



# SAN FRANCISCO PLANNING DEPARTMENT

## Executive Summary

### Planning Code Text Amendment

HEARING DATE: JANUARY 11, 2018

EXPIRATION DATE: FEBRUARY 20, 2018

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CA 94103-2479

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<i>Project Name:</i>	<b>Inclusionary Affordable Housing Program Amendment</b>
<i>Case Number:</i>	<b>2017-014892PCA</b> [Board File No. 171193]
<i>Initiated by:</i>	Supervisor Peskin / Introduced November 20, 2017
<i>Staff Contact:</i>	Carly Grob, Current Planning carly.grob@sfgov.org, 415-575-9138
<i>Reviewed by:</i>	Kate Conner, Housing Implementation Specialist kate.conner@sfgov.org, 415-575-6914
<i>Recommendation:</i>	<b>Recommend Approval</b>

#### PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Inclusionary Affordable Housing Ordinance (Planning Code Section 415) to remove the requirement that on-site and off-site inclusionary units within a new development be ownership units rather than rental units.

#### The Way It Is Now:

Project sponsors may comply with the requirements of the Inclusionary Affordable Housing Program, set forth in Planning Code section 415 et. seq., by paying an impact fee, providing affordable units on-site, or providing affordable units off-site. On-site or off-site affordable units must be ownership units unless a developer can demonstrate that the development qualifies for an exemption from the Costa-Hawkins Rental Housing Act (CA Civil Code Section 1954.50 – “Costa Hawkins”). Generally, Costa Hawkins prohibits rent control on new residential units, unless the development has received density bonuses or other zoning modifications. The project sponsor would enter into a Costa Hawkins Agreement with the City, demonstrating that the project's on- or off-site units are not subject to the Costa Hawkins because the project is receiving a development bonus or direct financial contribution.

#### The Way It Would Be:

This Ordinance would amend Planning Code Section 415 to allow affordable units on-site and off-site rental units without the need to qualify for an exemption from Costa Hawkins.

#### BACKGROUND

In 1995, the Costa Hawkins Act was enacted to prohibit municipal rent control ordinances which did not allow landlords to raise rents to market level when tenants vacated a unit. Under the Costa Hawkins Act, municipalities could regulate the amount of rent increase while the tenant is occupying the unit, but the landlord would be able to set the initial rent for a new tenant when a unit is vacated.

The Palmer/Sixth Street Properties v. City of Los Angeles case found that a city's application of an affordable housing requirement is preempted by the provisions of the Costa Hawkins Act- meaning that instead of the Mayor's Office of Housing regulating the rent of an affordable unit, the landlord retains that right.

Currently, our Inclusionary Affordable Housing Program requires that any on-site affordable units be ownership-only as a result of the Palmer case, unless the project qualifies for an exception to the Costa Hawkins Act.

On September 29, 2017, Governor Jerry Brown signed Assembly Bill 1505 (AB-1505), which is also known as "The Palmer Fix." AB 1505 restores the City's ability to require on-site and off-site inclusionary affordable rental housing without qualifying for an exemption from Costa Hawkins. The bill specifically allows legislative bodies to adopt ordinances that require, as a condition of development, that the development include a certain percentage of affordable rental units, as long as the ordinances provide alternative means of compliance, such as payment of in-lieu fees or provision of on-site or off-site ownership units. AB 1505 became effective on January 1, 2018.

## **ISSUES AND CONSIDERATIONS**

### **Affordable Rental Housing**

The proposed Ordinance would allow the Department to implement the Palmer Fix by removing requirements that affordable units must be ownership, or must qualify for an exemption from Costa Hawkins. The exemption is memorialized in a Costa Hawkins Agreement which demonstrates that the project's on- or off-site units are not subject to the Costa Hawkins because the project is receiving an exception or modification resulting in additional density or a direct financial contribution. In some cases, these restrictions effectively prohibited code-complying projects from providing affordable rental units on-site or off-site, since they weren't receiving an exception or modification to allow more density. By removing these requirements, a greater number of projects would be eligible to comply with the Inclusionary Housing Program by providing on-site or off-site affordable rental units, which could lead to more affordable rental units in the MOHCD Inclusionary portfolio, and potentially more rental housing overall.

### **Process Improvements and Streamlining**

Currently, a project must demonstrate that it is receiving a density bonus or other zoning modification, and is eligible for an exemption from Costa Hawkins. In some cases, projects that are completely Code-compliant are unable to provide on-site affordable rental units because they are not seeking any exceptions or modifications that would result in a density bonus. These projects must either pay the Inclusionary Affordable Housing Fee, or they must revise their project to create the need for an exception or modification, resulting in additional hearings for the Commission and the Zoning Administrator.

