



SAN FRANCISCO PLANNING DEPARTMENT

April 2, 2010

Ms. Angela Calvillo, Clerk
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
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San Francisco, CA 94102

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415.558.6377

**Re: Transmittal of Planning Department Case Number 2010.0050T:
Affordable Housing Program
Board File Number 10-0046
Planning Commission Recommendation: Approval with Modifications**

Dear Ms. Calvillo,

On March 25th the San Francisco Planning Commission (hereinafter "Commission") conducted duly noticed public hearings at a regularly scheduled meeting to consider the proposed Ordinance.

The proposed Ordinance would amend San Francisco Planning Code Section 315 et all, to do the following:

1. Change the name of the *Residential Inclusionary Housing Affordable Program* to the *Affordable Housing Program*;
2. Require all project applicants to pay the Affordable Housing fee unless they are eligible for an alternative;
3. Making other amendments to the program including:
 - a. Expanding the uses of the Citywide Affordable Housing Fund,
 - b. Deleting provisions relating to certain requirements of off-site units, and
 - c. Deleting provisions requiring a refund of fees after issuance of certificate of occupancy;
4. Amending Section 827 of the Rincon Hill Area Plan to delete the requirement that 50% of on – or off- site affordable housing units provided under Section 315 be provided as rental; and
5. Amending the Administrative Code Chapter 56 (Development Agreements) to allow Development Agreements between the City and a project sponsor if there will be developments with on-site inclusionary rental housing units.

The proposed changes have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2).

At the March 25th hearing, the Commission voted to recommend approval with modifications of the proposed Ordinance.

The proposed modifications are outlined in the attached documents, labeled "Attachment C" and "Attachment C.2", respectively.

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

Sincerely,



John Rahaim
Director of Planning

cc: Mayor Newsom
Supervisor Chiu
Mayors Office of Housing

Attachments (one copy of the following):

Planning Commission Resolution No. 18056

Attachment C

Attachment C.2

Planning Commission Executive Summary for Case No. 2010.0050T



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 18056

HEARING DATE: MARCH 25, 2010
CONTINUED FROM: FEBRUARY 25, 2010

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CA 94103-2479

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Project Name: Amendments relating to Planning Code Section 315:
Amending the Affordable Housing Program

Case Number: 2010.0050T [Board File No. 10-0046 and 10-0046-2]

Initiated by: Mayor Newsom & Supervisor Chiu /
BF 10-0046 Introduced January 12, 2010
BF 10-0046-2 Substitute Ord. Introduced January 26, 2010

Staff Contact: Tara Sullivan, Legislative Affairs
tara.sullivan@sfgov.org, 415-558-6257

Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395

90-day Deadline: April 28, 2010

Recommendation: Recommend Approval With Modifications

RECOMMENDING THAT THE BOARD OF SUPERVISORS APPROVE WITH MODIFICATIONS THE PROPOSED ORDINANCE THAT WOULD AMEND SAN FRANCISCO PLANNING CODE SECTION 315 ET. ALL TO CHANGE THE RESIDENTIAL INCLUSIONARY AFFORDABLE HOUSING PROGRAM TO THE AFFORDABLE HOUSING PROGRAM AND TO REQUIRE ALL PARTICIPANTS TO PAY AN AFFORDABLE HOUSING FEE UNLESS THEY ARE ELIGIBLE FOR AN ALTERNATIVE; MAKING OTHER AMENDMENTS TO THE PROGRAM; AMENDING SECTION 827 OF THE RINCON HILL AREA PLAN AND CHAPTER 56 OF THE ADMINISTRATIVE CODE TO CONFORM TO THE CHANGES TO THE AFFORDABLE HOUSING PROGRAM.

PREAMBLE

Whereas, on January 12, 2010, Mayor Newsom and Supervisor Chiu introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 10-0046; and

Whereas, on January 26, 2010 substitute legislation was introduced under Board File Number 10-0046-2 that would amend San Francisco Planning Code Section 315 et all, to do the following:

