SAN FRANCISCO
PLANNING DEPARTMENT

Executive Summary
Planning Code Text Amendment

HEARING DATE: JUNE 15, 2017
90 DAY DEADLINE: AUGUST 25, 2017

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Date:	June 8, 2017
Project Name:	**Inclusionary Affordable Housing Program (Sec 415) Amendments**
Case Number:	2017-001061PCA [Board File No. 161351v4]
Sponsored by:	Supervisors Breed, Kim, Peskin, Safai, and Tang
Staff Contact:	Jacob Bintliff, Citywide Planning Division jacob.bintliff@sfgov.org, 415-575-9170
Reviewed by:	AnMarie Rodgers, Senior Policy Advisor
Recommendation:	**Recommend Approval with Modifications**

PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code to revise the amount of the Inclusionary Affordable Housing Fee and the On-Site and Off-Site Affordable Housing Alternatives and other Inclusionary Housing requirements and to require a minimum dwelling unit mix requirement in all residential districts.

BACKGROUND

The Planning Commission considered the findings of the Controller's Economic Feasibility Study that was required by Proposition C to advise the Board of Supervisors of the maximum economically feasible Inclusionary requirements on February 23, 2017, and held an informational hearing on proposed amendments to the Inclusionary Affordable Housing Program on March 16, 2017. Most recently, the Planning Commission considered two ordinances on April 27, 2017 [Board File No. 161351 Inclusionary Affordable Housing Fee and Requirements and Board File No. 170208 Inclusionary Affordable Housing Fee and Dwelling Unit Mix Requirements], and adopted specific recommendations on amendments to the Inclusionary Program. Since the Commission hearing, the sponsors of the two ordinances have collaborated to draft this revised ordinance [Board File No. 161351v4], the "Consensus" ordinance.

While the Planning Commission has already made recommendations to the Board of Supervisors about many of the elements in this new Consensus ordinance, there are six features of the proposed Ordinance which were not previously considered by the Commission. These new features are considered "material modifications". Planning Code Section 302(d) requires that material modifications added by the Board of Supervisors be referred to the Planning Commission for consideration.

The purpose of this hearing is for the Commission to consider these material modifications.

The New Material Modifications Under Referral to the Commission: On May 22, 2017 at the Land use and Transportation Committee, Supervisor Peskin moved to amend BF 161351. After the motion was

seconded by Supervisor Safai, the ordinance as amended became the "Consensus" ordinance. The provisions of the Consensus Ordinance that are materially different than elements considered by the Commission on April 27, 2017 include the following:

1. to **require a minimum dwelling unit mix** in all residential districts for projects of 10 - 24 units, as well as projects of 25 units or more, in all residential zoning districts outside of Plan Areas;
2. to **establish a minimum unit size for inclusionary units** required through Section 415,;
3. to prohibit the designation of inclusionary **studio units at affordable levels above 100% AMI**;
4. to **require replacement of or fee payment for any affordable units that may be lost** due to demolition or conversion, above and beyond the required inclusionary units under Section 415;
5. to **exclude certain areas from the proposed citywide Inclusionary requirements** and make them subject to higher requirements until additional analysis is completed to address affordability levels in these areas, including a) the Eastern Neighborhoods Mission Planning Area; the North of Market Residential Special Use District Subarea 1 or Subarea 2 and the SOMA Neighborhood Commercial Transit District.
6. to require an Affordable Housing Fee amount that is substantially above the maximum economically feasible level as identified by the Controller's Economic Feasibility Study required by Proposition C, and thus **establish a significant disincentive for the use of the State Density Bonus Law** to produce bonus units. This is because Bonus units would be subject to the Fee amount under the proposed Ordinance. This disincentive was not previously considered by the Planning Commission.

The Consensus Ordinance compared to the Planning Commission's Recent Recommendations

While the Consensus Ordinance is referred to the Commission for action on the above material modifications, the other key provisions of the current proposal are summarized below and compared to the Planning Commission's recommendations adopted April 27, 2016 for the Commission's information. While not required for this hearing, the Commission may revisit any aspect of the proposed Ordinance and their earlier recommendations.

1. Inclusionary requirement

a. **Fee/Off-Site requirement**: 30% for Rental units, or 33% for Ownership units
   - not consistent with Commission recommendation to set requirements within the maximum economically feasible level (23% for Rental or 28% for Ownership units).

b. **On-Site requirement**: 18% for Rental units, or 20% for Ownership units
   - consistent with Commission recommendation.

2. **Annual increases to requirements**

a. **Smaller projects (10 – 24 units)**: starting January 1, 2018, the On-Site requirement would increase 0.5% per year until the rate is 15%

b. **Larger projects (25 units or more):**
   i. Starting January 1, 2018, the On-Site requirement would increase by 1.0% per year; the increases would apply only to the lowest-income tier (55% of AMI for Rental or 80% of AMI for Ownership units).
   ii. Starting January 1, 2020 the On-Site requirement would increase by 0.5% per year until the requirement is 24% for Rental projects or 26% for Ownership projects; the increases would be split evenly between the middle and highest income tiers (80% and 110% of

AMI for Rental or 105% and 130% of AMI for Ownership Units)

c. No increases to the Fee/Off-Site requirements are proposed. These requirements would be set at the levels described below as of the effective date of the ordinance.
   - Not consistent with Commission recommendations to provide adequate time to phase-in of requirement increases or to increase On-Site and Fee/Off-site requirements at an even rate.
   - Consistent with Commission recommendations that rates not be increased above a specified amount that is below the Nexus limit supported by the Nexus Study.

3. **Affordable Housing Fee**
   a. The Fee would continue to be applied on a per unit basis
   b. The Controller, in consultation with an Inclusionary Housing Technical Advisory Committee would be required to complete a study of the Fee schedule methodology by January 31, 2018 for the consideration of the Board of Supervisors.
      - Not consistent with Commission recommendation to apply the Fee on a gross square footage basis so as to ensure projects pay a fee that is proportional to the size of the unit.

4. **Income Levels / AMIs**
   a. **Smaller projects**: Units would be designated as affordable to the 55% AMI level for Rental units or 80% AMI level for Ownership units.
      - Consistent with Commission recommendation.

   b. Larger Projects:
      i. For Rental projects the starting On-Site requirement of 18% would include:
         - 10% of units at 55% of AMI
         - 4% of units at 80% of AMI
         - 4% of units at 110% of AMI
      ii. For Ownership projects, the starting On-Site requirement of 20% would include:
         - 10% of units at 80% of AMI
         - 5% of units at 105% of AMI
         - 5% of units at 130% of AMI
      - Consistent with Commission recommendation to apportion requirements between low and moderate income tiers, with slightly more moderate units than the 2/3 low and 1/3 moderate recommended by the Commission.

5. **Density Bonus**
   a. Affordable Housing Fee would be applied to State Bonus units, as consistent with Commission recommendation.
   b. Require reasonable documentation from projects requesting the State Bonus units and establish annual reporting requirements on the use of State Density Bonus program, as consistent with Commission recommendation.

6. **Grandfathering Provisions**

a. No grandfathering provisions for projects that submitted a completed Environmental Application after January 1, 2013 are proposed, beyond the incremental increases to the On-Site and Fee/Off-Site requirements as established under Proposition C for projects that entered the pipeline between January 1, 2013 and January 12, 2016.

   - Not consistent with Commission recommendation to include grandfathering provisions for other provisions of Section 415, such as AMI levels.

b. Projects over 120 feet in height that entered the pipeline between January 1, 2013 and January 1, 2016 would be subject to a Fee/Off-Site requirement of 30%.

   - Not consistent with Commission recommendation that rates for pipeline projects remain at or below the maximum economically feasible level.

c. Some projects in the Eastern Neighborhood Urban Mixed Use Districts that entered the pipeline between January 1, 2013 and January 1, 2016 would also be subject to a 30% Fee/Off-Site requirement.

   - Not consistent with Commission recommendation that rates for pipeline projects remain at or below the maximum economically feasible level.

7. **Dwelling Unit** Mix **Requirement**
   A newly established dwelling unit mix requirement would apply to all residential projects in districts not within in Plan Areas of over 10 units. For all non-plan area and non-HOME-SF residential projects a new Planning Code section 207.7 would introduce that 25% of project units be two-bedrooms or larger, with 10% of these provided as three-bedroom units or larger.

   - Not consistent with Commission recommendation to apply new the unit mix requirements to Larger projects of 25 units or more.

8. **Additional feasibility studies for upzonings**
   The requirement to prepare feasibility studies for any significant upzoning actions, such as through Plan Areas, Special Use Districts, or otherwise, would apply retroactively to upzonings undertaken after January 1, 2015.

   - Not consistent with Commission recommendation to apply this requirement only to rezonings taken after the effective date of the ordinance.

ISSUES AND CONSIDERATIONS

Maximizing Inclusionary Affordable Housing

During the April 27, 2017 Planning Commission hearing, the Commissioners emphasized the need to maximize the production of inclusionary affordable housing and that central to this goal is maintaining the economic feasibility of the residential projects subject to the program. This goal aligns with the Board's action last year and the provisions of Proposition C. In March 2016, the Board of Supervisors

unanimously adopted a resolution[1] declaring that it shall be City policy to maximize the economically feasible percentage of inclusionary affordable housing in market rate housing development. Proposition C, passed by voters in June 2016, charged the Controller's Office, with guidance from the Inclusionary Housing Technical Advisory Committee (TAC), to define the maximum feasible requirement under current economic conditions, make recommendations to the Board of Supervisors, and repeat this analysis at least every three years. The TAC was established by the so-called "trailing ordinance" [BF 160255, Ord. 76-16], adopted by the Board of Supervisors in May 2016. The TAC convened from July, 2016 to February, 2017 and Controller provided a set of preliminary economic feasibility recommendations to the Board of Supervisors on September 13, 2016 and issued a set of final recommendations on February 13, 2017. The City's Chief Economist presented the Controller's recommendations to the Commission on February 23, 2017.

The Planning Commission relied on these findings and recommendations as well as additional analysis by Department staff to adopt specific recommendations for a feasible and implementable Inclusionary Housing program at the April 27, 2017 hearing. The following new analysis and recommendations apply this same focus on effective implementation, as well as the overarching policy goal of maximizing the affordable housing produced through the Inclusionary program to the Consensus Ordinance before the Commission for consideration.

IMPLEMENTATION

The Department has the ability to implement the ordinance, although there would be implementation challenges related to the following provisions:

1. Required Minimum DU Mix for projects of 10 units or more.
2. Minimum Dwelling Unit Sizes.
3. Replacement or Fee Payment for any affordable units that are demolished, converted or removed.
4. Limitations on allocation of studio units to income levels above 100%.

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.

[1] Establishing City Policy Maximizing a Feasible Inclusionary Affordable Housing Requirement [Board File No 160166, Reso. No. 79-16], approved March 11, 2016. Available at: https://sfgov.legistar.com/View.ashx?M=F&ID=4302571&GUID=8243D8E2-2321-4832-A31B-C47B52F71DB2

RECOMMENDATIONS

The Department recommends that the Commission recommend ***maintaining the Commission's April 27, 2017 recommendation as recorded in Resolution Number 19903, with the following new recommended modifications*** for the proposed Consensus Ordinance and adopt the attached Draft Resolution to that effect. The proposed new recommendations are as summarized below.

Material Modifications. For the material modifications, new recommendations are proposed as follows:

1. Add clarifying language about the **dwelling unit mix requirement**;
2. Set the **proposed minimum unit sizes to be equal to the current TCAC[2] minimum sizes** for all inclusionary units;
3. Remove the **prohibition on studio units with prices set at 100% AMI or above and distribute units evenly across income levels**;
4. Include any **required replacement of or fee payment for affordable units that may be lost** due to demolition or conversion within the inclusionary requirement;
5. **Establish a consistent citywide inclusionary requirement that is within the feasible level identified by the Controller's Study, unless appropriate study has been completed to support any neighborhood of district specific requirements. Further, if the Board maintains neighborhood-specific Inclusionary Requirements, the upcoming study** by the Controller, in consultation with an Inclusionary Housing Technical Advisory Committee **should be required to include a study of neighborhood-specific requirements** in addition to the upcoming the Fee schedule methodology to be completed by January 31, 2018 for later consideration by the Board of Supervisors**.**
6. **Set economically feasible Affordable Housing Fee requirements** that do not establish a disincentive to use the State Density Bonus Law to produce bonus units, or recommend further study through the Fee Schedule Analysis to be conducted by the Controller and TAC.

Implementation and Technical Recommendations. Beyond the response to the material modifications described above, Department staff has reviewed the Consensus Ordinance for implementation and technical considerations and offers the following additional revisions:

7. Clarify the **grandfathering language so as** to specify that the new and modified provisions of the Inclusionary program under the Consensus Ordinance would apply only to new projects, while maintaining the incremental increases to the On-Site and Fee/Off-Site percentage requirements for pipeline projects as established by Proposition C**.**

8. Add clarifying language to ensure that the cumulative rounding up of required inclusionary units in each of the three income tiers in no case exceed the total percentage requirement as applicable to the project as a whole (e.g. 18% total)

[2] The term "TCAC" refers to the California Tax Credit Allocation Committee (CTCAC). This state committee administers federal and state Low-Income Housing Tax Credit Programs and establishes related requirements at the state level.

9. Reference the appropriate Planning Department map of neighborhood areas for the purpose of analyzing neighborhood-level data to ensure that inclusionary units are priced below the market rate, the **American Community Survey Neighborhood Profile boundaries map.**
10. **Ensure that the application of the new requirements under Section 415 of the Planning Code is consistent with the Transbay Redevelopment Plan** and the state law governing redevelopment of the Transbay area, per OCII recommendation.
11. **Revise provisions regarding the determination and sunsetting** of inclusionary requirements for projects to allow for program implementation that is consistent with standard Department practices and Planning Commission recommendations.

BASIS FOR RECOMMENDATIONS

The effort by the Board of Supervisors to collaborate on a single ordinance is commendable. In the month since the last Planning Commission hearing, many divergent ideas about how to maximize the effectiveness of the successful Inclusionary Affordable Housing Program have been consolidated into a unified ordinance. Reaching a timely agreement on the Consensus Ordinance is important so that the provisions of Proposition C can be fulfilled by setting permanent inclusionary requirements at an economically feasible level that will maximize affordable housing production and serve a wider range of San Franciscans in need of housing support. To conclude this process, the Planning Commission is presented with these material modifications from previous proposals for due consideration. Additional implementation and technical recommendations are also offered for the Commission's consideration and action, based on staff review of the Ordinance. It should be noted that the Fee Schedule methodology would be required to undergo further study by the Controller and the TAC by January 31, 2018 and will be presented to the Board of Supervisors for consideration and possible action at a later date.

Recommendations Concerning the Material Modifications.

Recommendation 1. Add clarifying language about the dwelling unit mix requirement.

