



SAN FRANCISCO PLANNING DEPARTMENT

May 2, 2017

Ms. Angela Calvillo, Clerk
Honorable Mayor Lee
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

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**Re: Transmittal of Planning Department Case Number 2017-002161PCA:
Establishing a Fee for Monitoring of Student Housing
Board File No. 170093
Planning Commission Recommendation: Approval with Modification**

Dear Ms. Calvillo and Mayor Lee,

On April 27, 2017, the Planning Commission conducted duly noticed public hearings at regularly scheduled meetings to consider the proposed Ordinance that would amend Planning Code Section 415, introduced by Mayor Lee. At the hearing the Planning Commission recommended approval with modification.

The Commission's proposed modifications were as follows:

1. Clarify that the Monitoring Fee is due December 31, accompanying the annual submission of documentation to MOHCD by modifying proposed Section 415.3(e)(5)(D):

(D) The owner of the real property and each Post-Secondary Educational Institution or Institutions shall agree to submit annual documentation to MOHCD and the Planning Department, along with the annual monitoring fee, on or before December 31 of each year, that addresses the following:

2. Amend the date MOHCD publishes the indexed Monitoring Fee on its website to July 1 by modifying proposed Section 415.3(e)(5)(C)(iii):

(iii) No later than ~~September 30~~ July 1 of each year, MOHCD will publish on its website the current monitoring fee amount inclusive of the annual adjustment, and also make the fee amount available upon request at MOHCD's main office.

3. Clarify that the Monitoring Fee is charged on a per Student Housing project basis by modifying proposed Section 415.3(e)(5)(C):

The Mayor's Office of Housing and Community Development (MOHCD) is authorized to monitor ~~this~~ the Student Housing program described in this subsection (e)(5); and MOHCD shall

develop a monitoring form, ~~and~~ An annual monitoring fee of \$792 ~~to~~ per building exempted from the Inclusionary Housing Program pursuant to this Section 415.3(e)(5) shall be paid to MOHCD by the owner of the real property or the Post-Secondary Education Institution or Religious Institutions, as defined in Section 102 of this Code.

The proposed amendments are statutorily exempt under CEQA Guidelines Section 15273 Rates, Tolls, Fares, and Charges.

Mr. Mayor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission.

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,



Aaron D. Starr
Manager of Legislative Affairs

cc:

Judith A. Boyajian, Deputy City Attorney
Amy Chan, Mayor's Office of Housing and Community Development
Alisa Somera, Office of the Clerk of the Board

Attachments :

Planning Commission Resolution
Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 19904 HEARING DATE APRIL 27, 2017

Project Name: Establish Fee for Monitoring of Student Housing
Case Number: 2017-002161PCA [Board File No. 170093]
Initiated by: Mayor Lee / Introduced January 24, 2017
Staff Contact: Diego R Sánchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362

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RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD ESTABLISH A FEE FOR THE MAYOR'S OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT TO MONITOR STUDENT HOUSING; AFFIRMING THE PLANNING DEPARTMENT'S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; AND MAKING FINDINGS OF PUBLIC CONVENIENCE, NECESSITY, AND WELFARE UNDER PLANNING CODE SECTION 302.

WHEREAS, on January 31, 2017 Mayor Edwin Lee introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 170093, which would establish a fee for the Mayor's Office of Housing and Community Development to monitor Student Housing;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on April 27, 2017; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15273 Rates, Tolls, Fares, and Charges; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve with modifications** the proposed ordinance.

Those modifications include:

1. Clarify that the Monitoring Fee is due December 31, accompanying the annual submission of documentation to MOHCD by modifying proposed Section 415.3(e)(5)(D):

(D) The owner of the real property and each Post-Secondary Educational Institution or Institutions shall agree to submit annual documentation to MOHCD and the Planning Department, along with the annual monitoring fee, on or before December 31 of each year, that addresses the following:

2. Amend the date MOHCD publishes the indexed Monitoring Fee on its website to July 1 by modifying proposed Section 415.3(e)(5)(C)(iii):

(iii) No later than ~~September 30~~ July 1 of each year, MOHCD will publish on its website the current monitoring fee amount inclusive of the annual adjustment, and also make the fee amount available upon request at MOHCD's main office.

