

LEGISLATIVE DIGEST

[Planning Code - Inclusionary Affordable Housing Fee and Dwelling Unit Mix Requirements]

Ordinance amending the Planning Code to revise the amount of the Inclusionary Affordable Housing Fee and the On-Site and Off-Site Affordable Housing Alternatives and other Inclusionary Housing requirements; to require minimum dwelling unit mix in all residential districts; affirming the Planning Department’s determination under the California Environmental Quality Act; making findings of public necessity, convenience, 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 City generally requires private developers of new market-rate housing to provide affordable housing (“Inclusionary Housing”) by paying a fee to the City. The City’s Inclusionary Affordable Housing Program, setting forth the fee and other requirements, are included in Planning Code Sections 415 *et seq.* A developer can also opt to comply with the Inclusionary Affordable Housing Program by providing below-market rate residential units on- site or off-site. Generally, the requirements are as follows:

1. Affordable Housing Fee. The development project pays a fee equivalent to the applicable off-site percentage of the number of units in the principal project. The fee is imposed on a per unit basis.

- For development projects consisting of 10 dwelling units or more, but less than 25 dwelling units, the percentage is 20%.
- For development projects consisting of 25 dwelling units or more, the percentage is 33%.

2. On-site Units. If a developer opts to provide affordable housing on-site, the requirements are as follows:

- For housing development projects consisting of 10 dwelling units or more, but less than 25 dwelling units, the number of affordable units constructed on-site is generally 12% of all units constructed on the project site. The units must be affordable to low-income households.
- For housing development projects consisting of 25 dwelling units or more, the number of affordable units constructed on-site is generally 25% of all units constructed on the

project site. A minimum of 15% of the units must be affordable to low-income households and 10% of the units must be affordable to low- or middle- income households.

3. Off-site Units. If a developer opts to provide affordable housing off-site, the requirements are as follows:

- For housing development projects consisting of 10 dwelling units or more but less than 25 units, the number of affordable units constructed off-site is 20% of the number of units in the principal project. The units must be affordable to low-income households.
- For housing development projects consisting of 25 dwelling units or more, the number of affordable units required to be constructed off-site is 33% of the number of units in the principal project. A minimum of 20% of the units must be affordable to low-income households and 13% affordable to low- or middle-income households.

The Planning Code includes several temporary requirements for projects that submitted environmental evaluation applications prior to January 12, 2016. For projects with completed applications after January 1, 2013, the fee and off-site requirements range from 25% to 30%; the on-site requirement from 13% to 14.5%. Units were required to be affordable to low-income households only. The requirements for projects that submitted an environmental evaluation application prior to January 1, 2013 were 17% to 20% for fee or off-site, and 12% for on-site.

If there is a higher Inclusionary Housing requirement in a specific zoning district, the higher requirement applies. The Planning Code includes specific Inclusionary Housing requirements for the UMU and SOMA Youth & Families Zoning Districts in Section 419. Planning Code section 415 contains temporary requirements for projects located in the UMU or SOMA Youth and Family zoning districts, generally 1% to 2% higher than the requirements set forth in Planning Code section 419.

The Planning Code also requires an applicant seeking a density bonus under State law to provide analysis to support any requested concessions and incentives under the State law.

The Planning Code requires the Controller to study the economic feasibility of the City's inclusionary housing requirements and produce a report in 2016 and 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 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.

The Planning Code defines "low income" as affordable to households earning no more than 55% of Area Median Income ("AMI") for purposes of renting an affordable unit, or 80% of

Area Median Income for purposes of purchasing an affordable unit. The Planning Code defines “moderate income” and “middle income” households as households whose total 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.

Currently, there is no city-wide requirement that a residential development include dwelling units of any particular bedroom count. However, section 207.6 sets forth dwelling unit mix requirements in RTO, RCD, NCT, DTR, and Eastern Neighborhoods Mixed Use Districts.

Amendments to Current Law

This legislation amends the Inclusionary Affordable Housing Program, Section 415 et seq, and adds Section 207.7 as follows:

1) New Inclusionary Requirements:

New inclusionary Housing requirements will apply to any development project that submits a complete environmental evaluation application on or after January 12, 2016.

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 units, the percentage is 20%.
- For development projects consisting of 25 units or more, the percentage is 23% for a rental project, and 28% for an ownership project.