If a project was able to demonstrate that it was eligible for a waiver from Costa Hawkins, Planning Staff would coordinate with the project sponsor and City Attorney's Office to draft, sign, and notarize the Costa Hawkins Agreement. This was often a time-consuming process, and had the potential to result in project delays if the Agreement wasn't completed in time for a required hearing. The proposed Ordinance would remove the Section of the Planning Code that required project sponsors to enter into a Costa Hawkins Agreement, which would ultimately save staff time and result in fewer delays.

Although the Agreements are written to address any future modifications to the project, they must also be updated if there are changes to the Inclusionary Housing Program Requirements which would apply to the project. Approved ownership projects that are seeking to switch tenure to rental projects must also demonstrate eligibility to enter into a Costa Hawkins Agreement.

### **Implementation**

This Ordinance would be a step in simplifying Inclusionary Housing processes for Current Planners. Approximately six weeks prior to any required hearing, the Current Planner assigned to the project must engage the Housing Implementation Specialist to coordinate the Costa Hawkins Agreement. The Housing Implementation Specialist provides a Costa Hawkins Agreement template to the Project Sponsor, who revises the Agreement to fit the project. The Sponsor submits the agreement to Planning Staff, who transmit the Agreement to the City Attorney. The City Attorney may provide comments to the Project Sponsor, and often works directly with them to address any errors or discrepancies. When the Agreement is finalized, the City Attorney and Project Sponsor sign and notarize the agreement, and submit it to Planning Staff. The Agreement is signed by the Planning Director and notarized following project approval, and recorded on the property.

### **General Plan Compliance**

One of the goals of the General Plan is to preserve and enhance the City's supply of affordable housing. Policy 4.4 of the Housing Element of the General Plan encourages sufficient and suitable rental housing opportunities, especially permanently affordable rental units. The proposed Ordinance will enhance the City's supply of permanently affordable rental housing by increasing the number of mixed-use/residential projects that are eligible to comply with the Inclusionary Affordable Housing Program by providing on-site affordable rental units. The Ordinance would also reduce the administrative processes related to the provision of affordable units in rental projects, which may make rental projects more attractive to project sponsors and ultimately may encourage the development of more rental housing.

## **RECOMMENDATION**

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

## **BASIS FOR RECOMMENDATION**

- The Ordinance would bring the Planning Code into compliance with California State Law (AB 1505);
- The Ordinance would allow the Department to require on-site or off-site affordable rental housing without requiring a project to be eligible to enter into a Costa Hawkins Agreement. This would allow Code-Compliant projects to provide on-site rental units without seeking any exceptions or bonuses;
- This Ordinance would reduce the amount of Staff time required to review and process rental housing projects, which ultimately facilitates a quicker approval and construction of much-needed housing in the City.

## **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.

## **ENVIRONMENTAL REVIEW**

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

## **PUBLIC COMMENT**

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

<b>RECOMMENDATION:</b>	<b>Approval</b>
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### **Attachments:**

- Exhibit A: Draft Planning Commission Resolution  
Exhibit B: Board of Supervisors File No. 171193



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## Planning Commission Draft Resolution

HEARING DATE JANUARY 11, 2018

*Project Name:*

**Inclusionary Affordable Housing Program Amendment**

*Case Number:*

**2017-014892PCA** [Board File No. 171193]

*Initiated by:*

Supervisor Peskin / Introduced November 20, 2017

*Staff Contact:*

Carly Grob, Current Planning

[carly.grob@sfgov.org](mailto:carly.grob@sfgov.org), 415-575-9138

*Reviewed by:*

Kate Conner, Housing Implementation Specialist

[kate.conner@sfgov.org](mailto:kate.conner@sfgov.org), 415-575-6914

### **RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND SECTION 415 OF THE PLANNING CODE TO REMOVE THE REQUIREMENT THAT ON-SITE AND OFF-SITE AFFORDABLE UNITS WITHIN A NEW DEVELOPMENT BE OWNERSHIP UNITS RATHER THAN RENTAL UNITS; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.**

WHEREAS, on November 20, 2017 Supervisor Peskin introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 171193, which would amend Section 415 of the Planning Code to remove the requirement that on-site and off-site Affordable Units within a new development be ownership units rather than rental units;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on January 11, 2018; and,

