



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Planning Code Text Amendment INFORMATIONAL HEARING DATE: DECEMBER 10, 2015

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*Project Name:* **Inclusionary Affordable Housing Program**  
*Case Number:* **2015-012722PCA** [Board File No. 150911]  
*Initiated by:* Mayor Edwin M Lee, Supervisors Mark Farrell and Katy Tang /  
Introduced September 15, 2015  
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*Recommendation:* *None- Informational Presentation*

### PURPOSES OF THE INFORMATIONAL HEARING AND CASE REPORT

The purpose of this informational hearing and case report is to familiarize the Planning Commission with the general background of the proposed Ordinance, the general policy implications and the larger issues for consideration. The Planning Commission is tentatively scheduled to consider action on this Ordinance on January 21, 2016. At that time a subsequent case report will be provided. That case report will cover the proposed changes in greater detail and will describe proposed technical amendments that will facilitate implementation.

### BRIEF SUMMARY OF THE PLANNING CODE AMENDMENT

The proposed Ordinance would amend Planning Code Sections 401, 415 and 419 to:

- Revise the geographic, timing, pricing and other requirements for the Off-Site Affordable Housing Alternative to the Inclusionary Affordable Housing Fee;
- Create a new option for off-site projects that qualify as Nonprofit Provider Partner Project;
- Create an option for Project Sponsors of On- and Off-Site housing projects to provide higher amounts of affordable housing at higher levels of affordability termed “dialing up”;
- Create a new alternative for Project Sponsors of smaller market-rate projects to direct the Affordable Housing Fee to small sites projects;
- Revise the required timing for declaring a method of compliance with the Inclusionary Affordable Housing Program (Program) and clarify ways to amend that declaration; and

- Revise certain definitions and operating procedures related to the Program and make conforming changes.<sup>1</sup>

## **BACKGROUND**

### **Origins of the Inclusionary Affordable Housing Program**

Since at least the early 1990's the Planning Commission has recognized that production of housing units serving very low-, low- and moderate-income households has lagged behind projected needs.<sup>2</sup> At the same time, the production of market-rate units far exceeded the production of units serving lower income households. It also exceeded the projected need for market-rate units. This lack of new housing units priced to serve lower income households, it was found, forced those households to dedicate an increased share of their income on housing.

The Planning Commission has also found that new market rate development creates a demand for affordable housing.<sup>3</sup> The new residents of the market rate developments require retail businesses that serve their daily needs, such as restaurants, grocery stores and apparel stores. These businesses require employees and these employees, often earning modest incomes, need housing priced below market rates. Given the lack of housing production priced to serve these households, the employees of these businesses are forced to find housing outside of San Francisco. These circumstances result in a housing affordability crisis.

In this context, the Planning Commission adopted a Residence Element that expressed the need to "include affordable units in larger projects."<sup>4</sup> The policy statement declared that housing projects proposing at least 10 units seeking Planning Commission approval should provide at a minimum 10% of the total number of units as "affordable" units. In lieu of providing units within the market rate, or Principal Project, the units could be provided within another project in the "same general area" as the Principal Project or a "cash contribution" could be made to the City in an amount needed to produce the units.

To implement and help Project Sponsors understand and conform to the policy, the Planning Commission adopted the Guidelines for the Application of San Francisco's Inclusionary Affordable Housing Policy in April 1991. Approximately 16 months later, the Planning Commission adopted an update to those Guidelines as well as additional materials, including the Affordable Housing Monitoring Procedures Manual.<sup>5</sup>

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<sup>1</sup> Specific details on the existing Inclusionary Affordable Housing Program and proposed amendments are provided as Exhibit B.

<sup>2</sup> San Francisco City Planning Commission Motion 13052.

<sup>3</sup> *Ibid.*

<sup>4</sup> Objective 7 Policy 1 of the Residence Element adopted on September 13, 1990.

<sup>5</sup> San Francisco City Planning Commission Resolution 13405.

### **Changing Controls in the Inclusionary Affordable Housing Program**

Over its 20+ year life, the Program has evolved from a policy statement applying only to projects requiring a Planning Commission hearing to a codified requirement applicable to all projects of a certain unit size.<sup>6</sup> In that time there have been numerous amendments to the Program, some more significant or lasting than others.

