

1 [Planning Code - Inclusionary Affordable Housing Fee and Requirements]

2

3 **Ordinance amending the Planning Code to revise the amount of the Inclusionary**
 4 **Affordable Housing Fee and the On-Site and Off-Site Affordable Housing Alternatives**
 5 **and other Inclusionary Housing requirements; affirming the Planning Department's**
 6 **determination under the California Environmental Quality Act; making findings under**
 7 **Planning Code, Section 302; and making findings of consistency with the General Plan,**
 8 **and the eight priority policies of Planning Code, Section 101.1.**

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

13

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

15

16 Section 1. General Findings.

17 (a) The Planning Department has determined that the actions contemplated in this
 18 ordinance comply with the California Environmental Quality Act (California Public Resources
 19 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
 20 Supervisors in File No. 161351 and is incorporated herein by reference. The Board affirms
 21 this determination.

22 (b) On _____, the Planning Commission, in Resolution No. _____, adopted
 23 findings that the actions contemplated in this ordinance are consistent, on balance, with the
 24 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board

25

1 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
2 Board of Supervisors in File No. _____, and is incorporated herein by reference.

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

8

9 Section 2. Findings About Inclusionary Affordable Housing Requirements.

10 (a) The purpose of this ordinance is to adopt inclusionary or affordable housing
11 obligations following the voters' approval of the proposed Charter amendment on the ballot as
12 Proposition C at the June 7, 2016 election to revise the City's inclusionary affordable housing
13 requirements, which won overwhelming with 67.9% of the vote, and to update the provisions
14 of the Planning Code that became effective after the Charter Amendment.

15 (b) The San Francisco residential real estate market is one of the most expensive in
16 the United States. In February 2016, the California Association of Realtors reported that the
17 median priced home in San Francisco was \$1,437,500. This price is 222% higher than the
18 State of California median (\$446,460), and 312% higher than the national average
19 (\$348,900). While the national homeownership rate is approximately 63.8%, only
20 approximately 37% of San Franciscans own their own home. The majority of market-rate
21 homes for sale in San Francisco are priced out of the reach of low and moderate income
22 households. In 2015, the average rent was \$3,524, which is affordable to households earning
23 over \$126,864.

24 (c) The Board of Supervisors adopted San Francisco's General Plan Housing Element
25 in March 2015, and the California Housing and Community Development Department certified

1 it on May 29, 2015. The Housing Element states that San Francisco’s share of the regional
2 housing need for years 2015 through 2022 includes 10,873 housing units for very-low and
3 low-income households and 5,460 units for moderate/middle-income households, and a total
4 production of 28,870 net new units, with almost 60% to be affordable for very-low, low- and
5 moderate/middle-income San Franciscans.

6 (d) In November 2016, the City provided the updated Residential Affordable Housing
7 Nexus Analysis that confirms and quantifies the impact of new market rate housing
8 development on the demand for affordable housing for households earning up to 120% of
9 area median income. The study demonstrates a need of 24.1% affordable housing for onsite
10 renter-occupied market rate housing, and 27.3% affordable housing for the owner-occupied
11 market.

12
13 Section 3. The Planning Code is hereby amended by revising Sections 415.3, 415.5,
14 415.6, and 415.7, to read as follows:

15 **SEC. 415.3. APPLICATION.**

16 * * * *

17 (b) Any development project that has submitted a complete Environmental Evaluation
18 application prior to January 1, 2013 shall comply with the Affordable Housing Fee
19 requirements, the on-site affordable housing requirements or the off-site affordable housing
20 requirements, as applicable, in effect on January 12, 2016. For development projects that
21 have submitted a complete Environmental Evaluation application on or after January 1, 2013,
22 the requirements set forth in Planning Code Sections 415.5, 415.6, and 415.7 shall apply to
23 certain development projects consisting of 25 dwelling units or more during a limited period of
24 time as follows.

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

4 (A) Any development project that has submitted a complete
5 Environmental Evaluation application prior to January 1, 2014 shall provide affordable units in
6 the amount of 13% of the number of units constructed on-site.

7 (B) Any development project that has submitted a complete
8 Environmental Evaluation application prior to January 1, 2015 shall provide affordable units in
9 the amount of 13.5% of the number of units constructed on-site.

