monitor this program. MOHCD shall develop a monitoring form and annual  
8 monitoring fee to be paid by the owner of the real property or the Post-Secondary Educational  
9 Institution or Religious Institutions, as defined in Section 102 of this Code. The owner of the  
10 real property and each Post-Secondary Educational Institution or Institutions shall agree to  
11 submit annual documentation to ~~the Mayor's Office of Housing (MOHCD)~~ and the Planning  
12 Department, on or before December 31 of each year, that addresses the following:

13 (i) Evidence that the Post-Secondary Educational Institution  
14 continues to own or otherwise control the Student Housing project under a master lease or  
15 other contractual agreement with at least a ~~5~~two-year term, including a certificate from the  
16 owner of the real property and the Post-Secondary Educational Institution attaching a true and  
17 complete copy of the master lease or other contractual agreement (financial information may  
18 be redacted) and certifying that the lease or contract has not otherwise been amended or  
19 terminated; and

20 (ii) Evidence, on an average annualized basis, of the percentage  
21 of students in good standing enrolled at least half time or more in the ~~p~~Post-~~s~~Secondary  
22 Educational Institution or Institutions who are occupying the beds or accessory living space in  
23 the Student Housing project; and  
24  
25

1 (iii) The owner of the real property records a Notice of Special  
2 Restrictions (NSR) against fee title to the real property on which the Student Housing is  
3 located that states the following:

4 -a. The Post-Secondary Educational Institution, or the  
5 owner of the real property on its behalf, must file a statement with the Department if it intends  
6 to terminate the Student Housing project at least 60 days before it terminates such use  
7 ("statement of termination");

8 -b. The Student Housing project becomes subject to the  
9 Inclusionary Housing Ordinance requirements applicable to Housing Projects other than  
10 Qualified Housing Projects if (1) a Post-Secondary Educational Institution files a statement of  
11 termination with the Department and another ~~P~~Post-~~S~~Secondary Educational Institution or  
12 Institutions have not been substituted or obligated to meet the requirements of this subsection;  
13 or (2) the owner of the real property or the ~~P~~Post-~~S~~Secondary Educational Institution fails to file  
14 a statement of termination and fails to meet the requirements for a Student Housing project,  
15 then within not more than one year of a Notice Of Violation issued by the Planning  
16 Department;

17 -c. If units in a Student Housing project become subject  
18 to the Inclusionary Housing Ordinance then the owner of those units shall (1) pay the  
19 Affordable Housing Fee plus interest from the date the project received its first construction  
20 document for the project if there is no evidence the ~~P~~Project ever qualified as Student Housing  
21 or, if Student Housing was provided and occupied, then the Affordable Housing Fee with no  
22 interest is due on the date the units were no longer occupied by qualifying households and  
23 interest would accrue from that date if the fee is not paid; or (2) provide the required number  
24 of on-site affordable units required at time of original project approval and that those units  
25 shall be subject to all of the requirements of this Program. In this event, the owner of the real

1 property shall record a new NSR providing that the designated units must comply with all of  
2 the requirements of this Program.

3 -d. The Post-Secondary Educational Institution is  
4 required to report annually as required in Subsection (c)(5)(C) above;

5 -e. The City may commence legal action against the  
6 owner and/or Post-Secondary Educational Institution to enforce the NSR and the terms of  
7 Article IV of the Planning Code and Planning Code Section 415 et seq. if it determines that the  
8 project no longer meets the requirements for a Student Housing project; and

9 -f. The Student Housing project may be inspected by  
10 any City employee to determine its status as a Student Housing project and its compliance  
11 with the requirements of this Code is Section at any time upon at least 24 hours' prior notice to the  
12 owner of the real property or to the master lessee.

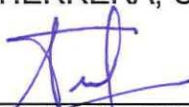
13 \* \* \* \*

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

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20 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
21 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
22 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
23 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
24 additions, and Board amendment deletions in accordance with the "Note" that appears under  
25 the official title of the ordinance.

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

By:   
\_\_\_\_\_  
ANDREA RUIZ-ESQUIDE  
Deputy City Attorney

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