During the ten year period between 1992 and 2002, the Program was a policy that applied to housing projects proposing at least ten units and seeking approvals from the Planning Commission, such as a Conditional Use authorization. Projects provided 10% of the total number of units in the Principal Project as “affordable” units. The units were priced at 60% of the Area Median Income (AMI) for rental units and 100% of AMI for ownership units.

In April 2002 Mayor Willie L Brown signed into law Ordinance No. 37-02, The Inclusionary Affordable Housing Program.<sup>7</sup> This Ordinance codified the Program by creating Planning Code Section 315. Section 315 generally applied to housing projects proposing 10 or more units. It allowed Project Sponsors the option to provide affordable units (Inclusionary Housing Units) either on-site, off-site or to pay a fee in a commensurate amount. The Ordinance required principally permitted projects to provide an amount equivalent to 10% of the units in the Principal Project as Inclusionary Housing Units on-site or 15% as off-site. For projects requiring a Planning Commission authorization, the Ordinance required projects to provide an amount equivalent to 12% of the units in the Principal Project as Inclusionary Housing Units on-site or 17% as off-site.

In September 2006, Ordinance 213-06 amended Planning Code Section 315 to generally require the provision of Inclusionary Housing Units of Principal Projects providing five or more units.<sup>8</sup> In that same month, Ordinance 219-06 amended Section 315 to base the required Inclusionary Housing Unit count on their location.<sup>9</sup> If the Project Sponsor elected to provide them on-site, then the Project Sponsor was required to provide an amount equivalent to 15% of the total number of units in the Principal Project. If the Project Sponsor elected to provide the Inclusionary Housing Units off-site then that ratio was 20%. This Ordinance also required that an off-site project locate within a one mile radius of the Principal Project.

With the passage of the Eastern Neighborhoods, the Program was augmented to include additional requirements for projects located in the Urban Mixed Use (UMU) district and the Mission Street

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<sup>6</sup> City and County of San Francisco: Evolution of Inclusionary Affordable Housing Program. <http://sf-moh.org/modules/showdocument.aspx?documentid=7252>.

<sup>7</sup> BF001262 <https://sfgov.legistar.com/View.ashx?M=F&ID=2607162&GUID=834416F9-DCED-42CF-A972-81D26DED2D9F>

<sup>8</sup> BF051668 <https://sfgov.legistar.com/View.ashx?M=F&ID=2593405&GUID=FFE38F51-0839-496F-A327-3981686CE861>

<sup>9</sup> BF051685 <https://sfgov.legistar.com/View.ashx?M=F&ID=2593400&GUID=988D8FA5-B0DC-41F3-A086-F2145E710999>

Neighborhood Commercial Transit (NCT) zoning district.<sup>10</sup> Required Inclusionary Housing Unit counts for both on-site and off-site options were based on the degree of increased development potential a property was granted through the Eastern Neighborhoods Plan, known as “Tiers.” On-Site requirements ranged from 18% to 22% and Off-Site requirements ranged from 23% to 27%. A “Middle Income” option was created for buildings of particular square footage and required a higher unit count still for pricing units at a “middle income” of between 120% and 150% AMI. Last, the Land Dedication option was created for the Mission Street NCT and UMU. This option requires the Project Sponsor to dedicate land to the City for development of affordable housing. The dedicated site must yield a total amount of Inclusionary Housing Units that is equivalent or greater than the minimum percentage of the units that will be provided on the principal site. The minimum percentages depend on the Tier of the principal site as well as its area, and the required areas range from 30% to 45%.

In April 2009, Ordinance 63-09 directed MOHCD to set aside 10% of the Affordable Housing Fees paid in compliance with the Program for acquiring and/or rehabilitating properties with less than 25 units.<sup>11</sup> These “Small Sites” are required to remain affordable for at least 55 years and are typically rental properties, vacant properties that were formally rental properties or properties subject to foreclosure.

Another significant change to the Program came via Ordinance 312-10.<sup>12</sup> This Ordinance changed the Program to a fee based program and considered the On- and Off-Site options as alternatives to paying the Affordable Housing Fee.

The latest change came forth in accordance with Proposition C: Housing Trust Fund, a voter approved amendment to the City’s Charter.<sup>13</sup> Ordinance 062-13 lowered the required affordable unit count for on-site projects from 15% to 12%.<sup>14</sup> The required unit count for developments electing the On-Site Affordable Housing Alternative in the UMU zoning district was also lowered. The requirement was lowered to 14.4% for Tier A projects, 16% for Tier B projects and 17.6% for Tier C projects. Ordinance 062-13 also made other changes clarifying the application and operation of the Program.

