

BOARD of SUPERVISORS



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MEMORANDUM

TO: Olson Lee, Director, Mayor's Office of Housing and Community Development
Tiffany Bohee, Executive Director, Office of Community Investment and Infrastructure
John Updike, Director Real Estate
Robert Collins, Acting Executive Director Rent

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

DATE: May 24, 2016

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Kim on May 17, 2016:

File No. 160550

Ordinance waiving the Inclusionary Affordable Housing requirements set forth in Planning Code, Section 415 et seq., exempting 21,422 square feet from the calculation of gross floor area pursuant to Planning Code, Section 124, to allow the additional floor area, and exempting 21,422 square feet from Planning Code, Sections 123 and 128, to reduce any required transferable development rights by such amount, for a project located at 1066 Market Street, in exchange for the dedication of certain real property to the Mayor's Office of Housing and Community Development at no cost; authorizing actions in furtherance of this Ordinance, as defined herein; adopting findings regarding the Final Mitigated Negative Declaration under the California Environmental Quality Act; and making findings under Planning Code, Section 302, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: andrea.ausberry@sfgov.org.

c: Eugene Flannery, Mayor's Office of Housing and Community Development
Sophie Hayward, Mayor's Office of Housing and Community Development

Claudia Guerra, Office of Community Investment and Infrastructure
Natasha Jones, Office of Community Investment and Infrastructure

1 [Planning Code - Waiving Inclusionary Housing Requirements, Exempting Certain Floor Area
2 from the Calculation of Gross Floor Area and Transferable Development Rights
Requirements, and Authorizing Land Dedication at No Cost - 1066 Market Street]

3
4 **Ordinance waiving the Inclusionary Affordable Housing requirements set forth in**
5 **Planning Code, Section 415 et seq., exempting 21,422 square feet from the calculation**
6 **of gross floor area pursuant to Planning Code, Section 124, to allow the additional floor**
7 **area, and exempting 21,422 square feet from Planning Code, Sections 123 and 128, to**
8 **reduce any required transferable development rights by such amount, for a project**
9 **located at 1066 Market Street, in exchange for the dedication of certain real property to**
10 **the Mayor's Office of Housing and Community Development at no cost; authorizing**
11 **actions in furtherance of this Ordinance, as defined herein; adopting findings regarding**
12 **the Final Mitigated Negative Declaration under the California Environmental Quality**
13 **Act; and making findings under Planning Code, Section 302, and findings of**
14 **consistency with the General Plan, and the eight priority policies of Planning Code,**
15 **Section 101.1.**

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

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

24 Section 1. Findings.

25 (a) It is the intention of the Board of Supervisors to (1) waive the requirements set forth
in Planning Code Section 415 to pay the Affordable Housing Fee or to provide on-site or off-

1 site inclusionary housing units, (2) exempt 21,422 square feet from the calculation of
2 allowable gross floor area set forth in Planning Code Section 124 to permit additional floor
3 area on the site, (3) exempt 21,422 square feet from the calculation of required transferable
4 development rights (“TDR”) to reduce the TDR necessary for the project located at 1066
5 Market Street, Assessor’s Block No. 0350, Lot No. 003 (“Project”), and (4) authorize 1066
6 Market LLC (“Project Sponsor”) to dedicate the real property located at 101 Hyde Street,
7 Assessor’s Block No. 0346, Lot No. 003A (“Dedicated Property”) to the San Francisco
8 Mayor’s Office of Housing and Community Development (“MOHCD”) at no cost.

9 (b) The proposed waiver and exemptions and corresponding land dedication are
10 necessary to implement construction of the Project and to allow development on the
11 Dedicated Property of a 100% affordable residential development. The Project is a multi-
12 family residential development project with ground floor retail space located on a 27,310
13 square foot project site within the Downtown Plan Area and the Downtown/Civic Center
14 neighborhood and is located within the C-3-G (Downtown General) Zoning and 120-X Height
15 and Bulk District. The floor area ratio (FAR) limit as defined by Planning Code Section 124 for
16 the C-3-G District is 6.0:1. Under Sections 123 and 128 of the Planning Code, the FAR can be
17 increased to 9.0 to 1 with the purchase of TDR.