3. Clarify that the Monitoring Fee is charged on a per building basis by modifying proposed Section 415.3(e)(5)(C):

The Mayor's Office of Housing and Community Development (MOHCD) is authorized to monitor ~~this the Student Housing~~ program described in this subsection (e)(5). and MOHCD shall develop a monitoring form. ~~and~~ An annual monitoring fee of \$792 to per building exempted from the Inclusionary Housing Program pursuant to this Section 415.3(e)(5) shall be paid to MOHCD by the owner of the real property or the Post-Secondary Education Institution or Religious Institutions, as defined in Section 102 of this Code.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. Providing a mechanism for the City to collect monetary resources to monitor the Student Housing stock is important. This housing stock is exempt from the Inclusionary Affordable Housing Program and it behooves the City to assure it remains in compliance with the criteria for that exemption.
2. Should a Student Housing project fall out of compliance for its exemption from the Inclusionary Affordable Housing Program, adequately resourced monitoring will help the City to bring the project back into compliance. Should the Student Housing use terminate, adequate monitoring will also help the City require the provision of Inclusionary Housing Units or payment of the Affordable Housing Fee.
3. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

OBJECTIVE 1

IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

Policy 1.1

Plan for the full range of housing needs in the City and County of San Francisco, especially affordable housing.

Policy 1.9

Require new commercial developments and higher educational institutions to meet the housing demand they generate, particularly the need for affordable housing for lower income workers and students.

The proposed Ordinance will help the City manage its Student Housing stock, which is a valuable asset because it serves a population in need of housing in particular locations. By assuring Student Housing projects are in compliance with the exemption from the Inclusionary Affordable Housing Program, the City also assures that higher educational institutions are in fact providing this needed housing stock and thereby reducing demand on the balance of the City's housing.

4. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail because it concerns itself with establishing an annual monitoring fee for Student Housing.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing or neighborhood character because it concerns itself with establishing an annual monitoring fee for Student Housing.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing because it concerns itself with establishing an annual monitoring fee for Student Housing. The fee is intended to provide resources to MOHCD to assure that Institutions producing or using Student Housing use that housing for their students and do not use the exemption from the Inclusionary Affordable Housing Program granted to Student Housing for other purposes.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking because it concerns itself with establishing an annual monitoring fee for Student Housing.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired because it concerns itself with establishing an annual monitoring fee for Student Housing.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake because it concerns itself with establishing an annual monitoring fee for Student Housing.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings because it concerns itself with establishing an annual monitoring fee for Student Housing.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas because it concerns itself with establishing an annual monitoring fee for Student Housing.

5. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance with modifications as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on April 27, 2017.



Jonas P. Ionin
Commission Secretary

AYES: Hillis, Johnson, Koppel, Melgar, Moore, Richards

NOES: None

ABSENT: Fong

ADOPTED: April 27, 2017



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment

HEARING DATE: APRIL 27, 2017
EXPIRATION DATE: MAY 1, 2017

Project Name: **Establish Fee for Monitoring of Student Housing**
Case Number: **2017-002161PCA** [Board File No. 170093]
Initiated by: Mayor Lee / Introduced January 24, 2017
Staff Contact: Diego R Sánchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Recommendation: **Recommend Approval with Modifications**

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PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code to establish a fee for the Mayor's Office of Housing and Community Development to monitor Student Housing.

The Way It Is Now:

The Planning Code establishes that the Mayor's Office of Housing and Community Development (MOHCD) is authorized to monitor Student Housing. As part of this effort MOHCD shall develop an annual monitoring fee.

The Way It Would Be:

The Mayor's Office of Housing and Community Development (MOHCD) would maintain its authorization to monitor Student Housing; in addition the Planning Code would list the base annual monitoring fee, the method for annually adjusting the monitoring fee and the manner in which the monitoring fee will be publicized.