### **Origin of the Proposed Ordinance**

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<sup>10</sup> BF081153 <https://sfgov.legistar.com/View.ashx?M=F&ID=2603499&GUID=3723A5EF-FD74-40E8-AC82-79CC07D83D38>

<sup>11</sup> BF081249 <https://sfgov.legistar.com/View.ashx?M=F&ID=712557&GUID=6EF3D361-7BC9-4684-B35A-66672A8AEE75>

<sup>12</sup> BF100046 <https://sfgov.legistar.com/View.ashx?M=F&ID=1123089&GUID=7F3D24E2-A00E-4A8A-929D-498D04B62C6D>

<sup>13</sup>

[http://sfgov2.org/ftp/uploadedfiles/elections/candidates/Nov2012/Nov2012\\_SanFranciscoHousingTrust-CharterAmend.pdf](http://sfgov2.org/ftp/uploadedfiles/elections/candidates/Nov2012/Nov2012_SanFranciscoHousingTrust-CharterAmend.pdf)

<sup>14</sup> BF121162 <https://sfgov.legistar.com/View.ashx?M=F&ID=2408572&GUID=91BDF341-7A4F-49D6-A841-0A4C26408BBB>

The proposed amendments to the Program are the result of the work done under the umbrella of the Mayor's Housing Working Group. The Housing Working Group was convened by Mayor Edwin M Lee in February 2014.

The goal of the Housing Working Group was to implement changes to help bring affordable housing units online quickly. The focus of the Housing Working Group's Legislative Subcommittee was to create and to strengthen alternatives to paying the Affordable Housing Fee, which is the principal method of compliance with the Program. The Legislative Subcommittee was comprised of market rate and affordable housing developers, advocates, property managers, and city staff involved in administering the Program. The Legislative Subcommittee vetted and discussed concepts over the course of 12 meetings beginning in the spring of 2014. Specific components were developed with the benefit of economic analysis and modeling conducted by Seifel Consulting, SPUR's Housing Board, and Council of Community Housing Organizations' staff.

#### **Composition of MOHCD Inclusionary Housing Units Portfolio**

As of 2015, the Program has created approximately 1,800 Inclusionary Housing Units. Of these units, approximately 80% are on-site units and 20% are off-site units. 54% of these units are ownership and 46% are rental. These units are priced to serve households with incomes between 55% AMI and 90% AMI.

For comparison, MOHCD, in collaboration with non-profit housing developers, have brought approximately 18,000 housing units on line using other sources of public and private financing.

#### **AMI Definitions and Targets of the Inclusionary Affordable Housing Program**

The following chart defines income levels as a percent of AMI:

Income Category	Income Range, as percent of AMI
Extremely Low	0% - 30%
Very Low	30% – 50%
Low	50% - 80%
Median	100%
Moderate	80% - 120%
Middle	120% - 150%

Currently the Program prices units to serve low-income households at 55% and 70% AMI and moderate-income households at 90% AMI. The following chart illustrates what those incomes are, by household size, in 2015.<sup>15</sup> It also includes other income levels for purposes of comparison.

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<sup>15</sup> <http://sf-moh.org/modules/showdocument.aspx?documentid=8829>

Income Level	Household Size			
	1 Person	2 Persons	3 Persons	4 Persons
55% AMI	\$39,250	\$44,850	\$50,450	\$56,050
70% AMI	\$49,950	\$57,050	\$64,200	\$71,350
90% AMI	\$64,200	\$73,350	\$82,550	\$91,700
100% AMI	\$71,350	\$81,500	\$91,700	\$101,900
120% AMI	\$85,600	\$97,800	\$110,050	\$122,300
150% AMI	\$107,050	\$122,250	\$137,550	\$152,850

## ISSUES AND CONSIDERATIONS

The amendments in the proposed Ordinance require the consideration of the following five issues:

1. The Off-Site Affordable Housing Alternative;
2. The Quantity and Pricing of required Inclusionary Housing Units and the Dial Program;
3. Alternatives to the Affordable Housing Fee and the “Small Sites” Alternative
4. Timing of and Amending the Declaration of the Method of Compliance
5. Program Definitions and Monitoring

### Off-Site Affordable Housing Alternative

#### **Inflexible Requirements for Off-Site Inclusionary Affordable Housing Developments**

The existing set of requirements under the Off-Site Affordable Housing Alternative is often seen as overly rigid. This can attributed to the fact that the Program largely offers only one way to comply with the various requirements under the Off-Site Affordable Housing Alternative.

