

1 [Planning Code - Inclusionary Affordable Housing Fee and Dwelling Unit Mix 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; ~~adding reporting requirements for~~**
 6 **~~density bonus projects~~ to require minimum dwelling unit mix in all residential districts;**
 7 **affirming the Planning Department's determination under the California Environmental**
 8 **Quality Act; making findings of public necessity, convenience, and welfare under**
 9 **Planning Code, Section 302; and making findings of consistency with the General Plan,**
 10 **and the eight priority policies of Planning Code, Section 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. General 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. 161351 and is incorporated herein by reference. The Board affirms
 24 this determination.

25 (b) On April 27, 2017, the Planning Commission, in Resolution No. 19903, 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. 161351, and is incorporated herein by reference.

4 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code
5 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth
6 in Planning Commission Resolution No. 19903 and the Board incorporates such reasons
7 herein by reference. A copy of Planning Commission Resolution No. 19903 is on file with the
8 Board of Supervisors in File No. 161351.

9
10 Section 2. Findings About Inclusionary Affordable Housing Requirements.

11 (a) The purpose of this ordinance is to adopt inclusionary or affordable housing
12 obligations following voter approval of Proposition C at the June 7, 2016 election to revise the
13 City Charter's inclusionary affordable housing requirements, which won overwhelming support
14 with 67.9% of the vote, and to update the provisions of the Planning Code that became
15 effective after the Charter Amendment passed, consistent with the process set forth in Section
16 415.10 of the Planning Code, and elaborated upon in Ordinance No. 76-16, which required
17 that the City study how to set inclusionary housing obligations in San Francisco at the
18 maximum economically feasible amount in market rate housing development to create
19 affordable housing. The inclusionary affordable housing obligations set forth in this ordinance
20 will supersede and replace any previous requirements.

21 (b) The San Francisco residential real estate market is one of the most expensive in
22 the United States. In February 2016, the California Association of Realtors reported that the
23 median priced home in San Francisco was \$1,437,500. This price is 222% higher than the
24 State of California median (\$446,460), and 312% higher than the national average
25 (\$348,900). While the national homeownership rate is approximately 63.8%, only

1 approximately 37% of San Franciscans own their own home. The majority of market-rate
2 homes for sale in San Francisco are priced out of the reach of low- and moderate-income
3 households. In 2015, the average rent was \$3,524, which is affordable to households earning
4 over \$126,864.

5 (c) The Board of Supervisors adopted San Francisco's General Plan Housing Element
6 in March 2015, and the California Housing and Community Development Department certified
7 it on May 29, 2015. The Housing Element states that San Francisco's share of the regional
8 housing need for years 2015 through 2022 includes 10,873 housing units for very-low- and
9 low-income households and 5,460 units for moderate/middle-income households, and a total
10 production of 28,870 net new units, with almost 60% to be affordable for very-low, low- and
11 moderate/middle-income San Franciscans.

12 (d) In November 2016, the City provided the updated Residential Affordable Housing
13 Nexus Analysis that confirms and quantifies the impact of new market rate housing
14 development on the demand for affordable housing for households earning up to 120% of
15 area median income. The study demonstrates a need of 31.8% affordable housing for rental
16 housing, and 37.6% affordable housing for ownership housing, and a need of 24.1% onsite
17 affordable housing for rental housing, and 27.3% onsite affordable housing for ownership
18 housing for households with incomes up to 120% of Area Median Income.

19 (e) In February 2017, the Office of the Controller presented a study of the economic
20 feasibility of increased inclusionary housing requirements, entitled "Inclusionary Housing
21 Working Group: Final Report." The Controller's Office, supported by a contracted consulting
22 team of three firms and advised by a Technical Advisory Committee (TAC) with
23 representatives appointed by the Mayor and Board of Supervisors, developed several policy
24 recommendations, including: (1) that the City should impose different inclusionary housing
25 requirements on rental and for-sale (condominium) properties; (2) that the City ~~could~~can set

1 the initial onsite requirements at a maximum feasible amount of 18% for rental projects and
2 20% for ownership projects; (3) that the City ~~may adopt~~should commit to a 15-year schedule
3 of increases to the inclusionary housing rate, at a rate of 0.5% increase each year; and (4)
4 that the City should revise the schedule of Inclusionary housing fees to provide a more
5 equivalent cost for developers as the on-site requirements. The Controller's Office
6 recommended updating the fee percentage to 23% and 28% to create an equivalency to the
7 recommended 18% and 20% on-site requirements, with the City conducting the specific
8 calculation of the fee itself.

9 (f) The Controller further acknowledged that application of the state-provided density
10 bonus could make a difference in the financial feasibility of housing development projects.

11 (g) The City's Inclusionary Affordable Housing Program is intended to help address the
12 demonstrated need for affordable housing in the City through the application of the City's land
13 use controls

14 (h) As rents and sales prices outpace what is affordable to the typical San Francisco
15 family, the City faces a continuing shortage of affordable housing for not only very low- and
16 low-income residents, but also for moderate, middle and upper-middle income families.

17 (i) In order to maximize the benefit of state and federal funds supporting affordable
18 housing construction, which are typically restricted to very low- and low-income households,
19 and to maximize the amount of affordable units constructed, the majority of the City's new
20 affordable housing production is likely to continue to focus on households at or below 60% of
21 area median income.

22 (j) The Board of Supervisors recognizes that this Inclusionary Housing Program is only
23 one small part of the City's overall strategy for providing affordable housing to very low-, low-,
24 moderate-, and middle-income households. The City will continue to acquire, rehabilitate and
25 produce units through the Mayor's Office of Housing and Community Development, provide

1 rental subsidies, and provide homeownership assistance to continue to expand its reach to
2 households in need of affordable housing.

3 (k) The City will also continue to pursue innovative solutions to provide and stabilize
4 affordable housing in San Francisco, including programs such as HOME-SF that incentivize
5 projects that set aside 30% of on-site units as permanently affordable, and 40% of units as
6 family-friendly multiple bedroom units.

7 (l) In an effort to support a mix of both ownership project and rental projects, the City is
8 providing a direct financial contribution to project sponsors who agree to rent units for a period
9 of 30 years. The direct financial contribution is in the form of a reduction in the applicable
10 affordable housing requirement.

11
12 Section 3. The Planning Code is hereby amended by revising Sections 415.2, 415.3,
13 415.5, 415.6, and 415.7, and 415.10, and adding a new Section 415.11, to read as follows:

14
15 **SEC. 415.2. DEFINITIONS.**

16 See Section 401 of this Article. ~~For purposes of Sections 415.3 et seq., "low income"~~
17 ~~households shall be defined as households whose total household income does not exceed 55%~~
18 ~~is 40% to 80% of Area Median Income for purposes of renting an affordable unit, or 80% to~~
19 ~~100% of Area Median Income for purposes of purchasing an affordable unit, and "moderate~~
20 ~~income" and "middle income" households shall mean households whose total household~~
21 ~~income does not exceed 100% is 80% to 120% of Area Median Income for purposes of renting~~
22 ~~an affordable unit, or 120% 100% to 140% of Area Median Income for purposes of purchasing~~
23 ~~an affordable unit. The Small Sites Fund, defined in Section 415.5(f)(2), and the Small Sites~~
24 ~~Program may use Affordable Housing Fees to acquire sites and buildings consistent with the~~
25 ~~income parameters of the Programs, as periodically updated and administered by MOHCD.~~

1 “Owned Unit” shall mean a dwelling unit that is a condominium, stock cooperative, community
2 apartment or detached single family home. The owner or owners of an owned unit must occupy the unit
3 as their primary residence.

4 “Rental Housing Project” shall mean a housing project consisting solely of Rental Units, as
5 defined in Section 401, which meets the following requirements:

6 (1) The units shall be rental housing for not less than 30 years from the issuance of the
7 certificate of occupancy pursuant to an agreement between the developer and the City. This agreement
8 shall be in accordance with applicable State law governing rental housing. All such agreements
9 entered into with the City must be reviewed and approved by the Planning Director and the City
10 Attorney’s Office, and may be executed by the Planning Director;

11 (2) The agreement shall be recorded against the property prior to issuance of the
12 certificate of occupancy.