BACKGROUND

Prior to 2011 most Student Housing projects were subject to the Inclusionary Affordable Housing Program.¹ This often required the Student Housing project to provide permanently affordable housing in a setting geared to a temporary user. Recognizing this ill fit, and as a means to encourage new Student Housing production, Ordinance 321-10 exempted qualified Student Housing projects from the Inclusionary Affordable Housing Program.²

¹ Planning Code Section 415.3(f)(2) exempts housing projects located on property owned by the State of California or any of its agencies if they are used for an educational purpose.

² Ordinance 321-10:

<https://sfgov.legistar.com/View.ashx?M=F&ID=1123080&GUID=39A95781-C62D-4E92-AA77-920A1922BBE8>

To qualify for the exemption, a Student Housing project must not result in the loss or conversion of existing housing. The owner or Institution served by the Student Housing must also file an Institutional Master Plan (IMP), pursuant to Planning Code Section 304.5, with the Planning Department.

As part of this exemption, MOHCD is authorized to monitor the Student Housing and establish a monitoring fee. The monitoring fee is paid by the owner of or Institution served by the Student Housing project. Exempted projects are required to provide documentation to MOHCD demonstrating the following:

- The Institution continues to own or control the Student Housing project under a master lease or other contractual agreement;
- The percentage of students enrolled in the Institution who are occupying the Student Housing project;
- The Institution has recorded a Notice of Special Restrictions (NSR) against the property where the Student Housing project is located stating:
 - The Institution, if terminating the Student Housing Project, must file a statement with the Planning Department at least 60 days in advance of termination (termination statement);
 - The Student Housing project becomes subject to the Inclusionary Affordable Housing Program if the Institution terminates the project or fails to file the termination statement and fails to meet the requirements for a Student Housing project;
 - If the Student Housing project becomes subject to the Inclusionary Affordable Housing Program the owner of the project shall pay the Affordable Housing Fee plus any applicable interest or provide on-site affordable units;
 - The Institution is require to report annually to MOHCD;
 - The City may commence legal action to enforce the NSR and the terms of Planning Code Article 4 and Section 415; and
 - The Student Housing project may be inspected by a City employee to determine compliance with the requirements of the Planning Code.

ISSUES AND CONSIDERATIONS

The Importance of Monitoring Student Housing during a Housing Crisis

Creating more student-housing helps reduce the demand on the City's existing housing stock, and in particular the City's supply of lower-cost housing. While some students have access to resources that allow them more choice in the housing market, students typically have lower incomes thereby increasing demand on the City's more affordable housing stock. Further, housing the City's student population,

regardless of financial resources, can be difficult given the City is in the midst of a housing crisis³ and because higher educational institutions do not provide housing for every enrolled student.⁴

As means to facilitate the production of Student Housing, the Planning Code exempts qualified projects from the Inclusionary Affordable Housing Program.⁵ Because of this exemption, the City has a significant interest in assuring that Student Housing is in fact being used to house students. Otherwise the exemption from the Inclusionary Affordable Housing Program becomes a loophole that developers could use to avoid paying millions of dollars in Affordable Housing Fees. As the charts below show, there are currently two student housing projects with over 180 units in operation and six student housing projects with approximately 795 units under construction or Planning Department review.⁶ Given the size and projected increase of Student Housing projects, MOHCD needs the financial resources to successfully operate its monitoring function.

STUDENT HOUSING IN OPERATION

LOCATION	NO. OF BEDS	NO. OF UNITS	INSTITUTION
38 Harriet	46	23	California College of the Arts (CCA)
1321 Mission	400	160	CCA and San Francisco Conservatory of Music (SFCM)

STUDENT HOUSING UNDER CONSTRUCTION OR REVIEW

LOCATION	NO. OF BEDS	NO. OF UNITS	INSTITUTION
75 Arkansas	228	30	CCA
2500 Turk	600	150	University of San Francisco
200 Van Ness	400	117	SFCM
188 Hooper	600	247	CCA
333 12 th Street	394	200	Golden Gate University and San Francisco Art Institute (SFAI)
630 Geary	79	51	SFAI

³Periodicals of various political inclinations recognize San Francisco’s housing crisis: http://www.huffingtonpost.com/entry/san-francisco-housing-crisis_us_5750a95ee4b0eb20fa0d682e

