

1 [Planning Code - Amendments to the Van Ness & Market Downtown Residential Special Use  
2 District]

3 **Ordinance amending the Planning Code to amend the Van Ness & Market Downtown**  
4 **Residential Special Use District, to encourage additional housing and uses that**  
5 **support neighborhood residents and businesses, and to give effect to amendments to**  
6 **the Market and Octavia Area Plan; amending Planning Code, Sections 145.4, 151.1, 155,**  
7 **207.6, 249.33, 260, 261.1, 263.19, 270, 270.2, 309, 341.5, 401, 411A.5, 416.3, 421.5, 424.1,**  
8 **424.3, 424.4, and 424.5; adding new Planning Code, Section 425, to create the Van Ness**  
9 **& Market Community Facilities Fee and Fund; and making environmental findings,**  
10 **including adopting a statement of overriding considerations, findings of consistency**  
11 **with the General Plan, and the eight priority policies of Planning Code, Section 101.1,**  
12 **and findings of public necessity, convenience, and welfare under Planning Code,**  
13 **Section 302.**

14  
15 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
16 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
17 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
18 **Board amendment additions** are in double-underlined Arial font.  
19 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
20 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
21 subsections or parts of tables.

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

23 Section 1. Environmental and Planning Code Findings.

24 (a) On May 21, 2020, after a duly noticed public hearing, the Planning Commission  
25 certified the Final Environmental Impact Report (EIR) for the proposed Hub Plan, 30 Van  
Ness Avenue Project, 98 Franklin Street Project, and Hub Housing Sustainability District (the  
Project) by Motion No. 20707, finding the Final EIR reflects the independent judgment and

1 analysis of the City and County of San Francisco, is adequate, accurate and objective,  
2 contains no significant revisions to the Draft EIR, and the content of the report and the  
3 procedures through which the Final EIR was prepared, publicized, and reviewed comply with  
4 the provisions of the California Environmental Quality Act (California Public Resources Code  
5 Sections 21000 et seq.), the CEQA Guidelines (14 Cal. Code Regs. Section 15000 et seq.),  
6 and Chapter 31 of the San Francisco Administrative Code. Copies of the Planning  
7 Commission Motion and Final EIR are on file with the Clerk of the Board of Supervisors in File  
8 No. 200556 and is incorporated herein by reference. The Board affirms this determination.

9 (b) The Project evaluated in the Final EIR includes the proposed amendments to the  
10 Planning Code as well as amendments to the General Plan and other related amendments.  
11 The proposed Planning Code amendments set forth in this ordinance are within the scope of  
12 the Project evaluated in the Final EIR.

13 (c) On May 21, the Planning Commission, in Motion No. 20708, adopted findings  
14 under CEQA regarding the Project's environmental impacts, the disposition of mitigation  
15 measures, and project alternatives, as well as a statement of overriding considerations  
16 (CEQA Findings) and adopted a mitigation monitoring reporting program (MMRP).

17 (d) On May 21, the Planning Commission, in Resolution No. 20710, recommended the  
18 proposed Planning Code amendments for approval and adopted findings that the actions  
19 contemplated in this ordinance are consistent, on balance, with the City's General Plan and  
20 eight priority policies of Planning Code Section 101.1. The Board adopts these findings as its  
21 own. A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No.  
22 200559, and is incorporated herein by reference.

23 (e) On May 21, the Planning Commission, in Resolution No. 20710, adopted findings  
24 under Planning Code section 302 that the actions contemplated in this ordinance will serve  
25 the public necessity, convenience, and welfare. The Board adopts these findings as its own.

1 A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No.  
2 200559, and is incorporated herein by reference.

3 (f) The Board of Supervisors has reviewed and considered the Final EIR and the  
4 environmental documents on file referred to herein. The Board of Supervisors has reviewed  
5 and considered the CEQA Findings, and hereby adopts them as its own and incorporates  
6 them by reference as though such findings were fully set forth in this Ordinance.

7 (g) The Board of Supervisors adopts the MMRP as a condition of this approval, and  
8 endorses those mitigation measures that are under the jurisdiction of other City Departments,  
9 and recommends for adoption those mitigation measures that are enforceable by agencies  
10 other than City agencies, all as set forth in the CEQA Findings and MMRP.

11 (h) The Board of Supervisors finds that since certification of the Final EIR no  
12 substantial changes have occurred in the proposed Project that would require revisions in the  
13 Final EIR due to the involvement of new significant environmental effects or a substantial  
14 increase in the severity of previously identified significant effects, no substantial changes have  
15 occurred with respect to the circumstances under which the proposed Project is to be  
16 undertaken that would require major revisions to the Final EIR due to the involvement of new  
17 environmental effects or a substantial increase in the severity of effects identified in the Final  
18 EIR, and no new information of substantial importance to the proposed Project has become  
19 available which indicates that (1) the Project will have significant effects not discussed in the  
20 Final EIR, (2) significant environmental effects will be substantially more severe, (3) mitigation  
21 measure or alternatives found not feasible that would reduce one or more significant effects  
22 have become feasible, or (4) mitigation measures or alternatives that are considerably  
23 different from those in the Final EIR would substantially reduce one or more significant effects  
24 on the environment.

1 Section 2. Articles 1, 2 and 4 of the Planning Code are hereby amended by revising  
2 Sections 145.4, 151.1, 155, 207.6, 249.33, 260, 261.1, 263.19, 270, 270.2, 309, 341.5, 401,  
3 411A.5, 416.3, 421.5, 424.1, 424.3, 424.4, and 424.5, as follows.

4  
5 **SEC. 145.4 REQUIRED GROUND FLOOR COMMERCIAL USES**

6 \* \* \* \*

7 (b) Applicability. The requirements of this Section 145.4 apply to the following street  
8 frontages.

9 \* \* \* \*

10 (3) Van Ness Avenue, in the Van Ness ~~and~~ Market ~~Downtown~~ Residential  
11 Special Use District, from Fell Street to Market Street;

12 (4) South Van Ness Avenue, for the entirety of the Van Ness ~~and~~ Market  
13 ~~Downtown~~ Residential Special Use District;

14 \* \* \* \*

15 (14) Mission Street, for the entirety of the Mission Street NCT District and Van  
16 Ness & Market Residential Special Use District;

17 \* \* \* \*

18 (33) Brannan Street, between Third Street and Fourth Street, in the Central  
19 SoMa Special Use District; ~~and~~

20 (34) Townsend Street, on the north side, between Second Street and Fourth  
21 Street; and

22 (35) Otis Street, for the entirety of the Van Ness and Market Residential Special Use  
23 District.

24 \* \* \* \*

25 (c) Definitions.

1 "Active commercial uses" shall include those uses specifically identified below in  
2 Table 145.4, and:

3 \* \* \* \*

4 (3) Shall not include Residential Care Facilities as defined in Sections 102 and  
5 890.50; ~~and~~

6 (4) Shall include one or more Designated Child Care Units as defined in  
7 Section 102, provided that each such unit meets all applicable criteria set forth in Section  
8 414A.6 of this Code;:

9 (5) In the Ocean Avenue NCT, shall include Arts Activities, Nighttime  
10 Entertainment, and Institutional Community Uses, as those uses are defined in Section 102;:  
11 and

12 (6) On Mission and Otis Street within the Van Ness & Market Residential Special Use  
13 District, shall include Light Manufacturing, as that use is defined in Section 102.

14 \* \* \* \*

15  
16 **SEC. 151.1 SCHEDULE OF PERMITTED OFF-STREET PARKING SPACES IN**  
17 **SPECIFIED DISTRICTS.**

18 \* \* \* \*

19 Table 151.1  
20 **OFF-STREET PARKING PERMITTED AS ACCESSORY**

<b><i>Use or Activity</i></b>	<b><i>Number of Off-Street Car Parking Spaces or Space Devoted to Off-Street Car Parking Permitted</i></b>
<b><i>RESIDENTIAL USES</i></b>	
* * * *	

25

Dwelling Units in the Van Ness & Market <i>Downtown</i> Residential Special Use District	P up to one car for each four Dwelling Units; <del>€ up to 0.5 cars for each Dwelling Unit, subject to the criteria and procedures of Section 151.1(e); NP above two cars for each four Dwelling Units. above .25 cars for each Dwelling Unit.</del>
* * * *	

\* \* \* \*

**SEC. 155. GENERAL STANDARDS AS TO LOCATION AND ARRANGEMENT OF OFF-STREET PARKING, FREIGHT LOADING, AND SERVICE VEHICLE FACILITIES.**

\* \* \* \*

**(u) Driveway and Loading Operations Plan (DLOP) in the Central SoMa Special Use District and Van Ness & Market Residential Special Use District.**

(1) **Purpose.** The purpose of a Driveway and Loading Operations Plan (DLOP) is to reduce potential conflicts between driveway and loading operations, including passenger and freight loading activities, and pedestrians, bicycles, and vehicles, to maximize reliance of on-site loading spaces to accommodate new loading demand, and to ensure that off-site loading activity is considered in the design of new buildings,

(2) **Applicability.** Development projects of more than 100,000 net new gross square feet in the Central SoMa Special Use District and Van Ness & Market Residential Special Use District.