The Consensus Ordinance applies the new requirements to smaller projects of 10 or more units, rather than only to larger projects of 25 or more units as originally proposed and considered by the Planning Commission. In order to extend these provisions to apply to Smaller Projects, the legislation would have to be referred back to Planning Commission before Board can take action. The Department notes that this requirement may be particularly difficult for small projects but does not recommend a substantive change to the Consensus ordinance on this matter, in part because the Consensus ordinance caps the Inclusionary requirement at a lower rate for these small projects. Instead, the recommendation offered here is for clarity. Specifically, the recommendation is that the unit mix requirement of 25% 2-bedrooms or larger units *can be inclusive* of the requirement for 10% 3-bedroom units. While the existing text does allow for this inclusivity, staff believes that the language as it currently exists may cause confusion for both staff and the public, if not clarified as proposed in the attached, draft Commission resolution.

Recommendation 2. Set the **proposed minimum unit sizes to be equal to the current TCAC minimum sizes** for all inclusionary units

The Consensus Ordinance will establish new minimum square foot unit sizes for inclusionary units. Previously, the minimum was the state-mandated TCAC minimums as codified in the MOHCD Procedures Manual. The requirements of the Consensus Ordinance are larger than TCAC minimums that are currently required and do not reference the TCAC minimums so would remain unchanged in the code.

The numbers to be codified in the legislation are about 100 square feet higher than the statewide TCAC minimums across the board, and also higher than the unit sizes proposed for market rate projects in some cases. Because Inclusionary units are required to be comparable in terms of size (and other features) to market-rate units, in practice, inclusionary units and the associated market-rate units provided may be larger than the required TCAC minimums. However, if the larger unit sizes proposed in the Ordinance were used, there may be some cases in which the inclusionary units would be required to be larger than the market rate units, in addition to the other requirements regarding Dwelling Unit Mix described in this report. This could strain project feasibility, further reducing production of both market rate and affordable units. Staff recommends that the Planning Code reference the statewide TCAC minimum sizes, as currently, rather than introduce new minimum unit sizes that were not analyzed by staff or considered by Planning Commission.

Recommendation 3. Remove the prohibition on studio units with prices set at 100% AMI or above and distribute units evenly across income levels.

The Consensus Ordinance prohibits households with incomes of more than 100% AMI from occupying studio units. The effect of this prohibition may be that projects with on-site Inclusionary Units may be disproportionately place households from the low-income tier into studios and thereby prevent low-income households from occupying larger units. This is because both the middle and top tier could contain households with incomes of 100% or higher AMI.

Inclusionary units are to be divided among the three income tiers, depending on occupancy type, at rates of either 10/4/4 percent for rental projects or 10/5/5 for condominium projects. Consider the example in Tables 1 and 2 below, which show a condo project that proposes 100 Dwelling Units and complies with the proposed dwelling unit mix of 25% 2-bedrooms or larger units which *can be inclusive* of the requirement 10% 3-bedroom units..

Table 1: Sample 100 Unit Condominium Project, Compliant With Required Dwelling Unit Mix

UNIT TYPE	TOTAL UNITS	REQUIRED BMR UNITS
Studio	25	5
One Bedroom	40	8
Two Bedroom	25	5
Three Bedroom	10	2
Total	100	20

Table 1 illustrates that the project would be required to provide 20% total onsite units, which must be comparable to the market-rate units provided by the project.

Table 2: Sample 100 Unit Condominium Project, Unit Mix Distributed by Household Income Comparison of with and without restriction on the household income levels in the studio unit

AMI LEVEL	STUDIO UNITS RESTRICTED	3BR BMR Units	2BR BMR Units	1BR BMR Units	Studio BMR Units
LOW INCOME 80% AMI (10 units required)	Without Studio Restriction	1	2	4	3
	With Studio Restriction	0	2	3	5
MODERATE INCOME 100% AMI (5 units required)	Without Studio Restriction	0	2	2	1
	With Studio Restriction	1	1	3	0
MIDDLE INCOME: 130% AMI (5 units required)	Without Studio Restriction	1	1	2	1
	With Studio Restriction	1	2	2	0

Table 2 illustrates that without any restrictions on how studios may be allocated between income levels, a greater number of one, two, and three bedroom units may be allocated to the low income tier. With the proposed restriction of higher income households in studio units, the result is a reduced number of one, two and three bedroom units available for households in the low-income tier.

The Department recommends that the Commission advise the Board of Supervisors to distribute households into the available unit sizes as equitably as possible so that households at all three tiers may be able to access any available unit size.

Recommendation 4. Include any **required replacement of or fee payment for affordable units that may be lost** due to demolition or conversion within the inclusionary requirement;

Under the ordinances previously considered by the Planning Commission, projects that would result in any affordable units being lost through demolition or conversion would have to provide replacement units or pay the Affordable Housing Fee equivalent to the replacement amount, but that that the total

amount of On-Site units or Fee/Off-Site provided would in no case exceed the total applicable inclusionary requirement for the project. However, as drafted in the Consensus Ordinance, the replacement units or fee payment would be **in addition** to the inclusionary requirement. This would in some cases significantly increase the BMR obligation of the project to above the maximum feasible level or the level proposed in either ordinance considered by Planning Commission. Lastly, the Planning Department is not the department authorized to determine if existing housing is subject to the Rent Ordinance, as well as assessing the relative affordability of these units. This determination lies within the authority of the Rent Board. New procedures will need to be established with Rent Board staff in order to review such projects.

Recommendation 5. Establish a consistent citywide inclusionary requirement that is within the feasible level identified by the Controller's Study, unless appropriate study has been completed to support any neighborhood or district specific requirements, including in the a) the Eastern Neighborhoods Mission Planning Area; b) the North of Market Residential Special Use District Subarea 1 or Subarea 2 and c) the SOMA Neighborhood Commercial Transit District. Further, if the Board maintains neighborhood-specific Inclusionary Requirements, the upcoming study by the Controller, in consultation with an Inclusionary Housing Technical Advisory Committee should be required to include a study of neighborhood-specific requirements in addition to the upcoming the Fee schedule methodology to be completed by January 31, 2018 for later consideration by the Board of Supervisors.

The Planning Department is engaged in planning efforts in the Mission, Central SoMa and the Tenderloin, however, these efforts are not broadly reviewing the Inclusionary requirements or studying the economic feasibility of residential development broadly across these areas. The Mission effort is looking at about 10 site-specific opportunities for mixed-income housing combined with other designated community benefits. The proposed Central SoMa Area Plan is accompanied by extensive previous feasibility analysis and a robust community benefits package for the area, but the zoning of the SoMA NCT district will not change or increase in housing capacity. In fact, only a portion of the SoMa NCT zoning district is located within Central SoMa. Similarly, within the Tenderloin, the Department is conducting a community development effort focused on stabilization and other community support policies, but is not studying project feasibility or rezoning in the area. The Ordinance does not specify which planning studies are referenced, whether funding would be identified for referenced studies, or the rationale for concluding that the Controller's economic feasibility study required by Proposition C and completed in February 2017 is not applicable to these specific areas, as for the rest of the City.

The higher requirements proposed in these areas would significantly exceed the maximum feasible level for new projects moving forward, and for Ownership units the requirement established by Proposition C. The result would be further straining project feasibility, reducing housing production, and weakening the effectiveness of the Inclusionary program. Staff recommends that no area-specific exemptions to inclusionary requirements be adopted until such time as appropriate analysis has been conducted, and that until such time, the findings of the Controller's Study are a sufficient and appropriate basis for the establishment of citywide baseline requirements.

Recommendation 6. Set economically feasible Affordable Housing Fee requirements that do not establish a disincentive to use the State Density Bonus Law to produce bonus units, or recommend further study through the Fee Schedule Analysis to be conducted by the Controller and TAC.

As consistent with Commission recommendations, the Consensus Ordinance would require projects that obtain additional units through the State Bonus Law to pay the Affordable Housing Fee on Bonus units. However, because the Ordinance also sets the Fee requirement at a level that significantly exceeds the maximum feasible level (i.e. 30% vs 23% for Rental units, or 33% vs 28% for Ownership units) the effect of the Ordinance would be to establish a new disincentive against the use of the State Bonus Law to produce bonus units, which was not previously considered by the Planning Commission. It should be noted that the State Density Bonus Law Government Code, Section 65915, et seq. can be used solely for the purpose of securing waivers, incentives and concessions for the City without requiring the production of "bonus units". By placing a fee requirement that exceeds feasibility on bonus units, the result may be that State Density Bonus Law may not be used to produce additional housing; but instead may be used solely to produce bigger, bulkier developments.

Implementation and Technical Recommendations

Recommendation 7. Clarify the grandfathering language so as to specify that the new and modified provisions of the Inclusionary program under the Consensus Ordinance would apply only to new projects, while maintaining the incremental increases to the On-Site and Fee/Off-Site percentage requirements for pipeline projects as established by Proposition C

The goal of this recommendation is to provide clarity and certainty to pipeline projects that filed a completed Environmental Application after January 1, 2013 but before January 12, 2016 regarding all new and modified provisions of Section 415 other than the specific On-site and Fee/Off-Site requirements established in Proposition C and maintained in the Ordinance. The Ordinance is currently silent on the application of provisions such as the new AMI tiers, and the rental vs. condominium requirements. The proposed language described in the attached draft resolution would clarify that all projects with EEA submitted before January 12, 2016 would be subject to the provisions of Section 415 in place prior to Proposition C, except for the higher On-site, Fee, and Off-site requirements established for projects the filed between 1/1/13 and 1/12/16.

Recommendation 8. Add clarifying language to ensure that the **cumulative rounding** up of required inclusionary units in each of the three income tiers **in no case exceed the total percentage requirement** as applicable to the project as a whole.

The current tier splits for large projects (10/4/4 for rental projects and 10/5/5 for condominiums) would lead to cumulative rounding that would amount to an inclusionary requirement that for some projects to have an inclusionary rate of greater than the actual requirement of 18% or 20%, or a higher rate, as the rates will be increased annually. This rounding-error problem would be most acute for projects with less than 50 units. Projects should be subject to the rate that is no higher than that required by the legislation. For this reason, the Department recommends adding text that would say, "in no case shall the total number of inclusionary units required exceed the number required as determined by the application of the applicable on-site requirement rate to the total project units", as illustrated in the attached resolution.

Table 3: Sample 35 Unit Condominium Project which requires 20% onsite BMR units

Required BMR Units	AMI Level and Requirement	BMR Requirement	Rounded BMR Requirement
7	Low Income: 80% AMI	3.5 units	4 units
	Moderate Income: 100% AMI	1.75 units	2 units
	Middle Income: 130% AMI	1.75 units	2 units
TOTAL		**7 units (20%)**	**8 units (22%)**

Table 3 illustrates a project which proposes 35 total condominium units. The project would be required to provide 20% inclusionary units onsite, or seven units. Of the seven required units, half must be designated to the low-income tier, which is equal to 3.5 units, and rounded to 4 total units. One quarter of the seven required inclusionary units would be allocated to the moderate and middle income tiers, which would equal 1.75 units in each tier and would be rounded to two units in each tier. The sum of each of these rounded numbers results in eight inclusionary units, equal to 22% which exceeds the inclusionary requirement of 20%. This increase may be significant for smaller projects.

Recommendation 9. Reference the appropriate Planning Department map of neighborhood areas for the purpose of analyzing neighborhood-level data to ensure that inclusionary units are priced below the market rate; the **American Community Survey Neighborhood Profile boundaries map.**

The Consensus Ordinance requires that a study be completed to ensure that the Inclusionary units are priced to be at least 20% or more below the pricing of market-rate units in the same neighborhood, consistent with the earlier Commission recommendation. However, the study area for each boundary is currently defined as the "neighborhood group map". The Department and the City at large generally use the Census database for mapping and demographic analysis. Therefore, the Department recommends that the map for such studies of pricing be established as the American Community Survey Neighborhood Profile (See Exhibit C), which is the smallest neighborhood level of mapping available from the Census.

Recommendation 10. Ensure that the application of the new requirements under Section 415 of the Planning Code is consistent with the Transbay Redevelopment Plan and the state law governing redevelopment of the Transbay area, per OCII Recommendation. See Exhibit D for a complete summary from the Office of Community Investment and Infrastructure.

Recommendation 11. Revise provisions regarding the determination and sunsetting of inclusionary requirements for projects to allow for program implementation that is consistent with standard Department practices and Planning Commission recommendations.

The Ordinance would assign the applicable On-Site, Fee, or Off-Site requirement amount at the date of project entitlement and projects would then have 30 months to obtain a site permit or building permit

before the requirement rate would be reset to the rate in effect at that time (as per the schedule of annual increases).

The Planning Department is responsible for providing clarity and certainty to projects and the general public as to the applicable inclusionary requirements at the beginning of the entitlement process. The TAC and Planning Commission both recommended that the rate be determined at the time of filing a completed Environmental Application and that this rate "sunset" and be reset if no First Construction Document is obtained within three years after entitlement. Staff recommends maintaining this structure, with the modification that projects be given 30 months, rather than 36, to obtain a First Construction Document.

ENVIRONMENTAL REVIEW

The proposed Ordinance is not defined as a project under CEQA Guidelines Section 15378 and 15060(c)(2) because it does not result in a physical change in the environment.

PUBLIC COMMENT

To date the Planning Department has received no public comment on the Consensus Ordinance.

RECOMMENDATION:	**Recommendation of Approval with Modifications**

Attachments:

Exhibit A:	Draft Planning Commission Resolution
Exhibit B:	Board of Supervisors File No. 161351v4
Exhibit C:	American Community Survey Neighborhood Profile Map
Exhibit D:	Office of Community Investment and Infrastructure requested modification

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DRAFT Planning Commission Resolution No. _____

HEARING DATE: JUNE 15, 2017

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Reviewed by:	AnMarie Rodgers, Senior Policy Advisor
Recommendation:	**Recommend Approval with Modifications**

RECOMMENDING THAT THE BOARD OF SUPERVISORS 1) ADOPT A PROPOSED ORDINANCE, WITH MODIFICATIONS THAT WOULD AMEND THE PLANNING CODE TO REVISE THE AMOUNT OF THE INCLUSIONARY AFFORDABLE HOUSING FEE AND THE ON-SITE AND OFF-SITE AFFORDABLE HOUSING ALTERNATIVES AND OTHER INCLUSIONARY HOUSING REQUIREMENTS; TO REQUIRE MINIMUM DWELLING UNIT MIX IN ALL RESIDENTIAL DISTRICTS; TO ESTABLISH DWELLING UNIT MINIMUM SIZES; TO ESTABLISH A PROHIBITION ON STUDIO UNITS WITH PRICES SET AT 100% AMI OR ABOVE; TO REPLACE OR PAY A FEE FOR ANY AFFORDABLE UNITS THAT MAY BE LOST DUE TO DEMOLITION OR CONVERSION; AND AFFIRMING THE PLANNING DEPARTMENT'S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; MAKING FINDINGS OF PUBLIC NECESSITY, CONVENIENCE, AND WELFARE UNDER PLANNING CODE, SECTION 302; AND MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1.

