

REVISED LEGISLATIVE DIGEST

(10/17/2017, Amended in Board)

[Planning Code - Inclusionary Affordable Housing Fee and Requirements]

Ordinance amending the Planning Code to revise the amount of the Inclusionary Affordable Housing Fee and the On-Site and Off-Site Affordable Housing Alternatives and other Inclusionary Housing requirements; to clarify Inclusionary Housing requirements in the Transbay C-3 Special Use District; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of public necessity, convenience, and welfare under Planning Code, Section 302; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

Existing Law

The City generally requires private developers of new market-rate housing to provide affordable housing ("Inclusionary Housing") by paying a fee to the City. A developer could also opt to provide Inclusionary Housing on- or off-site. The City's Inclusionary Affordable Housing Fee and other requirements are set forth in Planning Code Sections 415 et seq. and provide 3 methods of complying with the requirements.

1. **Affordable Housing Fee:** The development project pays a fee equivalent to the applicable off-site percentage of the number of units in the principal project:

- For development projects consisting of 10 – 24 dwelling units, the percentage is 20%.
- For development projects consisting of 25 dwelling units or more, the percentage is 33% for an ownership housing project and 30% for a rental housing project.

The fee shall be imposed on any additional units or square footage authorized and developed under California Government Code Sections 65915 et seq. This requirement would not apply to development projects that have submitted a complete Environmental Evaluation application on or before January 1, 2016.

2. **On-Site Inclusionary Affordable Housing Units:** If eligible, a project sponsor may elect to provide on-site affordable housing in lieu of paying the Inclusionary Fee.

For housing projects consisting of 10 – 24 units, the number of affordable units constructed on-site shall be 12% of all units constructed on the project site. The required on-site affordable housing would increase by 0.5% annually for housing projects consisting of 10 – 24 units, beginning on January 1, 2018, until the requirement reaches 15%. Owned Units shall be affordable to households earning up to 100% of Area Median Income, with an affordable sales price set at 80% of Area Median Income or less. Rental Units shall be affordable to

households earning up to 65% of Area Median Income, with an affordable rent set at 55% of Area Median Income or less.

For any housing development project consisting of 25 or more Owned Units, the number of affordable units constructed on-site shall generally be 20% of all units constructed on the project site. A minimum of 10% of the units shall be affordable to low-income households, 5% of the units shall be affordable to moderate-income households, and 5% of the units shall be affordable to middle-income households.

- Owned Units for low-income households shall have an affordable purchase price set at 80% of Area Median Income or less, with households earning up to 100% of Area Median Income eligible to apply for low-income units. Owned Units for moderate-income households shall have an affordable purchase price set at 105% of Area Median Income or less, with households earning from 95% to 120% of Area Median Income eligible to apply for moderate-income units. Owned Units for middle-income households shall have an affordable purchase price set at 130% of Area Median Income or less, with households earning from 120% to 150% of Area Median Income eligible to apply for middle-income units.
- For any affordable units with purchase prices set at 130% of Area Median Income, the units shall have a minimum occupancy of two persons.

For any Rental Housing Project consisting of 25 or more Rental Units, the number of affordable units constructed on-site shall generally be 18% of all units constructed on the project site, with a minimum of 10% of the units affordable to low-income households, 4% of the units affordable to moderate-income households, and 4% of the units affordable to middle-income households.

- Rental Units for low-income households shall have an affordable rent set at 55% of Area Median Income or less, with households earning up to 65% of Area Median Income eligible to apply for low-income units. Rental Units for moderate-income households shall have an affordable rent set at 80% of Area Median Income or less, with households earning from 65% to 90% of Area Median Income eligible to apply for moderate-income units. Rental Units for middle-income households shall have an affordable rent set at 110% of Area Median Income or less, with households earning from 90% to 130% of Area Median Income eligible to apply for middle-income units.
- For any affordable units with rents set at 110% of Area Median Income, the units shall have a minimum occupancy of two persons.

Notwithstanding the foregoing, Area Median Income limits for Rental Units and Owned Units, the maximum affordable rents or sales price shall be no higher than 20% below median rents or sales prices for the neighborhood within which the project is located, which shall be defined in accordance with the Planning Department's American Community Survey Neighborhood Profile Boundaries Map.