(3) **Requirement.** Applicable projects shall prepare a DLOP for review and approval by the Planning Department, in consultation with the San Francisco Municipal Transportation Agency. The DLOP shall be written in accordance with any guidelines issued by the Planning Department.

\* \* \* \*

1           **SEC. 207.6. REQUIRED MINIMUM DWELLING UNIT MIX IN RTO, RCD, NCT, DTR,**  
2 **EASTERN NEIGHBORHOODS MIXED USE DISTRICTS, THE VAN NESS & MARKET**  
3 **RESIDENTIAL SPECIAL USE DISTRICT, AND THE POLK STREET AND PACIFIC AVENUE**  
4 **NEIGHBORHOOD COMMERCIAL DISTRICTS.**

5           **(a) Purpose.** In order to foster flexible and creative infill development while  
6 maintaining the character of the district, dwelling unit density is not controlled by lot area in  
7 RTO, NCT, and Eastern Neighborhoods Mixed Use Districts but rather by the physical  
8 constraints of this Code (such as height, bulk, setbacks, open space, and dwelling unit  
9 exposure). However, to ensure an adequate supply of family-sized units in existing and new  
10 housing stock, new residential construction must include a minimum percentage of units of at  
11 least two bedrooms. In the Pacific Avenue and Polk Street Neighborhood Commercial  
12 Districts, and the Van Ness & Market Residential Special Use District, a dwelling unit mix  
13 requirement addresses the need for family-sized housing production in these districts.

14           **(b) Applicability.**

15           (1) This Section shall apply in the RTO, RCD, NCT, DTR, Eastern  
16 Neighborhoods Mixed Use Districts, the Van Ness & Market Residential Special Use District, and  
17 the Pacific Avenue and Polk Street NCDs.

18           (2) This Section shall apply to all applications for building permits and/or  
19 Planning Commission entitlements that propose the creation of five or more Dwelling Units.

20           (3) This Section does not apply to buildings for which 100 percent of the  
21 residential uses are: Group Housing, Dwelling Units that are provided at below market rates  
22 pursuant to Section 406(b)(1) of this Code, Single Room Occupancy (SRO) Units, Student  
23 Housing (all as defined in Section 102 of this Code) or housing specifically and permanently  
24 designated for seniors or persons with physical disabilities.

1 (c) **Controls.** For all RTO, RCD and NCT districts, as well as DTR, Eastern  
2 Neighborhoods Mixed Use Districts, the Van Ness & Market Residential Special Use District, and  
3 the Pacific Avenue and Polk Street NCDs, one of the following three must apply;

4 (1) no less than 40% of the total number of proposed Dwelling Units shall  
5 contain at least two bedrooms. Any fraction resulting from this calculation shall be rounded to  
6 the nearest whole number of Dwelling Units, or

7 (2) no less than 30% of the total number of proposed Dwelling Units shall  
8 contain at least three bedrooms. Any fraction resulting from this calculation shall be rounded  
9 to the nearest whole number of Dwelling Units, or

10 (3) no less than 35% of the total number of proposed Dwelling Units shall  
11 contain at least two or three bedrooms with at least 10% of the total number of proposed  
12 Dwelling Units containing three bedrooms. Any fraction resulting from this calculation shall be  
13 rounded to the nearest whole number of Dwelling Units.

14 (d) **Modifications.**

15 (1) In NCT, RCD, RTO and the Pacific Avenue and Polk Street NC Districts,  
16 these requirements may be waived or modified with Conditional Use Authorization. In addition  
17 to those conditions set forth in Section 303, the Planning Commission shall consider the  
18 following criteria:

19 (A) The project demonstrates a need or mission to serve unique  
20 populations, or

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

23 (2) In Eastern Neighborhoods Mixed Use Districts, these requirements may be  
24 waived in return for provision of family-sized affordable units, pursuant to Section 419 et seq.  
25 To receive this waiver, 100 percent of the total number of inclusionary units required under



1 Section 415 et seq. or Section 419 et seq. shall contain at least two bedrooms. Also in  
2 Eastern Neighborhoods Mixed Use Districts, these requirements may be waived or modified  
3 through the Variance process set forth in Section 305, or in the case of projects subject to  
4 Section 329, through the procedures of that section.

5 (3) In DTR Districts, these requirements may be modified per the procedures of  
6 Section 309.1.

7 (4) In the Van Ness & Market Residential Special Use District, these requirements may  
8 only be modified pursuant to the procedures of Section 309, regardless of the underlying zoning  
9 district.

10 \* \* \* \*

11  
12 **SEC. 249.33. Van Ness & Market ~~Downtown~~ Residential Special Use District.**

13 (a) Purpose. There shall be a Van Ness & Market ~~Downtown~~ Residential Special Use  
14 District, which is comprised of the parcels zoned C-3-G in the Market Octavia Better  
15 Neighborhoods Plan area, and whose boundaries are designated on Sectional Map Nos.  
16 SU02 and SU07 of the Zoning Map of the City and County of San Francisco. This District is  
17 generally comprised of parcels focused at the intersections of Van Ness Avenue at Market  
18 Street and South Van Ness Avenue at Mission Street, along with parcels on both sides of  
19 Market and Mission Streets between 9th 10th and Division 12th Streets. This District is intended  
20 to be a transit-oriented, high-density, ~~mixed-use~~ neighborhood with a significant residential  
21 presence and a mix of neighborhood-serving uses. New development and major expansions must be  
22 predominantly residential. Other non-residential uses that are allowed and encouraged, include arts,  
23 institutional, and retail uses. Retail controls allow for smaller retail use sizes in order to emphasize  
24 neighborhood-serving character. These uses compliment the transit rich infrastructure in the area,  
25 which includes the Van Ness MUNI Metro Station and the intersection of several major transit

1 corridors including Van Ness, Market Street, Mission Street and other major bus lines. This area is  
2 encouraged to transition from largely a back-office and warehouse support function to  
3 downtown into a more ~~cohesive downtown~~ mixed-use residential district, and serves as a  
4 transition zone to the lower scale residential and neighborhood commercial areas to the west  
5 and south of the C-3. A notable amount of large citywide commercial and office activity will  
6 remain in the area, including government offices supporting the Civic Center and City Hall.  
7 The area was initially identified in the Downtown Plan of the General Plan as an area to  
8 encourage housing adjacent to the downtown. As part of the city's Better Neighborhoods  
9 Program, this concept was fully articulated in the Market and Octavia Area Plan, and is  
10 described therein.

11 (b) **Use Controls.**

12 (1) **Non-residential Uses.** For newly-constructed buildings or additions which  
13 exceed 20 percent or more of an existing structure's gross floor area, ~~non-residential uses are~~  
14 ~~not permitted above the fourth story, and~~ at least ~~two~~ three occupied square feet of residential use  
15 shall be provided for each occupied square foot of non-residential use. In order to  
16 accommodate local government office uses near City Hall, publicly-owned or leased buildings  
17 or lots are exempted from the requirements of this Subsection. Replacement of existing office  
18 uses on the same parcel and other Public Facility and Art Activities, as defined in Section 102, are  
19 exempt from the requirements of this subsection (b)(1).

20 \* \* \* \*

21 (3) **Residential Affordable Housing Program.** All projects in this District shall  
22 be subject to all the terms of Section 415 et seq. ~~and following~~ of the Inclusionary Affordable  
23 Housing Program. Notwithstanding the foregoing, projects within the Van Ness ~~& Market~~  
24 ~~Downtown~~ Residential Special Use District shall at a minimum fulfill the requirements to the  
25 levels specified in this section. Should Section 415 require greater contributions to the

1 affordable housing program, those requirements shall ~~superecede~~supersede this section.