<http://www.businessinsider.com/san-francisco-housing-crisis-history-2016-6/#san-francisco-is-the-second-densest-city-in-the-us-after-new-york-city-with-about-18451-people-per-square-mile-packed-into-about-47-square-miles-1>

⁴The General Plan, for example, notes on page I.58 that San Francisco State University, in 2013, had 29,905 enrolled students but only about 2,700 Student Housing units. http://www.sf-planning.org/ftp/General_Plan/2014HousingElement-AllParts_ADOPTED_web.pdf

⁵Ordinance 321-10

⁶Data from the San Francisco Property Information Map and MOHCD. Please note that these charts omit Academy of Art University (AAU) properties. The November 2015 AAU IMP indicates 1,783 beds in 17 properties.

Clarifying Student Housing Fees

Currently, the Planning Code states that Student Housing developers are required pay annual monitoring fees to MOHCD. Unfortunately the Planning Code does not indicate the fee amount, whether it changes annually, or the fee's due date. The proposed Ordinance attempts to address these shortcomings in the following five ways. First, it includes an initial annual monitoring fee amount of \$792. Second, it establishes that the Controller is to index the fee to reflect changes in the two-year average Consumer Price Index for San Francisco/San Jose Primary Metropolitan Area. Third, it requires the Controller to report the newly indexed fee to the Board of Supervisors by May 15 of each year. This shall accompany a certification that the new fees are sufficient to support the monitoring costs and not result in revenues exceeding monitoring costs. Fourth, it indicates that the new fee rate is effective July 1 of each year. And fifth, it requires MOHCD to publish the indexed fee on its website by September 30 of each year.

RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. Clarify that the Monitoring Fee is due December 31, accompanying the annual submission of documentation to MOHCD.
2. Amend the date MOHCD publishes the indexed Monitoring Fee on its website to July 1.

BASIS FOR RECOMMENDATION

The Department supports the Ordinance because it provides the monetary resources required for MOHCD to regularly monitor the City's growing Student Housing stock. In the midst of a housing shortage and an affordability crisis, it is important to assure that Student Housing units are being used appropriately. If a Student Housing project falls out of Planning Code compliance, adequate monitoring helps the City to bring the project back into compliance. Should the Student Housing use terminate, adequate monitoring also helps the City require the provision of Inclusionary Housing Units or payment of the Affordable Housing Fee. Further, clarifying how the fee is calculated, having an annual review of the fee, and publishing the latest fee on the City's website are crucial to this program's success. These new provisions will make the program more transparent and help facilitate compliance.

The Department's following recommendations will further improve the program's transparency and facilitate compliance:

Recommendation 1: Amend Section 415.3(e)(5)(D) to clarify that the Monitoring Fee is due December 31 of each year. While the proposed Ordinance indicates a base annual monitoring fee and the method for its indexing, it omits an explicit mention of its due date. Indicating that the annual monitoring fee is due December 31, along with the annual submission to MOHCD, clarifies this ambiguity. It also facilitates compliance with the Student Housing program.

Recommendation 2: Amend Section 415.3(e)(5)(C)(ii) to require that the indexed Monitoring Fee is published on the MOHCD website on July 1 of each year. The proposed Ordinance sets three target dates: it requires the Controller to file a report with the Board of Supervisors by May 15 indicating the new annual monitoring fee; it states that the new monitoring fee becomes effective July 1; and it requires MOHCD to publish the indexed fee on its website by September 30 of each year. Requiring the new fee to be published on the MOHCD website on July 1, instead of no later than September 30, ensures that the correct fee is always reflected on the City's web site. This increases clarity about the Student Housing program, eases use of the program by its participants and ensures that the City's website is always up to date.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

IMPLEMENTATION

The Department determined that this ordinance will not impact our current implementation procedures.

ENVIRONMENTAL REVIEW

The proposed amendments are statutorily exempt under CEQA Guidelines Section 15273 Rates, Tolls, Fares, and Charges.

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

RECOMMENDATION:	Recommendation of Approval with Modifications
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Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 170093