Starting on January 1, 2018, and each year thereafter, MOHCD shall increase the percentage of units required on-site for projects consisting of 10 – 24 units, as set forth in Section 415.6(a)(1), by increments of 0.5% each year, until such requirement is 15%. For all development projects with 25 or more Owned or Rental Units, the required on-site affordable ownership housing to satisfy this section 415.6 shall increase by 1.0% annually for two consecutive years starting January 1, 2018. The increase shall be apportioned to units affordable to low-income households, as defined above in Subsection 415.6(a)(3). Starting January 1, 2020, the increase to on-site rental and ownership developments with 25 or more units shall increase by 0.5% annually, with such increases allocated equally for rental and ownership units to moderate and middle income households, as defined above in Subsection 415.6(a)(3). The total on-site inclusionary affordable housing requirement shall not exceed 26% for development projects consisting of Owned Units or 24% for development projects consisting of Rental Units, and the increases shall cease at such time as these limits are reached. MOHCD shall provide the Planning Department, DBI, and the Controller with information on the adjustment to the on-site percentage so that it can be included in the Planning Department's and DBI's website notice of the fee adjustments and the Controller's Citywide Development Fee and Development Impact Requirements Report described in Section 409(a).

3. Off-Site Inclusionary Affordable Housing.

- For housing development projects consisting of 10 dwelling units or more but less than 25 units, the number of affordable units constructed off-site shall be 20% of all units constructed on the project site. Owned Units shall be affordable to households earning up to 100% of Area Median Income, with an affordable sales price set at 80% of Area Median Income or less. Rental Units shall be affordable to households earning up to 65% of Area Median Income, with an average affordable rent set at 55% of Area Median Income or less.
- For any housing development project consisting of 25 or more Owned Units, the number of affordable units constructed off-site shall be 33% of all units constructed on the project site, with a minimum of 18% of the units affordable low-income households, 8% of the units affordable to moderate-income households, and 7% of the units affordable to middle income households. Owned Units for low-income households shall have an affordable purchase price set at 80% of Area Median Income or less, with households earning up to 100% of Area Median Income eligible to apply for low-income units. Owned Units for moderate-income households shall have an affordable purchase price set at 105% of Area Median Income or less, with households earning from 95% to 120% of Area Median Income eligible to apply for moderate-income units. Owned Units for middle-income households shall have an affordable purchase price set at 130% of Area Median Income or less, with households earning from 120% to 150% of Area Median Income eligible to apply for middle-income units. For any

affordable units with purchase prices set at 100% of Area Median Income or above, the units shall have a minimum occupancy of two persons.

- For any Rental Housing Project consisting of 25 or more Rental Units, the number of affordable units constructed off-site shall generally be 30% of all units constructed on the project site, with a minimum of 18% of the units affordable to low income households, 6% of the units affordable to moderate-income households, and 6% of the units affordable to middle-income households. Rental Units for low-income households shall have an affordable rent set at 55% of Area Median Income or less, with households earning up to 65% of Area Median Income eligible to apply for low-income units. Rental Units for moderate-income households shall have an affordable rent set at 80% of Area Median Income or less, with households earning from 65% to 90% of Area Median Income eligible to apply for moderate-income units. Rental Units for middle-income households shall have an affordable rent set at 110% of Area Median Income or less, with households earning from 90% to 130% of Area Median Income eligible to apply for middle-income units. For any affordable units with rental rates set at 100% of Area Median Income or above, the units shall have a minimum occupancy of two persons.
- A project may use California Debt Limit Allocation Committee (CDLAC) tax-exempt bond financing and 4% credits under the Tax Credit Allocation Committee (TCAC) to help fund its affordable housing obligations as long as the project provides 25% of the units as affordable at 50% of area median income for off-site housing. The income table to be used for such projects when the units are priced at 50% of area median income is the income table used by MOHCD for the Inclusionary Housing Program, not that used by TCAC or CDLAC.

For all projects, the applicable amount of the inclusionary housing fee or percentage required for the on-site or off-site alternatives will be determined based on the date that the project sponsor submitted a complete Environmental Evaluation application. If a project sponsor does not procure a building permit within 30 months of project approval, the project sponsor must comply with the inclusionary housing requirements at the time of building permit procurement.

