



SAN FRANCISCO PLANNING DEPARTMENT

October 19, 2018

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

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**Re: Transmittal of Planning Department Case Number 2018-012959PCA
Amending the Inclusionary Affordable Housing Program
Board File No. 180911
Planning Commission Recommendation: Approval**

Dear Ms. Calvillo and Mayor Breed,

On October 18, 2018, the Planning Commission conducted duly noticed public hearings at regularly scheduled meetings to consider the proposed Ordinance, introduced by Mayor Breed that would amend Planning Code Section 415. At the hearing the Planning Commission recommended approval.

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

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

Sincerely,

Aaron D. Starr
Manager of Legislative Affairs

cc:

Audrey Pearson, Deputy City Attorney
Kate Conner, Special Projects and Policy Manager, Planning Department
Kanishka Karunaratne Cheng, Mayor's Liaison to the Board of Supervisors
Crezia Tano, Project Manager, Office of Economic and Workforce Development
Angela Calvillo, Office of the Clerk of the Board

Attachments :

Planning Commission Resolution No. 20315

Planning Department Executive Summary

List of Potentially Affected Projects as of October 18, 2018



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 20315 HEARING DATE OCTOBER 18, 2018

Project Name: Amendments to the Inclusionary Housing Ordinance
Case Number: 2018-012959PCA [Board File No. 180911]
Initiated by: Mayor Breed / Introduced September 18, 2018
Staff Contact: Carly Grob, Office of Executive Programs
carly.grob@sfgov.org, 415-575-9138
Reviewed by: Kate Conner, Principal Planner, Special Projects and Policy
kate.conner@sfgov.org, 415-575-6914

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RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE SECTION 415.3 TO MODIFY THE DATE BY WHICH PROJECTS THAT ARE ELIGIBLE FOR TEMPORARY INCLUSIONARY HOUSING REQUIREMENTS MUST OBTAIN A BUILDING OR SITE PERMIT; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.

The proposed Ordinance would amend Planning Code Section 415.3 (Inclusionary Affordable Housing Program) to modify the date by which projects that are eligible for the temporary inclusionary housing requirements must obtain a building or site permit.

WHEREAS, on September 18, 2018 Mayor Breed introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 180911, which would amend Section 415.3 of the Planning Code (Inclusionary Affordable Housing Program) to modify the date by which projects that are eligible for the temporary inclusionary housing requirements must obtain a building or site permit;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on October 18, 2018; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c); and

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

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

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and
WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby approves the proposed ordinance.

FINDINGS

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

1. The Ordinance would facilitate the permitting and construction of up to 4,367 housing units, including 638 permanently affordable housing units, the majority of which have already been reviewed and/or approved by the relevant agencies.
2. There are a number of factors which could cause delays in project approval and issuance of site and/or building permits. Modifying the deadline would benefit housing producers who were diligently pursuing a site permit, but where mitigating factors made the deadline very difficult to achieve.
3. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

OBJECTIVE 1

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

Policy 1.10

Support new housing projects, especially affordable housing, where households can easily rely on public transportation, walking and bicycling for the majority of daily trips.

Many of the projects that would benefit from the proposed Ordinance are in denser areas of the City and are generally well-served by transit. The proposed Ordinance would support this Policy by facilitating a predictable approval path for the impacted projects.

OBJECTIVE 4

FOSTER A HOUSING STOCK THAT MEETS THE NEEDS OF ALL RESIDENTS ACROSS LIFESTYLES.

Policy 4.4

Encourage sufficient and suitable rental housing opportunities, emphasizing permanently affordable rental units wherever possible.

20 of the affected projects have indicated the intent to provide rental units rather than condominium units. These 20 projects include 3,264 units and 483 permanently affordable rental units.. The proposed Ordinance is intended to provide certainty and stability for these projects so they are likelier to be constructed.

Policy 4.5

Ensure that new permanently affordable housing is located in all of the city's neighborhoods, and encourage integrated neighborhoods, with a diversity of unit types provided at a range of income levels.

The projects which would be affected by the proposed Ordinance are located in various neighborhoods. By constructing new mixed-income projects across the City, more affordable housing is also constructed across the City, which achieves the goals of Policy 4.5. The proposed Ordinance is intended to provide certainty and stability for these projects so they are likelier to be constructed.

OBJECTIVE 10

ENSURE A STREAMLINED, YET THOROUGH, AND TRANSPARENT DECISION-MAKING PROCESS.

Policy 10.1

Create certainty in the development entitlement process, by providing clear community parameters for development and consistent application of these regulations.

The proposed Ordinance would maintain certainty in the development process for projects which are either currently under review, or have been approved by the Planning Department and are currently in permit review at another City agency.

