

BOARD of SUPERVISORS



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June 5, 2017

File No. 170093

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Ms. Gibson:


Mayor Lee introduced the following substituted legislation:

File No. 170093

Ordinance amending the Planning Code to 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.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board


By: Linda Wong, Assistant Clerk

Attachment

c: Joy Navarrete, Environmental Planning
Jeanie Poling, Environmental Planning

1 [Planning Code - Establish Fee for Monitoring of Student Housing - Mayor's Office of Housing
2 and Community Development]

3 **Ordinance amending the Planning Code to establish a fee for the Mayor's Office of**
4 **Housing and Community Development to monitor Student Housing, affirming the**
5 **Planning Department's determination under the California Environmental Quality Act;**
6 **and making findings of public convenience, necessity, and welfare under Planning**
7 **Code, Section 302.**

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

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

16 Section 1. Findings.

17 (a) The Planning Department has determined that the actions contemplated in this
18 ordinance comply with the California Environmental Quality Act (California Public Resources
19 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
20 Supervisors in File No. 170093 and is incorporated herein by reference. The Board affirms
21 this determination.

22 (b) On April 27, 2017, the Planning Commission, in Resolution No. 19904, adopted
23 findings that the actions contemplated in this ordinance will serve the public necessity,
24 convenience, and welfare as required by Planning Code Section 302, for the reasons set forth
25 in Resolution No. 19904. The Board adopts these findings as its own. A copy of said

1 Resolution is on file with the Clerk of the Board of Supervisors in File No. 170093, and is
2 incorporated herein by reference.

3
4 Section 2. The Planning Code is hereby amended by revising Section 415.3, to read
5 as follows:

6 **SEC. 415.3. APPLICATION.**

7 * * * *

8 ~~(e)~~ Section 415.1 et seq., the Inclusionary Housing Program, shall not apply to:

9 * * * *

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

11 (A) The building or space conversion does not result in loss or
12 conversion of existing housing, including but not limited to rental housing and dwelling units;

13 (B) An institutional master plan (IMP) pursuant to Section 304.5 is on
14 file with the Planning Department prior to the issuance of any building permit or alteration
15 permit in connection with the creation of the Student Housing project, and, in addition to the
16 requirements of Section 304.5, such IMP shall describe:

17 (i) to the extent such information is available, the type and
18 location of housing used by its students;

19 (ii) any plans for the provision of Student Housing; *and*

20 (iii) the Educational Institution's need for student housing to
21 support its program; and

22 (iv) the percentage of its students, on an average annual basis,
23 that receive some form of need-based assistance.

24 (C) The Mayor's Office of Housing and Community Development
25 (MOHCD) is authorized to monitor *this the Student Housing program described in this subsection*

1 (e)(5)- and MOHCD shall develop a monitoring form, and An annual monitoring fee of \$792 to
2 per building exempted from the Inclusionary Housing Program pursuant to this Section 415.3(e)(5)
3 shall be paid to MOHCD by the owner of the real property or the Post-Secondary Educational
4 Institution or Religious Institutions, as defined in Section 102 of this Code. Beginning with the
5 setting of fees for fiscal year 2018-2019, the Controller shall annually adjust the base monitoring fee
6 amount referenced in this subsection (e)(5)(C) without further action by the Board of Supervisors, to
7 reflect changes in the two-year average Consumer Price Index (CPI) change for the San Francisco/San
8 Jose Primary Metropolitan Area (PMSA). This process shall occur as follows:

9 (i) No later than April 15 of each year, MOHCD shall submit the
10 current monitoring fee to the Controller, who shall apply the CPI adjustment to produce a new
11 monitoring fee for the fiscal year beginning July 1. No later than May 15 of each year, the Controller
12 shall file a report with the Board of Supervisors reporting the new monitoring fee and certifying that
13 the fees to be collected will produce sufficient revenue to support the costs of providing the services for
14 which the fee is charged and will not produce revenue that exceeds the costs of providing the services
15 for which the fee is paid.