13
14 **SEC. 415.3. APPLICATION.**

15 * * * *

16 (b) Any development project that has submitted a complete Environmental Evaluation
17 application prior to January 1, 2013 shall comply with the Affordable Housing Fee
18 requirements, the on-site affordable housing requirements or the off-site affordable housing
19 requirements, as applicable, in effect on January 12, 2016. For development projects that
20 have submitted a complete Environmental Evaluation application on or after January 1, 2013,
21 the requirements set forth in Planning Code Sections 415.5, 415.6, and 415.7 shall apply to
22 certain development projects consisting of 25 dwelling units or more during a limited period of
23 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 ~~s~~Section 415.3, if a development project is located in a UMU Zoning District or
18 in the South of Market Youth and Family Zoning District, and is eligible and elects to provide
19 on-site units pursuant to Section 415.5(g), such development project shall comply with the on-
20 site requirements applicable within such Zoning Districts, as they existed on January 12,
21 2016, plus the following additional amounts of on-site affordable units: (i) if the development
22 project has submitted a complete Environmental Evaluation application prior to January 1,
23 2014, the Project Sponsor shall provide additional affordable units in the amount of 1% of the
24 number of 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 ~~s~~Section 415.3, if a development project is located in a UMU Zoning District or
20 in 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 * * * *

23 (d) Notwithstanding the provisions set forth in Section 415.3(b), or the inclusionary
24 affordable housing requirements contained in Sections 415.5, 415.6, and 415.7, such
25 requirements shall not apply to any project that has not submitted a complete Environmental

1 Evaluation Application on or before January 12, 2016, if the project is located within the
2 Eastern Neighborhoods Mission Planning Area, the North of Market Residential Special Use
3 District Subarea 1 or Subarea 2, or the SOMA Neighborhood Commercial Transit District,
4 because inclusionary affordable housing levels for those areas will be addressed in
5 forthcoming area plan processes or an equivalent community planning process. Until such
6 planning processes are complete and new inclusionary housing requirements for projects in
7 those areas are adopted, projects shall (1) pay a fee or provide off-site housing in an amount
8 equivalent to 30% or (2) provide affordable units in the amount of 25% of the number of
9 Rental Units constructed on-site or 27% of the number of Owned Units constructed on-site.

10 (de) The City may continue to enter into development agreements or other similar
11 binding agreements for projects that provide inclusionary affordable housing at levels that may
12 be different from the levels set forth in Sections 415.1 et seq.

13 (f) Section 415.1 et seq., the Inclusionary Housing Program, shall not apply to:

14 (1) That portion of a housing project located on property owned by the United
15 States or any of its agencies or leased by the United States or any of its agencies, for a period
16 in excess of 50 years, with the exception of such property not used exclusively for a
17 governmental purpose;

18 (2) That portion of a housing project located on property owned by the State of
19 California or any of its agencies, with the exception of such property not used exclusively for a
20 governmental or educational purpose; or

21 (3) That portion of a housing project located on property under the jurisdiction of
22 the San Francisco Office of Community Investment and Infrastructure or the Port of San
23 Francisco where the application of Section 415.1 et seq. is prohibited by California or local
24 law.

1 (4) A 100% affordable housing project in which rents are controlled or regulated
2 by any government unit, agency or authority, excepting those unsubsidized and/or unassisted
3 units which are insured by the United States Department of Housing and Urban Development.
4 The Mayor's Office of Housing and Community Development must represent to the Planning
5 Commission or Planning Department that the project meets this requirement.

6 * * * *

7 (5) A Student Housing project that meets all of the following criteria:

8 * * * *

9 (C) The Mayor's Office of Housing and Community Development
10 (MOHCD) is authorized to monitor this program. MOHCD shall develop a monitoring form and
11 annual monitoring fee to be paid by the owner of the real property or the Post-Secondary
12 Educational Institution or Religious Institutions, as defined in Section 102 of this Code. The
13 owner of the real property and each Post-Secondary Educational Institution or Institutions
14 shall agree to submit annual documentation to MOHCD and the Planning Department, on or
15 before December 31 of each year, ~~that~~ which addresses the following:

16 * * * *

17 (iii) The owner of the real property records a Notice of Special
18 Restrictions (NSR) against fee title to the real property on which the Student Housing is
19 located that states the following:

20 * * * *

21 d. The Post-Secondary Educational Institution is required to
22 report annually as required in Subsection (e)(5)(C) above;

23 * * * *

24
25 **SEC. 415.5. AFFORDABLE HOUSING FEE.**

1 * * * *

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

4 (1) The number of units equivalent to the applicable off-site percentage of the
5 number of units in the principal housing project.

6 *(A) For housing development projects consisting of 10 dwelling units or more,*
7 *but less than 25 dwelling units, ~~t~~The applicable percentage shall be 20% ~~for housing development~~*
8 *~~projects consisting of 10 dwelling units or more, but less than 25 dwelling units.~~*

9 *(B) ~~The applicable percentage for~~ For development projects consisting of*
10 *25 dwelling units or more, ~~the applicable percentage~~ shall be 33% ~~if such units are Owned Units.~~*

11 *(C) For development projects consisting of 25 dwelling units or more, the*
12 *~~applicable percentage shall be 30% if such units are Rental Units in a Rental Housing Project. In the~~*
13 *~~event one or more of the Rental Units in the principal Rental Housing Project become ownership units,~~*
14 *~~for each Rental Unit or for the principal Rental Housing Project in its entirety, as applicable, the~~*
15 *~~Project Sponsor shall pay to either (A) reimburse the City the difference in the proportional~~*
16 *~~amount of the applicable inclusionary affordable housing fee so that the total fee Inclusionary~~*
17 *~~Affordable Housing Fee, which would be equivalent to the current Inclusionary Affordable~~*
18 *~~Housing Fee requirement for Owned Units, which is 33% of~~ (B) provide additional on-site or*
19 *~~off-site affordable units equivalent to the current inclusionary requirements for Owned Units,~~*
20 *~~apportioned among the required number of total units at various income levels in compliance~~*
21 *~~with the principal project, or such current percentage that has been adjusted annually by~~*
22 *~~MOHCD requirements in effect at the time of conversion.~~*

23 *For the purposes of this Section 415.5, the City shall calculate the fee using the*
24 *direct fractional result of the total number of units multiplied by the applicable percentage, rather than*
25 *rounding up the resulting figure as required by Section 415.6(a).*

1 (2) The affordability gap shall be calculated using data on ~~the MOHCD's cost of~~
2 construction of residential ~~of construction of to construct affordable residential~~ housing, for
3 three different building heights, as applicable: (A) up to 55 feet; (B) above 55 feet up to 85
4 feet; and (C) above 85 feet ~~and the Maximum Purchase Price for the equivalent unit size.~~ The fee
5 shall be calculated individually for these three different building types and two types of tenure,
6 ownership and rental, rather than a single fee calculation uniformly applied to all types of
7 projects. The Department and MOHCD shall calculate the affordability gap within 6 months of
8 the effective date of this ordinance and shall update the technical report every two years, with
9 analysis from the Technical Advisory Committee, from time to time as they deem appropriate in
10 order to ensure that the affordability gap remains current, ~~and to reflect current costs of~~
11 construction consistent with the requirements set forth below in Section 415.5(b)(3) and
12 Section 415.10.

13 (3) *For all housing developments, no ~~no~~ later than January 1 of each year,*
14 MOHCD shall adjust the fee based on adjustments in the City's cost of constructing affordable
15 housing, including development and land acquisition costs. MOHCD shall provide the
16 Planning Department, DBI, and the Controller with information on the adjustment to the fee so
17 that it can be included in the Planning Department's and DBI's website notice of the fee
18 adjustments and the Controller's Citywide Development Fee and Development Impact
19 Requirements Report described in Section 409(a). MOHCD ~~is authorized to~~ shall develop an
20 appropriate methodology for calculating and indexing the fee, in consultation with the
21 Technical Advisory Committee consistent with the procedures set forth in Section 415.10,
22 based on adjustments in the cost of constructing housing ~~based on adjustments in the cost of~~
23 ~~constructing housing and the Maximum Purchase Price for the equivalent unit size.~~ The method of
24 indexing shall be published in the Procedures Manual ~~and shall be provided to the Board of~~
25 ~~Supervisors when it is updated.~~

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

5 (5) In the event the project sponsor does not procure a building permit or site permit for
6 construction of the principal project within ~~two years (2430 months)~~ of the project's approval, the
7 development project shall comply with the inclusionary affordable housing requirements applicable
8 thereafter at the time when the project sponsor does proceed with pursuing a building permit. Such
9 time period shall be extended in the event of any litigation seeking to invalidate the City's approval of
10 such project, for the duration of the litigation.