1. Change the name of the *Residential Inclusionary Housing Affordable Program* to the *Affordable Housing Program*;

2. Require all project applicants to pay the Affordable Housing fee unless they are eligible for an alternative;
3. Making other amendments to the program including:
 - a. Expanding the uses of the Citywide Affordable Housing Fund,
 - b. Deleting provisions relating to certain requirements of off-site units, and
 - c. Deleting provisions requiring a refund of fees after issuance of certificate of occupancy;
4. Amending Section 827 of the Rincon Hill Area Plan to delete the requirement that 50% of on – or off- site affordable housing units provided under Section 315 be provided as rental; and
5. Amending the Administrative Code Chapter 56 (Development Agreements) to allow Development Agreements between the City and a project sponsor if there will be developments with on-site inclusionary rental housing units; and

Whereas, the Commission received a letter from the Mayor's Office of Housing (Exhibit C attached), that described additional modifications requested to the proposed Ordinance; and

Whereas, on February 25, 2010 the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance;

Whereas, the proposed zoning changes have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2); and

Whereas, the 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 the applicant, Department staff, and other interested parties; and

Whereas, the 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 Commission has reviewed the proposed Ordinance; and

MOVED, that the Commission hereby recommends that the Board of Supervisors recommend approval of the proposed Ordinance with the modifications described in Exhibit C and adopts the attached Draft Resolution to that effect.

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. San Francisco's Inclusionary Affordable Housing Policy was first adopted by the Planning Commission in 1992, and in 2002 the City formally adopted this policy as a part of the Planning Code (Section 315).
2. In August 2006, the Board of Supervisors passed changes to the Planning Code that significantly amended Section 315 (BOS File No. 05-1685), with trailing legislation passed in April 2007 (BOS File No. 06-1529), clarifying portions of Section 315.
3. In late 2009 the Second District Court of Appeals published its decision in *Palmer/Sixth Street Properties vs. City of Los Angeles*, which held that the California Costa-Hawkins Rental Housing Act preempts a Los Angeles requirement mandating, as a condition of development, that a portion of newly constructed dwelling units be rented at low-income rents.

The proposed Ordinance, in part, responds to the *Palmer* case . The Mayor's Office of Housing and the Department have been working together to update the Planning Code so that it is more in line with that decision. Under the proposed ordinance, the Affordable Housing Program will be modified to a fee-based program and will no longer contain any requirement to build affordable units. A development that is subject to Section 315 must pay an affordable housing fee that is equivalent to "the applicable percentage of the number of units in the principal project. (The applicable percentage shall be 20% [unless otherwise stated].)"

4. It is important to note that neither the fee requirements nor the percentages of on or off-site housing are being amended with this legislation.
5. The Commission has been working closely with the Mayor's Office of Housing to ensure that there are no adverse impacts to Section 315, the ability for affordable housing continue to be constructed in San Francisco, or in the Mayor's Office of Housing's ability to run the program.
6. Therefore, the Commission strongly supports the proposed legislation, and recommends approval of the proposed Ordinance.
7. **General Plan Compliance.** The proposed Ordinance is, on balance, consistent with the following Objectives and Policies of the General Plan:

I. HOUSING ELEMENT INTRODUCTION

THE OBJECTIVES AND POLICIES DETAILED BELOW ADDRESS THE STATE'S, THE REGION'S AND THE CITY'S GOALS OF ACHIEVING DECENT, SUITABLE, AND AFFORDABLE HOUSING FOR CURRENT AND FUTURE SAN FRANCISCANS. INCREASING THE CITY'S HOUSING STOCK, PROTECTING AND CONSERVING EXISTING UNITS, AND ENCOURAGING HOUSING CHOICE ARE OBJECTIVES PREDICATED ON AFFORDABILITY..

OBJECTIVE 5

INCREASE THE EFFECTIVENESS AND EFFICIENCY OF THE CITY'S AFFORDABLE HOUSING PRODUCTION SYSTEM.

POLICY 5.1

Prioritize affordable housing projects in the planning review and approval processes, and work with the development community to devise methods of streamlining housing projects.

POLICY 5.2

Support efforts of for-profit and non-profit organizations and other community-based groups and expand their capacity to produce and manage permanently affordable housing.

POLICY 5.3

Create greater public awareness about the quality and character of affordable housing projects and generate community-wide support for new affordable housing.

POLICY 5.4

Coordinate governmental activities related to affordable housing.

The proposed Ordinances updates Section 315 to create the Affordable Housing Program. The Commission has been working closely with the Mayor's Office of Housing to ensure that there are no adverse impacts from the amendments to Section 315 including impacts on the ability for affordable housing to continue to be constructed in San Francisco, or on the Mayor's Office of Housing's ability to run the program and strongly supports the proposed Ordinance.