WHEREAS, on December 13, 2016 Supervisor Kim and Supervisor Peskin introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 161351 (referred to in this resolution as Proposal A), which amends Section 415 of the Planning Code to revise the amount of the Inclusionary Affordable Housing Fee and the On-Site and Off-Site Affordable Housing Alternatives and other Inclusionary Housing requirements; and adds reporting requirements for density bonus projects; and,

WHEREAS, on February 28, 2017 Supervisor Kim and Supervisor Peskin introduced substitute legislation under Board File Number 161351v2; and,

WHEREAS, on February 28, 2017 Supervisor Safai, Supervisor Breed, and Supervisor Tang introduced a proposed ordinance under Board File Number 170208 (referred to in this resolution as Proposal B), which amends the Planning Code to revise the amount of the Inclusionary Affordable Housing Fee and the On-Site and Off-Site Affordable Housing Alternatives and other Inclusionary Housing requirements; and requires a minimum dwelling unit mix in all residential districts; and,

WHEREAS, on September 29, 2015, Mayor Ed Lee and Supervisor Tang introduced a proposed Ordinance under Board File Number 150969, to add Planning Code Section 206 to create the Affordable Housing Bonus Program, the 100 Percent Affordable Housing Bonus Program, the Analyzed State Density Bonus Program, and the Individually Requested State Density Bonus Program, to provide for development bonuses and zoning modifications for increased affordable housing, in compliance with, and above those required by the State Density Bonus Law, Government Code, Section 65915, et seq.; to establish the procedures in which these Programs shall be reviewed and approved; and to add a fee for applications under the Programs; and

WHEREAS, on October 15, 2015 the Planning Commission voted to initiate an amendment to the General Plan to add language to certain policies, objectives and maps that clarified that the City could adopt policies or programs that allowed additional density and development potential if a project included increased amounts of on-site affordable housing; and

WHEREAS, on February 25, 2016, this Commission found that the Affordable Housing Bonus Program was, on balance, consistent with the San Francisco General Plan as amended, and forwarded the Affordable Housing Bonus Program, together with several recommended amendments, to the Board of Supervisors for their consideration; and

WHEREAS, on June 13, 2016, Supervisor Tang duplicated the AHBP ordinance file and amended the AHBP ordinance to include only the 100% Affordable Housing Bonus Program, and amended the 100% Affordable Housing Bonus Program to, among other items, prohibit the use of the program on parcels containing residential units and to allow an appeal to the Board of Supervisors; and

WHEREAS, on June 30, 2016, in Resolution 19686, the Planning Commission found that both the 100% Affordable Housing Bonus Program [BF 150969] and 100% Affordable Housing Density and Development Bonuses [BF 160668] to be consistent with the General Plan, and in July 2016 the Board of Supervisors adopted the 100% Affordable Housing Bonus Program, which is now found in Planning Code section 206; and

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public informational hearing at a regularly scheduled meeting to consider the two proposed ordinances on March 16, 2017; and

WHEREAS, The Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the two proposed Ordinances on April 27, 2017; and

WHEREAS, The Commission passed Resolution Number 19903 recommending approval with modifications of an Ordinance amending the Planning Code controls for the Affordable Inclusionary Housing Program and certain other requirements among other actions; and

WHEREAS, On May 22, 2017 at the Land use and Transportation Committee, Supervisor Peskin moved to amend BF 161351. After the motion was seconded by Supervisor Safai, the ordinance as amended became the "Consensus" ordinance.

WHEREAS, The components of the Consensus Ordinance that are materially different than elements considered by the Commission on April 27, 2017 include the following:

1. to **require a minimum dwelling unit mix** in all residential districts for projects of 10 - 24 units, as well as projects of 25 units or more, in all residential zoning districts outside of Plan Areas;
2. to **establish a minimum unit size for inclusionary units** required through Section 415,;
3. to prohibit the designation of inclusionary **studio units at affordable levels above 100% AMI**;
4. to **require replacement of or fee payment for any affordable units that may be lost** due to demolition or conversion, above and beyond the required inclusionary units under Section 415;
5. to **exclude certain areas from the proposed citywide Inclusionary requirements** and make them subject to higher requirements until additional analysis is completed to address affordability levels in these areas, including a) the Eastern Neighborhoods Mission Planning Area; the North of Market Residential Special Use District Subarea 1 or Subarea 2 and the SOMA Neighborhood Commercial Transit District.
6. to require an Affordable Housing Fee amount that is substantially above the maximum economically feasible level as identified by the Controller's Economic Feasibility Study required by Proposition C, and thus **establish a significant disincentive for the use of the State Density Bonus Law** to produce bonus units. This is because Bonus units would be subject to the Fee amount under the proposed Ordinance. This disincentive was not previously considered by the Planning Commission.

WHEREAS, Planning Code Section 302(d) requires that material modifications added by the Board of Supervisors be referred to the Planning Commission for consideration.

WHEREAS, the proposed amendments to the Inclusionary Affordable Housing Program in the modified ordinance is not defined as a project under CEQA Guidelines Section 15060(c)(2) and 15378 because they do not result in a physical change in the environment; and

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

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

WHEREAS, the Planning Commission has the "Consensus" ordinance amending the Inclusionary Affordable Housing Program [BF 161351]; and

WHEREAS, The Planning Commission determines that:

1. In making the recommendation to revise the Inclusionary Affordable Housing Program, the Commission reaffirms the Board of Supervisor's policy established by Resolution Number 79-16 that it shall be City policy to maximize the economically feasible percentage of inclusionary affordable housing in market rate housing development.

2. Inclusionary requirements should not exceed the rates recommended in the Controller's Economic Feasibility Study established in Proposition C, that the maximum economically feasible requirements for the on-site alternative are 18% for rental projects or 20% for ownership projects, or the equivalent of a fee or off-site alternative requirement of 23% for rental projects or 28% for ownership projects.

3. The Inclusionary Affordable Housing Program requirements should remain below the City's current Nexus Study.

4. The City should use the Inclusionary Affordable Housing Program to help serve the housing needs for low-, moderate-, and above-moderate income households that area above the level eligible for projects supported by federal low income housing tax credits, and also earn below the minimum level needed to access market rate housing units in San Francisco.

5. The Planning Department should implement additional monitoring and reporting procedures regarding the use of the State Density Bonus Law, and should require that eligible projects that seek and receive a bonus under the State Bonus Law pay the Affordable Housing Fee on additional units provided.

6. The incremental increases to the inclusionary requirements as established by the passage of Proposition C for projects that entered the pipeline between January 1, 2013 and January 12, 2016 should be retained for projects electing the on-site alternative, and removed for projects paying the Affordable Housing Fee or electing the off-site alternative, to maintain consistency with the recommended maximum economically feasible requirements recommended in the Controller's Study.

NOW THEREFORE BE IT RESOLVED, that the Planning Commission hereby **finds** that the proposed ordinance to amend the Inclusionary Affordable Housing Program and the Commission's recommended modifications to the Inclusionary Affordable Housing Program are **consistent with the General Plan** for the reasons set forth below; and be it

FURTHER RESOLVED, that the Planning Commission hereby **recommends that the Board of Supervisors approve** a modified ordinance to revise the Inclusionary Affordable Housing Program as described within Resolution Number 19903 and within this resolution and adopts the findings as set forth below.

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:

7. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

OBJECTIVE 1
IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

POLICY 1.1
Plan for the full range of housing needs in the City and County of San Francisco, especially affordable housing.

The ordinance amending the Inclusionary Affordable Housing Program furthers the potential for creation of permanently affordable housing in the City and facilitate an increase the number of affordable housing units that could be built in San Francisco. Generally affordable projects require that units be affordable for 55 years or permanently, depending on the funding source. This program is one tool to plan for affordable housing needs of very low, low and moderate income households.

POLICY 1.6
Consider greater flexibility in number and size of units within established building envelopes in community based planning processes, especially if it can increase the number of affordable units in multi-family structures.

The ordinance amending the Inclusionary Affordable Housing Program provides greater flexibility in the number of units permitted in new affordable housing projects by providing increased heights, relief from any residential density caps, and allowing some zoning modifications. This is achieved by pairing the programs with either the State Density Bonus Law, California Government Code section 65915 et seq. or through the local ordinance implementing the state law, such as the Affordable Housing Bonus Program or HOME-SF [BF 150969].

POLICY 3.3
Maintain balance in affordability of existing housing stock by supporting affordable moderate ownership opportunities.

The ordinance amending the Inclusionary Affordable Housing Program increase affordable ownership opportunities for households with moderate incomes.

The ordinance amending the Inclusionary Affordable Housing Program generally maintains the current "low" and "moderate" income tiers, with the significant change that these targets would be defined as an average AMI served by the project, with units falling within a specified range of income levels. Considering the average incomes served, the proposal would serve households in the middle of both the Low Income and Moderate Income groups, and would meet the demonstrated need of both income groups,

while serving segments of both income groups that are least served by the City's current affordable housing programs.

POLICY 4.1
Develop new housing, and encourage the remodeling of existing housing, for families with children.
The ordinance amending the Inclusionary Affordable Housing Program can increase the supply of new affordable housing, including new affordable housing for families. The ordinance amending the Inclusionary Affordable Housing Program includes dwelling unit mix requirements that encourage certain percentages of units with two or three bedrooms.

POLICY 4.4
Encourage sufficient and suitable rental housing opportunities, emphasizing permanently affordable rental units wherever possible.

The ordinance amending the Inclusionary Affordable Housing Program encourage the development of greater numbers of permanently affordable housing, including rental units. These affordable units are affordable for the life of the project.

Policy 4.5
Ensure that new permanently affordable housing is located in all of the city's neighborhoods, and encourage integrated neighborhoods, with a diversity of unit types provided at a range of income levels.

The ordinance amending the Inclusionary Affordable Housing Program reaches throughout the City which enables the City to increase the number of very low, low and moderate income households and encourage integration of neighborhoods.

OBJECTIVE 7
SECURE FUNDING AND RESOURCES FOR PERMANENTLY AFFORDABLE HOUSING, INCLUDING INNOVATIVE PROGRAMS THAT ARE NOT SOLELY RELIANT ON TRADITIONAL MECHANISMS OR CAPITAL.

The ordinance amending the Inclusionary Affordable Housing Program seeks to create permanently affordable housing by leveraging the investment of private development.

OBJECTIVE 8
BUILD PUBLIC AND PRIVATE SECTOR CAPACITY TO SUPPORT, FACILITATE, PROVIDE AND MAINTAIN AFFORDABLE HOUSING.

The ordinance amending the Inclusionary Affordable Housing Program supports this objective by revising the Inclusionary Affordable Housing Program to maximize the production of affordable housing in concert with the production of market-rate housing.

POLICY 8.3
Support the production and management of permanently affordable housing.

The ordinance amending the Inclusionary Affordable Housing Program supports the production of permanently affordable housing supply.

OBJECTIVE 11
SUPPORT AND RESPECT THE DIVERSE AND DISTINCT CHARACTER OF SAN FRANCISCO'S NEIGHBORHOODS.

The ordinance amending the Inclusionary Affordable Housing Program encourages mixed income buildings and neighborhoods.

POLICY 11.3
Ensure growth is accommodated without substantially and adversely impacting existing residential neighborhood character.

Establishing permanently affordable housing in the City's various neighborhoods would enable the City to stabilize very low, low and moderate income households. These households meaningfully contribute to the existing character of San Francisco's diverse neighborhoods.

POLICY 11.5
Ensure densities in established residential areas promote compatibility with prevailing neighborhood character.

The ordinance amending the Inclusionary Affordable Housing Program will produce buildings that are generally compatible with existing neighborhoods. State Density Bonus Law, California Government Code section 65915 et seq. does enable higher density that San Francisco's zoning would otherwise allow.

OBJECTIVE 12
BALANCE HOUSING GROWTH WITH ADEQUATE INFRASTRUCTURE THAT SERVES THE CITY'S GROWING POPULATION.

OBJECTIVE 13
PRIORITIZE SUSTAINABLE DEVELOPMENT IN PLANNING FOR AND CONSTRUCTING NEW HOUSING.

Housing produced under either ordinance amending the Inclusionary Affordable Housing Program would pay impact fees that support the City's infrastructure.

URBAN DESIGN ELEMENT

BALBOA PARK AREA PLAN
OBJECTIVE 4.5: PROVIDE INCREASED HOUSING OPPORTUNITIES AFFORDABLE TO A MIX OF HOUSEHOLDS AT VARYING INCOME LEVELS.
The ordinance amending the Inclusionary Affordable Housing Program would increase affordable housing opportunities for a mix of household incomes.

BAYVIEW AREA PLAN

OBJECTIVE 6 ENCOURAGE THE CONSTRUCTION OF NEW AFFORDABLE AND MARKET RATE HOUSING AT LOCATIONS AND DENSITY LEVELS THAT ENHANCE THE OVERALL RESIDENTIAL QUALITY OF BAYVIEW HUNTERS POINT.

The ordinance amending the Inclusionary Affordable Housing Program would increase affordable housing opportunities for a mix of household incomes.

CENTRAL WATERFRONT AREA PLAN

OBJECTIVE 2.1 ENSURE THAT A SIGNIFICANT PERCENTAGE OF NEW HOUSING CREATED IN THE CENTRAL WATERFRONT IS AFFORDABLE TO PEOPLE WITH A WIDE RANGE OF INCOMES.

The ordinance amending the Inclusionary Affordable Housing Program would increase affordable housing opportunities

CHINATOWN AREA PLAN

OBJECTIVE 3
STABILIZE AND WHERE POSSIBLE INCREASE THE SUPPLY OF HOUSING.

The ordinance amending the Inclusionary Affordable Housing Program would increase affordable housing opportunities.

MARKET AND OCTAVIA AREA PLAN

OBJECTIVE 2.4
PROVIDE INCREASED HOUSING OPPORTUNITIES AFFORDABLE TO HOUSEHOLDS AT VARYING INCOME LEVELS.

The ordinance amending the Inclusionary Affordable Housing Program would increase affordable housing opportunities.

MISSION AREA PLAN

OBJECTIVE 2.1
ENSURE THAT A SIGNIFICANT PERCENTAGE OF NEW HOUSING CREATED IN THE MISSION IS AFFORDABLE TO PEOPLE WITH A WIDE RANGE OF INCOMES.

The ordinance amending the Inclusionary Affordable Housing Program would increase affordable housing opportunities.

SHOWPLACE/POTRERO HILL AREA PLAN

OBJECTIVE 2.1
ENSURE THAT A SIGNIFICANT PERCENTAGE OF NEW HOUSING CREATED IN THE SHOWPLACE /POTRERO IS AFFORDABLE TO PEOPLE WITH A WIDE RANGE OF INCOMES.
The ordinance amending the Inclusionary Affordable Housing Program would increase affordable housing opportunities.

SOMA AREA PLAN

OBJECTIVE 3
ENCOURAGE THE DEVELOPMENT OF NEW HOUSING, PARTICULARLY AFFORDABLE HOUSING.
The ordinance amending the Inclusionary Affordable Housing Program would increase affordable housing opportunities.

WESTERN SHORELINE AREA PLAN

POLICY 11.3
Continue the enforcement of citywide housing policies, ordinances and standards regarding the provision of safe and convenient housing to residents of all income levels, especially low- and moderate-income people.
The ordinance amending the Inclusionary Affordable Housing Program would increase affordable housing opportunities.

POLICY 11.4
Strive to increase the amount of housing units citywide, especially units for low- and moderate-income people.
The ordinance amending the Inclusionary Affordable Housing Program would increase affordable housing opportunities.