11 (6) The fee shall be imposed on any additional units or square footage
12 authorized and developed under California Government Code Sections 65915 et seq. This
13 subsection 415.5(b)(6) shall not apply to development projects that have submitted a
14 complete Environmental Evaluation application on or before January 1, 2016.

15 (7) If the principal project has resulted in demolition, conversion, or removal of
16 affordable housing units that are subject to a recorded covenant, ordinance, or law that
17 restricts rents to levels affordable to persons and families of moderate-, low- or very low-
18 income, or housing that is subject to any form of rent or price control through a public entity's
19 valid exercise of its police power, the Commission or the Department shall require that the
20 project sponsor pay the Inclusionary Affordable Housing Fee equivalent for the number of
21 affordable units removed, in addition to compliance with the inclusionary requirements set
22 forth in this Section.

23 (c) **Notice to Development Fee Collection Unit of Amount Owed.** Prior to issuance
24 of the first construction document for a development project subject to Section 415.5, MOH
25

1 the Planning Department shall notify the Development Fee Collection Unit at DBI
2 electronically or in writing of its calculation of the amount of the fee owed.

3 (d) **Lien Proceedings.** If, for any reason, the Affordable Housing Fee imposed
4 pursuant to Section 415.5 remains unpaid following issuance of the first Certificate of
5 Occupancy, the Development Fee Collection Unit at DBI shall institute lien proceedings to
6 make the entire unpaid balance of the fee, plus interest and any deferral surcharge, a lien
7 against all parcels used for the development project in accordance with Section 408 of this
8 Article and Section 107A.13.15 of the San Francisco Building Code.

9 (e) If a housing project is located in an Area Plan with an additional or specific
10 affordable housing requirements such as those set forth in a special use district or section
11 416, 417, and 419 or elsewhere in this code, the higher housing requirement shall apply. ~~more~~
12 ~~specific provisions shall apply in lieu of or in addition to those provided in this Program, as~~
13 ~~applicable.~~

14 (f) **Use of Fees.** All monies contributed pursuant to the Inclusionary Affordable
15 Housing Program shall be deposited in the Citywide Affordable Housing Fund ("the Fund"),
16 established in Administrative Code Section 10.100-49. The Mayor's Office of Housing and
17 Community Development ("MOHCD") shall use the funds collected under this Section in the
18 following manner:

19 (1) Except as provided in subsection (2) below, the funds collected under this
20 Section shall be used to:

21 (A) increase the supply of housing affordable to qualifying households
22 subject to the conditions of this Section; and

23 (B) provide assistance to low- and moderate-income homebuyers; and

24 (C) pay the expenses of MOHCD in connection with monitoring and
25 administering compliance with the requirements of the Program. MOHCD is authorized to use

1 funds in an amount not to exceed \$200,000 every 5 years to conduct follow-up studies under
2 Section 415.9(e) and to update the affordable housing fee amounts as described above in
3 Section 415.5(b). All other monitoring and administrative expenses shall be appropriated
4 through the annual budget process or supplemental appropriation for MOHCD.

5 (2) **"Small Sites Funds."**

6 (A) Designation of Funds. MOHCD shall designate and separately
7 account for 10% percent of all fees that it receives under Section 415.1_et seq. that are
8 deposited into the Citywide Affordable Housing Fund, established in Administrative Code
9 Section 10.100-49, excluding fees that are geographically targeted such as those referred to
10 in Sections 415.5(b)(1) and 827(b)(1), to support acquisition and rehabilitation of Small Sites
11 ("Small Sites Funds"). MOHCD shall continue to divert 10% ~~percent~~ of all fees for this purpose
12 until the Small Sites Funds reach a total of \$15 million at which point, MOHCD will stop
13 designating funds for this purpose. At such time as designated Small Sites Funds are
14 expended and dip below \$15 million, MOHCD shall start designating funds again for this
15 purpose, such that at no time the Small Sites Funds shall exceed \$15 million. When the total
16 amount of fees paid to the City under Section 415.1_et seq. totals less than \$10 million over
17 the preceding 12 month period, MOHCD is authorized to temporarily divert funds from the
18 Small Sites Fund for other purposes. MOHCD must keep track of the diverted funds, however,
19 such that when the amount of fees paid to the City under Section 415.1_et seq. meets or
20 exceeds \$10 million over the preceding 12 month period, MOHCD shall commit all of the
21 previously diverted funds and 10% ~~percent~~ of any new funds, subject to the cap above, to the
22 Small Sites Fund.

23 (B) **Use of Small Sites Funds.** The funds shall be used exclusively to
24 acquire or rehabilitate "Small Sites" defined as properties consisting of 2-25 units. Units
25 supported by monies from the fund shall be designated as housing affordable to qualified

1 households ~~as set forth in Section 415.2~~ for no less than 55 years. Properties supported by
2 the Small Sites Funds must be:

- 3 (i) rental properties that will be maintained as rental properties;
- 4 (ii) vacant properties that were formerly rental properties as long
5 as those properties have been vacant for a minimum of two years prior to the effective date of
6 this legislation;
- 7 (iii) properties that have been the subject of foreclosure; or
- 8 (iv) a Limited Equity Housing Cooperative as defined in
9 Subdivision Code Sections 1399.1 et seq. or a property owned or leased by a non-profit entity
10 modeled as a Community Land Trust.

11 (C) Initial Funds. If, within 18 months from April 23, 2009, MOHCD
12 dedicates an initial one-time contribution of other eligible funds to be used initially as Small
13 Sites Funds, MOHCD may use the equivalent amount of Small Sites Funds received from
14 fees for other purposes permitted by the Citywide Affordable Housing Fund until the amount of
15 the initial one-time contribution is reached.

16 (D) Annual Report. At the end of each fiscal year, MOHCD shall issue a
17 report to the Board of Supervisors regarding the amount of Small Sites Funds received from
18 fees under this legislation, and a report of how those funds were used.

19 (E) Intent. In establishing guidelines for Small Sites Funds, the Board of
20 Supervisors does not intend to preclude MOHCD from expending other eligible sources of
21 funding on Small Sites as described in this Section, or from allocating or expending more than
22 \$15 million of other eligible funds on Small Sites.

23 (3) For all projects funded by the Citywide Affordable Housing Fund, MOHCD
24 requires the project sponsor or its successor in interest to give preference as provided in
25 Administrative Code Chapter 47.

1 (g) **Alternatives to Payment of Affordable Housing Fee.**

2 (1) **Eligibility:** A project sponsor must pay the Affordable Housing Fee unless it
3 qualifies for and chooses to meet the requirements of the Program through an Alternative
4 provided in this Subsection. The project sponsor may choose one of the following
5 Alternatives:

6 (A) **Alternative #1: On-Site Units.** Project sponsors may elect to
7 construct units affordable to qualifying households on-site of the principal project pursuant to
8 the requirements of Section 415.6.

9 (B) **Alternative #2: Off-Site Units.** Project sponsors may elect to
10 construct units affordable to qualifying households at an alternative site within the City and
11 County of San Francisco pursuant to the requirements of Section 415.7.

12 (C) **Alternative #3: Small Sites.** Qualifying project sponsors may elect
13 to fund buildings as set forth in Section 415.7-1.

14 (D) **Alternative #4: Combination.** Project sponsors may elect any
15 combination of payment of the Affordable Housing Fee as provided in Section 415.5,
16 construction of on-site units as provided in Section 415.6, or construction of off-site units as
17 provided in Section 415.7, provided that the project applicant constructs or pays the fee at the
18 appropriate percentage or fee level required for that option. Development Projects that have
19 submitted a complete Environmental Evaluation application after January 1, 2016 that are
20 providing on-site units under Section 415.6 and that qualify for and receive additional density
21 under California Government Code Section 65915 et seq. shall use Alternative #4 to pay the
22 Affordable Housing Fee on any additional units or square footage authorized under Section
23 65915.