1. The proposed replacement project is generally consistent with the eight General Plan priority policies set forth in Section 101.1 in that:
 - A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

The proposed Ordinance will not impact existing neighborhood-serving retail uses or opportunities for employment in or ownership of such businesses.
 - B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

The proposed Ordinance will have no impact to neighborhood character.
 - C) The City's supply of affordable housing will be preserved and enhanced:

The proposed Ordinance will have no adverse effects on the City's supply of affordable housing.

- D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

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

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

The proposed Ordinance would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

Preparedness against injury and loss of life in an earthquake is unaffected by the proposed Ordinance.

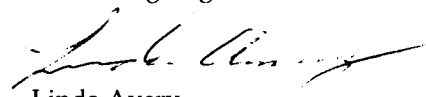
- G) That landmark and historic buildings will be preserved:

Landmarks and historic buildings would be unaffected by the proposed amendments.

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed amendments.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on March 25, 2010.



Linda Avery
Commission Secretary

AYES: Miguel, Olague, Borden, Lee, Antonini, Sugaya, Moore

NAYS:

ABSENT:

ADOPTED: March 25, 2010



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change

HEARING DATE: MARCH 25, 2010
CONTINUED FROM: FEBRUARY 25, 2010

Project Name: **Amendments relating to Planning Code Section 315:
Amending the Affordable Housing Program**

Case Number: 2010.0050T [Board File No. 10-0046 and 10-0046-2]

Initiated by: Mayor Newsom & Supervisor Chiu /
BF 10-0046 Introduced January 12, 2010
BF 10-0046-2 Substitute Ord. Introduced January 26, 2010

Staff Contact: Tara Sullivan, Legislative Affairs
tara.sullivan@sfgov.org, 415-558-6257

Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395

90-day Deadline: April 28, 2010

Recommendation: **Recommend Approval With Modifications**

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PLANNING CODE AMENDMENT

The proposed Ordinance would amend Planning Code Section 3.15 to do the following:

1. Change the name of the *Residential Inclusionary Housing Affordable Program* to the *Affordable Housing Program*;
2. Require all project applicants to pay the Affordable Housing fee unless they are eligible for an alternative;
3. Making other amendments to the program including:
 - a. Expanding the uses of the Citywide Affordable Housing Fund,
 - b. Deleting provisions relating to certain requirements related to off-site units, and
 - c. Deleting provisions requiring a refund of fees after issuance of certificate of occupancy;
4. Amending Section 827 of the Rincon Hill Area Plan to delete the requirement that 50% of on – or off- site affordable housing units provided under Section 315 be provided as rental; and
5. Amending the Administrative Code Chapter 56 (Development Agreements) to allow Development Agreements between the City and a project sponsor to facilitate developments with on-site inclusionary rental housing units.

The Way It Is Now:

All projects that involve five or more new dwelling units must participate in the *Residential Inclusionary Affordable Housing Program* contained in Section 315 of the Planning Code. Currently the Planning Code allows for affordable housing requirements to be fulfilled in three ways:

- 315.4: On-Site Housing Requirements and Benefits. A building that will be 120 feet in height and under must provide on-site below market rate units (“BMR”) equal to 15% of the total number of units. A building that will be over 120 feet in height must provide on-site BMR units equal to 12% of units. Buildings within the Market-Octavia and Eastern Neighborhood Area Plans have additional requirements. Buildings within Van Ness-Market Downtown Special Use District (adopted with the Market-Octavia Area Plan) that will be more than 120 feet in height must meet the 15% on-site affordable inclusionary housing requirements and must provide 50% of this housing within the proposed building. Projects within the Rincon Hill Area Plan that provide on- or off-site affordable housing must provide 50% of the requirement as rental housing.
- 315.5: Off-Site Housing Development. As an alternative to the on-site requirement, a new project may provide off-site BMR units equal to 20% of the total of the number of units. These units must be located within one mile of the principal project. At the project applicant’s option, any project may elect to participate in this alternative at or before the project’s hearing at the Planning Commission.
- 315.6: In-Lieu Fee. As an alternative to the on-site requirement, a project sponsor may pay an in-lieu fee to the Mayor’s Office of Housing (“MOH”) equivalent to 20% of the total number of units proposed in the principal project. At the project applicant’s option, any project may elect to participate in this alternative at or before the project’s hearing at the Planning Commission.