WESTERN SOMA AREA PLAN

OBJECTIVE 3.3
ENSURE THAT A SIGNIFICANT PERCENTAGE OF THE NEW HOUSING CREATED IS AFFORDABLE TO PEOPLE WITH A WIDE RANGE OF INCOMES
The ordinance amending the Inclusionary Affordable Housing Program would increase affordable housing opportunities.

8. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

   1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

      The ordinance amending the Inclusionary Affordable Housing Program would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

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

The ordinance amending the Inclusionary Affordable Housing Program would not have a negative effect on housing or neighborhood character.

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

   The ordinance amending the Inclusionary Affordable Housing Program would increase City's supply of permanently affordable housing.

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

   The ordinance amending the Inclusionary Affordable Housing Program would result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

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

   The ordinance amending the Inclusionary Affordable Housing would not cause displacement of the industrial or service sectors due to office development as it does not enable office development.

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

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

7. That the landmarks and historic buildings be preserved;

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

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

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

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

BE IT FURTHER RESOLVED that the Commission hereby recommends that the Board ADOPT a proposed Ordinance amending the Inclusionary Affordable Housing Program, as described in the

Commission's April 27, 2017 recommendation as recorded in Resolution Number 19903, with the following new recommended modifications as summarized below.

Material Modifications. For the material modifications, the Commission's new recommendations are as follows:

1. Add clarifying language about the **dwelling unit mix requirement**;
2. Set the **proposed minimum unit sizes to be equal to the current TCAC minimum sizes** for all inclusionary units;
3. Remove the **prohibition on studio units with prices set at 100% AMI or above and distribute units evenly across income levels**;
4. Include any **required replacement of or fee payment for affordable units that may be lost** due to demolition or conversion within the inclusionary requirement;
5. **Establish a consistent citywide inclusionary requirement that is within the feasible level identified by the Controller's Study, unless appropriate study has been completed to support any neighborhood of district specific requirements. Further, if the Board maintains neighborhood-specific Inclusionary Requirements, the upcoming study** by the Controller, in consultation with an Inclusionary Housing Technical Advisory Committee **should be required to include a study of neighborhood-specific requirements** in addition to the upcoming the Fee schedule methodology to be completed by January 31, 2018 for later consideration by the Board of Supervisors**.**
6. **Set economically feasible Affordable Housing Fee requirements** that do not establish a disincentive to use the State Density Bonus Law to produce bonus units, or recommend further study through the Fee Schedule Analysis to be conducted by the Controller and TAC.

Implementation and Technical Recommendations.

Beyond the response to the material modifications described above, Department staff have reviewed the Consensus Ordinance for implementation and technical considerations and offers the following additional revisions:

7. Clarify the **grandfathering language so as** to specify that the new and modified provisions of the Inclusionary program under the Consensus Ordinance would apply only to new projects, while maintaining the incremental increases to the On-Site and Fee/Off-Site percentage requirements for pipeline projects as established by Proposition C**.**

8. Add clarifying language to ensure that the cumulative rounding up of required inclusionary units in each of the three income tiers in no case exceed the total percentage requirement as applicable to the project as a whole (e.g. 18% total)

9. Reference the appropriate Planning Department map of neighborhood areas for the purpose of analyzing neighborhood-level data to ensure that inclusionary units are priced below the market rate, the **American Community Survey Neighborhood Profile boundaries map.**

10. **Ensure that the application of the new requirements under Section 415 of the Planning Code is consistent with the Transbay Redevelopment Plan** and the state law governing redevelopment of the Transbay area, per OCII recommendation.

11. **Revise provisions regarding the determination and sunsetting** of inclusionary requirements for projects to allow for program implementation that is consistent with standard Department practices and Planning Commission recommendations.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on June 15, 2017.

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED:

[Planning Code - Inclusionary Affordable Housing Fee and Dwelling Unit Mix Requirements]

Ordinance amending the Planning Code to revise the amount of the Inclusionary Affordable Housing Fee and the On-Site and Off-Site Affordable Housing Alternatives and other Inclusionary Housing requirements; ~~adding reporting requirements for density bonus projects~~to require minimum dwelling unit mix in all residential districts; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of public necessity, convenience, and welfare under Planning Code, Section 302; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

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

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

Section 1. General Findings.

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 161351 and is incorporated herein by reference. The Board affirms this determination.

(b) On April 27, 2017, the Planning Commission, in Resolution No. 19903, adopted findings that the actions contemplated in this ordinance are consistent, on balance, with the

City's General Plan and eight priority policies of Planning Code Section 101.1. The Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No. 161351, and is incorporated herein by reference.

(c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code Amendment will serve the public necessity, convenience, and welfare for the reasons set forth in Planning Commission Resolution No. 19903 and the Board incorporates such reasons herein by reference. A copy of Planning Commission Resolution No. 19903 is on file with the Board of Supervisors in File No. 161351.

Section 2. Findings About Inclusionary Affordable Housing Requirements.

(a) The purpose of this ordinance is to adopt inclusionary or affordable housing obligations following voter approval of Proposition C at the June 7, 2016 election to revise the City Charter's inclusionary affordable housing requirements, which won overwhelming support with 67.9% of the vote, and to update the provisions of the Planning Code that became effective after the Charter Amendment passed, consistent with the process set forth in Section 415.10 of the Planning Code, and elaborated upon in Ordinance No. 76-16, which required that the City study how to set inclusionary housing obligations in San Francisco at the maximum economically feasible amount in market rate housing development to create affordable housing. The inclusionary affordable housing obligations set forth in this ordinance will supersede and replace any previous requirements.

(b) The San Francisco residential real estate market is one of the most expensive in the United States. In February 2016, the California Association of Realtors reported that the median priced home in San Francisco was $1,437,500. This price is 222% higher than the State of California median ($446,460), and 312% higher than the national average ($348,900). While the national homeownership rate is approximately 63.8%, only

approximately 37% of San Franciscans own their own home. The majority of market-rate homes for sale in San Francisco are priced out of the reach of low- and moderate-income households. In 2015, the average rent was $3,524, which is affordable to households earning over $126,864.

(c) The Board of Supervisors adopted San Francisco's General Plan Housing Element in March 2015, and the California Housing and Community Development Department certified it on May 29, 2015. The Housing Element states that San Francisco's share of the regional housing need for years 2015 through 2022 includes 10,873 housing units for very-low- and low-income households and 5,460 units for moderate/middle-income households, and a total production of 28,870 net new units, with almost 60% to be affordable for very-low, low- and moderate/middle-income San Franciscans.

(d) In November 2016, the City provided the updated Residential Affordable Housing Nexus Analysis that confirms and quantifies the impact of new market rate housing development on the demand for affordable housing for households earning up to 120% of area median income. The study demonstrates a need of 31.8% affordable housing for rental housing, and 37.6% affordable housing for ownership housing, and a need of 24.1% onsite affordable housing for rental housing, and 27.3% onsite affordable housing for ownership housing for households with incomes up to 120% of Area Median Income.

(e) In February 2017, the Office of the Controller presented a study of the economic feasibility of increased inclusionary housing requirements, entitled "Inclusionary Housing Working Group: Final Report." The Controller's Office, supported by a contracted consulting team of three firms and advised by a Technical Advisory Committee (TAC) with representatives appointed by the Mayor and Board of Supervisors, developed several policy recommendations, including: (1) that the City should impose different inclusionary housing requirements on rental and for-sale (condominium) properties; (2) that the City ~~could~~can set

the initial onsite requirements at a maximum feasible amount of 18% for rental projects and 20% for ownership projects; (3) that the City ~~may adopt~~should commit to a 15-year schedule of increases to the inclusionary housing rate, at a rate of 0.5% increase each year; and (4) that the City should revise the schedule of Inclusionary housing fees to provide a more equivalent cost for developers as the on-site requirements. The Controller's Office recommended updating the fee percentage to 23% and 28% to create an equivalency to the recommended 18% and 20% on-site requirements, with the City conducting the specific calculation of the fee itself.

(f) The Controller further acknowledged that application of the state-provided density bonus could make a difference in the financial feasibility of housing development projects.

(g) The City's Inclusionary Affordable Housing Program is intended to help address the demonstrated need for affordable housing in the City through the application of the City's land use controls

(h) As rents and sales prices outpace what is affordable to the typical San Francisco family, the City faces a continuing shortage of affordable housing for not only very low- and low-income residents, but also for moderate, middle and upper-middle income families.

(i) In order to maximize the benefit of state and federal funds supporting affordable housing construction, which are typically restricted to very low- and low-income households, and to maximize the amount of affordable units constructed, the majority of the City's new affordable housing production is likely to continue to focus on households at or below 60% of area median income.

(j) The Board of Supervisors recognizes that this Inclusionary Housing Program is only one small part of the City's overall strategy for providing affordable housing to very low-, low-, moderate-, and middle-income households. The City will continue to acquire, rehabilitate and produce units through the Mayor's Office of Housing and Community Development, provide

rental subsidies, and provide homeownership assistance to continue to expand its reach to households in need of affordable housing.

(k) The City will also continue to pursue innovative solutions to provide and stabilize affordable housing in San Francisco, including programs such as HOME-SF that incentivize projects that set aside 30% of on-site units as permanently affordable, and 40% of units as family-friendly multiple bedroom units.

(l) In an effort to support a mix of both ownership project and rental projects, the City is providing a direct financial contribution to project sponsors who agree to rent units for a period of 30 years. The direct financial contribution is in the form of a reduction in the applicable affordable housing requirement.

Section 3. The Planning Code is hereby amended by revising Sections 415.2, 415.3, 415.5, 415.6, ~~and~~ 415.7, and 415.10, and adding ~~a new~~ Section 415.11, to read as follows:

SEC. 415.2. DEFINITIONS.

See Section 401 of this Article. ~~For purposes of Sections 415.3et seq., "low income" households shall be defined as households whose total household income *does not exceed 55%* is 40% to 80% of Area Median Income for purposes of renting an affordable unit, or 80% to 100% of Area Median Income for purposes of purchasing an affordable unit, and "moderate income" and "middle income" households shall mean households whose total household income *does not exceed 100%* is 80% to 120% of Area Median Income for purposes of renting an affordable unit, or *120%* 100% to 140% of Area Median Income for purposes of purchasing an affordable unit. The Small Sites Fund, defined in Section 415.5(f)(2), and the Small Sites Program may use Affordable Housing Fees to acquire sites and buildings consistent with the income parameters of the Programs, as periodically updated and administered by MOHCD.~~

"Owned Unit" shall mean a dwelling unit that is a condominium, stock cooperative, community apartment or detached single family home. The owner or owners of an owned unit must occupy the unit as their primary residence.

"Rental Housing Project" shall mean a housing project consisting solely of Rental Units, as defined in Section 401, which meets the following requirements:

(1) The units shall be rental housing for not less than 30 years from the issuance of the certificate of occupancy pursuant to an agreement between the developer and the City. This agreement shall be in accordance with applicable State law governing rental housing. All such agreements entered into with the City must be reviewed and approved by the Planning Director and the City Attorney's Office, and may be executed by the Planning Director;

(2) The agreement shall be recorded against the property prior to issuance of the certificate of occupancy.

SEC. 415.3. APPLICATION.

*** * * ***

(b) Any development project that has submitted a complete Environmental Evaluation application prior to January 1, 2013 shall comply with the Affordable Housing Fee requirements, the on-site affordable housing requirements or the off-site affordable housing requirements, as applicable, in effect on January 12, 2016. For development projects that have submitted a complete Environmental Evaluation application on or after January 1, 2013, the requirements set forth in Planning Code Sections 415.5, 415.6, and 415.7 shall apply to certain development projects consisting of 25 dwelling units or more during a limited period of time as follows.

(1) If a development project is eligible and elects to provide on-site affordable housing, the development project shall provide the following amounts of on-site affordable housing. All other requirements of Planning Code Sections 415.1 et seq. shall apply.

(A) Any development project that has submitted a complete Environmental Evaluation application prior to January 1, 2014 shall provide affordable units in the amount of 13% of the number of units constructed on-site.

(B) Any development project that has submitted a complete Environmental Evaluation application prior to January 1, 2015 shall provide affordable units in the amount of 13.5% of the number of units constructed on-site.

(C) Any development project that has submitted a complete Environmental Evaluation application on or prior to January 12, 2016 shall provide affordable units in the amount of 14.5% of the number of units constructed on-site.

(D) Any development project that submits an Environmental Evaluation application after January 12, 2016, shall comply with the requirements set forth in Planning Code Sections 415.5, 415.6 and 415.7, as applicable.

(E) Notwithstanding the provisions set forth in subsections (b)(1)(A), (B) and (C) of this ~~s~~Section 415.3, if a development project is located in a UMU Zoning District or in the South of Market Youth and Family Zoning District, and is eligible and elects to provide on-site units pursuant to Section 415.5(g), such development project shall comply with the on-site requirements applicable within such Zoning Districts, as they existed on January 12, 2016, plus the following additional amounts of on-site affordable units: (i) if the development project has submitted a complete Environmental Evaluation application prior to January 1, 2014, the Project Sponsor shall provide additional affordable units in the amount of 1% of the number of units constructed on-site; (ii) if the development project has submitted a complete Environmental Evaluation application prior to January 1, 2015, the Project Sponsor shall

provide additional affordable units in the amount of 1.5% of the number of units constructed on-site; or (iii) if the development project has submitted a complete Environmental Evaluation application on or prior to January 12, 2016, the Project Sponsor shall provide additional affordable units in the amount of 2% of the number of units constructed on-site.

(F) Any development project that has submitted a complete Environmental Evaluation application on or before January 12, 2016 and seeks to utilize a density bonus under State Law shall use its best efforts to provide on-site affordable units in the amount of 25% of the number of units constructed on-site and shall consult with the Planning Department about how to achieve this amount of inclusionary affordable housing. ~~*Any project*~~ *An applicant* seeking a density bonus under the provisions of State Law shall *provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, and waivers or reductions of development standards.* ~~*prepare a report analyzing how the concessions and incentives requested are necessary in order to provide the required on-site affordable housing.*~~

(2) If a development project pays the Affordable Housing Fee or is eligible and elects to provide off-site affordable housing, the development project shall provide the following fee amount or amounts of off-site affordable housing during the limited periods of time set forth below. All other requirements of Planning Code Sections 415.1 et seq. shall apply.

(A) Any development project that has submitted a complete Environmental Evaluation application prior to January 1, 2014, shall pay a fee or provide off-site housing in an amount equivalent to 25% of the number of units constructed on-site.

(B) Any development project that has submitted a complete Environmental Evaluation application prior to January 1, 2015, shall pay a fee or provide off-site housing in an amount equivalent to 27.5% of the number of units constructed on-site.

(C) Any development project that has submitted a complete Environmental Evaluation application on or prior to January 12, 2016 shall pay a fee or provide off-site housing in an amount equivalent to 30% of the number of units constructed on-site.

(D) Any development project that submits an Environmental Evaluation application after January 12, 2016 shall comply with the requirements set forth in Sections 415.5, 415.6, and 415.7, as applicable.