Off-site inclusionary affordable housing projects are typically constructed by the developer of a Principal Project subject to the Program. The Off-Site project typically contains only the Inclusionary Housing Units from one Principal Project. The developer of the Principal Project must construct an off-site inclusionary affordable housing project having an exterior appearance and overall quality of construction similar to that of the Principal Project. The number of bedrooms and total square footage comprising the units in the off-site inclusionary affordable housing project must also be comparable to the Principal Project. However, the most salient requirement is that the off-site inclusionary affordable housing project contains the minimum required number of units as indicated by the Program.

The Program requires that the Off-Site Inclusionary Housing Units are located within one mile of the Principal Project. This is in part, to assure that no one neighborhood becomes over concentrated with Off-Site Inclusionary Affordable Housing developments and to help economically diversify all of San Francisco’s neighborhoods.

The Inclusionary Affordable Housing Program also requires that these units are constructed, completed, ready for occupancy, and marketed no later than the market rate units in the Principal Project. As an

assurance, the Program prohibits the Principal Project from receiving its first certificate of occupancy until the off-site inclusionary affordable housing project has received its first certificate of occupancy. The Program currently does not afford any flexibility on either of these locational or timing requirements.

This lack of flexibility can be seen as a disincentive for electing this method of compliance. With respect to the locational requirements, finding an available or suitable site within a one mile radius can be difficult or impossible. This is particularly the case if the Principal Project is located close to a body of water or a jurisdictional boundary. The strict timing requirement can also be seen as an impediment to electing this method. Bringing two projects on line at the same time can often be tricky, especially given the uncertainties of the construction process.

The proposed amendments seek to address the existing rigidity of the Off-Site Affordable Housing Alternative in hopes of easing the construction of Off-Site Inclusionary Housing Units.

### **Financing Mechanisms for Off-Site Inclusionary Housing**

The developer of the Principal Project cannot utilize Federal, State or local development subsidies to construct required inclusionary affordable units with one exception. The Program allows a developer to 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.

One distinction between providing On-Site Inclusionary Housing Units versus Off-Site Inclusionary Housing Units when utilizing CDLAC and TCAC financing is in the minimum unit requirement. The Program requires a developer electing the On-Site Affordable Housing Alternative to provide an amount equivalent to 20% of the units in the Principal Project as Inclusionary Housing Units. If a developer utilizes this public source of financing as part of the Off-Site Affordable Housing Alternative, it must provide an amount equivalent to 25% of the units in the Principal Project as Off-Site Inclusionary Housing Units. This different and higher rate can also be seen as an impediment to electing this method of compliance.

Proposals to align the Off-Site Affordable Housing Alternative unit requirement for projects using CDLAC and TCAC financing with that of the unit requirement for the On-Site Alternative can be seen as an incentive to elect this method of compliance and increase the City's stock of this type of housing.

However, it should also be noted that the difference between the unit requirement for the On-Site Affordable Housing Alternative when using and not using this public financing is 8% (12% without CDLAC/TCAC vs 20% with CDLAC/TCAC), while only 5% (20% vs 25%) for the Off-Site Affordable Housing Alternative.

### Quantity and Pricing of Required Inclusionary Housing Units / Dial Program

#### **Constraints on the Quantity and Pricing of Inclusionary Affordable Housing**

The On-Site and Off-Site Affordable Housing Alternatives require the production of Inclusionary Housing Units priced at specific AMI targets, depending on tenure, and in specific baseline quantities. The On-Site Affordable Housing Alternative requires Inclusionary Housing Units to be priced at 55% AMI for rental units and at 90% AMI for ownership units. The Off-Site Affordable Housing Alternative

requires Inclusionary Housing Units to be priced at 55% AMI for rental units and at 70% AMI for ownership units. These required AMI targets assure that housing resources stemming from the Program are provided to low- and moderate-income households.