The Way It Would Be:

In late 2009 the Second District Court of Appeals published its decision in *Palmer/Sixth Street Properties vs. City of Los Angeles*, which held that the California Costa-Hawkins Rental Housing Act¹ preempts a Los Angeles requirement mandating, as a condition of development, that a portion of newly constructed dwelling units be rented at low-income rents.

The proposed Ordinance, in part, responds to the *Palmer* case and emphasizes that the program is an impact fee requirement. Under the proposed ordinance, all projects subject to Section 315 must pay an affordable housing fee. There are only limited ways, described in more detail below, to qualify for a waiver to be permitted to provide on- or off-site affordable units. It is important to note that neither the fee requirements nor the percentages of on or off-site housing are being amended with this legislation.

¹ California Civil Code Section 1954.50-1954.535.

The proposed ordinance would also eliminate the requirement in the Rincon Hill Area Plan that fifty percent (50%) of the below market rate units that are built on or off-site must be provided as rental units for the life of the project.²

Chapter 56 of the Administrative Code will also be amended to allow Development Agreements to be entered into between the City and a project sponsor when a residential development project contains on-site affordable housing units. Currently the Administrative Code limits Development Agreements to affordable housing developments or larger multi-phase projects.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATION

The Department recommends that the Commission recommend *approval with the modifications identified by the Mayor's Office of Housing in Exhibit B* of the proposed Ordinance and adopt the attached Draft Resolution to that effect.

BASIS FOR RECOMMENDATION

San Francisco's Inclusionary Affordable Housing Policy was first adopted by the Planning Commission in 1992. This policy required that all housing projects with 10 or more units or planned unit developments ("PUD") provide 10% of the total number of units as affordable housing. In 2002 the City formally adopted this policy as a part of the Planning Code (Section 315) and strengthened the policy to apply to *all* housing projects with 10 or more units (there were also additional requirements for projects that needed a conditional use authorization or a PUD).

In August 2006, the Board of Supervisors passed changes to the Planning Code that significantly amended Section 315 (BOS File No. 05-1685). It increased the requirements for all projects, lowered the threshold to five or more new dwelling units to participate in the program and required 15% of all on-site units and 20% of off-site units to be affordable. It also added the one-mile radius requirement for developers choosing the off-site option. Trailing legislation was passed in April 2007 (BOS File No. 06-1529), which clarified portions of Section 315.

As mentioned above, in late 2009 the Second District Court of Appeals published its decision in *Palmer/Sixth Street Properties vs. City of Los Angeles*, which held that the California Costa-Hawkins Rental Housing Act³ preempts a Los Angeles requirement mandating, as a condition of development, that a portion of newly constructed dwelling units be rented at low-income rents.

² Planning Code Section 827(b)(D).

³ California Civil Code Section 1954.50-1954.535.

The proposed Ordinance, in part, responds to the *Palmer* case. The Mayor's Office of Housing and the Department have been working together to update the Planning Code so that it is more in line with that decision.

The Affordable Housing Program will be modified to a fee-based program and will no longer contain any requirement to build affordable units. A development that is subject to Section 315 must pay an affordable housing fee that is equivalent to "the applicable percentage of the number of units in the principal project. (The applicable percentage shall be 20% [unless otherwise stated].)".

While the primary mechanism of the program is an affordable housing fee to the Mayor's Office of Housing, it should also be noted that there are circumstances where a project sponsor may qualify to choose an alternative – to build on-site or off-site affordable units. If the developer chooses to sell the new residential units rather than rent them, then the developer may build the affordable units on or off-site instead. Further, if the project is exempt from the Costa-Hawkins Act because it has received a direct financial contribution from the government pursuant to the Costa-Hawkins Act,⁴ participates in California Debt Limit Allocation Committee tax-exempt bonds, or enters into a Development Agreement with the City, then the project sponsor may elect to build affordable housing units on site or off site.

There are a few modifications to the Affordable Housing Program that the Mayor's Office of Housing and the Department request. Exhibit C is a letter from the Mayor's Office of Housing that details the requested changes. In summary, the first requested change would be a modification to Sections 315.2 (Findings) and 315.4 (Affordable Housing Fee) to allow the Mayor's Office of Housing to use the Affordable Housing Fees to assist in the creation of affordable housing and for down payment assistance to low and moderate income buyers.⁵ The second MOH requested modification is to delete the provision in Section 315.5 (Off-Site Housing Development) that 25% of all off-site units may be constructed outside of the mandated one-mile radius. The last modification being forwarded is to delete provisions requiring a refund of fees after issuance of certificate of occupancy. The Department supports the modifications as described in Exhibit C.