(E) Notwithstanding the provisions set forth in subsections (b)(2)(A), (B) and (C) of this Section 415.3, for development projects proposing buildings over 120 feet in height, as measured under the requirements set forth in the Planning Code, except for buildings up to 130 feet in height located both within a special use district and within a height and bulk district that allows a maximum building height of 130 feet, such development projects shall pay a fee or provide off-site housing in an amount equivalent to ~~*33*~~ *30*% of the number of units constructed on-site. Any buildings up to 130 feet in height located both within a special use district and within a height and bulk district that allows a maximum building height of 130 feet shall comply with the provisions of subsections (b)(2)(A), (B) and (C) of this Section 415.3 during the limited periods of time set forth therein.

(F) Notwithstanding the provisions set forth in subsections (b)(2)(A), (B) and (C) of this ~~*s*~~*S*ection 415.3, if a development project is located in a UMU Zoning District or in the South of Market Youth and Family Zoning District, and pays the Affordable Housing Fee or is eligible and elects to provide off-site affordable housing pursuant to Section 415.5(g), or elects to comply with a land dedication alternative, such development project shall comply with the fee, off-site or land dedication requirements applicable within such Zoning Districts, as they existed on January 12, 2016, plus the following additional amounts for the Affordable Housing Fee or for land dedication or off-site affordable units: (i) if the development project

has submitted a complete Environmental Evaluation application prior to January 1, 2014, the Project Sponsor shall pay an additional fee, or provide additional land dedication or off-site affordable units, in an amount equivalent to 5% of the number of units constructed on-site; (ii) if the development project has submitted a complete Environmental Evaluation application prior to January 1, 2015, the Project Sponsor shall pay an additional fee, or provide additional land dedication or off-site affordable units, in an amount equivalent to 7.5% of the number of units constructed on-site; or (iii) if the development project has submitted a complete Environmental Evaluation application on or prior to January 12, 2016, the Project Sponsor shall pay an additional fee, or provide additional land dedication or off-site affordable units, in an amount equivalent to 10% of the number of units constructed on-site. Notwithstanding the foregoing, a development project shall not pay a fee or provide off-site units in a total amount greater than the equivalent of ~~*33*~~*30*% of the number of units constructed on-site.

(G) Any development project consisting of 25 dwelling units or more that has submitted a complete Environmental Evaluation application on or prior to January 12, 2016, and is eligible and elects to provide off-site affordable housing, may provide off-site affordable housing by acquiring an existing building to fulfill all or part of the requirements set forth in this Section 415.3 and in Section 415.7 with an equivalent amount of units as specified in this Section 415.3(b)(2), as reviewed and approved by the Mayor's Office of Housing and Community Development and consistent with the parameters of its Small Sites Acquisition and Rehabilitation Program, in conformance with the income limits for the Small Sites Program.

* * * *

(d) Notwithstanding the provisions set forth in Section 415.3(b), or the inclusionary affordable housing requirements contained in Sections 415.5, 415.6, and 415.7, such requirements shall not apply to any project that has not submitted a complete Environmental

Evaluation Application on or before January 12, 2016, if the project is located within the Eastern Neighborhoods Mission Planning Area, the North of Market Residential Special Use District Subarea 1 or Subarea 2, or the SOMA Neighborhood Commercial Transit District, because inclusionary affordable housing levels for those areas will be addressed in forthcoming area plan processes or an equivalent community planning process. Until such planning processes are complete and new inclusionary housing requirements for projects in those areas are adopted, projects shall (1) pay a fee or provide off-site housing in an amount equivalent to 30% or (2) provide affordable units in the amount of 25% of the number of Rental Units constructed on-site or 27% of the number of Owned Units constructed on-site.

(~~d~~e) The City may continue to enter into development agreements or other similar binding agreements for projects that provide inclusionary affordable housing at levels that may be different from the levels set forth in Sections 415.1 et seq.

(f) Section 415.1 et seq., the Inclusionary Housing Program, shall not apply to:

(1) That portion of a housing project located on property owned by the United States or any of its agencies or leased by the United States or any of its agencies, for a period in excess of 50 years, with the exception of such property not used exclusively for a governmental purpose;

(2) That portion of a housing project located on property owned by the State of California or any of its agencies, with the exception of such property not used exclusively for a governmental or educational purpose; or

(3) That portion of a housing project located on property under the jurisdiction of the San Francisco Office of Community Investment and Infrastructure or the Port of San Francisco where the application of Section 415.1 et seq. is prohibited by California or local law.

(4) A 100% affordable housing project in which rents are controlled or regulated by any government unit, agency or authority, excepting those unsubsidized and/or unassisted units which are insured by the United States Department of Housing and Urban Development. The Mayor's Office of Housing and Community Development must represent to the Planning Commission or Planning Department that the project meets this requirement.

* * * *

(5) A Student Housing project that meets all of the following criteria:

*** * * ***

(C) The Mayor's Office of Housing and Community Development (MOHCD) is authorized to monitor this program. MOHCD shall develop a monitoring form and annual monitoring fee to be paid by the owner of the real property or the Post-Secondary Educational Institution or Religious Institutions, as defined in Section 102 of this Code. The owner of the real property and each Post-Secondary Educational Institution or Institutions shall agree to submit annual documentation to MOHCD and the Planning Department, on or before December 31 of each year, ~~that~~ which addresses the following:

* * * *

(iii) The owner of the real property records a Notice of Special Restrictions (NSR) against fee title to the real property on which the Student Housing is located that states the following:

*** * * ***

d. The Post-Secondary Educational Institution is required to report annually as required in Subsection (~~e~~f)(5)(C) above;

*** * * ***

SEC. 415.5. AFFORDABLE HOUSING FEE.

* * * *

(b) **Amount of Fee.** The amount of the fee ~~*which*~~ *that* may be paid by the project sponsor subject to this Program shall be determined by MOHCD utilizing the following factors:

(1) The number of units equivalent to the applicable off-site percentage of the number of units in the principal housing project.

(A) For housing development projects consisting of 10 dwelling units or more, but less than 25 dwelling units, t~~*T*~~he applicable percentage shall be 20% ~~*for housing development projects consisting of 10 dwelling units or more, but less than 25 dwelling units*~~.

(B) ~~*The applicable percentage for*~~ *For* development projects consisting of 25 dwelling units or more, *the applicable percentage* shall be 33% *if such units are Owned Units*.

(C) For development projects consisting of 25 dwelling units or more, the applicable percentage shall be 30% if such units are Rental Units in a Rental Housing Project. In the event one or more of the Rental Units in the principal Rental Housing Project become ownership units, for *each Rental Unit or* for *the principal Rental Housing Project in its entirety, as applicable*, the Project Sponsor *shall* ~~pay to~~ either (A) reimburse *the City the* ~~difference in the~~ proportional *amount of the* ~~applicable inclusionary affordable housing fee so that the total fee~~ Inclusionary Affordable Housing Fee, which *would be equivalent to the* current Inclusionary Affordable Housing Fee *requirement for Owned Units,* ~~which is 33% of~~or (B) provide additional on-site or off-site affordable units equivalent to the current inclusionary requirements for Owned Units, apportioned among *the* required *number of* ~~total~~ *units* at various income levels *in* compliance with *the* ~~principal project, or such current percentage that has been adjusted annually by MOHCD~~requirements in effect at the time of conversion.

~~*For the purposes of this Section 415.5, the City shall calculate the fee using the direct fractional result of the total number of units multiplied by the applicable percentage, rather than rounding up the resulting figure as required by Section 415.6(a).*~~

(2) The affordability gap ~~shall be calculated~~ using data on ~~*the*~~ *MOHCD's* cost of construction of residential ~~of construction of to construct affordable~~ *residential* housing. ~~for three different building heights, as applicable: (A) up to 55 feet; (B) above 55 feet up to 85 feet; and (C) above 85 feet~~ ~~*and the Maximum Purchase Price for the equivalent unit size*~~. ~~The fee shall be calculated individually for these three different building types and two types of tenure, ownership and rental, rather than a single fee calculation uniformly applied to all types of projects.~~ The Department and MOHCD shall ~~calculate the affordability gap within 6 months of the effective date of this ordinance and shall~~ update the technical report every two years, with analysis from the Technical Advisory Committee, ~~*from time to time as they deem appropriate*~~ in order to ensure that the affordability gap remains current, ~~and to reflect current costs of construction~~consistent with the requirements set forth below in Section 415.5(b)(3) and Section 415.10.

(3) *For all housing developments, no* ~~*No*~~ later than January 1 of each year, MOHCD shall adjust the fee *based on adjustments in the City's cost of constructing affordable housing*~~.~~, including development and land acquisition costs. MOHCD shall provide the Planning Department, DBI, and the Controller with information on the adjustment to the fee so that it can be included in the Planning Department's and DBI's website notice of the fee adjustments and the Controller's Citywide Development Fee and Development Impact Requirements Report described in Section 409(a). MOHCD ~~*is authorized to*~~ *shall* develop an appropriate methodology for calculating and indexing the fee, in consultation with the Technical Advisory Committee consistent with the procedures set forth in Section 415.10, based on adjustments in the cost of constructing housing~~*based on adjustments in the cost of constructing housing and the Maximum Purchase Price for the equivalent unit size*~~. The method of indexing shall be published in the Procedures Manual ~~and shall be provided to the Board of Supervisors when it is updated~~.

(4) *Specific Geographic Areas.* For any housing development that is located in an area with a specific affordable housing requirement set forth in a Special Use District, or in any other section of the Code such as Section 419, the higher affordable housing requirement shall apply.

(5) In the event the project sponsor does not procure a building permit or site permit for construction of the principal project within ~~two years (24~~30 *months*~~)~~ *of the project's approval, the development project shall comply with the inclusionary affordable housing requirements applicable thereafter at the time when the project sponsor does proceed with pursuing a building permit. Such time period shall be extended in the event of any litigation seeking to invalidate the City's approval of such project, for the duration of the litigation.*

(6) The fee shall be imposed on any additional units or square footage authorized and developed under California Government Code Sections 65915 et seq. This subsection 415.5(b)(6) shall not apply to development projects that have submitted a complete Environmental Evaluation application on or before January 1, 2016.

(7) If the principal project has resulted in demolition, conversion, or removal of affordable housing units that are subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate-, low- or very low-income, or housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power, the Commission or the Department shall require that the project sponsor pay the Inclusionary Affordable Housing Fee equivalent for the number of affordable units removed, in addition to compliance with the inclusionary requirements set forth in this Section.

(c) **Notice to Development Fee Collection Unit of Amount Owed.** Prior to issuance of the first construction document for a development project subject to Section 415.5, ~~MOH~~

the Planning Department shall notify the Development Fee Collection Unit at DBI electronically or in writing of its calculation of the amount of the fee owed.

(d) **Lien Proceedings.** If, for any reason, the Affordable Housing Fee imposed pursuant to Section 415.5 remains unpaid following issuance of the first Certificate of Occupancy, the Development Fee Collection Unit at DBI shall institute lien proceedings to make the entire unpaid balance of the fee, plus interest and any deferral surcharge, a lien against all parcels used for the development project in accordance with Section 408 of this Article and Section 107A.13.15 of the San Francisco Building Code.

(e) If a housing project is located in an Area Plan with an additional or specific affordable housing requirements such as those set forth in a special use district or section 416, 417, and 419 or elsewhere in this code, the higher housing requirement shall apply. ~~more specific provisions shall apply in lieu of or in addition to those provided in this Program, as applicable.~~

(f) **Use of Fees.** All monies contributed pursuant to the Inclusionary Affordable Housing Program shall be deposited in the Citywide Affordable Housing Fund ("the Fund"), established in Administrative Code Section 10.100-49. The Mayor's Office of Housing and Community Development ("MOHCD") shall use the funds collected under this Section in the following manner:

(1) Except as provided in subsection (2) below, the funds collected under this Section shall be used to:

(A) increase the supply of housing affordable to qualifying households subject to the conditions of this Section; and

(B) provide assistance to low- and moderate-income homebuyers; and

(C) pay the expenses of MOHCD in connection with monitoring and administering compliance with the requirements of the Program. MOHCD is authorized to use

funds in an amount not to exceed $200,000 every 5 years to conduct follow-up studies under Section 415.9(e) and to update the affordable housing fee amounts as described above in Section 415.5(b). All other monitoring and administrative expenses shall be appropriated through the annual budget process or supplemental appropriation for MOHCD.

(2) **"Small Sites Funds."**

(A) Designation of Funds. MOHCD shall designate and separately account for 10% percent of all fees that it receives under Section 415.1 et seq. that are deposited into the Citywide Affordable Housing Fund, established in Administrative Code Section 10.100-49, excluding fees that are geographically targeted such as those referred to in Sections 415.5(b)(1) and 827(b)(1), to support acquisition and rehabilitation of Small Sites ("Small Sites Funds"). MOHCD shall continue to divert 10% ~~percent~~ of all fees for this purpose until the Small Sites Funds reach a total of $15 million at which point, MOHCD will stop designating funds for this purpose. At such time as designated Small Sites Funds are expended and dip below $15 million, MOHCD shall start designating funds again for this purpose, such that at no time the Small Sites Funds shall exceed $15 million. When the total amount of fees paid to the City under Section 415.1 et seq. totals less than $10 million over the preceding 12 month period, MOHCD is authorized to temporarily divert funds from the Small Sites Fund for other purposes. MOHCD must keep track of the diverted funds, however, such that when the amount of fees paid to the City under Section 415.1 et seq. meets or exceeds $10 million over the preceding 12 month period, MOHCD shall commit all of the previously diverted funds and 10% ~~percent~~ of any new funds, subject to the cap above, to the Small Sites Fund.

(B) **Use of Small Sites Funds.** The funds shall be used exclusively to acquire or rehabilitate "Small Sites" defined as properties consisting of 2-25 units. Units supported by monies from the fund shall be designated as housing affordable to qualified

households ~~as set forth in Section 415.2~~ for no less than 55 years. Properties supported by the Small Sites Funds must be:

(i) rental properties that will be maintained as rental properties;

(ii) vacant properties that were formerly rental properties as long as those properties have been vacant for a minimum of two years prior to the effective date of this legislation;

(iii) properties that have been the subject of foreclosure; or

(iv) a Limited Equity Housing Cooperative as defined in Subdivision Code Sections 1399.1 et seq. or a property owned or leased by a non-profit entity modeled as a Community Land Trust.

(C) Initial Funds. If, within 18 months from April 23, 2009, MOHCD dedicates an initial one-time contribution of other eligible funds to be used initially as Small Sites Funds, MOHCD may use the equivalent amount of Small Sites Funds received from fees for other purposes permitted by the Citywide Affordable Housing Fund until the amount of the initial one-time contribution is reached.

(D) Annual Report. At the end of each fiscal year, MOHCD shall issue a report to the Board of Supervisors regarding the amount of Small Sites Funds received from fees under this legislation, and a report of how those funds were used.

(E) Intent. In establishing guidelines for Small Sites Funds, the Board of Supervisors does not intend to preclude MOHCD from expending other eligible sources of funding on Small Sites as described in this Section, or from allocating or expending more than $15 million of other eligible funds on Small Sites.