Policy 10.2

Implement planning process improvements to both reduce undue project delays and provide clear information to support community review.

The Ordinance would reduce undue project delays for projects which are subject to a temporary inclusionary rate, but have not yet obtained a site permit.

4. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:
 1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

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

The proposed Ordinance would not have a negative effect on housing or neighborhood character.

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

The proposed Ordinance would enhance the City's supply of affordable housing, as it would provide a clear approval path for the permitting and construction of approximately 628 Inclusionary Housing Units.

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

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

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

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

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

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

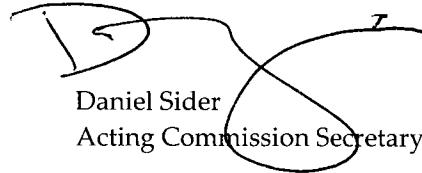
8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

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

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on October 18, 2018.

1

Daniel Sider
Acting Commission Secretary

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

NOES: None

ABSENT: Richards

ADOPTED: October 18, 2018



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment

HEARING DATE: OCTOBER 18, 2018
90-DAY DEADLINE: DECEMBER 17, 2018

Project Name: **Amendments to the Inclusionary Housing Ordinance**
Case Number: **2018-012959PCA** [Board File No. 180911]
Initiated by: Mayor Breed / Introduced September 18, 2018
Staff Contact: Carly Grob, Office of Executive Programs
carly.grob@sfgov.org, 415-575-9138
Reviewed by: Kate Conner, Principal Planner, Special Projects and Policy
kate.conner@sfgov.org, 415-575-6914
Recommendation: **Approval**

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PLANNING CODE AMENDMENT

The proposed Ordinance would amend Planning Code Section 415.3 (the Inclusionary Affordable Housing Program) to extend the permitting timeline for projects with lower, legacy affordability requirements. In doing do, the Ordinance would prolong what has come to be known as the "Proposition C" grandfathering provisions

The Way It Is Now:

Generally, residential development projects of ten units or more must comply with the inclusionary housing requirements set forth in Planning Code Section 415. Projects must pay a fee, or set aside a percentage of units, either on-site or off-site, as affordable to low, moderate, or middle income households. Projects of 25 units or more that have filed a complete Environmental Evaluation Application between January 1, 2013 and January 12, 2016 qualify for the "temporary provisions" of the Inclusionary Housing Ordinance as set forth in Planning Code section 415.3(b) if they secure a site or building permit on or before December 7, 2018. Those temporary provisions provide for lower inclusionary housing requirements, typically between 13% and 14.5% of on-site units.

The Way It Would Be:

This Ordinance would modify the date by which projects of 25 units or more that have filed complete Environmental Evaluation Applications between January 1, 2013 and January 12, 2016 must secure a site or building permit in order to qualify for the temporary provisions. Specifically, such projects must secure a site or building permit by the later of either (a) 30 months from the date that the project is approved, including any appeal to an administrative body or City Board, or (b) by December 7, 2018.

BACKGROUND

The Inclusionary Housing Ordinance was amended in mid-summer 2016 by Ordinance 76-16. Generally, Ordinance 76-16 increased the required inclusionary housing amounts. That Ordinance also included

temporary provisions setting forth different inclusionary housing requirements for projects that had filed complete Environmental Evaluations Applications between January 1, 2013 and January 12, 2016, but had not yet been approved. Planning Code Section 415.3 set a deadline for this set of projects to obtain a site permit by December 7, 2018. If a site permit is not issued by December 7, 2018, the project would be subject to a higher on-site or off-site inclusionary rate ranging between 18% and 33%.

The December 7 deadline could impact over up to 33 projects, which include approximately 4,367 housing units, including 638 permanently affordable housing units. Of these 33 projects, only six have not yet been approved by the Planning Commission, and the majority of the applicants for the remaining 27 projects are actively seeking site permits.

ISSUES AND CONSIDERATIONS

Current Policy Creates an Approval “Window” not applied to other projects

Currently, Planning Code Section 415 creates an approval “window” for projects which have submitted a complete Environmental Evaluation Application (EEA) between January 1, 2013 and January 12, 2016. Based on the time that the project submitted an application, the project would have approximately between three and six years to obtain the required entitlements and the site permit. Projects with complete EEAs submitted after January 12, 2016, are vested with the inclusionary rate at the time of application, and must obtain a site permit within 30 months of project *approval*, not application. Although the City has since established target timelines for approvals (via Executive Directive 17-02) , there is no codified requirement that a project be entitled in a certain amount of time. Imposing a deadline on the entire permitting and entitlement process unfairly impacts those projects which applied closer to January 12, 2016, as these projects must be approved with a site permit issued between three and six years. The deadline does not provide any flexibility for common project delays including increasing project costs, uncertainties in the permitting process, and regulatory uncertainty.