2 Proposed exceptions to these requirements due to hardships associated with construction  
3 type, specifically heights above 120 feet, are not applicable in this Special Use District  
4 because parcels are receiving an up zoning through increased density and benefits through  
5 the general transformation of the district to a transit oriented neighborhood with a mixed use  
6 character. Requirements and administration of this program shall follow the conditions  
7 outlined in Section 415 et seq. of this Code unless otherwise specified in this Section.

8 \* \* \* \*

9 (5) **Lot Coverage.** The rear yard requirements of Section 134 of this Code shall  
10 not apply. Lot coverage is limited to 80 percent at all ~~residential~~ levels containing a dwelling unit  
11 or group housing bedroom ~~except on levels in which all residential units face onto a public right of~~  
12 ~~way.~~ The unbuilt portion of the lot shall be open to the sky except for those obstructions  
13 permitted in yards per Section 136(c) of this Code. Exceptions to the 20 percent open area  
14 may be granted pursuant to the procedures of Section 309. ~~for conversions of existing non-~~  
15 ~~residential structures where it is determined that provision of 20 percent open area would require~~  
16 ~~partial demolition of the existing non-residential structure.~~

17 \* \* \* \*

18 (7) **Retail Use Size.** Retail Uses shall be principally permitted up to 5,999 gross square  
19 feet and conditionally permitted if 6,000 gross square feet and above.

20 (8) **Formula Retail.** Formula Retail Uses, as defined in Section 102, shall require a  
21 Conditional Use Authorization as set forth in Section 303.1.

22 (9) **Micro-Retail.** “Micro-Retail” shall mean a Retail Use, other than a Formula Retail  
23 Use, measuring no less than 100 gross square feet, no greater than 1,000 gross square feet and a 10  
24 foot minimum depth from the front façade.

1 (A) Applicability. Micro-Retail controls shall apply to projects with new  
2 construction or alterations to greater than 50% of an existing building if located on a lot of at least  
3 20,000 square feet.

4 (B) Controls.

5 (i) Amount. Applicable development projects shall have at least one  
6 Micro-Retail unit for every 20,000 gross square feet of lot area, rounded to the nearest unit.

7 (ii) Location and Design. All Micro-Retail units shall be on the ground  
8 floor, independently and directly accessed from a public right-of-way or a publicly-accessible open  
9 space, and designed to be accessed and operated independently from other spaces or uses on the  
10 subject property. For projects adjacent to Privately Owned Publicly Accessible Open Spaces, free  
11 standing kiosks are allowed to meet this requirement through Planning Commission approval through  
12 a 309 exception.

13 (iii) Exemption. Any projects providing ground floor uses that are larger  
14 than 1,000 gross square feet and defined as Arts Activities, Child Care Facility, Community Facility,  
15 Instructional Service, Public Facility, School or Social Service are exempt from the Micro-Retail  
16 requirement.

17 (iv) Exceptions. Exceptions to the micro-retail requirement may be  
18 granted pursuant to the procedures of Section 309.

19 (10) Accessory Parking. For projects that provide 25% or more on-site affordable  
20 housing units as defined in Section 415, accessory non-residential parking may be used jointly as  
21 accessory residential parking for residential uses within the same project, so long as the following  
22 criteria is met:

23 (A) the total number of independently accessible parking stalls (whether  
24 residential or non-residential) provided in such project shall not exceed the sum of the maximum  
25

1 amount of accessory residential and accessory non-residential parking spaces permitted by the  
2 Planning Code, and;

3 (B) the total number of parking spaces used as residential accessory parking  
4 shall not exceed 0.4 spaces per each Dwelling Unit.

5 (11) Cannabis-Related Land Uses. All cannabis-related uses, which includes Cannabis  
6 Retail (Retail Sales and Service Category), Medical Cannabis Dispensary, Industrial Agriculture,  
7 Agriculture and Beverage Processing 2, Light Manufacturing, Laboratory, Wholesale, or Parcel  
8 Delivery Service, as defined in Section 102 shall follow the land use controls of the NCT-3 Moderate-  
9 Scale Neighborhood Commercial Transit District, Section 752 of this Code.

10 (12) Living Roofs and Living Walls.

11 (A) Definitions. For the purpose of this subsection (b)(12), all terms shall be as  
12 defined in Sections 102 and 149.

13 (B) Applicability. The requirements of this subsection (b)(12) shall apply to any  
14 building and development project that meet all of the following criteria:

15 (i) The development project lot size is 5,000 square feet or larger;

16 (ii) The building constitutes a Large Development Project or Small  
17 Development Project under the Stormwater Management Ordinance (Public Works Code Sections 147-  
18 147.6); and

19 (iii) The building height is 120 feet or less.

20 (C) Requirements.

21 (i) Notwithstanding the requirements of Section 149, at least thirty  
22 percent of the roof area shall be covered by one or more Living Roofs.

23 (ii) The Living Roof shall be considered in determining compliance with  
24 the Stormwater Management Ordinance.

25 (iii) The Planning Department, after consulting with the Public Utilities

1 Commission and the Department of the Environment, shall adopt rules and regulations to implement  
2 this subsection (b)(12) and shall coordinate with those departments to ensure compliance with the  
3 Stormwater Management Ordinance.

4 (iv) Projects that consist of multiple buildings may choose to locate the  
5 Living Roofs required in subsection (b)(12)(B)(i) on any rooftops within the subject project site,  
6 including on buildings that are not subject to these requirements, provided that the project as a whole  
7 provides the square footage of Living Roofs required by subsection (b)(12)(B)(i).

8 (v) Project sponsors are encouraged to incorporate vertical living walls  
9 on building facades, composed of climate-appropriate, native, and non-invasive plantings.

10 (D) Waiver. If the project sponsor demonstrates to the Zoning Administrator's  
11 satisfaction that it is physically infeasible to meet the Living Roof requirements that apply to the  
12 project, the Zoning Administrator may, in their sole discretion and pursuant to the procedures set forth  
13 in Planning Code Section 307(h), reduce the requirement stated in subsection (b)(12)(B)(i) to what is  
14 required under Section 149.

15 **(13) Option for In-Kind Provision of Transportation Sustainability Fee.**

16 Notwithstanding the requirements of Planning Code section 411A et seq., Development projects in this  
17 District may propose to provide transportation improvements to the City directly. In such a case, the  
18 City, at its sole discretion, may enter into an In-Kind Improvements Agreement with the sponsor of such  
19 project and issue a fee waiver for the TSF from the Municipal Transportation Agency Board of  
20 Directors (the "MTA" and the "MTA Board," respectively), subject to the following rules and  
21 requirements:

22 (A) Approval criteria. The City shall not enter into an In-Kind Improvements  
23 Agreement unless the proposed in-kind improvements meet an identified community need and where  
24 they substitute for improvements that could be provided by the TSF Expenditure Program (as described  
25 in Section 411A.6). No physical improvement or provision of space otherwise required by the Planning

1 Code or any other City Code shall be eligible for consideration as part of this In-Kind Improvements  
2 Agreement.

3 (B) Valuation. The Director of Transportation, in consultation with the Director  
4 of Planning, shall determine the appropriate value of the proposed in-kind improvements. For the  
5 purposes of calculating the total value, the development project shall provide the Planning Department  
6 and MTA with a cost estimate for the proposed in-kind improvement(s) from two independent sources  
7 or, if relevant, real estate appraisers. If the City has completed a detailed site-specific cost estimate for  
8 a planned improvement this may serve as one of the cost estimates, provided it is indexed to current  
9 cost of construction.

10 (C) Content of the In-Kind Improvements Agreement. The In-Kind  
11 Improvements Agreement shall include at least the following items:

12 (i) A description of the type and timeline of the proposed in-kind  
13 improvements;

14 (ii) The appropriate value of the proposed in-kind improvement, as  
15 determined in subsection (2) above; and

16 (iii) The legal remedies in the case of failure by the development project  
17 to provide the in-kind improvements according to the specified timeline and terms in the agreement.  
18 Such remedies shall include the method by which the City will calculate accrued interest.