10 (C) Any development project that has submitted a complete
11 Environmental Evaluation application on or prior to January 12, 2016 shall provide affordable
12 units in the amount of 14.5% of the number of units constructed on-site.

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

16 (E) Notwithstanding the provisions set forth in subsections (b)(1)(A), (B)
17 and (C) of this section 415.3, if a development project is located in a UMU Zoning District or in
18 the South of Market Youth and Family Zoning District, and is eligible and elects to provide on-
19 site units pursuant to Section 415.5(g), such development project shall comply with the on-site
20 requirements applicable within such Zoning Districts, as they existed on January 12, 2016,
21 plus the following additional amounts of on-site affordable units: (i) if the development project
22 has submitted a complete Environmental Evaluation application prior to January 1, 2014, the
23 Project Sponsor shall provide additional affordable units in the amount of 1% of the number of
24 units constructed on-site; (ii) if the development project has submitted a complete
25 Environmental Evaluation application prior to January 1, 2015, the Project Sponsor shall

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

5 (F) Any development project that has submitted a complete
6 Environmental Evaluation application on or before January 12, 2016 and seeks to utilize a
7 density bonus under State Law shall use its best efforts to provide on-site affordable units in
8 the amount of 25% of the number of units constructed on-site and shall consult with the
9 Planning Department about how to achieve this amount of inclusionary affordable housing.

10 ~~Any project~~ An applicant seeking a density bonus under the provisions of State Law shall
11 provide reasonable documentation to establish eligibility for a requested density bonus, incentives or
12 concessions, and waivers or reductions of development standards. ~~prepare a report analyzing how the~~
13 ~~concessions and incentives requested are necessary in order to provide the required on-site affordable~~
14 ~~housing.~~

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

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

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

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

5 (D) Any development project that submits an Environmental Evaluation
6 application after January 12, 2016 shall comply with the requirements set forth in Sections
7 415.5, 415.6, and 415.7, as applicable.

8 (E) Notwithstanding the provisions set forth in subsections (b)(2)(A), (B)
9 and (C) of this Section 415.3, for development projects proposing buildings over 120 feet in
10 height, as measured under the requirements set forth in the Planning Code, except for
11 buildings up to 130 feet in height located both within a special use district and within a height
12 and bulk district that allows a maximum building height of 130 feet, such development projects
13 shall pay a fee or provide off-site housing in an amount equivalent to ~~33~~30% of the number of
14 units constructed on-site. Any buildings up to 130 feet in height located both within a special
15 use district and within a height and bulk district that allows a maximum building height of 130
16 feet shall comply with the provisions of subsections (b)(2)(A), (B) and (C) of this Section 415.3
17 during the limited periods of time set forth therein.

18 (F) Notwithstanding the provisions set forth in subsections (b)(2)(A), (B)
19 and (C) of this section 415.3, if a development project is located in a UMU Zoning District or in
20 the South of Market Youth and Family Zoning District, and pays the Affordable Housing Fee
21 or is eligible and elects to provide off-site affordable housing pursuant to Section 415.5(g), or
22 elects to comply with a land dedication alternative, such development project shall comply
23 with the fee, off-site or land dedication requirements applicable within such Zoning Districts,
24 as they existed on January 12, 2016, plus the following additional amounts for the Affordable
25 Housing Fee or for land dedication or off-site affordable units: (i) if the development project

1 has submitted a complete Environmental Evaluation application prior to January 1, 2014, the
2 Project Sponsor shall pay an additional fee, or provide additional land dedication or off-site
3 affordable units, in an amount equivalent to 5% of the number of units constructed on-site; (ii)
4 if the development project has submitted a complete Environmental Evaluation application
5 prior to January 1, 2015, the Project Sponsor shall pay an additional fee, or provide additional
6 land dedication or off-site affordable units, in an amount equivalent to 7.5% of the number of
7 units constructed on-site; or (iii) if the development project has submitted a complete
8 Environmental Evaluation application on or prior to January 12, 2016, the Project Sponsor
9 shall pay an additional fee, or provide additional land dedication or off-site affordable units, in
10 an amount equivalent to 10% of the number of units constructed on-site. Notwithstanding the
11 foregoing, a development project shall not pay a fee or provide off-site units in a total amount
12 greater than the equivalent of ~~33~~30% of the number of units constructed on-site.