On-site Affordable Housing: A developer may opt to provide a percentage of dwelling units on-site. If a developer opts to provide affordable housing on-site, the requirements are as follows

- For development projects consisting of 10 dwelling units or more, but less than 25 units, the percentage is 12%. Units in a rental housing project must be affordable to households earning no more than 80% of AMI; units in an ownership project must be affordable to households earning no more than 120% of AMI.
- For development projects consisting of 25 or more rental units, the percentage is 18%. Units in rental projects must be affordable to households earning an average of 80% AMI or less, with units equally distributed among households earning 55%, 80% and 110% of AMI. MOHCD may reduce these AMI ranges to maintain pricing that is below market in a particular neighborhood or at the request of the project sponsor.

- For development projects consisting of 25 or more ownership units, the percentage is 20%. Units in ownership projects must be affordable to households earning an average of 120% AMI, with units equally distributed among households earning 90%, 120% and 140% of AMI. MOHCD may reduce these AMI ranges to maintain pricing that is below market in a particular neighborhood or at the request of the project sponsor.

Off-site Affordable Housing: If a developer opts to provide affordable housing off-site, the requirements are as follows:

- For development projects consisting of 10 dwelling units or more, but less than 25 units, the percentage is 20%. Units must be affordable to households earning up to 80% of AMI for rental projects and 120% for ownership projects.
- For rental development projects consisting of 25 units or more, the percentage is 23%. The units must be affordable to an average of 85% AMI or less, with units equally distributed among households earning 55%, 80% and 120% of AMI. These AMI levels may be reduced to maintain pricing that is below market in a particular neighborhood or at the request of the project sponsor.
- For ownership development projects consisting of 25 units or more, the percentage is 28%. The units must be affordable to an average of 120% AMI or less, with units equally distributed among households earning between 90%, 120% and 140% of AMI. These AMI levels may be reduced to maintain pricing that is below market in a particular neighborhood or at the request of the project sponsor.

Projects that provide off-site affordable housing units may acquire an existing building consistent with the parameters of MOHCD's Small Sites Acquisition and Rehabilitation Program. Previously, only projects subject to the temporary requirements could do so.

2. Temporary requirements.

The legislation retains the temporary requirements for projects with completed environmental evaluation applications submitted prior to January 1, 2013. For projects with completed environmental evaluation applications submitted between January 1, 2013 and January 1, 2016, the legislation retains the temporary on-site requirements, but eliminates the fee, off-site, UMU and SOMA Youth and Family Zone temporary requirements.

3. Definitions.

The legislation defines a "rental housing project" as a housing project consisting solely of "rental units" (defined in Planning Code Section 401), and which agrees to remain rental for no less than 30 years. The project sponsor must enter into an agreement with the City, and the agreement is recorded against the property. "Owned Units" are condominiums, stock

cooperative, community apartment or detached single family home, where the owner or owners occupy the unit as their primary residence.

The legislation eliminates the definitions of low-income and moderate/middle-income in Section 415. Any remaining reference to these terms would be found in the definitions in Section 401.

4. Other requirements.

The legislation requires MOHCD to calculate, and the Planning Department to impose the fee on a dollar per square foot equivalency based on the total number of gross residential square feet in the project.

The legislation includes an automatic yearly increase of 0.5% in the fee/off-site and on-site requirements, starting on January 1, 2019, and continuing for 10 years, so long as the increase does not exceed the nexus requirements from the City's most recent nexus analysis.

The legislation imposes the Inclusionary Housing fee on any additional units constructed pursuant to the State Density Bonus Law, California Government Code section 65915 et seq.

The legislation adds a severability clause to the Inclusionary Housing Ordinance.

The legislation adds Section 207.7 to require a dwelling unit mix of either 25% two-bedroom or 10% three-bedroom units in all new residential buildings in all zoning districts, except in those zoning districts covered by the unit mix requirements in Section 207.6 (RTO, RCD, NCT, DTR and Eastern Neighborhoods Mixed Use districts). A developer may seek a modification of this requirement through the conditional use process.

Background Information

The City published the Residential Affordable Housing Nexus Analysis in November 2016. In February 2017, the Controller completed the feasibility analysis, the Inclusionary Housing Working Group Final Report, required by Planning Code Section 415.10. The legislation responds to the conclusions in the nexus analysis and the feasibility analysis.