18 (c) The Project would provide approximately 304 dwelling units and 4,540 gross
19 square feet of ground-floor commercial retail space. The Project applied to provide 36 on-site
20 inclusionary affordable dwelling units (comprising 21,422 gross square feet of floor area) to
21 comply with the requirements of Section 415 et seq. The Project sponsor also sought a
22 conditional use permit to allow the additional square footage for the affordable units pursuant
23 to Planning Code Section 124(f). The Planning Commission approved the project and the
24 conditional use permit, by Planning Commission Motion Nos. 19593 and 19594.
25

1 (d) The Project now proposes to provide land to the City to construct off-site affordable
2 housing. The proposed Section 415 waiver and Sections 123, 124 and 128 floor area
3 exemptions will enable the Project to be constructed without on-site inclusionary affordable
4 dwelling units, without the need to acquire an additional 21,422 gross square feet of
5 transferable development rights, and without the need to procure a conditional use permit for
6 the extra square footage as was otherwise required by Planning Code Section 124(f) for the
7 on-site affordable housing. This ordinance will allow the Project Sponsor to withdraw the
8 conditional use application approved by Planning Commission Motion No. 19594 without
9 forfeiting the Section 124 gross floor area exemption granted for the 21,422 gross square feet
10 associated with the prior on-site inclusionary affordable units. The cost to the Project Sponsor
11 of transferring the Dedicated Property to the City is not more than the cost of providing on-site
12 inclusionary housing units or payment of the Affordable Housing Fee. As set forth below,
13 dedication to the City of the Dedicated Property allows the City to provide a greater number of
14 affordable housing units than could otherwise be provided on-site.

15 (e) The Dedicated Property located at 101 Hyde Street is 10,633 square foot in land
16 area, equivalent to 39% of the land area of the Project site. The Dedicated Property is
17 already approved for construction of an 85 dwelling unit multi-family residential project. The
18 conveyance by the Project Sponsor of the Dedicated Property will allow the City, through
19 MOHCD, to provide a 100% affordable residential housing development of approximately 85
20 dwelling units on the Dedicated Property, a significant increase in the City's stock of
21 affordable housing in the Downtown/Civic Center neighborhood compared to the previously
22 approved 36 on-site inclusionary affordable units at the Project site.

23 (f) On _____, 2016, the Planning Commission conducted a duly noticed
24 public hearing on the ordinance, including the waiver of fee payments and requirements under
25 Planning Code Section 415 et seq. and the exemption of 21,422 gross square feet from the

1 calculation of gross floor area as set forth in Planning Code Section 124 and from the
2 requirements to purchase TDR under Planning Code Sections 123 and 128. The Planning
3 Commission, in Motion No. _____, found that the ordinance is, on balance, consistent with
4 the City's General Plan and the eight priority policies of Planning Code Section 101.1. A
5 copy of the Planning Commission Motion is on file with the Clerk of the Board of Supervisors
6 in File No. _____ and is incorporated herein by reference. The Board adopts the Planning
7 Commission findings as its own.

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

12 (h) On March 17, 2016, the Planning Commission finalized, reviewed and considered
13 the Final Mitigated Negative Declaration (FMND) prepared for the Project located at 1066
14 Market Street and found that the contents of the FMND and the procedures through which the
15 FMND was prepared, publicized, and reviewed complied with the California Environmental
16 Quality Act, California Public Resources Code Sections 21000 et seq. (CEQA), Title 14
17 California Code of Regulations Sections 15000 et seq. (the "CEQA Guidelines") and Chapter
18 31 of the San Francisco Administrative Code ("Chapter 31"). The Planning Commission
19 adopted the FMND, CEQA findings and a Mitigation and Monitoring Reporting Program
20 (MMRP) in its Motion No. 19593. The CEQA findings and the MMRP contained in Planning
21 Commission Motion No. 19593 are incorporated herein by this reference thereto. The
22 proposed changes contained in this ordinance are not substantial changes to the Project and
23 there are no substantial changes in Project circumstances that would require major revisions
24 to the FMND due to the involvement of new significant environmental effects, nor is there an
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1 increase in the severity of previously identified significant impacts, or any new information of
2 substantial importance that would change the conclusions set forth in the FMND.