Increasing Costs

Increases to the on-site or off-site inclusionary affordable housing rate (“rate”) for an approved project would have an impact on the finances for that project. Although project financing usually builds-in some buffer for unexpected expenditures, recent and rapid increases to the cost of construction have dramatically increased project costs overall. According to a Turner Center brief on the Costs of Construction in the Bay Area, San Francisco was the second-most expensive construction market behind New York City, costing approximately \$330 per square foot to build.¹ An unanticipated increase to the inclusionary rate may result in substantial delays for the project while finances are reevaluated with the lender for the project, or could render that project infeasible if the lender’s expected rate of return cannot be met or renegotiated. If a project cannot be constructed, the result would be fewer housing units to be constructed.

¹ Reid and Raetz. January, 2018.
https://turnercenter.berkeley.edu/uploads/San_Francisco_Construction_Cost_Brief_-_Turner_Center_January_2018.pdf

Permitting Process

Basic procedural requirements for complex projects, such as the need to perform thorough CEQA review, may require months of research and analysis. Projects may also require sufficient design review and revisions to achieve the goals and policies of the City's General Plan. The applicant must perform adequate outreach to members of the community to ensure that any potential negative impacts of the development can be addressed appropriately. Finally, City Staff reviewing these projects are often working on many projects simultaneously, so a project may sit idle for a significant period of time prior to any meaningful review or analysis.

After entitlement, the process to obtain a site permit can also be complex. A site permit is reviewed by several agencies, each with different requirements and procedures. Feedback from one agency may conflict with feedback from another, and the applicant is responsible for addressing the conflict and finding a solution. Following entitlement, many project sponsors must also restructure their financing to transition to a full construction loan. This loan allows the project sponsor to draft the set of plans necessary for the site permit and subsequent addenda, and provides the capital for the actual construction of the project, but the project often must be entitled before the lender can commit funds to construct the project.

Recently, various City Agencies working in conjunction with Mayor Breed and the Board of Supervisors have implemented process improvements to further streamline the permitting process. The Planning Department and Department of Building Inspection have implemented parallel processing to shorten review time and ameliorate conflict between multiple agencies. The Planning Department has committed to reviewing projects consistent with the aggressive timelines that are stated in Executive Directive 17-02. These timelines are dependent upon the required CEQA for the project, and can range from a six-month approval requirement for projects without any required CEQA review, to 22 months for a project with a complex Environmental Impact Report. Consistent with the provisions of the Executive Directive, dedicated staff meet periodically to find solutions to conflicting procedures.

Moreover, the Department has implemented several State Laws to further streamline development, including the establishment of review procedures for projects eligible for Senate Bill 35 and by working to establish a Housing Sustainability District through the Central SOMA area planning process. Both programs provide a path for ministerial approval.

Regulatory Uncertainty

Additional delays may have resulted from substantial regulatory uncertainty during the review process. After San Franciscans voted to increase the on-site inclusionary rate from 12% to 25% under Proposition C, it was unclear how many projects could incorporate the increased rate and remain feasible. The City responded by introducing a set of "grandfathered" rates for pipeline projects, which ensured some certainty for these projects at the time, and established the December 7 site permit deadline. At the time, it was assumed that projects that did not obtain a site permit by December 7, 2018 would be subject to an on-site rate of 25%. The Inclusionary Ordinance was further modified in 2017, which introduced several new concepts to Section 415, including minimum unit sizes and three distinct affordability tiers. Throughout the legislative process, the Commission and Board of Supervisors clearly intended for all of the grandfathered projects to keep the lower rates they were subject to; however, it was unclear how other new requirements would apply to pipeline projects. This lack of clarity, along with the continually

shifting regulatory landscape, is thought to have impeded what would have otherwise been a more expeditious and predictable review and approval process.

Implementation

The Department has determined that this Ordinance will not change our current procedures for implementing the Inclusionary Affordable Housing Program. The proposed changes can be implemented without increasing permit costs or review time. On the other hand, if the proposed Ordinance is not adopted, there could be significant impacts to the Department's workload and review process. Not only would Planning Staff be required to review the affected projects in their current stages of development and in many cases correct the administrative record (e.g. Notices of Special Restrictions, Motions, etc), but those project sponsors wishing to move projects forward with increased affordability requirements may make seek changes to their approved projects in order to maintain feasibility. These changes could result in projects with fewer units and require additional review time and public hearings.