(3) For all projects funded by the Citywide Affordable Housing Fund, MOHCD requires the project sponsor or its successor in interest to give preference as provided in Administrative Code Chapter 47.

(g) **Alternatives to Payment of Affordable Housing Fee**.

(1) **Eligibility**: A project sponsor must pay the Affordable Housing Fee unless it qualifies for and chooses to meet the requirements of the Program though an Alternative provided in this Subsection. The project sponsor may choose one of the following Alternatives:

(A) **Alternative #1: On-Site Units.** Project sponsors may elect to construct units affordable to qualifying households on-site of the principal project pursuant to the requirements of Section 415.6.

(B) **Alternative #2: Off-Site Units.** Project sponsors may elect to construct units affordable to qualifying households at an alternative site within the City and County of San Francisco pursuant to the requirements of Section 415.7.

(C) **Alternative #3**: **Small Sites.** Qualifying project sponsors may elect to fund buildings as set forth in Section 415.7-1.

(D) **Alternative #4: Combination**. Project sponsors may elect any combination of payment of the Affordable Housing Fee as provided in Section 415.5, construction of on-site units as provided in Section 415.6, or construction of off-site units as provided in Section 415.7, provided that the project applicant constructs or pays the fee at the appropriate percentage or fee level required for that option. Development Projects that have submitted a complete Environmental Evaluation application after January 1, 2016 that are providing on-site units under Section 415.6 and that qualify for and receive additional density under California Government Code Section 65915 et seq. shall use Alternative #4 to pay the Affordable Housing Fee on any additional units or square footage authorized under Section 65915.

(2) **Qualifications**: If a project sponsor wishes to comply with the Program through one of the Alternatives described in subsection (g)(1) rather than pay the Affordable

Housing Fee, they must demonstrate that they qualify for the Alternative to the satisfaction of the Department and MOHCD. A project sponsor may qualify for an Alternative by the following methods:

(i) Method #1 - Ownership Units. All affordable units provided under this Program shall be sold as ownership units and will remain ownership units for the life of the project. Project sponsors must submit the 'Affidavit of Compliance with the Inclusionary Affordable Housing Program' to the Planning Department prior to project approval by the Department or the Commission; or

(ii) Method #2 - Government Financial Contribution. Submit to the Department a contract demonstrating 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 form of assistance specified in California Government Code Sections 65915 et seq. and it submits an Affidavit of such to the Department. All such contracts entered into with the City and County of San Francisco must be reviewed and approved by ~~the Mayor's Office Housing~~ MOHCD and the City Attorney's Office. All contracts that involve 100% affordable housing projects in the residential portion may be executed by the Mayor or the Director of ~~the Mayor's Office of Housing~~ MOHCD. Any contract that involves less than 100% affordable housing in the residential portion, may be executed by either the Mayor, the Director of ~~the Mayor's Office of Housing~~ MOHCD or, after review and comment by ~~the Mayor's Office of Housing~~ MOHCD, the Planning Director. A Development Agreement under California Government Code Sections 65864 et seq. and Chapter 56 of the ~~San Francisco~~ Administrative Code entered into between a project sponsor and the City and County of San Francisco may, but does not necessarily, qualify as such a contract.

(3) The Planning Commission or the Department may not require a project sponsor to select a specific Alternative. If a project sponsor elects to meet the Program requirements through one of the Alternatives described in subsection (g)(1), they must choose it and demonstrate that they qualify prior to any project approvals from the Planning Commission or Department. The Alternative will be a condition of project approval and recorded against the property in an NSR. Notwithstanding the foregoing, if a project sponsor qualifies for an Alternative described in subsection (g)(1) and elects to construct the affordable units on- or off-site, ~~they~~ the project sponsor must submit the 'Affidavit of Compliance with the Inclusionary Housing Program' based on the fact that the units will be sold as ownership units. A project sponsor who has elected to construct affordable ownership units on- or off-site may only elect to pay the Affordable Housing Fee up to the issuance of the first construction document if the project sponsor submits a new Affidavit establishing that the units will not be sold as ownership units. If a project sponsor fails to choose an Alternative before project approval by the Planning Commission or Planning Department or if a project becomes ineligible for an Alternative, the provisions of Section 415.5 shall apply.

(4) If at any time, the project sponsor eliminates the on-site or off-site affordable ownership-only units, then the project sponsor must immediately inform the Department and ~~MOH~~ MOHCD and pay the applicable Affordable Housing Fee plus interest and any applicable penalties provided for under this Code. If a project sponsor requests a modification to its conditions of approval for the sole purpose of complying with this Section, the Planning Commission shall be limited to considering issues related to Section 415et seq. in considering the request for modification

SEC. 415.6. ON-SITE AFFORDABLE HOUSING ALTERNATIVE.

~~*The requirements set forth in this Section 415.6 will be reviewed when the City completes an Economic Feasibility Study.*~~ If a project sponsor is eligible and elects to provide on-site units pursuant to Section 415.5(g), the development project shall meet the following requirements:

(a) Number of Units. The number of units constructed on-site shall be as follows:

(1) *For housing development projects consisting of 10 dwelling units or more, but less than 25 dwelling units,* ~~*T*~~the number of *affordable* units constructed on-site shall generally be 12% of all units constructed on the project site ~~*for housing development projects consisting of 10 dwelling units or more, but less than 25 dwelling units*~~. The affordable units shall *all* be affordable to low~~ - and lower -~~ income households. *Owned Units shall be affordable to households earning* ~~80%~~up *to 100% of Area Median Income, with an* ~~average~~ *affordable sales price set at* ~~90~~80*% of Area Median Income or less. Rental Units shall be affordable to households earning* ~~40%~~up *to* ~~80~~65*% of Area Median Income, with an average affordable rent set at* ~~60~~55*% of Area Median Income or less.* ~~*The number of units constructed on-site shall generally be 25% of all units constructed on the project site for housing development projects consisting of 25 dwelling units or more, with a minimum of 15% of the units affordable to low-income households and 10% of the units affordable to low- or moderate/middle-income households.*~~

(2) For any housing development project consisting of 25 or more Owned Units, the number of affordable units constructed on-site shall generally be 20% of all units constructed on the project site. A minimum of 10% of the units shall be affordable to low-income households, 5% of the units shall affordable to moderate-income households, and 5% of the units shall be affordable to middle-income households. Owned Units for low-income households shall have an affordable purchase price set at 80% of Area Median Income or less, with households earning up to 100% of Area Median Income eligible to apply for low-income units. Owned Units for moderate-income households shall have an affordable purchase price set at 105% of Area Median Income or less, with households earning from

95% to 120% of Area Median Income eligible to apply for moderate-income units. Owned Units for middle-income households shall have an affordable purchase price set at 130% of Area Median Income or less, with households earning from 120% to 150% of Area Median Income eligible to apply for middle-income units. For any affordable units with purchase prices set at 100% of Area Median Income or above, studio units shall not be allowed. MOHCD may reduce Area Median Income pricing and the minimum income required for eligibility in each ownership category.

(3) For any Rental Housing Project consisting of 25 or more Rental Units, the number of affordable units constructed on-site shall generally be 18% of all units constructed on the project site, with a minimum of 10% of the units affordable to low-income households, 4% of the units affordable to moderate-income households, and 4% of the units affordable to middle-income households. Rental Units for low-income households shall have an affordable rent set at 55% of Area Median Income or less, with households earning up to 65% of Area Median Income eligible to apply for low-income units. Rental Units for moderate-income households shall have an affordable rent set at 80% of Area Median Income or less, with households earning from 65% to 90% of Area Median Income eligible to apply for moderate-income units. Rental Units for middle-income households shall have an affordable rent set at 110% of Area Median Income or less, with households earning from 90% to 130% of Area Median Income eligible to apply for middle-income units. For any affordable units with rental rates set at 100% of Area Median Income or above, studio units shall not be allowed. MOHCD may reduce Area Median Income pricing and the minimum income required for eligibility in each rental category.

(4) Notwithstanding the foregoing, Area Median Income limits for Rental Units and Owned Units, the maximum affordable rents or sales price shall be no higher than 20% below median rents or sales prices for the neighborhood within which the project is located,

which shall be defined in accordance with the Planning Department's Neighborhood Groups Map. MOHCD shall adjust the allowable rents and sales prices, and the eligible households for such units, accordingly, and such potential readjustment shall be a condition of approval upon project entitlement. The City shall review the updated data on neighborhood rents and sales prices on an annual basis.

(5) Starting on January 1, 2018, and no later than January 1 of each year thereafter, MOHCD shall increase the percentage of units required on-site for projects consisting of 10 – 24 units, as set forth in Section 415.6(a)(1), by increments of 0.5% each year, until such requirement is 15%. For all development projects with 25 or more Owned or Rental Units, the required on-site affordable ownership housing to satisfy this section 415.6 shall increase by 1.0% annually for two consecutive years starting January 1, 2018. The increase shall be apportioned to units affordable to low-income households, as defined above in Subsection 415.6(a)(3). Starting January 1, 2020, the increase to on-site rental and ownership developments with 25 or more units shall increase by 0.5% annually, with such increases allocated equally for rental and ownership units to moderate and middle income households, as defined above in Subsection 415.6(a)(3). The total on-site inclusionary affordable housing requirement shall not exceed 26% for development projects consisting of Owned Units or 24% for development projects consisting of Rental Units, and the increases shall cease at such time as these limits are reached. MOHCD shall provide the Planning Department, DBI, and the Controller with information on the adjustment to the on-site percentage so that it can be included in the Planning Department's and DBI's website notice of the fee adjustments and the Controller's Citywide Development Fee and Development Impact Requirements Report described in Section 409(a).

~~(2) For any housing development project consisting of 25 or more Owned Units, the number of affordable units constructed on-site shall be 27% of all units constructed on the~~

~~project site, with a minimum of 15% of the units affordable to low-or lower-income households and 12% of the units affordable to moderate/middle-income households. Owned Units for low- and lower-income households shall be affordable to a range of households from 80% to 100% of Area Median Income, with an average affordable sales price set at 90% of Area Median Income or less. Owned Units for middle/moderate income households shall be affordable to a range of households from 100% to 140% of Area Median Income, with an average affordable sales price set at 120% of Area Median Income or less; provided that a middle/moderate income unit shall have a maximum sales price set at 100% of Area Median Income for a single income household. MOHCD may reduce the average Area Median Income upon request by the project sponsor.~~

~~(3) For any Rental Housing Project consisting of 25 or more Rental Units, the number of affordable units constructed on-site shall generally be 24% of all units constructed on the project site, with a minimum of 15% of the units affordable to low- or lower-income households and 9% of the units affordable to moderate/middle-income households. Rental Units for low- and lower-income households shall be affordable to a range of households earning from 40% to 80% of Area Median Income, with an average affordable rent set at 60% of Area Median Income or less. Rental Units for middle/moderate income households shall be affordable to a range of households earning from 80% to 120% of Area Median Income, with an average affordable rent set at 100% of Area Median Income or less; provided that a middle/moderate income unit shall have a maximum rent set at 100% of Area Median Income for a single income household. MOHCD may reduce the average Area Median Income upon request by the project sponsor. MOHCD shall set forth in the Procedures Manual the administration of rental units within this range.~~

~~(4) A minimum of 40% of the on-site affordable units shall consist of two bedroom units and a minimum of 20% of the on-site affordable units shall consist of three~~

~~bedrooms or larger. Units shall have minimum floor areas that conform to the standards developed by the California Tax Credit Allocation Committee (CTCAC) for affordable units. The total residential floor area devoted to the affordable units shall not be less than the applicable percentage applied to the total residential floor area of the principal project, provided that a 10% variation in floor area is permitted.~~

~~(5) In the event one or more of the Rental Units in the principal Rental Housing Project become ownership units, each converted Rental Unit shall reimburse the City the proportional difference between the amount of the then-current inclusionary affordable housing requirement for Rental Units and Owned Units. If a Rental Housing Project is converted to an ownership housing project in its entirety, an additional 3% of the units shall be designated as affordable to qualifying households, apportioned between the required number of low- and lower-income and moderate/middle-income on-site units in compliance with the requirements currently in effect at the time of conversion.~~

(6) The Department shall require as a condition of Department approval of a project's building permit, or as a condition of approval of a Conditional Use Authorization or Planned Unit Development or as a condition of Department approval of a live/work project, that 12%, ~~24% or 27% *25%,*~~ *18%, or 20%*, as applicable, or such current percentage that has been adjusted annually by MOHCD, of all units constructed on the project site shall be affordable to qualifying households so that a project sponsor must construct .12, ~~.24 or .27 *or .25*~~ .18, or .20 times, or such current number as adjusted annually by MOHCD, as applicable, the total number of units produced in the principal project. If the total number of units is not a whole number, the project sponsor shall round up to the nearest whole number for any portion of .5 or above.

(7) In the event one or more of the Rental Units in the principal Rental Housing Project become ownership units, for each converted Rental Unit, or for the principal Rental

Housing Project in its entirety, as applicable, the project owner shall either (A) reimburse the City the proportional amount of the inclusionary affordable housing fee, which would be equivalent to the current inclusionary affordable fee requirement for Owned Units, or (B) provide additional on-site or off-site affordable units equivalent to the current inclusionary requirements for Owned Units, apportioned among the required number of units at various income levels in compliance with the requirements in effect at the time of conversion.

(8) **Specific Geographic Areas.** For any housing development that is located in an area with a specific affordable housing requirement set forth in a Special Use District or in any other section of the Code such as Section 419, the higher housing requirement shall apply. *The Planning Department, in consultation with the Controller, shall undertake a study of areas where an Area Plan, Special Use District, or other re-zoning* is being considered for adoption or *has been adopted after January 1, 2015, to determine whether a higher on-site inclusionary affordable housing requirement is feasible on sites that have received a 20% or greater increase in developable residential gross floor area or a 35% or greater increase in residential density over prior zoning, and shall submit such information to the Planning Commission and Board of Supervisors*.

(~~8~~9) If the principal project has resulted in demolition, conversion, or removal of affordable housing units that are subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate-, low- or very-low-income, or housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power, the Commission or the Department shall require that the project sponsor replace the number of affordable units removed with units of a comparable number of bedrooms and sales prices or rents, in addition to compliance with the requirements set forth in this Section. ~~renting or selling to households at income levels and/or for a rental rate or sales price below corresponding income thresholds for units affordable to low income households, the Commission or the Department shall require that the project~~

~~sponsor replace the number of affordable units removed with units of a comparable number of bedrooms in addition to compliance with the inclusionary requirements set forth in this Section 415.6~~ ~~*or provide that 25% of all units constructed as part of the new project shall be affordable to low income or moderate/middle income households, whichever is greater.*~~

~~(9) **Annual indexing.** The required on-site affordable housing to satisfy this section 415.6 shall increase by 0.75% annually for all development projects with 10-24 units of housing, beginning on January 1, 2018.~~

(10) Any development project that constructs on-site affordable housing units as set forth in this Section 415.6 shall diligently pursue completion of such units. In the event the project sponsor does not procure a building permit or site permit for construction of the principal project within ~~two years (24~~ 30 *months*~~)~~ *of the project's approval, the development project shall comply with the inclusionary affordable housing requirements applicable thereafter at the time when the project sponsor procures a building permit. Such deadline shall be extended in the event of any litigation seeking to invalidate the City's approval of such project, for the duration of the litigation.*

(b) Any On-site units provided through this Section 415.6 may be used to qualify for a density bonus under California Government Code Section 65915, any ordinance implementing Government Code Section 65915, or one of the Affordable Housing Bonus Programs currently proposed in an ordinance in Board of Supervisors File No. 150969 or its equivalent if such ordinance is adopted. An applicant seeking a density bonus under State Law shall provide reasonable documentation to establish eligibility for a requested density bonus, incentive or concession, and waiver or reduction of development standards, as provided for under State Law and as consistent with the process and procedures detailed in a locally adopted ordinance implementing the State Law.