19 (D) Approval Process. The MTA Board, with the advice of the Director of  
20 Planning and the Director of Transportation, must approve the material terms of an In-Kind  
21 Agreement. Prior to the parties executing the Agreement, the City Attorney must approve the agreement  
22 as to form and to substance. The Director of Transportation is authorized to execute the Agreement on  
23 behalf of the City. If the MTA Board approves the In-Kind Agreement, it shall waive the amount of the  
24 TSF by the value of the proposed In-Kind Improvements Agreement, as determined by the Director of  
25 Transportation and the Director of Planning. No credit shall be made for land value unless ownership

1 of the land is transferred to the City or a permanent public easement is granted, the acceptance of  
2 which is at the sole discretion of the City. The maximum value of the In-Kind Improvements Agreement  
3 shall not exceed the required TSF.

4 (E) Administrative Costs. Development projects that pursue an In-Kind  
5 Improvements Agreement will be billed time and materials for any administrative costs that the  
6 Planning Department or any other City entity incurs in negotiating, drafting, and monitoring  
7 compliance with the In-Kind Improvements Agreement.

8 (14) Option for Provision of Affordable Housing Fees. Development projects in this  
9 District may pay the affordable housing fees required under sections 416 and 424 by choosing any of  
10 the alternatives set forth in Section 415.5(g), provided that nothing in this subsection shall be  
11 interpreted to change any obligations established by contract with the City.

12 (15) Option for Income Levels of Affordable Units. Notwithstanding the provisions  
13 of Section 415.6 (h), a project may use California Debt Limit Allocation Committee (CDLAC) tax-  
14 exempt bond financing and 4% tax credits under the Tax Credit Allocation Committee (TCAC) to help  
15 fund its obligations under Section 415.1 et seq. as long as the project provides 20% of the units as  
16 affordable to households at 50% of Area Median Income for on-site housing, or 10% of the units as  
17 affordable to households at 50% of Area Median Income and 30% of the units as affordable to  
18 households at 60% of Area Median Income for on-site housing. The income table to be used for such  
19 projects when the units are priced at 50% or 60% of Area Median Income is the income table used by  
20 MOHCD for the Inclusionary Affordable Housing Program, not that used by TCAC or CDLAC. Except  
21 as provided in this subsection (b)(15), all units provided under this Section must meet all of the  
22 requirements of Section 415.1et seq. and the Procedures Manual for on-site housing, except that the  
23 requirement to provide moderate- and middle-income units under in Section 415.6(a) may be replaced  
24 with low income affordable units that satisfy TCAC requirements for 4% tax credits. If the number of  
25 affordable units required by Section 415.6 exceeds the number of affordable units required to use 4%



1 tax credits, the project shall comply with higher requirement under Section 415.6 and the additional  
2 Inclusionary obligation above the tax credit units may be met by providing on-site affordable units  
3 equally distributed between moderate- and middle-income households as defined in Section 415.6.

4 **(16) Option for Dedication of Land.**

5 (A) Development projects in this District may opt to fulfill the Inclusionary  
6 Housing requirement of Section 415 through the Land Dedication alternative contained in Section  
7 419.6. The Land Dedication alternative is available for development projects within the District under  
8 the same terms and conditions as provided for in Section 419.5(a)(2), except that in lieu of the Land  
9 Dedication Alternative requirements of Table 419.5, projects may satisfy the requirements of Section  
10 415.5 by dedicating land for affordable housing if the dedicated land could accommodate a total  
11 amount of units that is equal to or greater than 35% of the units that are being provided on the  
12 principal development project site, as determined by the Planning Department. Any dedicated land  
13 shall be at least partly located within 1 mile of the boundaries of either the Market and Octavia Plan  
14 Area or the Upper Market NCT District.

15 (B) Notwithstanding the requirements of Section 419.5(a)(2)(H), development  
16 projects dedicating land shall obtain the required letter from the Mayor's Office of Housing and  
17 Community Development verifying acceptance of the dedicated land within 180 days of the effective  
18 date of this Special Use District or prior to Planning Commission or Planning Department approval of  
19 the development project, whichever occurs first. No property may be used for this land dedication  
20 option unless the Mayor's Office of Housing and Community Development issues an acceptance letter  
21 within this 180-day timeline.

22 (C) Development projects that elect to dedicate land pursuant to this section  
23 may be eligible for a waiver against all or a portion of their affordable housing fees under Sections 416  
24 and 424 if the Planning Director determines that the land acquisition costs for the dedicated land  
25 exceed the development project's obligations under the fee option of Section 415. The Planning

1 Director, in consultation with the Director of the Mayor’s Office of Housing and Community  
2 Development and the Director of Property, shall calculate the waiver amount based on actual  
3 commercially reasonable costs to acquire the dedicated land. If the Director of the Mayor’s Office of  
4 Housing and Community Development requests that the land dedication occur before the First  
5 Construction Document for the development project, the waiver amount shall be increased by the  
6 reasonable value of the City’s early use of the dedicated land.

7 (17) **Required Minimum Dwelling Unit Mix.** Development projects in this District  
8 shall comply with Section 207.6.

9 (18) **Active Uses.** For purposes of this section 249.33, Arts Activities and Institutional  
10 Community Uses are considered to be “active uses,” as defined in Section 145.4 of this Code.

11 (19) **Projects with on-site affordable housing units provided pursuant to a Purchase**  
12 and Sale Agreement with the City and County of San Francisco that are in excess of the amount  
13 required by Planning Code Section 415 may deviate from the building floor distribution requirements  
14 of Section 415.6(f)(1) by up to 15%.

15 (c) In the event of a conflict between the provisions of this Section 249.33 and the provisions of  
16 Section 249.81, the 1629 Market Street Special Use District, the provisions of Section 249.81 shall  
17 control.

18 (d) In the event of a conflict between the provisions of this Section 249.33 and the provisions of  
19 Section 249.12, the 1500 Mission Street Special Use District, the provisions of Section 249.12 shall  
20 control.

21  
22 **SEC. 260. HEIGHT LIMITS: MEASUREMENT**

23 \* \* \* \*

1 (b) Exemptions. In addition to other height exceptions permitted by this Code, the  
2 features listed in this subsection (b) shall be exempt from the height limits established by this  
3 Code, in an amount up to but not exceeding that which is specified.

4 (1) The following features shall be exempt provided the limitations indicated for  
5 each are observed; and provided further that the sum of the horizontal areas of all features  
6 listed in this subsection (b)(1) shall not exceed 20% of the horizontal area of the roof above  
7 which they are situated, or, in C-3 Districts and in the Rincon Hill Downtown Residential  
8 District, where the top of the building has been separated into a number of stepped elements  
9 to reduce the bulk of the upper tower, of the total of all roof areas of the upper towers; and  
10 provided further that in any R, RC-3, or RC-4 District the sum of the horizontal areas of all  
11 such features located within the first 10 feet of depth of the building, as measured from the  
12 front wall of the building, shall not exceed 20% of the horizontal area of the roof in such first  
13 10 feet of depth.

14 \* \* \* \*

15 (N) In the Van Ness & Market Residential Special Use District and only in the  
16 block/lot districts 85-X // 120/365-R-2, additional building volume used to enclose or screen from view  
17 the features listed in subsections (b)(1)(A) and (b)(1)(B) above. The rooftop form created by the added  
18 volume shall not be subject to the percentage coverage limitations otherwise applicable to the building,  
19 but shall meet the requirements of Section 141; shall not exceed 10 percent of the total height of any  
20 building taller than 200 feet; shall have a horizontal area not more than 100 percent of the total area of  
21 the highest occupied floor; and shall contain no space for human occupancy that is enclosed or  
22 otherwise not open to the sky. The features described in subsection (b)(1)(B) shall not be limited to 16  
23 feet for buildings taller than 200 feet but shall be limited by the permissible height of any additional  
24 rooftop volume allowed by this subsection (N).

25 \* \* \* \*

1  
2           **SEC. 261.1. ADDITIONAL HEIGHT LIMITS FOR NARROW STREETS AND ALLEYS**  
3 **IN, R, RTO, NC, NCT, AND EASTERN NEIGHBORHOODS MIXED USE DISTRICTS**

4 \* \* \* \*

5           (b) Definitions.

6                   \* \* \* \*

7                   (2) "Subject Frontage" shall mean:

8                   \* \* \* \*

9                               (B) any building frontage in an RH-2, RH-3, RM, RTO, NC, NCT, Van  
10 Ness & Market Residential Special Use District, or Eastern Neighborhood Mixed Use District that  
11 abuts a Narrow Street and that is more than 60 feet from an intersection with a Street wider  
12 than 40 feet.