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

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

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

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

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

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

## FINDINGS

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

1. The proposed Ordinance will correct the Planning Code so that it is in line with the newly adopted California State Assembly Bill 1515 ("AB 1505" or "The Palmer Fix").
2. The Ordinance would allow the Department to require on-site or off-site affordable rental housing without requiring a project to be eligible to enter into a Costa Hawkins Agreement. This would allow Code-Compliant projects to provide on-site rental units without seeking any exceptions or bonuses.
3. The Ordinance would reduce the amount of staff time spent to review, track and execute Costa Hawkins Agreements, which incrementally reduces the amount of process required on a project-level basis. This is consistent with the Mayor's Executive Directive No. 17-02, which charged the Planning Department to enhance regulatory and development review functions in order to streamline the approval and construction of housing in the City.
4. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

## HOUSING ELEMENT

### OBJECTIVE 4

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

#### Policy 4.4

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

*The proposed Ordinance will enhance the City's supply of permanently affordable rental housing by increasing the number of mixed-use/residential projects that are eligible to comply with the Inclusionary Affordable Housing Program by providing on-site affordable rental units. The Ordinance would also reduce the administrative processes related to the provision of affordable units in rental projects, which may make rental projects more attractive to project sponsors and ultimately may encourage the development of more rental housing.*

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

opportunities for resident employment in and ownership of such businesses enhanced;

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

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

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

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

*The proposed Ordinance would enhance the City's supply of affordable housing by allowing project sponsors to provide on-site affordable rental units through the Inclusionary Affordable Housing Program. Project sponsors would no longer need to demonstrate that they qualify for an exemption from Costa Hawkins, which could result in a greater number of projects that are eligible to provide on-site affordable rental housing. The Ordinance would also result in the reduction of process for Planning Staff, which could have incremental impacts on the overall timeline for the project, and ultimately provide both the market-rate and affordable units more quickly. The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.*

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

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

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

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

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

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

7. That the landmarks and historic buildings be preserved;

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

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

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

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

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

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on January 11, 2018.

Jonas P. Ionin  
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: January 11, 2018

If any Designated Units will be rental units, the project sponsor must follow the procedures in Section [415.5](#)(g)(2). As provided in that subsection, the Planning Director or the Director of MOHCD, may execute such an agreement under the terms specified in Section [415.5](#)(g)(2). [Planning Code - Inclusionary Affordable Housing Program]

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

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
**Additions to Codes** are in *single-underlined 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.

(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. \_\_\_\_ and is incorporated herein by reference. The Board affirms this determination.

7

8                   Section 2. The Planning Code is hereby amended by revising Sections 415.3, 415.4,  
9                   415.5, 415.6, and 415.7, to read as follows:

### **10 SEC. 415.3. APPLICATION.**

11 \* \* \* \*

12                   (b) Any development project that has submitted a complete Environmental Evaluation  
13 application prior to January 12, 2016 shall comply with the Affordable Housing Fee  
14 requirements, the on-site affordable housing requirements or the off-site affordable housing  
15 requirements, and all other provisions of Section 415.1 *et seq.*, as applicable, in effect on  
16 January 12, 2016. For development projects that have submitted a complete Environmental  
17 Evaluation application on or after January 1, 2013, the requirements set forth in Planning  
18 Code Sections 415.5, 415.6, and 415.7 shall apply to certain development projects consisting  
19 of 25 dwelling units or more during a limited period of time as follows:

20 \* \* \* \*

25

(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 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 Section 415.3, if a development project is located in a UMU Zoning District or

1 in the South of Market Youth and Family Zoning District, and pays the Affordable Housing Fee  
2 or ~~is eligible and~~ elects to provide off-site affordable housing pursuant to Section 415.5(g), or  
3 elects to comply with a land dedication alternative, such development project shall comply  
4 with the fee, off-site or land dedication requirements applicable within such Zoning Districts,  
5 as they existed on January 12, 2016, plus the following additional amounts for the Affordable  
6 Housing Fee or for land dedication or off-site affordable units: (i) if the development project  
7 has submitted a complete Environmental Evaluation application prior to January 1, 2014, the  
8 Project Sponsor shall pay an additional fee, or provide additional land dedication or off-site  
9 affordable units, in an amount equivalent to 5% of the number of units constructed on-site; (ii)  
10 if the development project has submitted a complete Environmental Evaluation application  
11 prior to January 1, 2015, the Project Sponsor shall pay an additional fee, or provide additional  
12 land dedication or off-site affordable units, in an amount equivalent to 7.5% of the number of  
13 units constructed on-site; or (iii) if the development project has submitted a complete  
14 Environmental Evaluation application on or prior to January 12, 2016, the Project Sponsor  
15 shall pay an additional fee, or provide additional land dedication or off-site affordable units, in  
16 an amount equivalent to 10% of the number of units constructed on-site. Notwithstanding the  
17 foregoing, a development project shall not pay a fee or provide off-site units in a total amount  
18 greater than the equivalent of 30% of the number of units constructed on-site.