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

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

23 (i) Evidence that the Post-Secondary Educational Institution
24 continues to own or otherwise control the Student Housing project under a master lease or
25 other contractual agreement with at least a two-year term, including a certificate from the

1 owner of the real property and the Post-Secondary Educational Institution attaching a true and
2 complete copy of the master lease or other contractual agreement (financial information may
3 be redacted *to the extent permitted by law*) and certifying that the lease or contract has not
4 otherwise been amended or terminated; and

5 (ii) Evidence, on an average annualized basis, of the
6 percentage of students in good standing enrolled at least ~~half-time~~ *half-time* or more in the
7 Post-Secondary Educational Institution or Institutions who are occupying the beds or
8 accessory living space in the Student Housing project; and

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

12 a. The Post-Secondary Educational Institution, or the owner
13 of the real property on its behalf, must file a statement with the Department if it intends to
14 terminate the Student Housing project at least 60 days before it terminates such use
15 ("statement of termination");

16 b. The Student Housing project becomes subject to the
17 Inclusionary Housing Ordinance requirements applicable to Housing Projects other than
18 Qualified Housing Projects if (1) a Post-Secondary Educational Institution files a statement of
19 termination with the Department and another Post-Secondary Educational Institution or
20 Institutions have not been substituted or obligated to meet the requirements of this subsection
21 *(e)(5)*; or (2) the owner of the real property or the Post-Secondary Educational Institution fails
22 to file a statement of termination and fails to meet the requirements for a Student Housing
23 project, then within not more than one year of a Notice Of Violation issued by the Planning
24 Department;

1 c. If units in a Student Housing project become subject to
2 the Inclusionary Housing Ordinance then the owner of those units shall (1) pay the Affordable
3 Housing Fee plus interest from the date the project received its first construction document for
4 the project if there is no evidence the project ever qualified as Student Housing or, if Student
5 Housing was provided and occupied, then the Affordable Housing Fee with no interest is due
6 on the date the units were no longer occupied by qualifying households and interest would
7 accrue from that date if the fee is not paid; or (2) provide the required number of on-site
8 affordable units required at time of original project approval and that those units shall be
9 subject to all of the requirements of this Program. In this event, the owner of the real property
10 shall record a new NSR providing that the designated units must comply with all of the
11 requirements of this Program.

12 d. The Post-Secondary Educational Institution is required to report
13 annually as required in ~~§~~subsubsection ~~(e)~~ (e) (5)(D) above;

14 e. The City may commence legal action against the owner and/or
15 Post-Secondary Educational Institution to enforce the NSR and the terms of Article ~~4~~ ~~II~~ of the
16 Planning Code and Planning Code Section 415 et seq. if it determines that the project no
17 longer meets the requirements for a Student Housing project; and

18 f. The Student Housing project may be inspected by any duly
19 authorized City employee to determine its status as a Student Housing project and its
20 compliance with the requirements of this Code at any time upon at least 24 hours' prior notice
21 to the owner of the real property or to the master lessee.

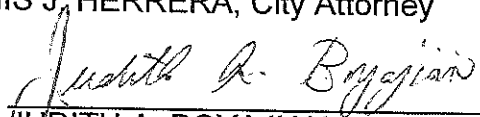
22
23 Section 3. Effective Date. This ordinance shall become effective 30 days after
24 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
25

1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
2 of Supervisors overrides the Mayor's veto of the ordinance.

3
4 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
5 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
6 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
7 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
8 additions, and Board amendment deletions in accordance with the "Note" that appears under
9 the official title of the ordinance.

10
11 APPROVED AS TO FORM:
12 DENNIS J. HERRERA, City Attorney

13 By:



14 JUDITH A. BOYAJIAN
15 Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning Code - Establish a Fee for Monitoring of Student Housing - Mayor's Office of Housing and Community Development]

Ordinance amending the Planning Code to 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.

Existing Law

Planning Code Section 415 through 415.10 set forth the requirements and procedures for San Francisco's Inclusionary Housing Program. Section 415.3 establishes the scope of this Program, and provides, in subsection (c)(5), that the Inclusionary Housing Program does not apply to a Student Housing project that meets the criteria set forth. Subsection (c)(5)(C) authorizes the Mayor's Office of Housing (now called the Mayor's Office of Housing and Community Development) to monitor the program and to develop a monitoring form and an annual monitoring fee. Each property owner and institution under this program is required to file specified information with the Mayor's Office of Housing each year.

Amendments to Current Law

The proposed legislation would establish the annual monitoring fee referenced in Planning Code Section 415.3(c)(5)(C) and provide for annual indexing of the fee by the Controller without further action by the Board of Supervisors.

Background Information

The exclusion of Student Housing that meets specified criteria from the City's Inclusionary Housing Program and providing for monitoring by the Mayor's Office of Housing and Community Development (MOHCD) was added to Section 415.3 in 2010 by Ordinance No. 321-10. MOHCD has developed a monitoring form and, working with the Controller's Office and Mayor's Budget Office, has completed the cost analysis necessary to develop a monitoring fee that provides cost recovery without producing revenue that exceeds the costs of providing the monitoring service. The base monitoring fee established by this ordinance will be part of the Mayor's budget for fiscal year 2017-2018 and will be indexed by the Controller in subsequent years without further action by the Board.

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