The Department has been working closely with the Mayor's Office of Housing to ensure that there are no adverse impacts from the amendments to Section 315 including impacts on the ability for affordable housing to continue to be constructed in San Francisco, or on the Mayor's Office of Housing's ability to run the program. As such, the Department strongly supports the proposed legislation, which updates Section 315 to create the Affordable Housing Program.

ENVIRONMENTAL REVIEW

The proposal to amend the San Francisco Planning Code Section 315 would result in no physical impact on the environment. The proposed amendment is exempt from environmental review under Section 15060(c)(2) of the CEQA Guidelines.

⁴ California Civil Code Section 1954.54(b).

⁵ Section 315.2(6).

PUBLIC COMMENT

As of the date of this report, the Planning Department has received no letters in support or opposition to the proposal from the public.

RECOMMENDATION: Recommendation of Approval
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Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Draft Board of Supervisors Ordinance (BOS File No. 10-0046-2)
- Exhibit C: Letter from Mayor's Office of Housing Requesting Additional Modifications

MAYOR'S OFFICE OF HOUSING
CITY AND COUNTY OF SAN FRANCISCO



GAVIN NEWSOM
MAYOR

DOUGLAS SHOEMAKER
DIRECTOR

To: San Francisco Planning Commission

From: Chandra Egan, Program Manager
Myrna Melgar, Director of Homeownership Programs

Re: Proposed Changes to the Inclusionary Affordable Housing Program Ordinance

Date: 2/17/10

In an effort to update and enhance the Below Market Rate (BMR) Affordable Housing Program, the Mayor's Office of Housing proposes the following additional changes to the Inclusionary Affordable Housing Program ordinance.

Allowance for Temporary, One-time Procedures for BMR Units Unable to Resell

The way it is now:

A number of rules set forth in the ordinance and in the Procedures Manual ensure that the BMR units offer affordable, high-quality housing and not investment opportunities. In particular, BMR units must be purchased by first-time homebuyers; owner-occupied at all times with a limited allowance for renting; and households purchasing BMR units must be at least as many people as bedrooms in the unit. However, these rules sometimes prevent interested buyers from being qualified to purchase BMR resale units. During economic downturns especially, this narrowing of the pool of potential buyers can harm households that may need to sell their unit.

The way it would be:

To assist homeowners in avoiding risk of default and foreclosure during economic downturns, MOH proposes to amend the ordinance and the corresponding Procedures Manual to allow MOH discretion, in certain limited circumstances, to waive certain requirements for BMR owners unable to resell their unit in a timely manner. These procedures would only be applied to units advertised by MOH for over a 4 month period without selling and whose owners are financially burdened or must relocate out of the area for a new employment opportunity. MOH would have discretion to make one or more allowances limited to the following three allowances: (1) a one-time waiver of the first-time homebuyer rule for the purchasing household; (2) a one-time waiver of qualifying household size requirements for the purchasing household; (3) and a one-time waiver of owner occupancy rules.

Allowance for One-time Lifting of Qualifying Income Levels for BMR Units Reselling at an Unaffordable Price

The way it is now:

BMR units may be resold to qualifying buyers whose income is at or below the income levels set forth in the Notice of Special Restrictions or Planning Approvals for the unit. In all cases, the income of the new buyer household cannot exceed 120% of median income per the current ordinance. In some cases, however, the resale price of a BMR unit is higher than the price affordable even to a household at 120% of median income. In the case of an owner earning appreciation, it is assumed that the owner can lower the price until it becomes affordable. In cases where the owner is reselling his unit at a price no higher than that paid for the unit, and where that price is not affordable to a household at 120% of median income, that owner would be required to lower his resale price below what he paid for the unit and not recoup even his initial investment.

The way it would be:

Allow MOH the authority to increase the qualifying income level for the unit by up to 20% above the maximum income limit currently allowed in the ordinance on a one-time basis in cases where a BMR unit being resold at the original purchase price is unaffordable to a household at 120% of median income.

