

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

3 **Ordinance amending the Planning Code to require additional affordable housing or**  
4 **payment of a fee for certain sites that obtained higher residential development**  
5 **potential as a result of the rezoning of the Divisadero Street Neighborhood Commercial**  
6 **Transit District and the Fillmore Street Neighborhood Commercial Transit District in**  
7 **2015; affirming the Planning Department’s determination under the California**  
8 **Environmental Quality Act; and making findings of consistency with the General Plan,**  
9 **Planning Code, Section 302, and the eight priority policies of Planning Code, Section**  
10 **101.1.**

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

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

19 Section 1. Findings.

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

25 (b) On June 30, 2016, the Planning Commission, in Resolution No. 19679, adopted  
findings that the actions contemplated in this ordinance are consistent, on balance, with the

1 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board  
2 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the  
3 Board of Supervisors in File No. 151258, and is incorporated herein by reference.

4 (c) Pursuant to Planning Code Section 302, this Board finds that the actions  
5 contemplated in this ordinance will serve the public necessity, convenience, and welfare for  
6 the reasons set forth in Planning Commission Resolution No. 19679 and the Board  
7 incorporates such reasons herein by reference. A copy of the Planning Commission  
8 Resolution No. 19679 is on file with the Clerk of the Board of Supervisors in File No. 151258.

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

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

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

3 (f) The City conducted a Nexus Study in 2007, performed by Keyser Marston and  
4 Associates, in support of the Inclusionary Affordable Housing Program, or an analysis of the  
5 impact of development of market rate housing on affordable housing supply and demand. The  
6 Board of Supervisors reviewed the Nexus Study and staff analysis and report of the Study  
7 and, on that basis, found that the Study supported the inclusionary affordable housing  
8 requirements combined with the additional affordable housing fee set forth in Planning Code  
9 Sections 415 *et seq.*, prior to enactment of 2012 Prop C. The City is now in the process of  
10 updating this nexus analysis.

11 (g) On June 7, 2016, the voters approved a Charter Amendment (“2016 Prop C”)  
12 eliminating the limits on inclusionary affordable housing set forth in Charter Section 16.110.  
13 The Board of Supervisors also adopted legislation to implement changes to the inclusionary  
14 affordable housing requirements, Ordinance No. 76-16, that will go into effect when the June  
15 7, 2016 election is certified and the Charter Amendment goes into effect.

16 (h) The 2015 rezoning of the Divisadero and Fillmore NCTs allowed a 50% or greater  
17 increase in residential densities over prior zoning on certain sites contained within the two  
18 NCTs. In keeping with the intent and provisions of both 2012 Prop C and 2016 Prop C,  
19 projects on such sites should, and can afford to, mitigate fully their impacts on the need for  
20 affordable housing.

21  
22 Section 2. The Planning Code is hereby amended by adding Section 428, including  
23 Sections 428.1, 428.2, 428.3, 428.4, and 428.5, to read as follows:

24 **SEC. 428. DIVISADERO STREET NCT AND FILLMORE STREET NCT AFFORDABLE**  
25 **HOUSING FEE AND REQUIREMENTS.**

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

4           **SEC. 428.1. FINDINGS.**

5           The Board of Supervisors hereby finds that:

6           (a) The additional affordable housing fee requirement of this Section 428.1 et seq. is supported  
7 by the Nexus Study performed by Keyser Marston and Associates found in Board File No. 081152. The  
8 Board of Supervisors has reviewed the Nexus Study and other documents and, on that basis, finds that  
9 the Study supports the inclusionary affordable housing requirements combined with the additional  
10 affordable housing fee and requirements set forth in this Section 428.1 et seq. Specifically, the Board  
11 finds that the Study: (1) identifies the purpose of the additional fee and requirements to mitigate  
12 impacts on the demand for affordable housing in the City; (2) identifies the use of the additional fee to  
13 increase the City's affordable housing supply; and (3) establishes a reasonable relationship between  
14 the use of the additional fee for affordable housing and the need for affordable housing and the  
15 construction of new market rate housing. Further, the affordable housing fee and requirements do not  
16 include the costs of remedying any existing deficiencies and do not duplicate other City requirements or  
17 fees.