3 (i) This ordinance does not constitute an approval of any new or revised project
4 located at 101 Hyde Street. The Planning Commission adopted a mitigated negative
5 declaration, CEQA findings and a Mitigation and Monitoring Reporting Program in its Motion
6 No. 19389 for the Dedicated Property. The CEQA findings and the MMRP contained in
7 Planning Commission Motion No. 19389 are incorporated herein by this reference thereto, as
8 applicable to the land dedication authorized by this Ordinance. The City is not otherwise
9 approving any changes to the approved project at 101 Hyde Street. If and when any revised
10 project for the Dedicated Property is undertaken by the City, or is submitted to the City for
11 review, the City will conduct any additional environmental review required by CEQA for that
12 project.

13
14 Section 2. Planning Code Fee Waiver, Floor Area and TDR Exemption and Land
15 Dedication.

16 (a) Waiver of Inclusionary Affordable Housing Requirements. Notwithstanding the
17 requirement to pay the Affordable Housing Fee or provide on-site or off-site inclusionary
18 affordable housing alternatives to the Affordable Housing Fee pursuant to Planning Code
19 Section 415 et seq. (Inclusionary Housing Program), the requirements set forth in Planning
20 Code Section 415 to either pay the Affordable Housing Fee or provide on-site or off-site
21 inclusionary affordable housing alternatives to the Affordable Housing Fee payment for the
22 Project are hereby waived in their entirety and the Project Sponsor shall be permitted to
23 dedicate a site to the City to be used for affordable housing. In lieu of paying the Affordable
24 Housing Fee or providing on-site or off-site inclusionary affordable housing units, prior to
25 issuance of a site or building permit for the Project, the Project Sponsor shall convey in fee

1 simple absolute to MOHCD, according to the Procedures Manual, the real property located at
2 101 Hyde Street, at no cost to MOHCD, which real property shall be used by MOHCD to
3 facilitate construction of an affordable housing project of approximately 85 dwelling units.

4 (b) Exemption From Floor Area Ratio Calculations. Notwithstanding the provisions of
5 Planning Code Section 124, floor area in the Project equivalent to 21,422 square feet is
6 hereby exempt from the calculation of gross floor area pursuant to Planning Code Section
7 124. This Section 124 floor area exemption shall not reduce the Project's development
8 impact fee obligations by any amount under Article 4 of the Planning Code and the Project
9 shall pay any applicable development impact fees set forth in Planning Code Article 4 on the
10 total floor area of the Project.

11 (c) TDR Exemption. Notwithstanding the provisions of Planning Code Sections 123
12 and 128, the Project shall be exempt from any applicable requirement to purchase TDR solely
13 for 21,422 square feet of floor area to increase the allowable density on-site. The Project
14 shall be permitted to increase density on-site by 21,422 square feet of floor area without the
15 need to purchase TDR for this amount. The Project shall be otherwise required to comply
16 with Planning Code Sections 123 and 128, and shall purchase TDR for any other necessary
17 increase in density on-site.

18
19 Section 3. The Mayor, Clerk of the Board, Property Director and MOHCD are hereby
20 authorized and directed to take any and all actions which they or the City Attorney may deem
21 necessary or advisable in order to effectuate the purpose and intent of this ordinance
22 (including, without limitation, the filing of the ordinance in the Official Records of the City and
23 County of San Francisco; acceptance of the land dedication and confirmation of satisfaction of
24 the conditions to the effectiveness of the Section 415 waiver and land dedication hereunder;
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1 and execution and delivery of any evidence of the same, which shall be conclusive as to the
2 satisfaction of the conditions upon signature by any such City official or his or her designee).

3
4 Section 4. Effective Date. This ordinance will become effective only on or after the
5 effective date of the Charter amendment revising Section 16.110 at the June 7, 2016 election,
6 permitting the City to change the inclusionary affordable housing requirements, and after the
7 effective date of the ordinance amending Planning Code Sections 415.1 et seq. set forth in
8 Board of Supervisors File No. 160255. In the event the voters do not adopt such Charter
9 amendment, and the ordinance set forth in Board of Supervisors File No. 160255 does not
10 take effect, this ordinance shall not take effect. This ordinance otherwise shall become
11 effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance,
12 the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of
13 receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

14
15 APPROVED AS TO FORM:
16 DENNIS J. HERRERA, City Attorney

17 By:


18 KATE H. STACY
19 Deputy City Attorney

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