19 (G) Any development project consisting of 25 dwelling units or more that  
20 has submitted a complete Environmental Evaluation application on or prior to January 12,  
21 2016, and ~~is eligible and~~ elects to provide off-site affordable housing, may provide off-site  
22 affordable housing by acquiring an existing building to fulfill all or part of the requirements set  
23 forth in this Section 415.3 and in Section 415.7 with an equivalent amount of units as specified  
24 in this Section 415.3(b)(2), as reviewed and approved by the Mayor's Office of Housing and  
25 Community Development and consistent with the parameters of its Small Sites Acquisition

1 and Rehabilitation Program, in conformance with the income limits for the Small Sites  
2 Program.

3 \* \* \* \*

4

5 **SEC. 415.4. IMPOSITION OF REQUIREMENTS.**

6 \* \* \* \*

7 (c) **Payment of Affordable Housing Fee or Project Sponsor's *Eligibility for and***

8 **Selection of Alternative.** Prior to issuance of first construction document for a development  
9 project subject to the requirements of Section 415.1 *et seq.*, the sponsor of the development  
10 project shall pay the Affordable Housing Fee set forth in Section 415.5 or, *if eligible to meet the*  
11 *requirements through an Alternative,* shall select one of the options listed in Section 415.5(f).

12 \* \* \* \*

13

14 **SEC. 415.5. AFFORDABLE HOUSING FEE.**

15 \* \* \* \*

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

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

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

24

25

6 (D) Alternative #4: Combination. Project sponsors may elect any  
7 combination of payment of the Affordable Housing Fee as provided in Section 415.5,  
8 construction of on-site units as provided in Section 415.6, or construction of off-site units as  
9 provided in Section 415.7, provided that the project applicant constructs or pays the fee at the  
10 appropriate percentage or fee level required for that option. Development Projects that have  
11 submitted a complete Environmental Evaluation application after January 12, 2016 that are  
12 providing on-site units under Section 415.6 and that qualify for and receive additional density  
13 under California Government Code Section 65915 et seq. shall use Alternative #4 to pay the  
14 Affordable Housing Fee on any additional units or square footage authorized under Section  
15 65915.

(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 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 MOHCD. Any contract that involves less than 100% affordable housing in the residential portion, may be executed by either the Mayor, the Director of MOHCD or, after review and comment by MOHCD, the Planning Director. A Development Agreement under California Government Code Sections 65864 et seq. and Chapter 56 of the 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.

15                   ~~(3)(2)~~ The Planning Commission or the Department may not require a project  
16 sponsor to select a specific Alternative. If a project sponsor elects to meet the Program  
17 requirements through one of the Alternatives described in subsection(g)(1), they must choose  
18 it ~~and demonstrate that they qualify~~ 30 days prior to any project approvals from the Planning  
19 Commission or Department. The Alternative will be a condition of project approval and  
20 recorded against the property in an NSR. Any subsequent change by a project sponsor that  
21 results in the reduction in the number of on-site units shall require public notice for a hearing  
22 and approval from the Planning Commission. ~~Notwithstanding the foregoing, if a project sponsor~~  
23 ~~qualifies for an Alternative described in subsection (g)(1) and elects to construct the affordable units~~  
24 ~~on or off site, the project sponsor must submit the Affidavit of Compliance with the Inclusionary~~  
25 ~~Housing Program based on the fact that the units will be sold as ownership units. A project sponsor~~

1 ~~who has elected to construct affordable ownership units on- or off-site may only elect to pay the~~  
2 ~~Affordable Housing Fee up to the issuance of the first construction document if the project sponsor~~  
3 ~~submits a new Affidavit establishing that the units will not be sold as ownership units. If a project~~  
4 ~~sponsor fails to choose an Alternative before project approval by the Planning Commission or~~  
5 ~~Planning Department or if a project becomes ineligible for an Alternative, the provisions of Section~~  
6 ~~415.5 shall apply.~~

7           (4)(3) If at any time, the project sponsor eliminates the on-site or off-site  
8 affordable ~~ownership only~~ units, then the project sponsor must immediately inform the  
9 Department and MOHCD and pay the applicable Affordable Housing Fee plus interest and  
10 any applicable penalties provided for under this Code. If a project sponsor requests a  
11 modification to its conditions of approval for the sole purpose of complying with this Section,  
12 the Planning Commission shall be limited to considering issues related to Section 415 *et seq.*  
13 in considering the request for modification.