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

22           (c) A major objective of the Divisadero Street and Fillmore Street NCTs, set forth in Planning  
23 Code Sections 746 and 747, respectively, is to encourage and promote development that enhances the  
24 walkable, mixed-use character of the corridor and surrounding neighborhoods and to encourage  
25 housing development in new buildings above the ground floor. New market rate housing development

1 could outnumber both the number of units and potential new sites within the area for permanently  
2 affordable housing opportunities. The City has adopted a policy in its General Plan to meet the  
3 affordable housing needs of its general population and to require new housing developments to  
4 produce sufficient affordable housing opportunities for all income groups, both of which goals are not  
5 likely to be met by the potential housing development in the area. In addition, the Nexus Study  
6 indicates that market rate housing itself generates additional lower income affordable housing needs  
7 for the workforce needed to serve the residents of the new market rate housing proposed for the area.  
8 To meet the demand created for affordable housing by the Divisadero Street NCT and Fillmore Street  
9 NCT zoning and to be consistent with the policy of the City, additional affordable housing requirements  
10 should be included for all market rate housing development in these NCTs.

11 (d) The Divisadero Street NCT and Fillmore Street NCT rezonings set forth in Ordinance Nos.  
12 126-15 and 127-15 will allow greater residential development on certain sites within the NCTs, and  
13 such residential development will create a greater need for affordable housing, and should provide  
14 more affordable housing. The higher densities will also make provision of higher levels of affordable  
15 housing feasible for such sites.

16 (e) If a site located in the Divisadero Street NCT or Fillmore Street NCT received an increase  
17 in density of 50% or more from the 2015 rezoning set forth in Ordinance Nos. 126-15 and 127-15, a  
18 higher inclusionary affordable housing requirement should apply. The density for the previously  
19 existing Divisadero Neighborhood Commercial District was one unit per 800 square feet of lot area.  
20 The density for the Fillmore Neighborhood Commercial District was 1 unit per 600 square feet of lot  
21 area, with one parcel (Block 0798, Lot 001) zoned RH-3 (3 units per lot), another parcel (Block 0779,  
22 Lot 031) zoned RM-4 (1 unit per 200 square feet of lot area), and one parcel (Block 0702, Lot 038)  
23 zoned RM-3 (1 unit per 400 square feet of lot area).

24 **SEC. 428.2. DEFINITIONS.**

25 See Section 401 of this Article 4.

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

2           (a) **Applicability.** The Inclusionary Affordable Housing Program set forth in Planning Code  
3 Sections 415.1 et seq. shall apply in the Divisadero Street NCT and Fillmore Street NCT, with the  
4 following requirements that will apply to certain sites in these NCTs. In the event that the Planning  
5 Department determines that the residential development potential on a site within the Divisadero Street  
6 NCT or the Fillmore Street NCT has been increased through the adoption of the NCT rezoning set forth  
7 in Ordinance Nos. 126-15 and 127-15, as detailed in Section 428.1(e) herein, the requirements of  
8 Sections 415.1 through 415.9 of the Planning Code shall apply, except that the “grandfathering”  
9 provisions of Planning Code Section 415.3(b) shall not apply to such sites and the following affordable  
10 housing requirements shall be applied to residential development on such sites:

11                   (1) **Fee.** For a development project that is subject to the Residential Inclusionary  
12 Affordable Housing Program, the development project shall pay an affordable housing fee equivalent  
13 to a requirement to provide 33% of the units in the principal project as affordable units, using the  
14 method of fee calculation set forth in Section 415.5(b).

15                   (2) **On-Site Housing.** If the project sponsor of a housing development project is  
16 eligible and elects to construct units affordable to qualifying households on-site of the principal project  
17 as set forth in Planning Code Section 415.5(g), the project sponsor shall construct 25% of all units  
18 constructed on the project site as affordable housing and shall comply with all otherwise applicable  
19 requirements of Section 415.6.

20                   (3) **Off-Site Housing.** If the project sponsor of a housing development project is  
21 eligible and elects to provide units affordable to qualifying households off-site of the principal project  
22 as set forth in Section 415.5(g), the project sponsor shall construct or cause to be constructed  
23 affordable housing equal to 33% of all units constructed on the principal project site as affordable  
24 housing and shall comply with all otherwise applicable requirements of Section 415.7.

1           (b) Exemption for Affordable Housing. A project applicant shall not pay the affordable  
2 housing fee for any space designated as a below market rate unit under Section 415.1 et seq., the  
3 Citywide Inclusionary Affordable Housing Program, or any other residential unit that is designated as  
4 an affordable housing unit under a Federal, State, or local restriction in a manner that maintains  
5 affordability for a term no less than 50 years.

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

10           (d) If the Board adopts higher inclusionary housing requirements, the higher requirement shall  
11 apply, irrespective of the grandfathering provisions set forth in Sections 428.1 et seq.

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

13           (a) Determination of Requirements. The Planning Department shall determine the  
14 applicability of Section 428.1 et seq. to any development project requiring a first construction  
15 document and, if Section 428.1 et seq. is applicable, shall impose any such requirements as a condition  
16 of approval for issuance of the first construction document. The project sponsor shall supply any  
17 information necessary to assist the Department in this determination.