The baseline quantity for Inclusionary Housing Units is typically 12% for the On-Site Alternative and 20% for the Off-Site Alternative. One exception is in the Urban Mixed Use zoning district. As mentioned on page 4, the UMU zoning district requires differing levels of Inclusionary Housing Units based on the height increase granted as part of the Eastern Neighborhoods Plan. Broadly, projects electing the On-Site Affordable Housing Alternative are required to provide between 14.4% to 17.6% of units in the Principal Project as Inclusionary Housing Units and projects electing the Off-Site Affordable Housing Alternative are required to provide between 23% to 27% of units in the Principal Project as Inclusionary Housing Units. In all zoning districts the baseline quantities do not differ on the basis of tenure. For example, the typical baseline requirement for the On-Site Affordable Housing Alternative is 12%, whether the units will be rental or ownership.

The Program does not afford flexibility from the stated baseline quantities and the AMI target levels. Once an election is made on whether to provide Inclusionary Housing Units through the On- or Off-Site Alternatives, the required number of units and AMI target levels are set.

#### **The Dial Program Alternative**

The Dial Program, developed by MOHCD in consultation with Seifel Consulting and based on an analysis conducted in 2014, has two intentions. The first is to expand housing resources to moderate-income households. The second is to produce more Inclusionary Affordable Housing Units than would be created under the existing requirements.

The Dial Program would allow Project Sponsors the option of pricing required Inclusionary Housing Units at higher AMI targets than what is allowed under the current baseline. In exchange for this flexibility, the Project Sponsor would be required to provide a higher number of Inclusionary Housing Units than under the existing requirement. Each allowed AMI target/unit requirement combination was designed to be revenue neutral to the developer.

The chart below illustrates the Dial Program options for a typical 12% On-Site baseline case.

ON-SITE UNITS- BASELINE 12%

	Unit Requirement	Ownership AMI Target	Rental AMI Target
Baseline Requirement	12%	90% of AMI	55% of AMI
Dial Up	13%	Not Available	70% of AMI
Dial Up	15%	120% of AMI	Not Available
Dial Up	16%	Not Available	90% of AMI

In this On-Site, 12% Baseline case, the Dial Program would allow a Project Sponsor qualifying to provide rental units to “dial up” from the baseline 55% AMI target level and price Inclusionary Housing Units at 70% of AMI. In exchange, the Project Sponsor would provide an amount of Inclusionary Housing Units equivalent to 13% of the units in the Principal Project. A Project Sponsor could also “dial up” to provide



rental units at 90% AMI and in exchange provide an amount of Inclusionary Housing Units equivalent to 16% of the units in the Principal Project. When providing ownership units, the Project Sponsor could “dial up” to provide units at 120% AMI in exchange for providing an amount of Inclusionary Housing Units equivalent to 15% of the units in the Principal Project.

In general, when a Project Sponsor qualifies to provide rental units, the Dial Program would afford the Project sponsor the option of “dialing up” from the existing 55% AMI target baseline and price units at the 70% and 90% AMI target levels. In the case of ownership units, Project Sponsors may “dial up” from a newly proposed 90% AMI target baseline and price units at the 120% AMI target level.

In exchange for the option of “dialing up,” Project Sponsors are required to provide an increased percentage of the units produced in the Principal Project as Inclusionary Housing Units. Under the typical situation of a 12% On-Site requirement, the increased requirement ranges from 13% to 16% for rental, and 15% for ownership. Under the typical situation of a 20% Off-Site requirement, the increased requirement ranges from 23% to 30% for rental, and 31% for ownership.

It is important to note that the Dial Program proposes to provide access to Inclusionary Housing Units to a broader range of low-income households. The current baseline targets households with incomes equal to 55% AMI. The Dial Program proposes to provide access to low-income households with incomes of up to 70% of AMI, which is still considered low-income. The Dial Program would also allow moderate-income households with incomes equal to 90% of AMI to access rental units through the Inclusionary Affordable Housing Program.

The Dial Program would also provide access to ownership Inclusionary Housing Units to a broader range of moderate-income households. The current baseline targets households with incomes equal to 90% of AMI. The Dial Program proposes to provide access to moderate-income households with incomes up to 120% of AMI, which is still considered moderate-income.

### **Housing Production Goals: Moderate-Income Housing Production Lags**

The 2014 Housing Element reviewed the City’s housing production against its Regional Housing Needs Allocation production goals for the years 2007-2014.<sup>16</sup> During this period it was the City’s goal to produce approximately 31,200 housing units to satisfy its regional fair share. According to these goals, approximately 12,125 units should have been affordable to households with incomes less than 80% AMI and approximately 6,755 units affordable to households with incomes between 80% and 120% AMI (moderate-income level). The remaining units would be realized through market-rate housing production.