13                   \* \* \* \*

14           (c) **Applicability.** The controls in this Section shall apply in all RH, RM, RTO, NC,  
15 NCT, the Van Ness & Market Residential Special Use District, and Eastern Neighborhoods Mixed  
16 Use Districts, except in the Bernal Heights Special Use District. Notwithstanding the  
17 foregoing, in the CS Bulk District these controls shall only apply on certain frontages as  
18 described in Section 270(h).

19 \* \* \* \*

20  
21           **SEC. 263.19. HEIGHT LIMITS: PERMITTED PODIUM AND TOWER HEIGHTS IN**  
22 **THE R BULK DISTRICTS.**

23           (a) **Intent.** ~~As described in Section 827(a), the~~ general development concept for Rincon  
24 Hill R Bulk Districts is of podium buildings ~~up to 85,~~ that vary from 65 to 170 feet in height  
25 depending on the district and location, with adequately spaced slender towers up to ~~550~~ 650 feet

1 in height rising above the podium buildings. ~~In South Beach, towers up to 200 feet in height are~~  
2 ~~permitted to rise in limited locations above a podium height that varies from 65 to 105 feet. This urban~~  
3 ~~form is implemented in the R height and bulk district, mapped in all portions of the Rincon Hill and~~  
4 ~~South Beach Downtown Residential Districts where towers are permitted.~~

5 (b) **Maximum Height Controls for Podiums and Towers.** In the R bulk districts,  
6 which include the R, R-2, and R-3 bulk districts as designated on Sectional Map No. HT01 ~~HH~~,  
7 HT02, and HT07 of the Zoning Map, maximum permitted building heights for both podiums and  
8 towers are expressed as two numbers separated by a slash, ~~including 65/200-R, 105/200-R,~~  
9 ~~85/150-R, 85/200-R, 85/250-R, 65/400-R, 85/400-R, 45/450-R, and 45/550-R.~~ The number preceding  
10 the slash represents the height limit for podium buildings. The number following the slash  
11 represents the height limit for towers. No building may exceed the podium height limit except  
12 for towers meeting the bulk and tower spacing controls established in Section 270(e) and (f).

13 (c) **Maximum Height Controls for Podiums and Towers in the R-2 Bulk District and the Van**  
14 **Ness & Market Residential Special Use District.** In the R-2 bulk district and within the Van Ness &  
15 Market Residential Special Use District, maximum permitted building heights for both podiums and  
16 towers are expressed as two sets of numbers separated by a double slash in the format described above,  
17 in subsection (b). Each set of numbers represents the maximum heights for podium and tower  
18 applicable to the parcel and as regulated per subsection (b) above as follows: The first set of numbers  
19 represents the principally permitted height limits for the parcel, both for the podium and for the tower.  
20 The second set of numbers after the double slash represents the maximum height limits for podium and  
21 tower that can be granted by the Planning Commission for that parcel through an exception pursuant  
22 to the procedures and findings of Section 309(a)(17).

23  
24 **SEC. 270 Bulk Limits: Measurement**

25 \* \* \* \*

1 (f) **Van Ness ~~&and~~ Market ~~Downtown~~ Residential Special Use District.** In Bulk  
2 District R-2, (Van Ness ~~&and~~ Market ~~Downtown~~ Residential Special Use District), bulk  
3 limitations are as follows:

4 (1) **Tower Bulk and Spacing.** ~~In height districts~~ In the R-2 bulk district ~~120/200-R-2,~~  
5 ~~20/300-R-2, 120/320-R-2, and 120/400-R-2,~~ there are no bulk limitations below the podium height  
6 ~~120 feet in 7 height,~~ and structures above 120 feet in the podium height shall meet the bulk  
7 limitations described in subsection (e)(2)(A)-(FE). ~~In height district 85/250-R-2 there are no bulk~~  
8 ~~limitations below 85 feet in height, and structures above 85 feet in height shall meet the bulk limitations~~  
9 ~~described in subsections (e)(2)(A) – (F).~~ To ensure tower sculpting, the gross floor area of the top one-  
10 third of the height of the tower shall be reduced by not less than 10 percent from the maximum floor  
11 plates described in subsections (e)(2)(A) – (E) above, and the average diagonal of the top one-third of  
12 the height of the tower shall be reduced by not less than 13% from the average diagonal of the tower,  
13 unless the overall tower volume is reduced by an equal or greater volume.

14 (2) **Exceptions.** In the R-2 bulk district, the Planning Commission may grant bulk  
15 exceptions through the procedures and findings of Section 309(a)(17) to increase the allowed bulk of  
16 buildings up to the limits described in subsections (A) – (D) below. The procedures for granting  
17 exceptions to bulk limits described in Section 272 shall not apply.

18 (A) Towers up to 350 feet in height may not exceed an average floor area of  
19 10,000 gross square feet.

20 (B) Towers taller than 350 feet may not exceed an average floor area of 12,000  
21 gross square feet, maximum plan length of 150 feet, and maximum diagonal dimension of 190 feet.

22 (C) Towers taller than 550 feet in height districts of 590 feet and greater may  
23 not exceed an average floor area of 18,500 gross square feet between a podium height of 140 feet and  
24 170 feet. Building mass above 150 feet shall be set back at least 10 feet from the property line for a  
25 minimum of 90% of all street frontages.

1 (D) Exceptions to the tower sculpting requirements described in subsection (f)(1)  
2 above may be considered up to the limits as follows:

3 (i) For towers less than 400 feet in height, the provision may be fully  
4 waived.

5 (ii) For towers taller than 400 feet in height, at least one-quarter of the  
6 tower's floors shall be reduced by not less than 10% from the maximum floor areas described in (2)(B)  
7 above.

8 (iii) For towers between 500 and 550 feet in height, the average diagonal  
9 of the upper one-third of the height of the tower shall be reduced by not less than 5% of maximum  
10 diagonal dimension described in subsection 270(e), above.

11 (23) In order to provide adequate sunlight and air to streets and open spaces, a  
12 minimum distance of 115 feet must be preserved between all structures above ~~120 feet in~~  
13 ~~height at all levels above 120 feet in height~~ the applicable podium height for the subject development  
14 lot. Spacing shall be measured horizontally from the outside surface of the exterior wall of the  
15 subject building to the nearest point on the closest structure above 120 feet in height.

16 (34) ~~No~~ Exceptions shall be permitted as described in section (2) (a)-(c) above. The  
17 procedures for granting special exceptions to bulk limits described in Section 272 shall not  
18 apply.

19 \* \* \* \*

20 **SEC. 270.2. SPECIAL BULK AND OPEN SPACE REQUIREMENT: MID-BLOCK**  
21 **ALLEYS IN LARGE LOT DEVELOPMENT IN THE EASTERN NEIGHBORHOODS MIXED**  
22 **USE DISTRICTS, SOUTH OF MARKET NEIGHBORHOOD COMMERCIAL TRANSIT**  
23 **DISTRICT, FOLSOM STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT,**  
24 **REGIONAL COMMERCIAL DISTRICT, C-3 DISTRICT, AND DTR DISTRICT.**

25 \* \* \* \*

1 (d) **Requirements.**

2 \* \* \* \*

3 (3) For new construction within the Van Ness & Market Residential Special Use  
4 District on lots with greater than 300 linear feet of street frontage, the project shall provide a publicly-  
5 accessible mid-block alley between any two frontages that have at least 200 feet of length each. Such  
6 alley shall be subject to all requirements of this Section 270.2, except that the requirements of  
7 subsection 270.2(e)(14) shall not apply. A project subject to this subsection 270.2(d)(3) may seek an  
8 exception to the requirements of Section 270.2(e)(6) pursuant to the procedures and findings of Section  
9 309(a)(18).

10 \* \* \* \*

11  
12 **SEC. 309. PERMIT REVIEW IN C-3 DISTRICTS.**

13 \* \* \* \*

14 (a) **Exceptions.** Exceptions to the following provisions of this Code may be granted  
15 as provided in the code sections referred to below:

16 \* \* \* \*

17  
18 (16) Exceptions to the Micro-Retail requirements as permitted in Section 249.33.  
19 (17) Exceptions to the height and bulk limits for parcels within the Van Ness & Market  
20 Residential Special Use District as defined by Section 270(f)(2). In considering such exceptions, the  
21 Planning Commission shall consider the extent to which the project achieves the following: (A) sculpts  
22 the building massing to achieve an elegant and creative tower form that enhances the skyline; (B)  
23 reduces or minimizes potential impacts on winds and shadows; (C) provides ground floor uses that  
24 serve a range of income levels and enrich the social landscape of the area such as: Arts Activities,  
25 Child Care Facility, Community Facility, Instructional Service, Public Facility, School, Social Service,



1 priority health service or neighborhood-serving retail; and (D) maximizes housing density within the  
2 allowed envelope.