13 (G) Any development project consisting of 25 dwelling units or more that
14 has submitted a complete Environmental Evaluation application on or prior to January 12,
15 2016, and is eligible and elects to provide off-site affordable housing, may provide off-site
16 affordable housing by acquiring an existing building to fulfill all or part of the requirements set
17 forth in this Section 415.3 and in Section 415.7 with an equivalent amount of units as specified
18 in this Section 415.3(b)(2), as reviewed and approved by the Mayor's Office of Housing and
19 Community Development and consistent with the parameters of its Small Sites Acquisition
20 and Rehabilitation Program, in conformance with the income limits for the Small Sites
21 Program.

22 **SEC. 415.5. AFFORDABLE HOUSING FEE.**

23 * * * *

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

1 (1) The number of units equivalent to the applicable off-site percentage of the
2 number of units in the principal project. The applicable percentage shall be 20% for housing
3 development projects consisting of 10 dwelling units or more, but less than 25 dwelling units.
4 The applicable percentage for development projects consisting of 25 dwelling units or more
5 shall be ~~33~~ 30%. For the purposes of this Section 415.5, the City shall calculate the fee using
6 the direct fractional result of the total number of units multiplied by the applicable percentage,
7 rather than rounding up the resulting figure as required by Section 415.6(a).

8 (2) The affordability gap using data on the cost of construction of *providing the*
9 residential housing *on-site* and the Maximum Purchase Price for the equivalent unit size. *The*
10 *fee shall be calculated individually for 4 different building types and 2 types of tenure, ownership and*
11 *rental, rather than a single fee calculation uniformly applied to all types of projects. The 4 building*
12 *types shall be based on the height of the building, and shall consist of 4 different building heights,*
13 *which height the Department shall determine using the methods set forth in Planning Code Section*
14 *260: (A) up to 55 feet; (B) above 55 feet up to 85 feet; (C) above 85 feet up to 300 feet; and (D) above*
15 *300 feet.* The Department and MOHCD shall update the technical report from time to time as
16 they deem appropriate in order to ensure that the affordability gap remains current *and to*
17 *reflect current costs for the different building types and tenures.*

18 (3) No later than January 1 of each year, MOHCD shall adjust the fee. MOHCD
19 shall provide the Planning Department, DBI, and the Controller with information on the
20 adjustment to the fee so that it can be included in the Planning Department's and DBI's
21 website notice of the fee adjustments and the Controller's Citywide Development Fee and
22 Development Impact Requirements Report described in Section 409(a). MOHCD is
23 authorized to develop an appropriate methodology for indexing the fee, based on adjustments
24 in the cost of constructing housing and the Maximum Purchase Price for the equivalent unit
25 size. The method of indexing shall be published in the Procedures Manual.

1 (4) For any housing development that is located in an area with a specific
2 affordable housing requirement set forth in a Special Use District, or in any other section of
3 the Code such as Section 419, the higher affordable housing requirement shall apply.

4 * * * *

5 **SEC. 415.6. ON-SITE AFFORDABLE HOUSING ALTERNATIVE.**

6 ~~The requirements set forth in this Section 415.6 will be reviewed when the City completes an~~
7 ~~Economic Feasibility Study.~~ If a project sponsor is eligible and elects to provide on-site units
8 pursuant to Section 415.5(g), the development project shall meet the following requirements:

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

10 (1) The number of units constructed on-site shall generally be 12% of all units
11 constructed on the project site for housing development projects consisting of 10 dwelling
12 units or more, but less than 25 dwelling units. The affordable units shall be affordable to low-
13 income households. The number of units constructed on-site shall generally be 25% of all
14 units constructed on the project site for housing development projects consisting of 25
15 dwelling units or more, with a minimum of 15% of the units affordable to low-income
16 households and 10% of the units affordable to low- or moderate/middle-income households.
17 The Department shall require as a condition of Department approval of a project's building
18 permit, or as a condition of approval of a Conditional Use Authorization or Planned Unit
19 Development or as a condition of Department approval of a live/work project, that 12% or
20 25%, as applicable, of all units constructed on the project site shall be affordable to qualifying
21 households so that a project sponsor must construct .12 or .25 times, as applicable, the total
22 number of units produced in the principal project. If the total number of units is not a whole
23 number, the project sponsor shall round up to the nearest whole number for any portion of .5
24 or above.