The inclusionary affordable housing requirements shall not apply to any project that has not submitted a complete Environmental Evaluation Application on or before January 12, 2016, if the project is located within the Eastern Neighborhoods Mission Planning Area, the North of Market Residential Special Use District Subarea 1 or Subarea 2, or the SOMA Neighborhood Commercial Transit District. Until such planning processes are complete and new inclusionary housing requirements for projects in those areas are adopted, projects shall (1) pay a fee or provide off-site housing in an amount equivalent to 30% or (2) provide affordable units in the amount of 25% of the number of Rental Units constructed on-site or 27% of the number of Owned Units constructed on-site. For Rental Units, 15% of the on-site affordable

units shall be affordable to low-income households, 5% shall be affordable to moderate-income households and 5% shall be affordable to middle-income households. For Owned Units, 15% of the on-site affordable units shall be affordable to low-income households, 6% shall be affordable to moderate-income households and 6% shall be affordable to middle-income households.

The Planning Department, in consultation with the Controller, must undertake a study of areas where an Area Plan, Special Use District, or other re-zoning is being considered for adoption, or has been adopted, after January 1, 2015, to determine whether a higher on-site inclusionary affordable housing requirement is feasible on sites that have received a 20% or greater increase in developable residential gross floor area or a 35% or greater increase in residential density over prior zoning, and shall submit such information to the Planning Commission and Board of Supervisors.

Amendments to Current Law

The Proposed Legislation would change the inclusionary affordable housing requirement in the following ways.

The inclusionary affordable housing requirements would not apply to any project consisting of 25 dwelling units or more that has not submitted a complete Environmental Evaluation Application on or before January 12, 2016, if such project is located within the Eastern Neighborhoods Mission Planning Area, the North of Market Residential Special Use District Subarea 1 or Subarea 2, or the SOMA Neighborhood Commercial Transit District. Until such planning processes are complete and new inclusionary housing requirements for projects in those areas are adopted, such projects consisting of 25 dwelling units or more shall (1) pay a fee or provide off-site housing in an amount equivalent to 30% if the principal housing project is a Rental Housing Project or 33% if the principal housing project consists of Owned Units, or (2) provide affordable units in the amount of 25% of the number of Rental Units constructed on-site or 27% of the number of Owned Units constructed on-site. For Rental Units, 15% of the on-site affordable units shall be affordable to low-income households, 5% shall be affordable to moderate-income households and 5% shall be affordable to middle-income households. For Owned Units, 15% of the on-site affordable units shall be affordable to low-income households, 6% shall be affordable to moderate-income households and 6% shall be affordable to middle-income households.

The Planning Department, in consultation with the Controller, must undertake a study of areas greater than 5 acres in size where an Area Plan, Special Use District, or other re-zoning is being considered for adoption, or has been adopted, after January 1, 2015, to determine whether a higher on-site inclusionary affordable housing requirement is feasible on sites that have received a 20% or greater increase in developable residential gross floor area or a 35% or greater increase in residential density over prior zoning, and shall submit such information to the Planning Commission and Board of Supervisors.

For off-site affordable units, a project may use California Debt Limit Allocation Committee (CDLAC) tax-exempt bond financing and 4% credits under the Tax Credit Allocation Committee (TCAC) to help fund its obligations under this ordinance as long as at least 60% of the off-site affordable units are affordable to households at 55% of AMI, and the balance of the off-site affordable units using these funds at affordability rates that comply with the requirements of TCAC, CDLAC, and this Section 415. The income table to be used for such projects when the units are priced at 55% of AMI is the income table used by MOHCD for the Inclusionary Housing Program, not that used by TCAC or CDLAC.

The Ordinance clarifies its application to the Transbay C-3 Special Use District. The requirements of Planning Code Section 415.1 *et seq.* apply to this area, subject to the following exceptions: (A) The inclusionary affordable housing provided on-site shall be the higher amount determined under the Transbay Redevelopment Plan or Section 415.6(a) of the Planning Code, as it may be amended from time to time; and the inclusionary affordable housing constructed on the site shall be affordable to, and occupied by, “qualifying persons and families,” as defined by the Transbay Redevelopment Plan; (B) All required inclusionary affordable housing units must be built on-site; and (C) Payment of the Affordable Housing Fee or compliance with the Off-Site Affordable Housing Alternative shall not be permitted to satisfy the inclusionary affordable housing requirement.

Background Information

The City published the Residential Affordable Housing Nexus Analysis in November 2016.

The Controller completed the Feasibility Analysis required by Planning Code Section 415.10 in February 2017.

The City adopted new inclusionary housing requirements, which became effective August 26, 2017.

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