Affordable Market Rate Units

The way it is now:

Some market rate efficiency units in San Francisco sell at a price that is close to the below market rate prices set by the Mayor's Office of Housing and require an in lieu fee payment that would greatly exceed the opportunity cost of selling the unit at the below market rate. In essence, these units are naturally affordable on the outset and, therefore, have a hard time attracting BMR buyers who are reluctant to choose a restricted BMR unit over a market rate unit in the same building.

The way it would be:

Allow MOH to establish procedures for allowing efficiency units to sell at a market-rate price as long as the unit: (1) has a market-rate price that is close to the below market rate prices set by the Mayor's Office of Housing; (2) requires an in lieu fee payment that would greatly exceed the opportunity cost of selling the unit at the below market rate price; and (3) is sold to a qualifying household. The new BMR owner could resell the unit to a higher income household than the initial qualifying level allowed and at a maximum resale price that would exceed the resale price generally set by the Mayor's Office of Housing for current resale units under the program.

Resale Lottery List Clarification

The way it is now:

The current ordinance states that MOH shall maintain a waitlist from the initial lottery or other process for new BMR units. However, MOH believes that the maintenance of an ongoing "waitlist" for its BMR units is not beneficial to BMR owners or buyers because such lists often

become “stale” quickly, are staff-intensive in their maintenance, and slow down the resale process for BMR sellers.

The way it would be:

Amend sections 315.5 (e) (1) and 315.6 (e) (1) to clarify the fact that MOH shall continue to hold an initial lottery for all BMR resale units but that MOH will not maintain a list generated from the lottery for new BMR units or by any other means to identify buyers for resale BMR units or any other units. All new and resale units shall be subject to a new lottery at the time of sale.

First-time Homebuyer Rule

Amend Sections (16) (17) and (17A) to further define a household as a “first-time homebuyer” household. A first-time homebuyer household is defined as a household in which no member of the qualifying household must have owned any interest in a dwelling unit for a three-year period prior to applying to qualify for purchase of a BMR unit.

Update Fee Usage Language

Clarify use of fees for affordable housing. Instead of “provide downpayment assistance to low and moderate income homebuyers” say “provide assistance to low and moderate income homebuyers.”

Administrative Changes (typographical errors; changes to conform to the Procedures Manual and/or prior amendments)

Amend definition (3) (iii) to add a missing word. The line should read “On subsequent sales at or below the prices to be determined by the Director of the Mayor’s Office of Housing.... “

Amend section 315.7 (c) to clarify the fact that upon conversion from rental to ownership, a BMR unit will be restricted for the life of the project or for the restriction period as identified in the Notice of Special Restrictions and/or Conditions of Approval for the project.

Update sections 315.5 (e) (2) and 315.6 (e) (2) to reflect the lottery preference for Certificate of Preference (COP) holders preference established in Ordinance #232-08. COP holders are primarily households displaced by Agency action in Redevelopment Project Areas during the 1960’s and 1970’s, but may also include other persons displaced by Agency action.

Attachment C.2

To: San Francisco Planning Commission

From: Chandra Egan, Program Manager
Myrna Melgar, Director of Homeownership Programs

Re: Additional Proposed Changes to the Inclusionary Affordable Housing Program Ordinance

Date: 3/25/10

In an effort to update and enhance the Below Market Rate (BMR) Affordable Housing Program, the Mayor's Office of Housing proposed a number of changes to the proposed Affordable Housing Program ordinance ("Proposed Ordinance"). These changes are included in the packet prepared for the March 25, 2010 Planning Commission Meeting.

In addition to the change already proposed, the Mayor's Office of Housing proposes to make the following changes to the Proposed Ordinance.

Capital Improvements Cap

The way it is now:

The regulations for the Affordable Housing Program ("Program") have since 2007 included a cap on the amount of capital improvements a BMR owner can recoup at the time of resale. Currently the Procedures Manual provides for a cap of 7% of the resale price. The policy behind the cap is to balance the interests between our current BMR unit owners who wish to recoup eligible expenses for upkeep and maintenance (which we encourage) with the interests of future BMR unit owners in terms of maintaining affordability. The Procedures Manual also allows for BMR unit owners to recoup an uncapped amount of homeowner initiated special assessments. The ordinance, however, did not specify any particular cap on the amount of capital improvement expenditures that can be added to a seller's resale price nor did it reference the amount of special assessments to be recouped.