24 (2) **Qualifications:** If a project sponsor wishes to comply with the Program
25 through one of the Alternatives described in subsection (g)(1) rather than pay the Affordable

1 Housing Fee, they must demonstrate that they qualify for the Alternative to the satisfaction of
2 the Department and MOHCD. A project sponsor may qualify for an Alternative by the
3 following methods:

4 (i) Method #1 - Ownership Units. All affordable units provided under this
5 Program shall be sold as ownership units and will remain ownership units for the life of the
6 project. Project sponsors must submit the 'Affidavit of Compliance with the Inclusionary
7 Affordable Housing Program' to the Planning Department prior to project approval by the
8 Department or the Commission; or

9 (ii) Method #2 - Government Financial Contribution. Submit to the
10 Department a contract demonstrating that the project's on- or off-site units are not subject to
11 the Costa Hawkins Rental Housing Act, California Civil Code Section 1954.50 because, under
12 Section 1954.52(b), it has entered into an agreement with a public entity in consideration for a
13 direct financial contribution or any other form of assistance specified in California Government
14 Code Sections 65915 et seq. and it submits an Affidavit of such to the Department. All such
15 contracts entered into with the City and County of San Francisco must be reviewed and
16 approved by ~~the Mayor's Office of Housing~~ MOHCD and the City Attorney's Office. All contracts
17 that involve 100% affordable housing projects in the residential portion may be executed by
18 the Mayor or the Director of ~~the Mayor's Office of Housing~~ MOHCD. Any contract that
19 involves less than 100% affordable housing in the residential portion, may be executed by
20 either the Mayor, the Director of ~~the Mayor's Office of Housing~~ MOHCD or, after review and
21 comment by ~~the Mayor's Office of Housing~~ MOHCD, the Planning Director. A Development
22 Agreement under California Government Code Sections 65864 et seq. and Chapter 56 of the
23 ~~San Francisco~~ Administrative Code entered into between a project sponsor and the City and
24 County of San Francisco may, but does not necessarily, qualify as such a contract.

1 (3) The Planning Commission or the Department may not require a project
2 sponsor to select a specific Alternative. If a project sponsor elects to meet the Program
3 requirements through one of the Alternatives described in subsection (g)(1), they must choose
4 it and demonstrate that they qualify prior to any project approvals from the Planning
5 Commission or Department. The Alternative will be a condition of project approval and
6 recorded against the property in an NSR. Notwithstanding the foregoing, if a project sponsor
7 qualifies for an Alternative described in subsection (g)(1) and elects to construct the affordable
8 units on- or off-site, ~~they~~ the project sponsor must submit the 'Affidavit of Compliance with the
9 Inclusionary Housing Program' based on the fact that the units will be sold as ownership units.
10 A project sponsor who has elected to construct affordable ownership units on- or off-site may
11 only elect to pay the Affordable Housing Fee up to the issuance of the first construction
12 document if the project sponsor submits a new Affidavit establishing that the units will not be
13 sold as ownership units. If a project sponsor fails to choose an Alternative before project
14 approval by the Planning Commission or Planning Department or if a project becomes
15 ineligible for an Alternative, the provisions of Section 415.5 shall apply.

16 (4) If at any time, the project sponsor eliminates the on-site or off-site affordable
17 ownership-only units, then the project sponsor must immediately inform the Department and
18 ~~MOH~~ MOHCD and pay the applicable Affordable Housing Fee plus interest and any
19 applicable penalties provided for under this Code. If a project sponsor requests a modification
20 to its conditions of approval for the sole purpose of complying with this Section, the Planning
21 Commission shall be limited to considering issues related to Section 415et seq. in considering
22 the request for modification

23 **SEC. 415.6. ON-SITE AFFORDABLE HOUSING ALTERNATIVE.**
24
25

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

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

5 (1) For housing development projects consisting of 10 dwelling units or more, but less
6 than 25 dwelling units, the number of affordable units constructed on-site shall generally be
7 12% of all units constructed on the project site for housing development projects consisting of 10
8 dwelling units or more, but less than 25 dwelling units. The affordable units shall all be affordable
9 to low- and lower-income households. Owned Units shall be affordable to households earning
10 80% up to 100% of Area Median Income, with an average affordable sales price set at 90-80% of
11 Area Median Income or less. Rental Units shall be affordable to households earning 40% up to
12 80-65% of Area Median Income, with an average affordable rent set at 60-55% of Area Median Income
13 or less. The number of units constructed on-site shall generally be 25% of all units constructed on the
14 project site for housing development projects consisting of 25 dwelling units or more, with a minimum
15 of 15% of the units affordable to low-income households and 10% of the units affordable to low- or
16 moderate/middle-income households.

17 (2) For any housing development project consisting of 25 or more Owned Units,
18 the number of affordable units constructed on-site shall generally be 20% of all units
19 constructed on the project site. A minimum of 10% of the units shall be affordable to low-
20 income households, 5% of the units shall affordable to moderate-income households, and 5%
21 of the units shall be affordable to middle-income households. Owned Units for low-income
22 households shall have an affordable purchase price set at 80% of Area Median Income or
23 less, with households earning up to 100% of Area Median Income eligible to apply for low-
24 income units. Owned Units for moderate-income households shall have an affordable
25 purchase price set at 105% of Area Median Income or less, with households earning from

1 95% to 120% of Area Median Income eligible to apply for moderate-income units. Owned
2 Units for middle-income households shall have an affordable purchase price set at 130% of
3 Area Median Income or less, with households earning from 120% to 150% of Area Median
4 Income eligible to apply for middle-income units. For any affordable units with purchase
5 prices set at 100% of Area Median Income or above, studio units shall not be allowed.
6 MOHCD may reduce Area Median Income pricing and the minimum income required for
7 eligibility in each ownership category.

8 (3) For any Rental Housing Project consisting of 25 or more Rental Units, the
9 number of affordable units constructed on-site shall generally be 18% of all units constructed
10 on the project site, with a minimum of 10% of the units affordable to low-income households,
11 4% of the units affordable to moderate-income households, and 4% of the units affordable to
12 middle-income households. Rental Units for low-income households shall have an affordable
13 rent set at 55% of Area Median Income or less, with households earning up to 65% of Area
14 Median Income eligible to apply for low-income units. Rental Units for moderate-income
15 households shall have an affordable rent set at 80% of Area Median Income or less, with
16 households earning from 65% to 90% of Area Median Income eligible to apply for moderate-
17 income units. Rental Units for middle-income households shall have an affordable rent set at
18 110% of Area Median Income or less, with households earning from 90% to 130% of Area
19 Median Income eligible to apply for middle-income units. For any affordable units with rental
20 rates set at 100% of Area Median Income or above, studio units shall not be allowed.
21 MOHCD may reduce Area Median Income pricing and the minimum income required for
22 eligibility in each rental category.

23 (4) Notwithstanding the foregoing, Area Median Income limits for Rental Units
24 and Owned Units, the maximum affordable rents or sales price shall be no higher than 20%
25 below median rents or sales prices for the neighborhood within which the project is located,

1 which shall be defined in accordance with the Planning Department's Neighborhood Groups
2 Map. MOHCD shall adjust the allowable rents and sales prices, and the eligible households
3 for such units, accordingly, and such potential readjustment shall be a condition of approval
4 upon project entitlement. The City shall review the updated data on neighborhood rents and
5 sales prices on an annual basis.