The 2014 Housing Element reports that approximately 18,080 housing units (58% of the goal) were produced over that time period. Approximately 4,980 units were produced for households with incomes less than 80% AMI, reaching only 41% of the production goal for this income level. The greatest deficit

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<sup>16</sup> 2014 Housing Element  
[AllParts\\_ADOPTED\\_web.pdf](http://www.sf-planning.org/ftp/General_Plan/2014HousingElement-AllParts_ADOPTED_web.pdf)

[http://www.sf-planning.org/ftp/General\\_Plan/2014HousingElement-](http://www.sf-planning.org/ftp/General_Plan/2014HousingElement-AllParts_ADOPTED_web.pdf)

was at the moderate-income level. Only 1,100 housing units accessible for moderate-income households were produced. This is approximately equivalent to 16% of the housing production goal.

The 2014 Housing Element also notes that in other Bay Area communities with high land values the production of housing for moderate income households has also lagged. Given this, the Housing Element goes on to state that the production of moderate-income housing will continue to depend on inclusionary housing programs.

In this context, it is indispensable that the City find ways to serve moderate-income households. This is especially the case given that the majority of publically subsidized housing programs serve low- or very low-income households.

#### Timing of and Amending the Declaration of the Method of Compliance

##### **Politicizing the Method of Compliance is Unnecessary**

The Inclusionary Affordable Housing Program requires Project Sponsors to declare their method of compliance with the Program prior to the Planning Department or Planning Commission taking an action on the project. The declaration allows a Project Sponsor to pay the Affordable Housing Fee or select one of three Alternatives. Neither the Planning Department nor Planning Commission may require a Project Sponsor to select a specific Alternative as each equally complies with the requirements of the Program. This neutrality toward the Fee and the Alternatives eliminates any overt political pressure from the City on how a Project Sponsor meets its requirements under the Program.

The Inclusionary Affordable Housing Program allows a Project Sponsor to change their method of compliance after Planning Department or Planning Commission action. When a development required Planning Commission review, there are instances when a change in the method of compliance requires a subsequent Planning Commission hearing. This is the case for elections from the On-Site Affordable Housing Alternative to any other election as well as a change in election to pay the Affordable Housing Fee. Projects that only required Planning Department action are not required to go before the Planning Commission for a change in election.

Proposals that seek to change the process of declaring the method of compliance should be weighed carefully to ensure that they do not unnecessarily politicize the Project Sponsor's election or seemingly bind that election. The Planning Commission could be placed in an awkward position if at a subsequent Planning Commission hearing there is objection, on the basis of demographic differences, to a change in method of compliance to serve higher income households. The Planning Commission, by duty, must weigh the public opinion on a project. However, the City has a stated goal of providing a diverse range of unit types accessible to a wide variety of income levels.<sup>17</sup> It also cannot require a Project Sponsor to select a specific Alternative.<sup>18</sup> These circumstances are arguably inappropriate for the Planning

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<sup>17</sup> 2014 Housing Element, 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.

<sup>18</sup> Planning Code Section 415.5(g)

Commission to deliberate on a project-by-project basis. While setting policy for housing production at a macro-level helps the City meet established needs, no one project can ease the housing shortage at a citywide scale. Instead, goals for income-levels that vary by project may add a new point of disagreement.

Proposals that seek to bind elections are also problematic because the Inclusionary Affordable Housing Program allows a Project Sponsor to elect any method of compliance. These proposals may also set false expectations regarding the final project.

#### Alternatives to the Affordable Housing Fee / The Small Sites Program

The collection of Affordable Housing Fee trends with market cycles, much like other fee programs dependent upon market-rate development. The 2014 Housing Element reports that during Fiscal Years 2008-2009 through FY10-11 the City did not collect, on net, any Affordable Housing Fee. This is problematic for production of inclusionary housing in general but also for particular uses of that Fee, including the Small Sites program.

The Small Site program, as mentioned on page 4, was established in 2009 for the express purpose of acquiring properties with less than 25 units. This program depends on an allocation of the Affordable Housing Fee to function. The program can never accumulate more than \$15 million of Affordable Housing Fee, and MOHCD is required to divert funds from the Small Sites program to other purposes when the City collects less than \$10 million in Affordable Housing Fee over a 12 month period. These circumstances place the viability of the Small Sites program on less than certain terms.