25 (2) Specific Geographic Areas.

1 (A) For any housing development that is located in an area with a
2 specific affordable housing requirement set forth in a Special Use District or in any other
3 section of the Code such as Section 419, the higher housing requirement shall apply.

4 (B) In order to stabilize certain neighborhoods with historically high
5 concentrations of low and moderate income households that are undergoing displacement and
6 gentrification, evidenced by high levels of evictions, or which through local legislation adopted after
7 January 1, 2015, received (1) a 20% or greater increase in developable residential gross floor area
8 over prior zoning, or (2) a 35% or greater increase in residential densities over prior zoning, certain
9 neighborhoods shall have a higher on-site inclusionary requirement. In these neighborhoods, the on-
10 site inclusionary affordable housing alternative requirement shall be 10% higher than the on-site
11 inclusionary amounts set forth in Section 415.6(a)(1) above. The following neighborhoods shall be
12 evaluated to determine whether they meet the criteria set forth in this Subsection 415.6(a)(2)(B):
13 Mission District, Chinatown, Richmond and Western SOMA.

14 (3) If the principal project has resulted in demolition, conversion, or removal of
15 affordable housing units renting or selling to households at income levels and/or for a rental
16 rate or sales price below corresponding income thresholds for units affordable to low income
17 households, the Commission or the Department shall require that the project sponsor replace
18 the number of affordable units removed with units of a comparable number of bedrooms or
19 provide that 25% of all units constructed as part of the new project shall be affordable to low
20 income or moderate/middle income households, whichever is greater.

21 * * * *

22
23 **SEC. 415.7. OFF-SITE AFFORDABLE HOUSING ALTERNATIVE**

24 ~~The requirements set forth in this Section 415.7 will be reviewed when the City completes an~~
25 ~~Economic Feasibility Study.~~ If the project sponsor is eligible and elects pursuant to Section

1 415.5(g) to provide off-site units to satisfy the requirements of Section 415.1 *et seq.*, the
2 project sponsor shall notify the Planning Department and the Mayor's Office of Housing and
3 Community Development ("MOHCD") of its intent as early as possible. The Planning
4 Department and MOHCD shall provide an evaluation of the project's compliance with this
5 Section 415.7 prior to approval by the Planning Commission or Planning Department. The
6 development project shall meet the following requirements:

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

8 (1) For any housing development that is located in an area with a specific
9 affordable housing requirement, set forth in Section 419 or elsewhere in this Code, the higher
10 off-site housing requirement shall apply.

11 (2) For housing development projects consisting of 10 dwelling units or more
12 but less than 25 units, the number of units constructed off-site shall be 20%, so that a project
13 applicant shall construct .20 times the total number of units produced in the principal project. If
14 the total number of units is not a whole number, the project applicant shall round up to the
15 nearest whole number for any portion of .5 or above. The off-site affordable units shall be
16 affordable to low-income households.

17 (3) For housing development projects consisting of 25 dwelling units or more,
18 the number of units constructed off-site shall be ~~33~~30%, with 20% of the units affordable to
19 low-income households and ~~13~~10% of the units affordable to low- or moderate/middle-income
20 households, so that a project applicant shall construct ~~.30~~.30 times the total number of units
21 produced in the principal project. If the total number of units is not a whole number, the project
22 applicant shall round up to the nearest whole number for any portion of .5 or above.

23 (4) For any housing development that is located in an area with a specific
24 affordable housing requirement set forth in a Special Use District, or in any other section of
25 the Code such as Section 419, the higher affordable housing requirement shall apply.

1 * * * *

2
3 Section 4. Effective Date. This ordinance shall become effective 30 days after
4 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
5 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
6 of Supervisors overrides the Mayor's veto of the ordinance.

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