6 (5) Starting on January 1, 2018, and no later than January 1 of each year
7 thereafter, MOHCD shall increase the percentage of units required on-site for projects
8 consisting of 10 – 24 units, as set forth in Section 415.6(a)(1), by increments of 0.5% each
9 year, until such requirement is 15%. For all development projects with 25 or more Owned or
10 Rental Units, the required on-site affordable ownership housing to satisfy this section 415.6
11 shall increase by 1.0% annually for two consecutive years starting January 1, 2018. The
12 increase shall be apportioned to units affordable to low-income households, as defined above
13 in Subsection 415.6(a)(3). Starting January 1, 2020, the increase to on-site rental and
14 ownership developments with 25 or more units shall increase by 0.5% annually, with such
15 increases allocated equally for rental and ownership units to moderate and middle income
16 households, as defined above in Subsection 415.6(a)(3). The total on-site inclusionary
17 affordable housing requirement shall not exceed 26% for development projects consisting of
18 Owned Units or 24% for development projects consisting of Rental Units, and the increases
19 shall cease at such time as these limits are reached. MOHCD shall provide the Planning
20 Department, DBI, and the Controller with information on the adjustment to the on-site
21 percentage so that it can be included in the Planning Department's and DBI's website notice
22 of the fee adjustments and the Controller's Citywide Development Fee and Development
23 Impact Requirements Report described in Section 409(a).

24 ~~(2) For any housing development project consisting of 25 or more Owned Units,~~
25 ~~the number of affordable units constructed on-site shall be 27% of all units constructed on the~~

1 project site, with a minimum of 15% of the units affordable to low or lower income households
2 and 12% of the units affordable to moderate/middle income households. Owned Units for
3 low and lower income households shall be affordable to a range of households from 80% to
4 100% of Area Median Income, with an average affordable sales price set at 90% of Area
5 Median Income or less. Owned Units for middle/moderate income households shall be
6 affordable to a range of households from 100% to 140% of Area Median Income, with an
7 average affordable sales price set at 120% of Area Median Income or less; provided that a
8 middle/moderate income unit shall have a maximum sales price set at 100% of Area Median
9 Income for a single income household. MOHCD may reduce the average Area Median
10 Income upon request by the project sponsor.

11 ——— (3) For any Rental Housing Project consisting of 25 or more Rental Units, the
12 number of affordable units constructed on-site shall generally be 24% of all units constructed
13 on the project site, with a minimum of 15% of the units affordable to low or lower income
14 households and 9% of the units affordable to moderate/middle income households. Rental
15 Units for low and lower income households shall be affordable to a range of households
16 earning from 40% to 80% of Area Median Income, with an average affordable rent set at 60%
17 of Area Median Income or less. Rental Units for middle/moderate income households shall be
18 affordable to a range of households earning from 80% to 120% of Area Median Income, with
19 an average affordable rent set at 100% of Area Median Income or less; provided that a
20 middle/moderate income unit shall have a maximum rent set at 100% of Area Median Income
21 for a single income household. MOHCD may reduce the average Area Median Income upon
22 request by the project sponsor. MOHCD shall set forth in the Procedures Manual the
23 administration of rental units within this range.

24 ——— (4) A minimum of 40% of the on-site affordable units shall consist of two
25 bedroom units and a minimum of 20% of the on-site affordable units shall consist of three

1 bedrooms or larger. Units shall have minimum floor areas that conform to the standards
2 developed by the California Tax Credit Allocation Committee (CTCAC) for affordable units.
3 The total residential floor area devoted to the affordable units shall not be less than the
4 applicable percentage applied to the total residential floor area of the principal project,
5 provided that a 10% variation in floor area is permitted.

6 ~~———— (5) In the event one or more of the Rental Units in the principal Rental Housing~~
7 ~~Project become ownership units, each converted Rental Unit shall reimburse the City the~~
8 ~~proportional difference between the amount of the then-current inclusionary affordable~~
9 ~~housing requirement for Rental Units and Owned Units. If a Rental Housing Project is~~
10 ~~converted to an ownership housing project in its entirety, an additional 3% of the units shall be~~
11 ~~designated as affordable to qualifying households, apportioned between the required number~~
12 ~~of low- and lower-income and moderate/middle-income on-site units in compliance with the~~
13 ~~requirements currently in effect at the time of conversion.~~

14 (6) The Department shall require as a condition of Department approval of a
15 project's building permit, or as a condition of approval of a Conditional Use Authorization or
16 Planned Unit Development or as a condition of Department approval of a live/work project,
17 that 12%, ~~24% or 27%~~ ~~25%~~, 18%, or 20%, as applicable, or such current percentage that has
18 been adjusted annually by MOHCD, of all units constructed on the project site shall be
19 affordable to qualifying households so that a project sponsor must construct .12, ~~.24 or .27 or~~
20 ~~.25~~ .18, or .20 times, or such current number as adjusted annually by MOHCD, as applicable,
21 the total number of units produced in the principal project. If the total number of units is not a
22 whole number, the project sponsor shall round up to the nearest whole number for any portion
23 of .5 or above.

24 (7) In the event one or more of the Rental Units in the principal Rental Housing
25 Project become ownership units, for each converted Rental Unit, or for the principal Rental

1 Housing Project in its entirety, as applicable, the project owner shall either (A) reimburse the
2 City the proportional amount of the inclusionary affordable housing fee, which would be
3 equivalent to the current inclusionary affordable fee requirement for Owned Units, or (B)
4 provide additional on-site or off-site affordable units equivalent to the current inclusionary
5 requirements for Owned Units, apportioned among the required number of units at various
6 income levels in compliance with the requirements in effect at the time of conversion.

7 **(8) Specific Geographic Areas.** For any housing development that is located
8 in an area with a specific affordable housing requirement set forth in a Special Use District or
9 in any other section of the Code such as Section 419, the higher housing requirement shall
10 apply. The Planning Department, in consultation with the Controller, shall undertake a study of areas
11 where an Area Plan, Special Use District, or other re-zoning is being considered for adoption or
12 has been adopted after January 1, 2015, to determine whether a higher on-site inclusionary affordable
13 housing requirement is feasible on sites that have received a 20% or greater increase in developable
14 residential gross floor area or a 35% or greater increase in residential density over prior zoning, and
15 shall submit such information to the Planning Commission and Board of Supervisors.

16 **(89)** If the principal project has resulted in demolition, conversion, or removal of
17 affordable housing units that are subject to a recorded covenant, ordinance, or law that
18 restricts rents to levels affordable to persons and families of moderate-, low- or very-low-
19 income, or housing that is subject to any form of rent or price control through a public entity's
20 valid exercise of its police power, the Commission or the Department shall require that the
21 project sponsor replace the number of affordable units removed with units of a comparable
22 number of bedrooms and sales prices or rents, in addition to compliance with the
23 requirements set forth in this Section. ~~renting or selling to households at income levels and/or~~
24 ~~for a rental rate or sales price below corresponding income thresholds for units affordable to~~
25 ~~low income households, the Commission or the Department shall require that the project~~

1 sponsor replace the number of affordable units removed with units of a comparable number of
2 bedrooms in addition to compliance with the inclusionary requirements set forth in this Section
3 415.6 ~~or provide that 25% of all units constructed as part of the new project shall be affordable to low~~
4 ~~income or moderate/middle income households, whichever is greater.~~

5 (9) **Annual indexing.** ~~The required on-site affordable housing to satisfy this~~
6 ~~section 415.6 shall increase by 0.75% annually for all development projects with 10-24 units~~
7 ~~of housing, beginning on January 1, 2018.~~

8 *(10) Any development project that constructs on-site affordable housing units as set*
9 *forth in this Section 415.6 shall diligently pursue completion of such units. In the event the project*
10 *sponsor does not procure a building permit or site permit for construction of the principal project*
11 *within ~~two years (24 30 months)~~ of the project's approval, the development project shall comply with*
12 *the inclusionary affordable housing requirements applicable thereafter at the time when the project*
13 *sponsor procures a building permit. Such deadline shall be extended in the event of any litigation*
14 *seeking to invalidate the City's approval of such project, for the duration of the litigation.*

15 (b) Any On-site units provided through this Section 415.6 may be used to qualify for a
16 density bonus under California Government Code Section 65915, any ordinance
17 implementing Government Code Section 65915, or one of the Affordable Housing Bonus
18 Programs currently proposed in an ordinance in Board of Supervisors File No. 150969 or its
19 equivalent if such ordinance is adopted. An applicant seeking a density bonus under State
20 Law shall provide reasonable documentation to establish eligibility for a requested density
21 bonus, incentive or concession, and waiver or reduction of development standards, as
22 provided for under State Law and as consistent with the process and procedures detailed in a
23 locally adopted ordinance implementing the State Law.