It is wise to augment the sources of funding for any program, including the Small Sites Program. Establishing a source of financing for the Small Sites Program that cannot be directly reverted by the City for another use is one way to supplement financing. It is also a worthwhile endeavor if one assumes the goal and value of acquiring smaller residential properties is effectual method to address an affordable housing shortage. As mentioned, the Small Sites program acquires existing housing stock and preserves its affordability for no less than 55 years. This immediately increases the City's stock of affordable housing and can help address the neighborhood stabilization concerns that are griping many parts of San Francisco.

#### **Codifying the Priority Processing Policy for Projects Providing Affordable Housing is Good Practice**

On December 18, 2013 Mayor Edwin M. Lee issued Executive Directive 13-01, Housing Production and Preservation of Rental Stock. This Directive sought to prioritize 100% affordable housing developments as well as moderate-income developments based on their provision of inclusionary housing. One key task for Departments with permitting authority over new housing was to create or amend existing policies facilitating the production of affordable housing or providing incentives to foster private development of rental units with affordable units.

Planning Director's Bulletin Number 2, Planning Department Priority Application Processing Guidelines, establishes the basis for which the Planning Department assigns priority review of projects. In response to the Directive, Planning Director's Bulletin Number 2 was revised. The revision provides priority

processing for market-rate housing projects providing affordable housing in excess of the minimum requirement. However, this revision is not codified and remains a Planning Department policy.

Given the sensitivity around project review timelines, it is prudent to have this operating practice codified. This provides Project Sponsors with a larger degree of certainty regarding their review timeline. It can also incentivize the provision of additional affordable housing units as Project Sponsors seek to expedite review of their developments.

#### Program Definitions and Monitoring

Currently the Planning Code utilizes the term “Affordable to Qualifying Households” when referencing the income and pricing rules for units that satisfy Inclusionary Affordable Housing Program requirements. However the Planning Code definition of this term does not directly state qualifying income and pricing levels. Instead it refers to other definitions within the Planning Code to state this information. Qualifying income and pricing levels should be clarified and easy to determine. Amendments to this effect should be adopted.

The Planning Code also defines the term “Household of Median Income” as a household with annual gross income not exceeding 90% of AMI and the term “Household of Moderate Income” as a household with annual gross income not exceeding 110% of AMI. These terms should be amended to better align with the standard definition that “median” equals 100% of the median income. From this basis, the “median income” would be set at 100% of area median income and moderate income as an income not exceeding 120% of the area median income.

Planning Code 419 makes reference to the “tenth unit” in Principal Projects as being the first unit for which a developer’s obligation begins. However, this is an erroneous explanation of the applicability of the Program. All units are subject to the Program. An election on the method of compliance is required when at least ten units are proposed. Correcting this error is beneficial to providing clarity on the Program’s application.

Under the Program rules for renters, household income cannot exceed 200% of the income target noted in the Notice of Special Restrictions for the unit. This rule was added in 2013 in order to provide a cushion for renters whose income was still within the range of the AMI level covered by the Inclusionary Program. Amendments to this rule propose to cap allowable income to no more than 120% AMI, which is the maximum allowed income in the Program. This assures that resources are generally not dedicated to households that would not necessarily need the assistance of the Program.

The Program currently allows applicants for new Inclusionary Housing Units to earn 10% above the AMI pricing level for the unit. This rule was added in 2013 in order to provide a cushion for buyers given the tight pricing mechanism required for the Program. Amendments propose to extend this cushion to applicants of existing Inclusionary Housing Units being resold. This can expand the pool of qualified households which can be advantageous during periods where such ownership units are in high demand or when finding qualified households for ownership units it difficult.

The Program allows restrictions to be subordinated to assist the developer or buyer in obtaining financing. Proposed amendments would only allow for the subordination of restrictions in the case where a buyer cannot obtain financing.

Planning Code Section 415.9 requires MOHCD to evaluate the inclusionary requirements for developments of over 120 feet in height five years from their April 2007 enactment. However, this requirement was included as an amendment to the City Charter through Proposition C: Housing Trust Fund. Eliminating this requirement from the Planning Code make sense as part of a broader update and clean up.

## **REQUIRED COMMISSION ACTION**

This is an informational item and no Commission action is required.

## **RECOMMENDATION**

There is no staff recommendation at this time.

## **BASIS FOR RECOMMENDATION**

The adoption hearing for this Ordinance is tentatively scheduled for January 21, 2016. At that time staff will present its recommendation and its basis to the Commission.