RECOMMENDATION

The Department recommends that the Commission *approve* the proposed Ordinance and adopt the attached Draft Resolution to that effect.

BASIS FOR RECOMMENDATION

The Department recommends approval for the following reasons:

- The Ordinance would facilitate the permitting and construction of up to 4,367 housing units, including 638 permanently affordable housing units, the majority of which have already been reviewed and/or approved by the Planning Department.
- Extending the December 7 deadline would benefit housing producers who were diligently pursuing a site permit, but where mitigating factors made the deadline very difficult to achieve.
- The Ordinance's proposed 30-month window for site or building permit issuance would place all projects on a level playing field, rather than penalizing projects which were entitled more recently and therefore afforded less time to obtain needed post-entitlement approvals.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

ENVIRONMENTAL REVIEW

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

PUBLIC COMMENT

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

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 180911
- Exhibit C: CEQA Review
- Exhibit D: List of potentially affected projects as of October 11, 2018

Potentially Affected Projects, October 18, 2018

BUILDING NAME	PLANNING DEPT CASE NUMBER	Entitlement Date	30 Month Expiration	TENURE	TOTAL UNITS IN BUILDING OR PHASE	TOTAL ON-SITE BMR UNITS	ON-SITE RATE
GROUP 1: ENTITLED, ALREADY HIT 30 MONTHS OR WILL PRIOR TO 12/7/18 - NO BENEFIT							
988 Harrison	2014.0832CUAENX	February 25, 2016	August 25, 2018	Rental	100	14	13.5%
2435-2445 16th Street	2014.1201ENX	June 23, 2016	December 23, 2018	Ownership	53	8	16.0%
145 Leavenworth and 361 Turk	2012.1531CEX	July 9, 2015	January 9, 2018	Rental	231	30	13.0%
GROUP 2: ENTITLED, WILL HIT 30 MONTHS AFTER DECEMBER 7 - WILL BENEFIT FROM LEGISLATION							
360 5th Street	2015-005863CUA	October 5, 2017	April 5, 2020	Ownership	127	18	14.5%
975 Bryant	2015-005862ENX	October 5, 2017	April 5, 2020	Rental	185	30	16.4%
999 Folsom/301 6th Street	2013.0538ENX	October 7, 2018	April 7, 2021	Rental	95	13	13.5%
888 Tennessee	2013.0975ENX	October 7, 2018	April 7, 2021	Rental	112	16	15.4%
600 Van Ness	2015-012729	May 24, 2018	November 24, 2020	Ownership	168	24	14.5%
1863 Mission	2009.1011	July 12, 2018	January 12, 2021	Undecided	36	5	13.5%
555 Golden Gate Ave.	2014.1102	May 17, 2018	November 17, 2020	Ownership	55	7	13.5%

BUILDING NAME	PLANNING DEPT CASE NUMBER	Entitlement Date	30 Month Expiration	TENURE	TOTAL UNITS IN BUILDING OR PHASE	TOTAL ON-SITE BMR UNITS	ON-SITE RATE
430 Main	2014-002033PRJ	May 24, 2018	November 24, 2020	Ownership	144	21	14.5%
980 Folsom	2013.0977	October 5, 2017	April 5, 2020	Rental	34	4	13.5%
135 Hyde	2015-015203DNX	March 29, 2018	September 29, 2020	Rental	69	10	14.5%
2140 Market (Lucky 13)	2014-002035	June 21, 2017	December 21, 2019	Rental	27	4	14.5%
1965 Market	2015-002825	January 18, 2018	July 18, 2020	Ownership	96	14	14.5%
793 South Van Ness Avenue	2015-001360CUA	December 14, 2017	June 14, 2020	Ownership	75	11	14.5%
98 Pennsylvania Avenue	2013.0517X	September 22, 2016	March 22, 2019	Rental	48	7	15.4%
1028 Market Street	2014.0241X; CUA; VAR	January 26, 2017	July 26, 2019	Rental	186	25	13.5%
524 Howard Street	2013.0882DNX; VAR	May 17, 2018	November 17, 2020	Rental	334	50	15.0%
555 Howard Street	2015-008058DNXCJAVAR	March 7, 2017	September 7, 2019	Ownership	69	10	15.0%
651 Geary Street	2014.0482CVAR	July 7, 2016	January 7, 2019	Ownership	52	7	13.5%
1740 Market Street	2014.0409CUAVAR	July 28, 2016	January 28, 2019	Rental	100	14	13.5%
519 Ellis Street	2014.0506CUA	June 1, 2017	December 1, 2019	Ownership	28	4	13.5%
198 Valencia	2013.1458EDV	February 16, 2017	August 16, 2019	Ownership	28	4	13.5%