24 (c) Beginning in January 2018, the Planning Department shall prepare an annual
25 report to the Planning Commission about the number of density bonus projects under

1 California Government Code Section 65915, the number of density bonus units, and the types
2 of concessions and incentives and waivers provided to each density bonus project.

3 (d) Unless otherwise specified in this Section 415.1 et seq., in the event the project
4 sponsor is eligible for and elects to receive additional density under California Government
5 Code Section 65915, the Sponsor shall pay the Affordable Housing Fee on any additional
6 units or square footage authorized under that section in accordance with the provisions in
7 Section 415.5(g)(1)(D).

8 **(be) Timing of Construction.** On-site affordable housing required by this Section
9 415.6 shall be constructed, completed, ready for occupancy, and marketed no later than the
10 market rate units in the principal project.

11 **(ef) Type of Housing.**

12 (1) Equivalency of Units. All on-site units constructed under this Section 415.6
13 shall be provided as ownership units unless the project sponsor meets the eligibility
14 requirement of Section 415.5(g). ~~All on-site units must be affordable to low income households.~~ In
15 general, affordable units constructed under this Section 415.6 shall be comparable in number
16 of bedrooms, exterior appearance and overall quality of construction to market rate units in
17 the principal project. A Notice of Special Restrictions shall be recorded prior to issuance of the
18 first construction document and shall specify the number, location and sizes for all affordable
19 units required under this subsection (ef). The affordable units shall be evenly distributed
20 throughout the building. For buildings over 120 feet in height, as measured under the
21 requirements set forth in the Planning Code, the affordable units may be distributed
22 throughout the lower 2/3 of the building, as measured by the number of floors. The interior
23 features in affordable units should be generally the same as those of the market rate units in
24 the principal project, but need not be the same make, model or type of such item as long as
25 they are of good and new quality and are consistent with then-current standards for new

1 housing. The square footage of affordable units does not need to be the same as or
2 equivalent to that in market rate units in the principal project, so long as it is consistent with
3 then-current standards for new housing. ~~The affordable units are not required to be the same~~
4 ~~size as the market rate units, and may be 90% of the average size of the specific unit type.~~
5 ~~For buildings over 120 feet in height, as measured under the requirements set forth in the~~
6 ~~Planning Code, the average size of the unit type may be calculated for the lower 2/3 of the~~
7 ~~building, as measured by the number of floors. Where applicable, parking shall be offered to~~
8 ~~the affordable units subject to the terms and conditions of the Department's policy on~~
9 ~~unbundled parking for affordable housing units as specified in the Procedures Manual and~~
10 ~~amended from time to time. *On-site affordable units shall be ownership units unless the project*~~
11 ~~*applicant meets the eligibility requirement of Section 415.5(9).*~~

12 (2) Minimum Size of Affordable Units. The affordable units are not required to
13 be the same size as the market rate units, and may be 90% of the average size of the specific
14 unit type. For buildings over 120 feet in height, as measured under the requirements set forth
15 in the Planning Code, the average size of the unit type may be calculated for the lower 2/3 of
16 the building, as measured by the number of floors. For affordable dwelling units, individual
17 unit square footage shall not be less than the following for each unit type:

18 Studios: 350 square feet

19 1-Bedrooms: 550 square feet

20 2-Bedrooms: 800 square feet

21 3-Bedrooms: 1,000 square feet

22 4-Bedrooms: 1,250 square feet

23 Units priced to be affordable for households earning 100% of Area Median
24 Income or above shall not include studios. The total residential floor area devoted to the

25

1 affordable units shall not be less than the applicable percentage applied to the total residential
2 floor area of the principal project, provided that a 10% variation in floor area is permitted.

3 ~~—— (2) Density Bonus Projects. An applicant seeking a density bonus under the~~
4 ~~provisions of State Law shall provide reasonable documentation to establish eligibility for a~~
5 ~~requested density bonus, incentives or concessions, and waivers or reductions of~~
6 ~~development standards. The Planning Department shall provide information about the value~~
7 ~~of the density bonus, concessions and incentives for each density bonus project and include it~~
8 ~~in the Department's case report or decision on the application. In addition, beginning in~~
9 ~~January 2018, the Planning Department shall prepare an annual report to the Planning~~
10 ~~Commission about the number of density bonus projects, density bonus units and the kinds of~~
11 ~~density bonuses, concessions and incentives provided to each density bonus project, which~~
12 ~~should be presented at the same time as the Housing Balance Report.~~

13 ~~(d)(g)~~ **Marketing the Units.** The Mayor's Office of Housing and Community
14 Development ("MOHCD") shall be responsible for overseeing and monitoring the marketing of
15 affordable units under this Section 415.6. In general, the marketing requirements and
16 procedures shall be contained in the Procedures Manual as amended from time to time and
17 shall apply to the affordable units in the project. MOHCD may develop occupancy standards
18 for units of different bedroom sizes in the Procedures Manual in order to promote an efficient
19 allocation of affordable units. MOHCD may require in the Procedures Manual that prospective
20 purchasers complete homebuyer education training or fulfill other requirements. MOHCD
21 shall develop a list of minimum qualifications for marketing firms that market affordable units
22 under Section 415.6 ~~415.5 et seq.~~, referred to in the Procedures Manual as Below Market
23 Rate (BMR units). No developer marketing units under the Program shall be able to market
24 affordable units except through a firm meeting all of the minimum qualifications. The Notice of
25 Special Restrictions or conditions of approval shall specify that the marketing requirements

1 and procedures contained in the Procedures Manual as amended from time to time, shall
2 apply to the affordable units in the project.

3 (1) **Lottery.** At the initial offering of affordable units in a housing project
4 and when ownership units become available for re-sale in any housing project subject to this
5 Program after the initial offering, MOHCD must require the use of a public lottery approved by
6 MOHCD to select purchasers or tenants.

7 (2) **Preferences.** MOHCD shall create a lottery system that gives
8 preference according to the provisions of Administrative Code Chapter 47. MOHCD shall
9 propose policies and procedures for implementing these preferences to the Planning
10 Commission for inclusion as an addendum to ~~in~~ the Procedures Manual. Otherwise, it is the
11 policy of the City to treat all households equally in allocating affordable units under this
12 Program.

13 ~~(e)~~ (h) Individual affordable units constructed under Section 415.6 as part of an on-site
14 project shall not have received development subsidies from any Federal, State or local
15 program established for the purpose of providing affordable housing, and shall not be counted
16 to satisfy any affordable housing requirement. Other units in the same on-site project may
17 have received such subsidies. In addition, subsidies may be used, only with the express
18 written permission by MOHCD, to deepen the affordability of an affordable unit beyond the
19 level of affordability required by this Program.

20 ~~(f)~~ (i) Notwithstanding the provisions of Section ~~415.6(e)~~ 415.6(g) above, a project may
21 use California Debt Limit Allocation Committee (CDLAC) tax-exempt bond financing and 4%
22 tax credits under the Tax Credit Allocation Committee (TCAC) to help fund its obligations
23 under Section 415.1 et seq. this ordinance as long as the project provides 20% percent of the
24 units as affordable to households at 50% percent of Area Median Income for on-site housing
25 or 10% of the units as affordable to households at 50% of Area Median Income, and 30% of

1 the units as affordable to households at 60% of Area Median Income for on-site housing. The
2 income table to be used for such projects when the units are priced at 50% or 60% percent of
3 Area Median Income is the income table used by MOHCD for the Inclusionary Affordable
4 Housing Program, not that used by TCAC or CDLAC. Except as provided in this subsection
5 *(i)*, all units provided under this Section must meet all of the requirements of Section 415.1 et
6 seq. this ordinance and the Procedures Manual for on-site housing.