(c) Beginning in January 2018, the Planning Department shall prepare an annual report to the Planning Commission about the number of density bonus projects under

California Government Code Section 65915, the number of density bonus units, and the types of concessions and incentives and waivers provided to each density bonus project.

(d) Unless otherwise specified in this Section 415.1 et seq., in the event the project sponsor is eligible for and elects to receive additional density under California Government Code Section 65915, the Sponsor shall pay the Affordable Housing Fee on any additional units or square footage authorized under that section in accordance with the provisions in Section 415.5(g)(1)(D).

(~~b~~e) **Timing of Construction.** On-site affordable housing required by this Section 415.6 shall be constructed, completed, ready for occupancy, and marketed no later than the market rate units in the principal project.

(~~c~~f) **Type of Housing.**

(1) Equivalency of Units. All on-site units constructed under this Section 415.6 shall be provided as ownership units unless the project sponsor meets the eligibility requirement of Section 415.5(g). ~~*All on-site units must be affordable to low income households.*~~ In general, affordable units constructed under this Section 415.6 shall be comparable in number of bedrooms, exterior appearance and overall quality of construction to market rate units in the principal project. A Notice of Special Restrictions shall be recorded prior to issuance of the first construction document and shall specify the number, location and sizes for all affordable units required under this subsection (~~c~~f). The affordable units shall be evenly distributed throughout the building. For buildings over 120 feet in height, as measured under the requirements set forth in the Planning Code, the affordable units may be distributed throughout the lower 2/3 of the building, as measured by the number of floors. The interior features in affordable units should be generally the same as those of the market rate units in the principal project, but need not be the same make, model or type of such item as long as they are of good and new quality and are consistent with then-current standards for new

housing. The square footage of affordable units does not need to be the same as or equivalent to that in market rate units in the principal project, so long as it is consistent with then-current standards for new housing. ~~The affordable units are not required to be the same size as the market rate units, and may be 90% of the average size of the specific unit type. For buildings over 120 feet in height, as measured under the requirements set forth in the Planning Code, the average size of the unit type may be calculated for the lower 2/3 of the building, as measured by the number of floors.~~ Where applicable, parking shall be offered to the affordable units subject to the terms and conditions of the Department's policy on unbundled parking for affordable housing units as specified in the Procedures Manual and amended from time to time. ~~*On-site affordable units shall be ownership units unless the project applicant meets the eligibility requirement of Section 415.5(9).*~~

(2) Minimum Size of Affordable Units. The affordable units are not required to be the same size as the market rate units, and may be 90% of the average size of the specific unit type. For buildings over 120 feet in height, as measured under the requirements set forth in the Planning Code, the average size of the unit type may be calculated for the lower 2/3 of the building, as measured by the number of floors. For affordable dwelling units, individual unit square footage shall not be less than the following for each unit type:

Studios: 350 square feet

1-Bedrooms: 550 square feet

2-Bedrooms: 800 square feet

3-Bedrooms: 1,000 square feet

4-Bedrooms: 1,250 square feet

Units priced to be affordable for households earning 100% of Area Median Income or above shall not include studios. The total residential floor area devoted to the

affordable units shall not be less than the applicable percentage applied to the total residential floor area of the principal project, provided that a 10% variation in floor area is permitted.

~~(2) Density Bonus Projects. An applicant seeking a density bonus under the provisions of State Law shall provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, and waivers or reductions of development standards. The Planning Department shall provide information about the value of the density bonus, concessions and incentives for each density bonus project and include it in the Department's case report or decision on the application. In addition, beginning in January 2018, the Planning Department shall prepare an annual report to the Planning Commission about the number of density bonus projects, density bonus units and the kinds of density bonuses, concessions and incentives provided to each density bonus project, which should be presented at the same time as the Housing Balance Report.~~

~~(d)~~(g) **Marketing the Units**. The Mayor's Office of Housing and Community Development ("MOHCD") shall be responsible for overseeing and monitoring the marketing of affordable units under this Section 415.6. In general, the marketing requirements and procedures shall be contained in the Procedures Manual as amended from time to time and shall apply to the affordable units in the project. MOHCD may develop occupancy standards for units of different bedroom sizes in the Procedures Manual in order to promote an efficient allocation of affordable units. MOHCD may require in the Procedures Manual that prospective purchasers complete homebuyer education training or fulfill other requirements. MOHCD shall develop a list of minimum qualifications for marketing firms that market affordable units under Section 415.6 ~~415.5~~ et seq., referred to in the Procedures Manual as Below Market Rate (BMR units). No developer marketing units under the Program shall be able to market affordable units except through a firm meeting all of the minimum qualifications. The Notice of Special Restrictions or conditions of approval shall specify that the marketing requirements

and procedures contained in the Procedures Manual as amended from time to time, shall apply to the affordable units in the project.

(1) **Lottery**. At the initial offering of affordable units in a housing project and when ownership units become available for re-sale in any housing project subject to this Program after the initial offering, MOHCD must require the use of a public lottery approved by MOHCD to select purchasers or tenants.

(2) **Preferences**. MOHCD shall create a lottery system that gives preference according to the provisions of Administrative Code Chapter 47. MOHCD shall propose policies and procedures for implementing these preferences to the Planning Commission for inclusion as an addendum to ~~in~~ the Procedures Manual. Otherwise, it is the policy of the City to treat all households equally in allocating affordable units under this Program.

~~(e)~~ (h) Individual affordable units constructed under Section 415.6 as part of an on-site project shall not have received development subsidies from any Federal, State or local program established for the purpose of providing affordable housing, and shall not be counted to satisfy any affordable housing requirement. Other units in the same on-site project may have received such subsidies. In addition, subsidies may be used, only with the express written permission by MOHCD, to deepen the affordability of an affordable unit beyond the level of affordability required by this Program.

~~(f)~~ (i) Notwithstanding the provisions of Section ~~415.6(e)~~ 415.6(g) above, a project may use California Debt Limit Allocation Committee (CDLAC) tax-exempt bond financing and 4% tax credits under the Tax Credit Allocation Committee (TCAC) to help fund its obligations under Section 415.1 et seq.~~this ordinance~~ as long as the project provides 20% ~~percent~~ of the units as affordable to households at 50% ~~percent~~ of Area Median Income for on-site housing or 10% of the units as affordable to households at 50% of Area Median Income, and 30% of

the units as affordable to households at 60% of Area Median Income for on-site housing. The income table to be used for such projects when the units are priced at 50% or 60% ~~percent~~ of Area Median Income is the income table used by MOHCD for the Inclusionary Affordable Housing Program, not that used by TCAC or CDLAC. Except as provided in this subsection *(i)*, all units provided under this Section must meet all of the requirements of Section 415.1 et seq.~~this ordinance~~ and the Procedures Manual for on-site housing.

~~(g)~~ (j) **Benefits.** If the project sponsor is eligible for and elects to satisfy the affordable housing requirements through the production of on-site affordable housing in this Section 415.6, the project sponsor shall be eligible to receive a refund for only that portion of the housing project which is affordable for the following fees: a Conditional Use authorization or other fee required by Section 352 of this Code, if applicable; an environmental review fee required by Administrative Code Section ~~31.46B~~ 31.22, if applicable; a building permit fee required by Section 355 of this Code for the portion of the housing project that is affordable. The project sponsor shall pay the building fee for the portion of the project that is market-rate. An application for a refund must be made within six months from the issuance of the first certificate of occupancy.

The Controller shall refund fees from any appropriated funds to the project sponsor on application by the project sponsor. The application must include a copy of the Certificate of Occupancy for all units affordable to a qualifying household required by the Inclusionary Housing Program. It is the policy of the Board of Supervisors to appropriate money for this purpose from the General Fund.

SEC. 415.7. OFF-SITE AFFORDABLE HOUSING ALTERNATIVE.

~~*The requirements set forth in this Section 415.7 will be reviewed when the City completes an Economic Feasibility Study.*~~ If the project sponsor is eligible and elects pursuant to Section

415.5(g) to provide off-site units to satisfy the requirements of Section 415.1 et seq., the project sponsor shall notify the Planning Department and the Mayor's Office of Housing and Community Development ("MOHCD") of its intent as early as possible. The Planning Department and MOHCD shall provide an evaluation of the project's compliance with this Section 415.7 prior to approval by the Planning Commission or Planning Department. The development project shall meet the following requirements:

(a) **Number of Units:** The number of units constructed off-site shall be as follows:

(1) For any housing development that is located in an area *or Special Use District* with a specific affordable housing requirement, ~~*set forth in Section 419 or elsewhere in this Code,*~~ the higher off-site housing requirement shall apply.

(2) For housing development projects consisting of 10 dwelling units or more but less than 25 units, the number of *affordable* units constructed off-site shall be 20%, so that a project applicant shall construct .20 times the total number of units produced in the principal project. If the total number of units is not a whole number, the project applicant shall round up to the nearest whole number for any portion of .5 or above. ~~The off-site affordable units shall be affordable to low – and lower – income households.~~ *Owned Units shall be affordable to households earning* ~~80%~~ up *to 100% of Area Median Income, with an* ~~average~~ *affordable sales price set at* ~~90~~ 80*% of Area Median Income or less. Rental Units shall be affordable to households earning* ~~40%~~ up *to* ~~80~~65*% of Area Median Income, with an average affordable rent set at* ~~60~~55*% of Area Median Income or less.*

(3) ~~For housing development projects consisting of 25 dwelling units or more, the number of units constructed off-site shall be 33%, with 20% of the units affordable to low-income households and 13% of the units affordable to low- or moderate/middle-income households, so that a project applicant shall construct .33 times the total number of units produced in the principal project. If the total number of units is not a whole number, the project~~

~~applicant shall round up to the nearest whole number for any portion of .5 or above.~~ *For any housing development project consisting of 25 or more Owned Units, the number of affordable units constructed off-site shall be 33% of all units constructed on the project site, with a minimum of* ~~15% of the units affordable to low- or lower-income households and~~ *18% of the units affordable to* ~~moderate/middle-income households. Owned Units for low- and lower-~~low-*income households*, ~~shall be~~ 8% of the units *affordable to* ~~a range of~~ moderate-income *households*, ~~from 80% to 100 of Area Median Income, with an average Area Median Income, with an average affordable sales price set at 90% of Area Median Income or less. Owned Units for~~ and 7% of the units affordable to *middle*~~/moderate~~ *income households*. ~~shall be affordable to a range of households from 100% to 140% of Area Median Income, with an average affordable sales price set at 120% of Area Median Income or less; provided that a middle/moderate income unit shall have a maximum sales price set at 100% of Area Median Income for a single income household. MOHCD may reduce the average Area Median Income upon request by the project sponsor.~~ Owned Units for low-income households shall have an affordable purchase price set at 80% of Area Median Income or less, with households earning up to 100% of Area Median Income eligible to apply for low-income units. Owned Units for moderate-income households shall have an affordable purchase price set at 105% of Area Median Income or less, with households earning from 95% to 120% of Area Median Income eligible to apply for moderate-income units. Owned Units for middle-income households shall have an affordable purchase price set at 130% of Area Median Income or less, with households earning from 120% to 150% of Area Median Income eligible to apply for middle-income units. For any affordable units with purchase prices set at 100% of Area Median Income or above, studio units shall not be allowed. MOHCD may reduce Area Median Income pricing and the minimum income required for eligibility in each rental category.

(4) For any Rental Housing Project consisting of 25 or more Rental Units, the number of affordable units constructed off-site shall generally be 30% of all units constructed on the project site, with a minimum of ~~15~~18*% of the units affordable to low-* ~~or lower-~~*income households,* ~~and 15% of the units affordable to moderate/middle-income households. Rental Units for low- and lower-income households shall be affordable to a range of households earning from 40% to 80% of Area Median Income, with an average affordable rent set at 60% of Area Median Income or less. Rental Units for middle/moderate income households shall be affordable to a range of households earning from 80% to 120% of Area Median Income, with an average affordable rent set at 100% of Area Median Income or less; provided that a middle/moderate income unit shall have a maximum rent set at 100% of Area Median Income for a single household. MOHCD may reduce the average Area Median Income upon request by the project sponsor.~~ 6% of the units affordable to moderate-income households, and 6% of the units affordable to middle-income households. Rental Units for low-income households shall have an affordable rent set at 55% of Area Median Income or less, with households earning up to 65% of Area Median Income eligible to apply for low-income units. Rental Units for moderate-income households shall have an affordable rent set at 80% of Area Median Income or less, with households earning from 65% to 90% of Area Median Income eligible to apply for moderate-income units. Rental Units for middle-income households shall have an affordable rent set at 110% of Area Median Income or less, with households earning from 90% to 130% of Area Median Income eligible to apply for middle-income units. For any affordable units with rental rates set at 100% of Area Median Income or above, studio units shall not be allowed. MOHCD may reduce Area Median Income pricing and the minimum income required for eligibility in each rental category. *MOHCD shall set forth in the Procedures Manual the administration of rental units within this range.*

(5) In the event one or more of the Rental Units in the principal Rental Housing Project become ownership units, for *each* ~~converted~~ *Rental Unit*~~,~~ *or* for *the principal Rental Housing Project in its entirety, as applicable*, the Project Sponsor *shall either (A) reimburse the City the proportional amount of the* ~~inclusionary affordable housing fee~~Inclusionary Affordable Housing Fee, *which would be equivalent to the current* ~~inclusionary affordable fee~~Inclusionary Affordable Housing Fee *requirement for Owned Units, or (B) provide additional* on-site or *off-site affordable units equivalent to the current inclusionary requirements for Owned Units*, apportioned among the required number of units at various income levels in compliance with the requirements in effect at the time of conversion.