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

23           (c) Process for Revisions of Determination of Requirements. If the Department or the  
24 Commission takes action affecting any development project subject to Section 428.1 et seq. and such  
25

1 action is subsequently modified, superseded, vacated, or reversed by the Board of Appeals, the Board  
2 of Supervisors, or a court, the procedures of Planning Code Section 402(c) shall be followed.

3 **SEC. 428.5. USE OF FUNDS.**

4 The affordable housing fee specified in this Section 428.1 et seq. for the Divisadero Street NCT  
5 and the Fillmore Street NCT shall be paid into the Citywide Affordable Housing Fund, established in  
6 Administrative Code Section 10.100-49, and the funds shall be separately accounted for. The Mayor's  
7 Office of Housing and Community Development shall expend the funds to increase the supply of  
8 housing affordable to qualifying households in the City. The funds may also be used for monitoring  
9 and administrative expenses subject to the process described in Planning Code Section 415.5(f).

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

13 **SEC. 746. DIVISADERO STREET NEIGHBORHOOD COMMERCIAL TRANSIT**  
14 **DISTRICT.**

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

24 The Divisadero Street NCT controls are designed to encourage and promote  
25 development that enhances the walkable, mixed-use character of the corridor and



1 surrounding neighborhoods. Rear yard requirements above the ground story and at residential  
2 levels preserve open space corridors of interior blocks. Housing development in new buildings  
3 is encouraged above the ground story. Existing residential units are protected by limitations  
4 on demolition and upper-story conversions.

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

16 If the Planning Department determines that any site proposed for residential development and  
17 located within the Divisadero Street NCT has received a 50% or greater increase in residential  
18 densities over prior zoning through the adoption of Ordinance No. 127-15, any development project  
19 that is subject to the Inclusionary Affordable Housing Program on such site shall pay the Affordable  
20 Housing Fee, or provide one of the Alternatives to Payment of the Affordable Housing Fee, set forth in  
21 Planning Code Sections 415 et seq., except that the amount of the Affordable Housing Fee or  
22 Alternatives to Payment of the Affordable Housing Fee shall be modified as set forth in Planning Code  
23 Section 428 et seq. If the Board adopts inclusionary affordable housing requirements that are higher  
24 than those set forth in Sections 428 et seq., the higher requirements shall apply.

25 \* \* \* \*

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

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

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

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

1 automobile uses protect the livability within and around the district and promote continuous  
2 retail frontage.

3 If the Planning Department determines that any site proposed for residential development and  
4 located within the Fillmore Street NCT has received a 50% or greater increase in residential densities  
5 over prior zoning through the adoption of Ordinance No. 126-15, any development project that is  
6 subject to the Inclusionary Affordable Housing Program on such site shall pay the Affordable Housing  
7 Fee, or provide one of the Alternatives to Payment of the Affordable Housing Fee, set forth in Planning  
8 Code Sections 415 et seq., except that the amount of the Affordable Housing Fee or Alternatives to  
9 Payment of the Affordable Housing Fee shall be modified as set forth in Planning Code Section 428 et  
10 seq. If the Board adopts inclusionary affordable housing requirements that are higher than those set  
11 forth in Sections 428 et seq., the higher requirements shall apply.

12 \* \* \* \*

13 Section 4. The Planning Code is hereby amended by revising Section 415.3(b), to  
14 read as follows:

15 \* \* \* \*

16 (3) During the limited period of time in which the provisions of Section 415.3(b) apply,  
17 for any housing development that is located in an area with a specific affordable housing  
18 requirement set forth in an Area Plan or a Special Use District, or in any other section of the  
19 Code such as Section 419, with the exception of the UMU Zoning District or in the South of  
20 Market Youth and Family Zoning District, the higher of the affordable housing requirement set  
21 forth in such Area Plan or Special Use District or in Section 415.3(b) shall apply. Any  
22 affordable housing impact fee paid pursuant to an Area Plan or Special Use District shall be  
23 counted as part of the calculation of the inclusionary housing requirements contained in  
24 Planning Code Sections 415.1 et seq. In the Divisadero Street NCT and the Fillmore Street NCT,  
25 the provisions of Section 415.3(b) shall not apply to certain sites, as set forth in the Divisadero Street

1 NCT And Fillmore Street NCT Affordable Housing Fee And Requirements, Planning Code Sections  
2 428.1 et seq.

3 \* \* \* \*

4 Section 5. Effective Date. This ordinance shall become effective 30 days after  
5 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
6 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
7 of Supervisors overrides the Mayor’s veto of the ordinance.

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

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

18  
19 By: \_\_\_\_\_  
20 KATE H. STACY  
21 Deputy City Attorney

22 n:\legana\as2016\1600294\01116890.docx