7 ~~(g)~~ (i) Benefits. If the project sponsor is eligible for and elects to satisfy the affordable
8 housing requirements through the production of on-site affordable housing in this Section
9 415.6, the project sponsor shall be eligible to receive a refund for only that portion of the
10 housing project which is affordable for the following fees: a Conditional Use authorization or
11 other fee required by Section 352 of this Code, if applicable; an environmental review fee
12 required by Administrative Code Section ~~31.46B~~ 31.22, if applicable; a building permit fee
13 required by Section 355 of this Code for the portion of the housing project that is affordable.
14 The project sponsor shall pay the building fee for the portion of the project that is market-rate.
15 An application for a refund must be made within six months from the issuance of the first
16 certificate of occupancy.

17 The Controller shall refund fees from any appropriated funds to the project sponsor on
18 application by the project sponsor. The application must include a copy of the Certificate of
19 Occupancy for all units affordable to a qualifying household required by the Inclusionary
20 Housing Program. It is the policy of the Board of Supervisors to appropriate money for this
21 purpose from the General Fund.

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 415.1et 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 or Special Use District
9 with a specific affordable housing requirement, ~~set forth in Section 419 or elsewhere in this Code,~~
10 the higher 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 affordable units constructed off-site shall be 20%, so that
13 a project applicant shall construct .20 times the total number of units produced in the principal
14 project. If the total number of units is not a whole number, the project applicant shall round up
15 to the nearest whole number for any portion of .5 or above. ~~The off-site affordable units shall~~
16 ~~be affordable to low — and lower — income households.~~ Owned Units shall be affordable to
17 households earning 80% up to 100% of Area Median Income, with an average affordable sales price
18 set at 90-80% of Area Median Income or less. Rental Units shall be affordable to households earning
19 40% up to 8065% of Area Median Income, with an average affordable rent set at 6055% of Area
20 Median Income or less.

21 (3) ~~For housing development projects consisting of 25 dwelling units or more,~~
22 ~~the number of units constructed off-site shall be 33%, with 20% of the units affordable to low-~~
23 ~~income households and 13% of the units affordable to low- or moderate/middle-income~~
24 ~~households, so that a project applicant shall construct .33 times the total number of units~~
25 ~~produced in the principal project. If the total number of units is not a whole number, the project~~

1 applicant shall round up to the nearest whole number for any portion of .5 or above. For any
2 housing development project consisting of 25 or more Owned Units, the number of affordable units
3 constructed off-site shall be 33% of all units constructed on the project site, with a minimum of 15% of
4 the units affordable to low- or lower-income households and 18% of the units affordable to
5 moderate/middle-income households. Owned Units for low- and lower-low-income
6 households shall be 8% of the units affordable to a range of moderate-income households, from
7 80% to 100% of Area Median Income, with an average Area Median Income, with an average
8 affordable sales price set at 90% of Area Median Income or less. Owned Units for and 7% of
9 the units affordable to middle/moderate income households shall be affordable to a range of
10 households from 100% to 140% of Area Median Income, with an average affordable sales
11 price set at 120% of Area Median Income or less; provided that a middle/moderate income
12 unit shall have a maximum sales price set at 100% of Area Median Income for a single
13 income household. MOHCD may reduce the average Area Median Income upon request by
14 the project sponsor. Owned Units for low-income households shall have an affordable
15 purchase price set at 80% of Area Median Income or less, with households earning up to
16 100% of Area Median Income eligible to apply for low-income units. Owned Units for
17 moderate-income households shall have an affordable purchase price set at 105% of Area
18 Median Income or less, with households earning from 95% to 120% of Area Median Income
19 eligible to apply for moderate-income units. Owned Units for middle-income households shall
20 have an affordable purchase price set at 130% of Area Median Income or less, with
21 households earning from 120% to 150% of Area Median Income eligible to apply for middle-
22 income units. For any affordable units with purchase prices set at 100% of Area Median
23 Income or above, studio units shall not be allowed. MOHCD may reduce Area Median
24 Income pricing and the minimum income required for eligibility in each rental category.
25

1 (4) For any Rental Housing Project consisting of 25 or more Rental Units, the number
2 of affordable units constructed off-site shall generally be 30% of all units constructed on the project
3 site, with a minimum of 15% of the units affordable to low- or lower-income households, and 15%
4 of the units affordable to moderate/middle-income households. Rental Units for low- and
5 lower-income households shall be affordable to a range of households earning from 40% to
6 80% of Area Median Income, with an average affordable rent set at 60% of Area Median
7 Income or less. Rental Units for middle/moderate income households shall be affordable to a
8 range of households earning from 80% to 120% of Area Median Income, with an average
9 affordable rent set at 100% of Area Median Income or less; provided that a middle/moderate
10 income unit shall have a maximum rent set at 100% of Area Median Income for a single
11 household. MOHCD may reduce the average Area Median Income upon request by the
12 project sponsor. 6% of the units affordable to moderate-income households, and 6% of the
13 units affordable to middle-income households. Rental Units for low-income households shall
14 have an affordable rent set at 55% of Area Median Income or less, with households earning
15 up to 65% of Area Median Income eligible to apply for low-income units. Rental Units for
16 moderate-income households shall have an affordable rent set at 80% of Area Median
17 Income or less, with households earning from 65% to 90% of Area Median Income eligible to
18 apply for moderate-income units. Rental Units for middle-income households shall have an
19 affordable rent set at 110% of Area Median Income or less, with households earning from
20 90% to 130% of Area Median Income eligible to apply for middle-income units. For any
21 affordable units with rental rates set at 100% of Area Median Income or above, studio units
22 shall not be allowed. MOHCD may reduce Area Median Income pricing and the minimum
23 income required for eligibility in each rental category. MOHCD shall set forth in the Procedures
24 Manual the administration of rental units within this range.

25

1 (5) In the event one or more of the Rental Units in the principal Rental Housing Project
2 become ownership units, for each converted Rental Unit, or for the principal Rental Housing Project
3 in its entirety, as applicable, the Project Sponsor shall either (A) reimburse the City the proportional
4 amount of the inclusionary affordable housing fee/Inclusionary Affordable Housing Fee, which
5 would be equivalent to the current inclusionary affordable fee/Inclusionary Affordable Housing
6 Fee requirement for Owned Units, or (B) provide additional on-site or off-site affordable units
7 equivalent to the current inclusionary requirements for Owned Units, apportioned among the
8 required number of units at various income levels in compliance with the requirements in
9 effect at the time of conversion.

10 ~~———(6) The Department shall require as a condition of Department approval of a~~
11 ~~project's building permit, or as a condition of approval of a Conditional Use Authorization or~~
12 ~~Planned Unit Development or as a condition of Department approval of a live/work project,~~
13 ~~that 20%, 30% or 33%, as applicable, of all units constructed on the project site shall be~~
14 ~~constructed off-site and affordable to qualifying households so that a project sponsor must~~
15 ~~construct .20, .30 or .33 times, as applicable, the total number of units produced in the~~
16 ~~principal project.~~

17 ~~———(7) A minimum of 40% of the off-site affordable units shall consist of two~~
18 ~~bedroom units and a minimum of 20% of the off-site affordable units shall consist of three~~
19 ~~bedrooms or larger. Units shall have minimum floor areas that conform to the standards~~
20 ~~developed by the California Tax Credit Allocation Committee (CTCAC) for affordable units.~~
21 ~~The total residential floor area devoted to the affordable units shall not be less than the~~
22 ~~applicable percentage applied to the total residential floor area of the principal project,~~
23 ~~provided that a 10% variation in floor area is permitted.~~

24 (86) Any development project that constructs off-site affordable housing units as set
25 forth in this Section 415.6 shall diligently pursue completion of such units. In the event the project

1 sponsor does not procure a building permit or site permit for construction of the principal project or
2 the off-site affordable housing project within ~~two years (24 months)~~ (2430 months) of the project's approval, the
3 development project shall comply with the inclusionary affordable housing requirements applicable
4 thereafter at the time when the project sponsor procures a building permit. Such deadline shall be
5 extended in the event of any litigation seeking to invalidate the City's approval of the principal project
6 or off-site affordable housing project for the duration of the litigation.

7 ~~(94) Specific Geographic Areas.~~ (7) For any housing development that is
8 located in an area with a specific affordable housing requirement set forth in a Special Use
9 District, or in any other section of the Code such as Section 419, the higher affordable
10 housing requirement shall apply.