~~(6) The Department shall require as a condition of Department approval of a project's building permit, or as a condition of approval of a Conditional Use Authorization or Planned Unit Development or as a condition of Department approval of a live/work project, that 20%, 30% or 33%, as applicable, of all units constructed on the project site shall be constructed off-site and affordable to qualifying households so that a project sponsor must construct .20, .30 or .33 times, as applicable, the total number of units produced in the principal project.~~

~~(7) A minimum of 40% of the off-site affordable units shall consist of two bedroom units and a minimum of 20% of the off-site affordable units shall consist of three bedrooms or larger. Units shall have minimum floor areas that conform to the standards developed by the California Tax Credit Allocation Committee (CTCAC) for affordable units. The total residential floor area devoted to the affordable units shall not be less than the applicable percentage applied to the total residential floor area of the principal project, provided that a 10% variation in floor area is permitted.~~

(~~8~~6) *Any development project that constructs off-site affordable housing units as set forth in this Section 415.6 shall diligently pursue completion of such units. In the event the project*

sponsor does not procure a building permit or site permit for construction of the principal project or the off-site affordable housing project within ~~two years (24~~30 *months*~~)~~ *of the project's approval, the development project shall comply with the inclusionary affordable housing requirements applicable thereafter at the time when the project sponsor procures a building permit. Such deadline shall be extended in the event of any litigation seeking to invalidate the City's approval of the principal project or off-site affordable housing project for the duration of the litigation.*

~~(9) Specific Geographic Areas.~~(7) For any housing development that is located in an area with a specific affordable housing requirement set forth in a Special Use District, or in any other section of the Code such as Section 419, the higher affordable housing requirement shall apply.

(8) If the principal project or the off-site project has resulted in demolition, conversion, or removal of affordable housing units that are subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate-, low- or very low-income, or housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power, the Commission or the Department shall require that the project sponsor replace the number of affordable units removed with units of a comparable number of bedrooms and sales prices or rents, in addition to compliance with the inclusionary requirements set forth in this Section.

*** * * ***

(e) **Marketing the Units:** MOHCD shall be responsible for overseeing and monitoring the marketing of affordable units under this Section 415.7. In general, the marketing requirements and procedures shall be contained in the Procedures Manual as amended from time to time and shall apply to the affordable units in the project. MOHCD may develop occupancy standards for units of different bedroom sizes in the Procedures Manual in order to promote an efficient allocation of affordable units. MOHCD may require in the

Procedures Manual that prospective purchasers complete homebuyer education training or fulfill other requirements. MOHCD shall develop a list of minimum qualifications for marketing firms that market affordable units under Section 415.1 *et seq.*, referred to the Procedures Manual as Below Market Rate (BMR units). No project sponsor marketing units under the Program shall be able to market BMR units except through a firm meeting all of the minimum qualifications. The Notice of Special Restrictions or conditions of approval shall specify that the marketing requirements and procedures contained in the Procedures Manual as amended from time to time, shall apply to the affordable units in the project.

* * * *

(f) Individual affordable units constructed as part of a larger off-site project under this Section 415.7 shall not receive development subsidies from any Federal, State or local program established for the purpose of providing affordable housing, and shall not be counted to satisfy any affordable housing requirement for the off-site development. Other units in the same off-site project may receive such subsidies. In addition, subsidies may be used, only with the express written permission by ~~MOH~~ MOHCD, to deepen the affordability of an affordable unit beyond the level of affordability required by this Program.

(g) Notwithstanding the provisions of Section 415.7(f) above, a project may use California Debt Limit Allocation Committee (CDLAC) tax-exempt bond financing and 4% credits under the Tax Credit Allocation Committee (TCAC) to help fund its obligations under this ordinance as long as the project provides 25% ~~percent~~ of the units as affordable at 50% ~~percent~~ of area median income for off-site housing. The income table to be used for such projects when the units are priced at 50% ~~percent~~ of area median income is the income table used by ~~MOH~~ MOHCD for the Inclusionary Housing Program, not that used by TCAC or CDLAC. Except as provided in this subsection, all units provided under this Section must meet all of the requirements of this ordinance and the Procedures Manual for off-site housing.

SEC. 415.10. ECONOMIC FEASIBILITY STUDY TO MAXIMIZE HOUSING AFFORDABILITY.

* * * *

(d) **Fee Schedule Analysis.** The City shall conduct an analysis to update the Inclusionary Affordable Housing Fee, to analyze MOHCD's true costs of constructing an affordable unit, including development and land acquisition costs. The Controller, with the support of consultants as necessary, and in consultation with the Inclusionary Housing Technical Advisory Committee, shall conduct a study to examine the City's costs of constructing an affordable unit and the amount of the Inclusionary Affordable Housing Fee by January 31, 2018. Following completion of this study, the Board of Supervisors will review the analyses and the proposed fee schedule; and may consider adopting legislation to revise the Inclusionary Affordable Housing fees.

(e) **Report to Board of Supervisors.** The Board of Supervisors may review the feasibility analyses, as well as the periodic updates to the City's Nexus Study evaluating the necessary affordable housing in order to mitigate the impacts of market rate housing. The Board of Supervisors, in its sole and absolute discretion, will review the feasibility analyses within three months of completion and will consider legislative amendments to the City's Inclusionary Housing in-lieu fees, on-site, off-site or other alternatives, and in so doing will seek consultation from the Planning Commission, adjusting levels of inclusionary or affordable housing obligations and income levels up to maximums as defined in Section 415.2, based on the feasibility analyses, with the objective of maximizing affordable Inclusionary Housing in market rate housing production, and with guidance from the City's Nexus Study. Any adjustment in income levels shall be adjusted commensurate with the percentage of units required so that the obligation for inclusionary housing is not reduced by any change in

income levels. The Board of Supervisors may also utilize the Nexus Study in considering legislative amendments to the Inclusionary Housing requirements. Updates to the City's Inclusionary Housing requirements shall address affordable housing fees, on-site affordable housing and off-site affordable housing, as well as the provision of affordable housing available to low-income households at or below 55% of Area Median Income for rental units and up to 80% of Area Median Income for ownership units, and moderate/middle-income households from 80% to 120% of Area Median Income.

SEC. 415.11. SEVERABILITY.

If any subsection, sentence, clause, phrase, or word of ~~this~~ *Section*s *415*~~,~~.1 et seq., *or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Section. The Board of Supervisors hereby declares that it would have passed* ~~this ordinance~~Sections 415.1 et seq. *and each and every subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Section*s 415.1 et seq. *or application thereof would be subsequently declared invalid or unconstitutional.*

Section 4. The Planning Code is hereby amended by adding Section 207.7 to read as follows:

SEC. 207.7. REQUIRED MINIMUM DWELLING UNIT MIX.

(a) **Purpose.** To ensure an adequate supply of family-sized units in new housing stock, new residential construction must include a minimum percentage of units of at least two and three bedrooms.

(b) **Applicability.**

(1) This Section 207.7 shall apply to all applications for building permits and/or Planning Commission entitlements that propose the creation of 10 or more Dwelling Units in all districts that allow residential uses, unless that project is located in an area or Special Use District with higher specific bedroom mix requirements, or is a HOME SF project subject to the requirements of Planning Code Section 206.3.

(2) This Section 207.7 shall not apply to buildings for which 100% of the residential uses are: Group Housing, Dwelling Units that are provided at below market rates pursuant to Section 406(b)(1) of this Code, Single Room Occupancy (SRO) Units, Student Housing (all as defined in Section 102 of this Code), or housing specifically and permanently designated for seniors or persons with physical disabilities.

(3) This Section 207.7 shall not apply to projects that filed a complete Environmental Evaluation Application on or prior to January 12, 2016.

(c) **Controls.** In all residential districts subject to this Section 207.7, the following criteria shall apply:

(1) No less than 25% of the total number of proposed dwelling units shall contain at least 2 bedrooms. Any fraction resulting from this calculation shall be rounded to the nearest whole number of dwelling units; and,

(2) No less than 10% of the total number of proposed dwelling units shall contain at least three bedrooms. Any fraction resulting from this calculation shall be rounded to the nearest whole number of dwelling units; and

(d) **Modifications.**

(1) These requirements may be waived or modified with Conditional Use Authorization. In addition to those conditions set forth in Section 303, the Planning Commission shall consider the following criteria:

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

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

(2) These requirements may be waived in the case of projects subject to Section 329 through the procedures of that Section.

Section 45. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

Section ~~5~~6. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

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

By: _____
KATE H. STACY
Deputy City Attorney

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MAP 1.
San Francisco Neighborhood Boundaries and Census Tracts

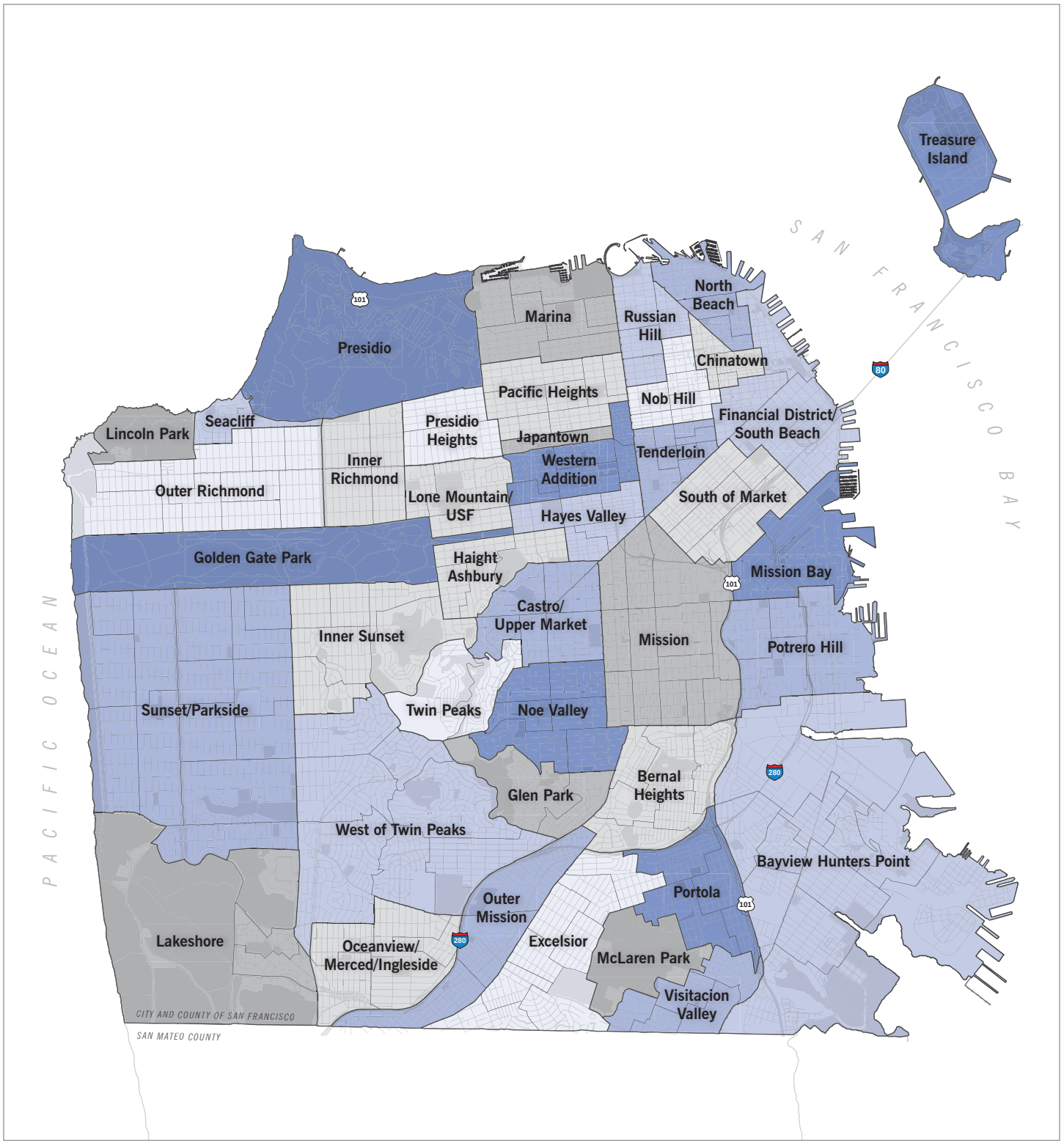

Exhibit D

From: Morales, James (CII)
Sent: Wednesday, June 07, 2017 10:02 AM
To: Rodgers, AnMarie (CPC)
Cc: Bintliff, Jacob (CPC); Dennis-Phillips, Sarah (ECN); Stacy, Kate (CAT); Sesay, Nadia (CII); Hart, Shane (CII); Foxworthy, Aaron (CII)
Subject: RE: Inclusionary Housing Ordinance

AnMarie:

The Office of Community Investment and Infrastructure (OCII) requests that the Planning Commission include the attached amendment to Section 249.28 of the Planning Code in the proposed Inclusionary Housing Ordinance that the Commission will consider at its meeting of June 15, 2017. The purpose of the amendment is to ensure that the application of the new requirements under Section 415 of the Planning Code are consistent with the Transbay Redevelopment Plan and the state law governing redevelopment of the Transbay area. The existing Section 249.28 of the Planning Code applies to portions of the Transbay Redevelopment Project Area (Zone 2) and incorporates, among other things, Section 415 with some exceptions. The proposed OCII amendment clarifies those exceptions in light of the proposed revisions to Section 415. Please let me know if you need any additional information.

James B. Morales
General Counsel & Deputy Director
Office of Community Investment and Infrastructure
(Successor Agency to San Francisco Redevelopment Agency)
1 South Van Ness Ave., 5th Floor
San Francisco, CA 94103
415.749.2454
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Exhibit D

Section ____. The Planning Code is hereby amended by revising Section 249.28, to read as follows:

(a) **Purpose.** There shall be a Transbay C-3 Special Use District, which is wholly within the Transbay Redevelopment Project Area, comprising all of the parcels, primarily privately-owned and zoned C-3, within the Redevelopment Area but outside of the Transbay Downtown Residential District (TB-DTR), and whose boundaries are designated on Sectional Map No. ISU of the Zoning Map of the City and County of San Francisco. This district is generally bounded by Mission, Second, Clementina, and Beale Streets and whose primary features include the Transbay Terminal facility and its associated ramps, and a portion of the New Montgomery/Second Street Conservation District. A vision and guidelines for this area as an integral component of the Transbay Redevelopment Area are laid out in the Transbay Redevelopment Plan and its companion documents, including the Design for the Development and the Development Controls and Design Guidelines for the Transbay Redevelopment Project. California Public Resources Code Section 5027.1 requires that 35 percent of all dwelling units developed during the life of the Transbay Redevelopment Plan in the Transbay Redevelopment Project Area shall be permanently affordable to low- and moderate-income households. Section 4.9.3 of the Transbay Redevelopment Plan requires that a minimum of 15 percent of all units constructed on a particular site shall be affordable to qualifying households.

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(6) **Housing Requirements for Residential and Live/Work Development Projects.** The requirements of Section 415 shall apply subject to the following exceptions:

(A) ~~A minimum of 15% of all~~The inclusionary affordable housing level shall be the higher amount determined under (i) Section 4.9.3 of the Transbay Redevelopment Plan, or (ii) Section 415.6 (a) of the Planning Code, as it may be amended from time to time; and the inclusionary units constructed on the site shall be affordable to, and occupied by, qualifying persons and families as defined by the Transbay Redevelopment Plan, specifically, Owned Units shall have a maximum affordable sales price affordable to households earning no more than 100% of Area Median Income, and Rental Units shall have a maximum affordable rent affordable to households earning no more than 60% of the Area Median Income;

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(B) All inclusionary units required by this Section shall be built on-site; and

(C) ~~Off-site construction or in-lieu fee~~The payment of the Affordable Housing Fee or the Off-Site Alternative ~~are~~ is not permitted to satisfy this requirement.