

LEGISLATIVE DIGEST

Revised 1/29/18

[Planning Code – Inclusionary Affordable Housing Program]

Ordinance amending the Planning Code to amend the Inclusionary Housing Ordinance to remove the requirement that on-site and off-site inclusionary units within a new development be ownership units rather than rental units, or alternatively, that the project sponsor submit a contract demonstrating the proposed on-site or off-site units are exempt from the Costa-Hawkins Rental Housing Act; making conforming amendments to Planning Code Section 124; updating references in Planning Code section 406; and affirming the Planning Department’s determination under the California Environmental Quality Act; and making findings of consistency with the General Plan and the eight priority policies of Planning Code Section 101.1.

Existing Law

The Inclusionary Affordable Housing Program, set forth in Planning Code section 415 *et seq.* sets forth a development fee to fund inclusionary housing. Project sponsors of residential developments of 10 units or more must pay the development fee, but also have the option to provide affordable units on-site or off-site. On-site or off-site units must be ownership units, unless a developer can demonstrate that the development qualifies for an exemption to the Costa-Hawkins Rental Housing Act, Civil Code section 1954.50 (“Costa-Hawkins”). Generally, Costa-Hawkins allows a property owner to set the initial rental price or rental price upon vacancy, unless the development has received a density bonus or other zoning modifications. Planning Code section 124 allows for the approval of additional square footage above that permitted by the base floor area limits for construction of affordable dwelling units in projects located in C-3-G and C-3-S districts (generally, downtown). If the units are rental units, the project sponsor must comply with the procedures in Section 415 and demonstrate that the development qualifies for an exemption to Costa-Hawkins. Planning Code Section 406 does not include a reference to the Department of Homelessness and Supportive Housing, and references the San Francisco Redevelopment Agency.

Amendments to Current Law

This ordinance would amend Planning Code section 415 to allow inclusionary on-site and off-site rental units without the need to qualify for an exception to Costa-Hawkins. The ordinance would also amend Planning Code section 124 to allow the approval of additional square footage for affordable rental units in the downtown without the need for an agreement under Costa-Hawkins. The ordinance would include the Department of Homelessness and Supportive Housing to the list of agencies that are eligible for development fee waivers for affordable housing, and changes the reference from the San Francisco Redevelopment Agency to the Office of Community Investment and Infrastructure.

Background Information

In *Palmer/Sixth Street Properties v. City of Los Angeles* (2009) 175 Cal.App.4th 1396, the Court of Appeal limited a city's ability to require a developer to include below-market on-site or off-site *rental* units, finding that the price restrictions on such units violated Costa-Hawkins. Generally, Costa-Hawkins allows a property owner to set the initial rental price or rental price upon vacancy, unless the development has received a density bonus or other zoning modifications. Governor Brown recently signed Assembly Bill 1505, also known as the "*Palmer Fix*." AB 1505 restores the City's ability to require on-site and off-site inclusionary affordable rental housing without the need for the development to fit into an exception to Costa-Hawkins. The bill specifically allows legislative bodies to adopt ordinances that require, as a condition of development, that the development include a certain percentage of below-market rate rental units, as long as the ordinances provide alternative means of compliance, such as payment of in-lieu fees or provision of off-site units. The bill went into effect on January 1, 2018.

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