11 (8) If the principal project or the off-site project has resulted in demolition,
12 conversion, or removal of affordable housing units that are subject to a recorded covenant,
13 ordinance, or law that restricts rents to levels affordable to persons and families of moderate-,
14 low- or very low-income, or housing that is subject to any form of rent or price control through
15 a public entity's valid exercise of its police power, the Commission or the Department shall
16 require that the project sponsor replace the number of affordable units removed with units of a
17 comparable number of bedrooms and sales prices or rents, in addition to compliance with the
18 inclusionary requirements set forth in this Section.

19 * * * *

20 (e) **Marketing the Units:** MOHCD shall be responsible for overseeing and
21 monitoring the marketing of affordable units under this Section 415.7. In general, the
22 marketing requirements and procedures shall be contained in the Procedures Manual as
23 amended from time to time and shall apply to the affordable units in the project. MOHCD may
24 develop occupancy standards for units of different bedroom sizes in the Procedures Manual in
25 order to promote an efficient allocation of affordable units. MOHCD may require in the

1 Procedures Manual that prospective purchasers complete homebuyer education training or
2 fulfill other requirements. MOHCD shall develop a list of minimum qualifications for marketing
3 firms that market affordable units under Section 415.1 *et seq.*, referred to the Procedures
4 Manual as Below Market Rate (BMR units). No project sponsor marketing units under the
5 Program shall be able to market BMR units except through a firm meeting all of the minimum
6 qualifications. The Notice of Special Restrictions or conditions of approval shall specify that
7 the marketing requirements and procedures contained in the Procedures Manual as amended
8 from time to time, shall apply to the affordable units in the project.

9 * * * *

10 (f) Individual affordable units constructed as part of a larger off-site project under this
11 Section 415.7 shall not receive development subsidies from any Federal, State or local
12 program established for the purpose of providing affordable housing, and shall not be counted
13 to satisfy any affordable housing requirement for the off-site development. Other units in the
14 same off-site project may receive such subsidies. In addition, subsidies may be used, only
15 with the express written permission by ~~MOH~~ MOHCD, to deepen the affordability of an
16 affordable unit beyond the level of affordability required by this Program.

17 (g) Notwithstanding the provisions of Section 415.7(f) above, a project may use
18 California Debt Limit Allocation Committee (CDLAC) tax-exempt bond financing and 4%
19 credits under the Tax Credit Allocation Committee (TCAC) to help fund its obligations under
20 this ordinance as long as the project provides 25% percent of the units as affordable at 50%
21 ~~percent~~ of area median income for off-site housing. The income table to be used for such
22 projects when the units are priced at 50% percent of area median income is the income table
23 used by ~~MOH~~ MOHCD for the Inclusionary Housing Program, not that used by TCAC or
24 CDLAC. Except as provided in this subsection, all units provided under this Section must
25 meet all of the requirements of this ordinance and the Procedures Manual for off-site housing.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SEC. 415.10. ECONOMIC FEASIBILITY STUDY TO MAXIMIZE HOUSING AFFORDABILITY.

* * * *

(d) **Fee Schedule Analysis.** The City shall conduct an analysis to update the Inclusionary Affordable Housing Fee, to analyze MOHCD’s true costs of constructing an affordable unit, including development and land acquisition costs. The Controller, with the support of consultants as necessary, and in consultation with the Inclusionary Housing Technical Advisory Committee, shall conduct a study to examine the City’s costs of constructing an affordable unit and the amount of the Inclusionary Affordable Housing Fee by January 31, 2018. Following completion of this study, the Board of Supervisors will review the analyses and the proposed fee schedule; and may consider adopting legislation to revise the Inclusionary Affordable Housing fees.

(e) **Report to Board of Supervisors.** The Board of Supervisors may review the feasibility analyses, as well as the periodic updates to the City's Nexus Study evaluating the necessary affordable housing in order to mitigate the impacts of market rate housing. The Board of Supervisors, in its sole and absolute discretion, will review the feasibility analyses within three months of completion and will consider legislative amendments to the City's Inclusionary Housing in-lieu fees, on-site, off-site or other alternatives, and in so doing will seek consultation from the Planning Commission, adjusting levels of inclusionary or affordable housing obligations and income levels up to maximums as defined in Section 415.2, based on the feasibility analyses, with the objective of maximizing affordable Inclusionary Housing in market rate housing production, and with guidance from the City's Nexus Study. Any adjustment in income levels shall be adjusted commensurate with the percentage of units required so that the obligation for inclusionary housing is not reduced by any change in

1 income levels. The Board of Supervisors may also utilize the Nexus Study in considering
2 legislative amendments to the Inclusionary Housing requirements. Updates to the City's
3 Inclusionary Housing requirements shall address affordable housing fees, on-site affordable
4 housing and off-site affordable housing, as well as the provision of affordable housing
5 available to low-income households at or below 55% of Area Median Income for rental units
6 and up to 80% of Area Median Income for ownership units, and moderate/middle-income
7 households from 80% to 120% of Area Median Income.

8
9 **SEC. 415.11. SEVERABILITY.**

10 If any subsection, sentence, clause, phrase, or word of this Sections 415.1 et seq., or any
11 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
12 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
13 portions or applications of the Section. The Board of Supervisors hereby declares that it would have
14 passed this ordinance Sections 415.1 et seq. and each and every subsection, sentence, clause,
15 phrase, and word not declared invalid or unconstitutional without regard to whether any other portion
16 of this Sections 415.1 et seq. or application thereof would be subsequently declared invalid or
17 unconstitutional.

18
19 Section 4. The Planning Code is hereby amended by adding Section 207.7 to read as
20 follows:

21 **SEC. 207.7. REQUIRED MINIMUM DWELLING UNIT MIX.**

22 (a) Purpose. To ensure an adequate supply of family-sized units in new housing
23 stock, new residential construction must include a minimum percentage of units of at least two
24 and three bedrooms.

25 **(b) Applicability.**

1 (1) This Section 207.7 shall apply to all applications for building permits and/or
2 Planning Commission entitlements that propose the creation of 10 or more Dwelling Units in
3 all districts that allow residential uses, unless that project is located in an area or Special Use
4 District with higher specific bedroom mix requirements, or is a HOME SF project subject to the
5 requirements of Planning Code Section 206.3.

6 (2) This Section 207.7 shall not apply to buildings for which 100% of the
7 residential uses are: Group Housing, Dwelling Units that are provided at below market rates
8 pursuant to Section 406(b)(1) of this Code, Single Room Occupancy (SRO) Units, Student
9 Housing (all as defined in Section 102 of this Code), or housing specifically and permanently
10 designated for seniors or persons with physical disabilities.

11 (3) This Section 207.7 shall not apply to projects that filed a complete
12 Environmental Evaluation Application on or prior to January 12, 2016.

13 (c) **Controls.** In all residential districts subject to this Section 207.7, the following
14 criteria shall apply:

15 (1) No less than 25% of the total number of proposed dwelling units shall
16 contain at least 2 bedrooms. Any fraction resulting from this calculation shall be rounded to
17 the nearest whole number of dwelling units; and,

18 (2) No less than 10% of the total number of proposed dwelling units shall
19 contain at least three bedrooms. Any fraction resulting from this calculation shall be rounded
20 to the nearest whole number of dwelling units; and

21 (d) **Modifications.**

22 (1) These requirements may be waived or modified with Conditional Use
23 Authorization. In addition to those conditions set forth in Section 303, the Planning
24 Commission shall consider the following criteria:

1 (A) The project demonstrates a need or mission to serve unique
2 populations, or

3 (B) The project site or existing building(s), if any, feature physical
4 constraints that make it unreasonable to fulfill these requirements.

5 (2) These requirements may be waived in the case of projects subject to
6 Section 329 through the procedures of that Section.

7
8 Section 45. Effective Date. This ordinance shall become effective 30 days after
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
11 of Supervisors overrides the Mayor’s veto of the ordinance.

12
13 Section 56. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
17 additions, and Board amendment deletions in accordance with the “Note” that appears under
18 the official title of the ordinance.

19
20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22 By: _____
23 KATE H. STACY
24 Deputy City Attorney

25 n:\legana\as2017\1700109\01195238.docx