3 (18) Exceptions to the percent lot coverage requirements of Section 270.2(e)(6) for  
4 projects within the Van Ness & Market Residential Special Use District. The Planning Commission  
5 shall only grant such exceptions if the Planning Commission finds that: (A) the proposed mid-block  
6 alley and percent coverage do not negatively affect the use and purpose of the alley as a means of  
7 creating a more efficient pedestrian network, as described in subsections 270.2(a)-(b); and (B) the  
8 proposed percent coverage does not negatively impact the quality of the mid-block alley as an area of  
9 pedestrian and retail activity and public open space. An exception shall not be granted for any mid-  
10 block alley that is less than 35 percent open to the sky.

11 (19) Exceptions to the required minimum dwelling unit mix in Section 207.6 for projects  
12 within the Van Ness & Market Residential Special Use District. In considering such exceptions, the  
13 Planning Commission shall consider the following criteria:

14 (A) whether the project demonstrates a need or mission to serve unique  
15 populations; or

16 (B) whether the project site or existing building(s), if any, feature physical  
17 constraints that make it unreasonable to fulfill the requirements of Section 207.6 or subsection  
18 309(a)(19)(i).

19 (20) Exceptions to the permitted obstructions requirements in Section 136 for projects  
20 within the Van Ness & Market Special Use District as defined by Section 270(f)(2). The Planning  
21 Commission shall only grant such an exception if it finds that the proposed obstructions assist the  
22 proposed development to meet the requirements of Section 148, or otherwise reduce wind speeds at the  
23 ground-level or at upper level open space.

24  
25 **SEC. 341.5. MARKET AND OCTAVIA COMMUNITY ADVISORY COMMITTEE.**

1 \* \* \* \*

2 (b) Representation. The Board of Supervisors shall appoint 2/3 of the committee  
3 members and the Mayor shall appoint 1/3 of the committee members on the CAC. Both the  
4 Board and the Mayor shall appoint members that represent the diversity of the plan area. The  
5 Citizens Advisory Committee shall be comprised of ~~7-11~~ 9 community members from varying  
6 geographic, socio-economic, ethnic, racial, gender, and sexual orientations living or working  
7 within the plan area. At a minimum, there must be one representative from each of the  
8 geographic areas of the Plan Area. Two members of the Citizens Advisory Committee may live or  
9 work in the Market and Octavia Plan Area Boundary or within 1,250 feet of the plan area boundary.  
10 The CAC should adequately represent key stakeholders including resident renters, resident  
11 homeowners, low-income residents, local merchants, established neighborhood groups within  
12 the plan area, and other groups identified through refinement of the CAC process. Each  
13 member shall be appointed by the Board and will serve for two-year terms, but those terms  
14 shall be staggered such that, of the initial membership, some members will be randomly  
15 selected to serve four-year terms and some will serve two-year terms. The Board of  
16 Supervisors may renew a member's term.

17 \* \* \* \*

18  
19 **SEC. 401. DEFINITIONS.**

20 \* \* \* \*

21 "Market and Octavia Community Improvements Program." The program intended to  
22 implement the community improvements identified in the Market and Octavia Area Plan, as  
23 articulated in the Market and Octavia Community Improvements Program Document on file  
24 with the Clerk of the Board in File No. 071157-, and as updated in the revised Market and Octavia  
25 Community Improvements Program Document, identified as part of the amendments to the Market and

1 Octavia Area Plan for the area known as the Hub, on file with the clerk of the board in File No.  
2 200559.

3 \* \* \* \*

4 **SEC. 411A.5. TSF SCHEDULE.**

5 (a) Development Projects subject to the TSF shall pay the following fees, as adjusted  
6 annually in accordance with Planning Code Section 409(b).

7 \* \* \* \*

8 (b) Development Projects in the Market & Van Ness Residential Special Use District may  
9 propose to pay their TSF in kind, as set forth in Section 249.33.

11 **SEC. 416.3. APPLICATION OF AFFORDABLE HOUSING FEE REQUIREMENT.**

12 \* \* \* \*

13 (b) **Other Fee Provisions.** This additional affordable housing fee shall be subject to  
14 the inflation adjustment provisions of Section 409 and the waiver and reduction provisions of  
15 Section 406. This additional affordable housing fee may not be met through the in-kind  
16 provision of community improvements or Community Facilities (Mello Roos) financing options  
17 of Sections 421.3(d) and (e). Pursuant to Section 249.33, in the Van Ness & Market Residential  
18 Special Use District this fee may be paid in any of the alternatives set forth in Section 415.5(g).

19 \* \* \* \*

20 **SEC. 421.5. MARKET AND OCTAVIA COMMUNITY IMPROVEMENTS FUND**

21 \* \* \* \*

22 (b) **Use of Funds.** The Fund shall be administered by the Board of Supervisors.

23 (1) **Infrastructure.** All monies deposited in the Fund shall be used to design,  
24 engineer, acquire, improve, and develop neighborhood open spaces, pedestrian and  
25 streetscape improvements, bicycle infrastructure, childcare facilities, and other improvements

1 that result in new publicly-accessible facilities and related resources within the Market and  
2 Octavia Plan Area or within ~~250~~ 1,250 feet of the Plan Area ~~and within the Upper Market Street~~  
3 ~~Neighborhood Commercial Transit District, portions of which are located outside the plan area.~~

4 Funds may be used for childcare facilities that are not publicly owned or publicly- accessible.

5 The improvements, where applicable, shall be consistent with the Market and Octavia Civic  
6 Streets and Open Space System as described in Map 45 of the Market and Octavia Area Plan  
7 of the General Plan, and Market and Octavia Community Improvements ~~Plan~~Program. The  
8 funds shall be allocated in accordance with Table 421.5A.

9 \* \* \* \*

10 **SEC. 424.1. FINDINGS SUPPORTING THE VAN NESS ~~&AND~~ MARKET AFFORDABLE**  
11 **HOUSING AND NEIGHBORHOOD INFRASTRUCTURE FEE AND PROGRAM.**

12 \* \* \* \*

13 (c) **Public Improvements.** The public improvements acceptable in exchange for  
14 granting the FAR bonus, and that would be necessary to serve the additional population  
15 created by the increased density, are listed below. All public improvements shall be consistent  
16 with the Market and Octavia Area Plan.

17 (1) **Open Space Acquisition and Improvement.** ~~Brady Park~~ Open Spaces  
18 described in the Market and Octavia Area Plan, or other open space of comparable size and  
19 performance. Open space shall be dedicated for public ownership or permanent easement for  
20 unfettered public access and improved for public use, including landscaping, seating, lighting,  
21 and other amenities.

22 (2) **Complete Streets.** Pedestrian and Streetscape improvements and Bicycle  
23 Infrastructure within the Special Use District as described in the Market and Octavia Area  
24 Plan, including Van Ness and South Van Ness Avenues, Gough, Mission, McCoppin, Market,  
25 Otis, Oak, Fell, Valencia, 11<sup>th</sup>, and 12<sup>th</sup> Streets, and 13<sup>th</sup> Streets, along with adjacent alleys.

1 Improvements include sidewalk widening, landscaping and trees, lighting, seating and other  
2 street furniture (e.g., newsracks, kiosks, bicycle racks), signage, transit stop and subway  
3 station enhancements (e.g., shelters, signage, boarding platforms), roadway and sidewalk  
4 paving, ~~and~~ public art and living alleys.

5 (3) **Affordable Housing.** The type of affordable housing needed in San  
6 Francisco is documented in the City's Consolidated Plan and the ~~Residence~~ Housing Element  
7 of the General Plan. New affordable rental housing and ownership housing affordable to  
8 households earning less than the median income is greatly needed in San Francisco.