#### 14           **SEC. 415.6. ON-SITE AFFORDABLE HOUSING ALTERNATIVE.**

15           If a project sponsor ~~is eligible and~~ elects to provide on-site units pursuant to Section  
16 415.5(g), the development project shall meet the following requirements:

17           \* \* \* \*

18           (b) Any On-site units provided through this Section 415.6 may be used to qualify for a  
19 density bonus under California Government Code Section 65915, any ordinance  
20 implementing Government Code Section 65915, or one of the Affordable Housing Bonus  
21 Programs contained ~~in Planning Code Section 206 et seq in the ordinance in Board of Supervisors~~  
22 ~~File No. 150969.~~ An applicant seeking a density bonus under State Law shall provide  
23 reasonable documentation to establish eligibility for a requested density bonus, incentive or  
24 concession, and waiver or reduction of development standards, as provided for under State  
25

1 Law and as consistent with the process and procedures detailed in a locally adopted  
2 ordinance implementing the State Law.

3 \* \* \* \*

4 (f) Type of Housing.

5 (1) Equivalency of Units. *All on-site units constructed under this Section 415.6 shall*  
6 *be provided as ownership units unless the project sponsor meets the eligibility requirement of Section*  
7 *415.5(g).* In general, affordable units constructed under this Section 415.6 shall be comparable  
8 in number of bedrooms, exterior appearance and overall quality of construction to market rate  
9 units in the principal project. A Notice of Special Restrictions shall be recorded prior to  
10 issuance of the first construction document and shall specify the number, location and sizes  
11 for all affordable units required under this subsection (f). The affordable units shall be evenly  
12 distributed throughout the building. For buildings over 120 feet in height, as measured under  
13 the requirements set forth in the Planning Code, the affordable units may be distributed  
14 throughout the lower 2/3 of the building, as measured by the number of floors. The interior  
15 features in affordable units should be generally the same as those of the market rate units in  
16 the principal project, but need not be the same make, model or type of such item as long as  
17 they are of good and new quality and are consistent with then-current standards for new  
18 housing. Where applicable, parking shall be offered to the affordable units subject to the terms  
19 and conditions of the Department's policy on unbundled parking for affordable housing units  
20 as specified in the Procedures Manual and amended from time to time.

21 (2) Minimum Size of Affordable Units. The affordable units are not required to  
22 be the same size as the market rate units. For buildings over 120 feet in height, as measured  
23 under the requirements set forth in the Planning Code, the average size of the unit type may  
24 be calculated for the lower 2/3 of the building, as measured by the number of floors. All units  
25 shall be no smaller than the minimum unit sizes set forth by the California Tax Credit

1 Allocation Committee as of May 16, 2017, and no smaller than 300 square feet for studios.  
2 The total residential floor area devoted to the affordable units shall not be less than the  
3 applicable percentage applied to the total residential floor area of the principal project,  
4 provided that a 10% variation in floor area is permitted.

5 \* \* \* \*

6 (j) Benefits. If the project sponsor *is eligible for and* elects to satisfy the affordable  
7 housing requirements through the production of on-site affordable housing in this Section  
8 415.6 , the project sponsor shall be eligible to receive a refund for only that portion of the  
9 housing project which is affordable for the following fees: a Conditional Use authorization or  
10 other fee required by Section 352 of this Code, if applicable; an environmental review fee  
11 required by Administrative Code Section 31.22, if applicable; a building permit fee required by  
12 Section 355 of this Code for the portion of the housing project that is affordable. The project  
13 sponsor shall pay the building fee for the portion of the project that is market-rate. An  
14 application for a refund must be made within six months from the issuance of the first  
15 certificate of occupancy.