The way it will be:

MOH proposes to amend Section 315.1 (3)(A)(iii) to be consistent with the Procedures Manual, and will increase the cap to 10% cap on capital improvements. A 10% cap is a more reasonable allowance given the fact that BMR units under the Program are now as old as 1992. The increased cap will encourage homeowners to maintain their units for the next owner. The exemption for special assessments will remain uncapped.

The 10% cap will go into effect immediately for all projects approved under the Program.

Attachment C.2

Authority to Sign Contracts

The way it is now:

Section 315.4(i)(1)(B) of the Proposed Ordinance neglected to specify what City official held the authority to sign a contract with the project sponsor indicating that the project's on- or off-site units are not subject to the Costa Hawkins Rental Housing Act, California Civil Code Section 1954.50 because, under Section 1954.52(b), it has entered into an agreement with a public entity in consideration for a direct financial contribution or any other forms of assistance specified in California Government Code Sections 65915 et seq.

The way it will be:

MOH proposes that an amendment to Section 315.4(i)(1)(B) state that: "all such contracts entered into with the City and County of San Francisco must be reviewed and approved by the Mayor's Office Housing. All contracts that involve 100% affordable housing projects in the residential portion may be executed by the Director of the Mayor's Office of Housing. Any contract that involves less than 100% affordable housing in the residential portion may be executed by either the Director of the Mayor's Office of Housing or, after review and comment by the Mayor's Office of Housing, the Planning Director."

Inheritance

The way it is now:

The current provisions of the Program – including lottery and other marketing requirements and rules regarding who may acquire a BMR unit – indicate that there are limits on how a BMR unit owner may transfer his or her ownership interest, including in the context of inheritance. Furthermore, BMR units are restricted under the Notice of Special Restrictions recorded on each project providing BMR units, indicating that the BMR unit must be occupied by qualified tenants only.

The way it will be:

MOH proposes to amend the Proposed Ordinance to clarify the specific procedures for passing a BMR unit through inheritance and to make corresponding amendments to the Procedures Manual. The procedures for passing a BMR unit through inheritance would include a rule that all transfers through inheritance must be reported to and approved by MOH and, in all cases, the heir must acknowledge and agree to the provisions of the BMR Program. The Proposed Ordinance would clarify that the following households may inherit the right to occupy a BMR unit: (i) a spouse or registered domestic partner, regardless of income; (ii) a child of the owner if the child qualifies as a low- or moderate-income household depending on the designation of the unit. Any heir who does not qualify in one of these categories may market and sell the unit at the BMR price through a public lottery process. The heir will retain the proceeds of the sale. Any heir who is eligible must agree, like any other BMR unit owner, to occupy the unit. If the heir chooses not to occupy the unit, the heir may market and sell the BMR unit at the BMR Price through a public lottery process. The heir will retain the proceeds of the sale.

Attachment C.2

Administrative Changes (typographical errors; changes to conform to the Procedures Manual and/or prior amendments)

In the memo dated 2/17/10, MOH proposes amending Sections (16) (17) and (17A) to further define a household as a “first-time homebuyer” household. This clarification corresponds to the existing Procedures Manual. A first-time homebuyer household is defined as a household in which no member of the qualifying household must have owned any interest in a dwelling unit for a three-year period prior to applying to qualify for purchase of a BMR unit. We propose adding this change to Section 315.1 (3) (A) and 315.1 (13) instead.

Amend Sections 315.5 (b) and 315.6 (b) to clarify that, in addition to being constructed, completed, and ready for occupancy no later than the market rate units, the BMR units must also be marketed at the same time as market rate units.

Strengthen Sections 315.5 (c) and 315.6 (c) to clarify that that the interior features of on-site BMR units must be comparable to the interior features of market rate but can be of a different make and model as long as they are of good quality, etc.

Amend Sections 315.5 (e) and 315.6 (e) regarding minimum marketing requirements to remove deadline language regarding the establishment of marketing guidelines.

Amend Section 315.6 (c) to clarify the fact that on-site units must be sold at 100% of median income on average.

Amend Section 315.7 (a) to align the ordinance with the Procedures Manual by clarifying that the resale process; restrictions on title transfer; and restrictions on owner refinancing are outlined in Manual.

Amend Section 315.7 (c) to clarify the fact that the Mayor's Office Housing can set rules for lease changes and subleasing in the Manual

Amend Section 315.8 (a) to point out the correct sections of the code.

Amend Section 315.8 (g) (1) to state that monitoring can be bi-annual rather than annual.