9  
10 **SEC. 424.3. APPLICATION OF VAN NESS ~~&AND~~ MARKET AFFORDABLE HOUSING**  
11 **AND NEIGHBORHOOD INFRASTRUCTURE FEE AND PROGRAM.**

12 (a) **Application.** Section 424.1 *et seq.* shall apply to any development project located in  
13 the Van Ness ~~&and~~ Market ~~Downtown~~ Residential Special Use District, as established in  
14 Section 249.33 of this Code. The Fee is due and payable to the Development Fee Collection  
15 Unit at DBI at the time of and in no event later than issuance of the first construction  
16 document, with an option for the project sponsor to defer payment to prior to issuance of the  
17 first certificate of occupancy upon agreeing to pay a deferral surcharge that would be paid into  
18 the appropriate fund in accordance with Section 107A.13.3 of the San Francisco Building  
19 Code.

20 (b) **Amount of Fee.**

21 (~~i~~) All uses in any development project within the Van Ness ~~&and~~ Market  
22 ~~Downtown~~ Residential Special Use District shall pay \$30.00 per net additional gross square  
23 foot of floor area in any portion of building area exceeding the base development site FAR of  
24 6:1 up to a base development site FAR of 9:1.

1                   (ii) All uses in any development project within the Van Ness ~~and~~ Market  
2 ~~Downtown~~ Residential Special Use District shall pay \$15.00 per net additional gross square  
3 foot of floor area in any portion of building area exceeding the base development site FAR of  
4 9:1.

5                   (c) **Option for In-Kind Provision of Infrastructure Improvements and Fee Credits.**

6 Project sponsors may propose to directly provide community improvements to the City. In  
7 such a case, the City may enter into an In-Kind Improvements Agreement with the sponsor  
8 and issue a fee waiver from the neighborhood infrastructure portion (\$15.00 per net additional  
9 gross square foot of floor area) of the Van Ness ~~and~~ Market ~~Downtown~~ Residential Special  
10 Use District Affordable Housing and Neighborhood Infrastructure Fee from the Planning  
11 Commission, subject to the following rules and requirements:

12                   (1) **Approval Criteria.** The City shall not enter into an In-Kind Agreement unless  
13 the proposed in-kind improvements meet an identified community need as analyzed in the  
14 Van Ness ~~and~~ Market Affordable Housing and Neighborhood Infrastructure Program and  
15 where they substitute for improvements that could be provided by the Van Ness ~~and~~ Market  
16 ~~Downtown~~ Residential Special Use District Infrastructure Fee Fund (as described in Section  
17 424.5). The City may reject in-kind improvements if they are not consistent with the priorities  
18 identified in the Van Ness ~~and~~ Market Affordable Housing and Neighborhood Infrastructure  
19 Program. No physical improvement or provision of space otherwise required by the Planning  
20 Code or any other City Code shall be eligible for consideration as part of this In-Kind  
21 Improvements Agreement.

22 \* \* \* \*

23                   (4) **Approval Process.** The Planning Commission must approve the material  
24 terms of an In-Kind Agreement. Prior to the parties executing the Agreement, the City  
25 Attorney must approve the agreement as to form and to substance. The Director of Planning

1 is authorized to execute the Agreement on behalf of the City. If the Planning Commission  
2 approves the In-Kind Agreement, it shall waive the amount of the neighborhood infrastructure  
3 portion of the Van Ness ~~&and~~ Market ~~Downtown~~ Residential Special Use District Affordable  
4 Housing and Neighborhood Infrastructure Fee by the value of the proposed In-Kind  
5 Improvements Agreement as determined by the Director of Planning. No credit shall be made  
6 for land value unless ownership of the land is transferred to the City or a permanent public  
7 easement is granted, the acceptance of which is at the sole discretion of the City. The  
8 maximum value of the In-Kind Improvements Agreement shall not exceed the required  
9 neighborhood infrastructure portion of the Van Ness ~~&and~~ Market Affordable Housing and  
10 Neighborhood Infrastructure Fee.

11 \* \* \* \*

12 **SEC. 424.4. VAN NESS ~~&AND~~ MARKET ~~DOWNTOWN~~ RESIDENTIAL SPECIAL**  
13 **USE DISTRICT AFFORDABLE HOUSING FUND.**

14 (a) That portion of gross floor area subject to the \$30.00 per gross square foot fee  
15 referenced in Section 424.3(b)(~~i~~1) above shall be deposited into the special fund maintained  
16 by the Controller called the Citywide Affordable Housing Fund established by Section 413.10.  
17 Except as specifically provided in this Section, collection, management, enforcement, and  
18 expenditure of funds shall conform to the requirements related to in-lieu fees in Planning Code  
19 Section 415.1 *et seq.*, specifically including, but not limited to, the provisions of Section 415.7.

20 (b) **Priorities for SUD Affordable Housing Fees Implementation.** In order to increase the  
21 supply of housing affordable to qualifying households in the Market and Octavia Plan Area, the Upper  
22 Market NCT District, and to the City, the following is the prioritization of the use of these fees;

23 (1) First, to increase the supply of housing affordable to qualifying households in the  
24 Van Ness & Market Residential Special Use District;

1                   (2) Second, to increase the supply of housing affordable to qualifying households  
2 within 1 mile of the boundaries of the Market and Octavia Area Plan;

3                   (3) Third, to increase the supply of housing affordable to qualifying households in  
4 the City and County of San Francisco.

5  
6                   **SEC. 424.5. VAN NESS ~~&AND~~ MARKET ~~DOWNTOWN~~ RESIDENTIAL SPECIAL**  
7 **USE DISTRICT INFRASTRUCTURE FUND.**

8 \* \* \* \*

9                   (1) **Infrastructure.** All monies deposited in the Fund, plus accrued interest,  
10 shall be used solely to design, engineer, acquire and develop neighborhood recreation and  
11 open space, pedestrian amenities and streetscape improvements, and bicycle infrastructure  
12 that result in new publicly-accessible facilities. First priority should be given to projects within  
13 the Van Ness ~~&and~~ Market ~~Downtown~~ Residential Special Use District ~~or the area bounded by~~  
14 ~~10th Street, Howard Street, South Van Ness Avenue, the northeastern line of the Central Freeway,~~  
15 ~~Market Street, Franklin Street, Hayes Street, and Polk Street.~~ Second Priority should be given to  
16 projects within the Market and Octavia Plan Area or within 1,250 feet of the Plan Area. These  
17 improvements shall be consistent with the Market and Octavia Area Plan of the General Plan  
18 and any Plan that is approved by the Board of Supervisors in the future for the area covered  
19 by the Van Ness ~~&and~~ Market ~~Downtown~~ Residential Special Use District, except that monies  
20 from the Fund may be used by the Planning Commission to commission studies to revise the  
21 fee above, or to commission landscape, architectural or other planning, design and  
22 engineering services in support of the proposed public improvements.

23 \* \* \* \*

24                   ///

25                   ///



1 Section 3. The Planning Code is revised by adding Section 425, to read as follows:

2 **SEC. 425. VAN NESS & MARKET COMMUNITY FACILITIES FEE AND FUND**

3 Sections 425.1 through 425.4 set forth the requirements and procedures for the Van Ness &  
4 Market Community Facilities Fee and Fund.

5  
6 **SEC. 425.1. PURPOSE AND FINDINGS.**

7 (a) Purpose. New development in the Van Ness & Market Residential Special Use District will  
8 increase the resident populations, generating new demand for use of community facilities, such as  
9 cultural facilities, health clinics, services for people with disabilities, and job training centers. New  
10 revenues to fund investments in community services are necessary to maintain the existing level of  
11 service. This fee will generate revenue that will be used to ensure an expansion in community service  
12 facilities as new development occurs in the Van Ness & Market Residential Special Use District area.

13 (b) Findings. In adopting the amendments to the Market and Octavia Area Plan (Ordinance  
14 No. \_\_\_\_\_), on file with the Clerk of the Board of Supervisors in File No. 200557, and corresponding  
15 amendments to the Planning Code (Ordinance No. \_\_\_\_\_ on file with the Clerk of the Board of  
16 Supervisors in File No. 200559), the Board of Supervisors reviewed the Central SoMa Community  
17 Facilities Nexus Study, prepared by Economic & Planning Systems and dated March 2016, as well as  
18 the Hub Community Facilities Nexus Memo, prepared by the Planning Department and dated June 29,  
19 2020 (collectively the “Nexus Study” for the purposes of Sections 425 et seq.). The Board of  
20 Supervisors reaffirms the findings and conclusions of the Nexus Study as they relate to the impact of  
21 new development in the Van Ness & Market Special Use District on community services facilities and  
22 hereby adopts the findings contained in the Nexus Study.