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

#### 21 SEC. 415.7. OFF-SITE AFFORDABLE HOUSING

22 If the project sponsor *is eligible and* elects pursuant to Section 415.5(g) to provide off-  
23 site units to satisfy the requirements of Section 415.1 *et seq.*, the project sponsor shall notify  
24 the Planning Department and the Mayor's Office of Housing and Community Development  
25 ("MOHCD") of its intent as early as possible. The Planning Department and MOHCD shall

1 provide an evaluation of the project's compliance with this Section 415.7 prior to approval by  
2 the Planning Commission or Planning Department. The development project shall meet the  
3 following requirements:

4 \* \* \* \*

5 (d) Type of Housing: *All off site units constructed under this Section 415.7 shall be provided*  
6 *as ownership housing for the life of the project unless the project applicant meets the eligibility*  
7 *requirement of Section 415.5(g).* Nothing in this Section shall limit a project sponsor from  
8 meeting the requirements of this Section through the construction of units in a limited equity or  
9 land trust form of ownership if such units otherwise meet all of the requirements for off-site  
10 housing. In general, affordable units constructed or otherwise provided under this Section  
11 shall be comparable in number of bedrooms, exterior appearance and overall quality of  
12 construction to market rate units in the principal project. The total square footage of the off-  
13 site affordable units constructed or otherwise provided under this Section shall be no less than  
14 the calculation of the total square footage of the on-site market-rate units in the principal  
15 project multiplied by the relevant on-site percentage requirement for the project specified in  
16 this Section. The Notice of Special Restrictions or conditions of approval shall include a  
17 specific number of units at specified unit sizes – including number of bedrooms and minimum  
18 square footage – for affordable units. The interior features in affordable units should generally  
19 be the same as those of the market rate units in the principal project but need not be the  
20 same make, model, or type of such item as long as they are of new and good quality and are  
21 consistent with then-current standards for new housing and so long as they are consistent  
22 with the "Quality Standards for Off-Site Affordable Housing Units" found in the Procedures  
23 Manual. Where applicable, parking shall be offered to the affordable units subject to the terms  
24 and conditions of the Department's policy on unbundled parking for affordable housing units  
25 as specified in the Procedures Manual and amended from time to time. If the residential units

1 in the principal project are live/work units which do not contain bedrooms or are other types of  
2 units which do not contain bedrooms separated from the living space, the off-site units shall  
3 be comparable in size according to the following equivalency calculation between live/work  
4 and units with bedrooms:

5 \* \* \* \*

6  
7       Section 3. The Planning Code is hereby amended by revising Section 124, to read as  
8 follows:

9       **Section 124. Basic Floor Area Ratio**

10      \* \* \* \* \*

11           (f) For buildings in C-3-G and C-3-S Districts, other than those designated as  
12 Significant or Contributory pursuant to Article 11 of this Code, additional square footage above  
13 that permitted by the base floor area ratio limits set forth above may be approved for  
14 construction of dwellings on the site of the building affordable for the Life of the Project, as  
15 defined in Section 401, to households whose incomes are within 150 percent of AMI, as  
16 defined in Section 401, for ownership units and up to 120% of AMI for rental units, in  
17 accordance with the conditional use procedures and criteria as provided in Section 303 of this  
18 Code. For buildings in the C-3-G District designated as Significant or Contributory pursuant to  
19 Article 11 of this Code, additional square footage above that permitted by the base floor area  
20 ratio limits set forth above up to the Gross Floor Area of the existing building may be  
21 approved, in accordance with the conditional use procedures and criteria as provided in  
22 Section 303 of this Code, where: (1) TDRs (as defined by Section 128(a)(5)) were transferred  
23 from the lot containing the Significant or Contributory building prior to the effective date of the  
24 amendment to Section 124(f) adding this paragraph when the floor area transferred was  
25 occupied by a non profit corporation or institution meeting the requirements for exclusion from

1 Gross Floor Area calculation; (2) the additional square footage includes only the amount  
2 necessary to accommodate dwelling units and/or group housing units that are affordable for  
3 the Life of the Project to households whose incomes are within 60 percent of AMI as defined  
4 herein together with any social, educational, and health service space accessory to such  
5 units; and (3) the proposed change in use to dwelling units and accessory space and any  
6 construction associated therewith, if it requires any alteration to the exterior or other  
7 character defining features of the Significant or Contributory Building, is undertaken pursuant  
8 to the duly approved Permit to Alter, pursuant to Section 1110, provided, however, that the  
9 procedures otherwise required for a Major Alteration as set forth in Sections 1111.4 and  
10 1111.5 and shall be deemed applicable to any such Permit to Alter.

20 \* \* \* \* \*

21 Section 4. Effective Date. This ordinance shall become effective 30 days after

22 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

23 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board

24 of Supervisors overrides the Mayor's veto of the ordinance.

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

7

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

10 By: AUDREY W. PEARSON  
11 Deputy City Attorney

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