23  
24  
25 **SEC. 425.2 APPLICATION OF FEES.**

1           (a) **Applicable Projects.** The Van Ness & Market Community Facilities Fee is applicable to  
2 any development project within the Van Ness & Market Residential Special Use District, described in  
3 Section 249.33, that:

4                   (1) Includes new construction, or an addition of space, in excess of 800 gross square  
5 feet of residential use; or

6                   (2) Converts 800 gross square feet or more of existing structure(s) from non-residential  
7 to residential use.

8           (b) **Fee Calculation.** For applicable projects, the fee is \$1.16 per net additional gross square  
9 foot of residential use or gross square foot of space converted from non-residential to residential use.

10           (c) **Option for In-Kind Provision of Community Improvements and Fee Credits.** Project  
11 sponsors may propose to provide community improvements directly to the City. In such a case, the City  
12 may enter into an In-Kind Improvements Agreement with the sponsor and issue a partial or total fee  
13 waiver for the Van Ness & Market Community Facilities Fund from the Planning Commission, subject  
14 to the following rules and requirements:

15                   (1) **Approval Criteria.** The City shall not enter into an In-Kind Improvements  
16 Agreement unless the proposed in-kind improvements meet an identified community need for  
17 cultural/arts facilities, social welfare facilities, or community health facilities, as described in the  
18 Nexus Study. In addition, the City may reject in-kind improvements if they are not consistent with the  
19 priorities identified in the Market & Octavia Area Plan; the priorities identified by the Interagency  
20 Plan Implementation Committee (see Section 36 of the Administrative Code), or the Market & Octavia  
21 Citizens Advisory Committee; or other prioritization processes related to the Market & Octavia Area  
22 Plan community improvements programming. No physical improvement or provision of space  
23 otherwise required by the Planning Code or any other City Code shall be eligible for consideration as  
24 part of an In-Kind Improvements Agreement.

1                   (2) Valuation, Content, Approval Process, and Administrative Costs. *The valuation,*  
2 *content, approval process, and administrative costs shall be undertaken pursuant to the requirements of*  
3 *subsections 421.3(d)(2) through 421.3(d)(5).*

4                   (d) Timing of Fee Payments. *The fee shall be due and payable to the Development Fee*  
5 *Collection Unit at DBI at the time of issuance of the first construction document for the development*  
6 *project. However, the project sponsor shall have the option to defer payment to prior to issuance of the*  
7 *first certificate of occupancy upon agreeing to pay a deferral surcharge as set forth in Section*  
8 *107A.13.3 of the San Francisco Building Code.*

9                   (e) Waiver or Reduction of Fees. *Development projects may be eligible for a waiver or*  
10 *reduction of impact fees, pursuant to Section 406.*

11  
12                   **SEC. 425.3. IMPOSITION OF VAN NESS & MARKET COMMUNITY FACILITIES FEE.**

13                   (a) Determination of Requirements. *The Department shall determine the applicability of*  
14 *Section 425 et seq. to any residential development project requiring a first construction document and,*  
15 *if Section 425 et seq. is applicable, the Department shall determine the amount of the Van Ness &*  
16 *Market Community Facilities Fees required and shall impose these requirements as a condition of*  
17 *approval for issuance of the first construction document for the development project. The project*  
18 *sponsor shall supply any information necessary to assist the Department in this determination.*

19                   (b) Department Notice to Development Fee Collection Unit at DBI. *Prior to the issuance of a*  
20 *building or site permit for a development project subject to the requirements of Section 425 et seq., the*  
21 *Department shall notify the Development Fee Collection Unit at DBI of its final determination of the*  
22 *amount of the Van Ness & Market Community Facilities Fees required, including any reductions*  
23 *calculated for an In-Kind Improvements Agreement, in addition to the other information required by*  
24 *Section 402(b) of this Article.*

1            (c) **Development Fee Collection Unit Notice to Department Prior to Issuance of the First**  
2 **Certificate of Occupancy.** The Development Fee Collection Unit at DBI shall provide notice in writing  
3 or electronically to the Department prior to issuing the first certificate of occupancy for any  
4 development project subject to Section 425 et seq. that has elected to fulfill all or part of its Van Ness &  
5 Market Community Facilities Fee requirement with an In-Kind Improvements Agreement. If the  
6 Department notifies the Unit at such time that the sponsor has not fully satisfied all of the terms of the  
7 In-Kind Improvements Agreement, the Director of DBI shall deny any and all certificates of occupancy  
8 until the project complies with the requirements of Section 425 et seq., either through conformance with  
9 the In-Kind Improvements Agreement or payment of the remainder of the Van Ness & Market  
10 Community Facilities Fee that would otherwise have been required, plus a deferral surcharge as set  
11 forth in Section 107A.13.3.1 of the San Francisco Building Code.

12            (d) **Process for Revisions of Determination of Requirements.** In the event that the  
13 Department or the Commission takes action affecting any development project subject to Section 425 et  
14 seq. and such action is subsequently modified, superseded, vacated, or reversed by the Department or  
15 the Commission, Board of Appeals, the Board of Supervisors, or by court action, the procedures of  
16 Section 402(c) of this Article shall be followed.

17  
18            **SEC. 425.4 THE VAN NESS & MARKET COMMUNITY FACILITIES FUND.**

19            (a) There is hereby established a separate fund set aside for a special purpose entitled the Van  
20 Ness & Market Community Facilities Fund (“Fund”). All monies collected by the Development Fee  
21 Collection Unit at DBI pursuant to this Section 425 shall be deposited in a special fund maintained by  
22 the Controller. The receipts in the Fund are to be used solely to fund community facilities subject to the  
23 conditions of this Section 425 et seq.

24            (b) Expenditures from the Fund shall be administered by the Mayor’s Office of Housing and  
25 Community Development, or its successor. The Mayor’s Office of Housing and Community

1 Development or its successor shall have the authority to prescribe rules and regulations governing the  
2 Fund.

3 (1) All monies deposited in the Fund shall be used to design, engineer, and develop  
4 community facilities as described in the Nexus Study, including cultural/arts facilities, social welfare  
5 facilities, and community health facilities, in the Market and Octavia Plan Area or within 1,250 feet of  
6 the Plan Area.

7 (2) Funds may be used for administration and accounting of fund assets, for additional  
8 studies related to community facilities identified in the Market & Octavia Area Plan or Market &  
9 Octavia Area Plan Implementation Document, or by the Interagency Plan Implementation Committee  
10 or the Market & Octavia Citizens Advisory Committee, and to defend the Van Ness & Market  
11 Community Facilities Fee against legal challenge, including the legal costs and attorney's fees  
12 incurred in the defense. Administration of this fund includes time and materials associated with  
13 reporting requirements, facilitating any necessary or required public meetings aside from Planning  
14 Commission hearings, and maintenance of the fund. Monies from the Fund may be used by the  
15 Planning Commission to commission economic analyses for the purpose of revising the fee, and/or to  
16 complete an updated nexus study to demonstrate the relationship between development and the need for  
17 public facilities and services if this is deemed necessary. Monies used for the purposes consistent with  
18 this subsection 425.4(b)(2) shall not exceed five percent of the total fees collected. All interest earned  
19 on this account shall be credited to the Van Ness & Market Community Facilities Fund.

20 (3) The Planning Department shall report annually to the Planning Commission on the  
21 current status of the fund as part of the Annual Progress Reports required by Administrative Code  
22 Section 36.4.

23 (4) All funds are justified and supported by the Nexus Study, adopted as part of the  
24 Market & Octavia Area Plan Amendments (Ordinance No. \_\_\_\_\_, on file with the Clerk of the Board  
25 of Supervisors in File No. 200557) and corresponding Planning Code Amendments (Ordinance No.

1 on file with the Clerk of the Board of Supervisors in File No. 200559). Implementation of the  
2 Fee and Fund shall be monitored according to the Market and Octavia Area Plan Monitoring Program  
3 required by Planning Code Section 341.

4  
5 Section 4. Effective Date.

6 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs  
7 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not  
8 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the  
9 Mayor's veto of the ordinance.

10  
11 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
12 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
13 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
14 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
15 additions, and Board amendment deletions in accordance with the "Note" that appears under  
16 the official title of the ordinance.

17  
18 APPROVED AS TO FORM:  
19 DENNIS J. HERRERA, City Attorney

20 By: /s/ Andrea Ruiz Esquide  
21 ANDREA RUIZ-ESQUIDE  
22 Deputy City Attorney

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