## **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>	<i>No Recommendation – this is an informational presentation</i>
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### **Attachments:**

- Exhibit A: Letter of interest from Public
- Exhibit B: Detailed description of proposed amendments to the Inclusionary Affordable Housing Program
- Exhibit C: Board of Supervisors File No. 150911



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San Francisco, CA 94103  
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The Honorable Mayor Edwin Lee  
City Hall, Room 200  
1 Carlton B. Goodlett Place  
San Francisco, CA 94102

November 12, 2015

**Ref: Geographic Radius – Off-Site Inclusionary Reform**

Dear Mayor Lee,

I am writing on behalf of the San Francisco Housing Action Coalition's (SFHAC's) 300 businesses, organizations and individual members. Our coalition respectfully requests that you consider supporting two amendments to strengthen proposed legislation to reform the off-site Inclusionary Housing Ordinance (IHO). In particular, we believe it's time for a frank assessment of the IHO's Off-Site Radius (OSR) and how to make it a more effective tool for increasing production of permanently affordable housing that requires no taxpayer support.

**Background**

We believe San Francisco's housing production record clearly demonstrates that the numerous restrictions that were put on the off-site option in 2006 have resulted in its effective nullification as a viable tool to produce permanently affordable housing. Given the City's unprecedented housing affordability crisis, it is vital that we make the Off-Site Inclusionary option more attractive.

According to the Mayor's Office of Housing, of all the housing that has been subject to the IHO since 2006, about 75 percent used the on-site option; about 20 percent paid the *in lieu* fee; and about five percent pursued the off-site option. In fact, the SFHAC is aware of only **one** off-site BMR project, 1600 Market Street, which was built within one mile of the principal project, as required by the OSR.

The OSR was not part of the original IHO in 2002; it was added at the last minute when Sup. Chris Daly introduced amendments to the ordinance in 2006. The OSR was added in response to Supervisor Sophie Maxwell's concerns that, without it, new inclusionary housing would be disproportionately concentrated in D10.

Finally, data from the Mayor's Office of Housing for various recently completed developments show that, for every successful applicant for a permanently



affordable on-site Inclusionary home, about 30 unsuccessful applicants were turned away. We must reduce this ratio!

### **The Problem**

The OSR was added to the IHO in 2006 with good intentions. It was supposed to result in mixed-income communities where residents would benefit from living in proximity to the principal market-rate housing project that funded it. A well-known local housing non-profit created the one-mile radius and its rationale by arbitrarily drawing circles on a map. We do not know why one mile was chosen as opposed to some other distance.

It is clear that the theoretical principle of using the OSR to achieve the social goal of mixed-income communities has collided with the actuality that it has prevented much off-site affordable housing from being built at all.

The current one-mile rule applies, even when much of the area within the radius is in the Bay or otherwise not zoned for development. Developer members of SFHAC who have tried to pursue off-site projects have repeatedly said that the one-mile radius limit makes it very difficult to find feasible off-site locations. Very few even bother looking.

The draft proposal from MOH to retain the one-mile radius and increase it to 1.25 miles is an inadequate response to the urgent problem of increasing housing affordability. Both distances seem like arbitrary choices intended to achieve an abstract outcome. Building one off-site project within the one-mile radius since the ordinance was amended 10 years ago is concrete evidence this idea hasn't worked.

Legislation was recently introduced that proposes a comprehensive list of reforms that might yet succeed in making off-site Inclusionary housing a realistic alternative. The SFHAC believes that because it was drafted as an outgrowth of the Mayor's Housing Working Group and benefited from a wide spectrum of perspectives, it is likely close to being ready for adoption. We participated in these discussions and support its speedy passage.

However, the SFHAC believes that the inclusion of a modified OSR in the draft legislation weakens the proposal and preserves a powerful obstacle to building off-site affordable housing. We would be saddened if, after all the participation and hard work by both City agencies and the entire development community, developers continue to ignore it and it results in little or no off-site housing being built. That has certainly been the case for the last decade.

### **The Solution**

The SFHAC suggests that in order for off-site option to finally become a successful tool to increase production of permanently affordable housing, the

OSR must be changed. Therefore, we suggest that the IHO legislation be amended to allow the following:

- 1. Allow the OSR to be waived for off-site projects that would be built in neighborhoods that have experienced elevated levels of displacement and evictions. These are the neighborhoods most in need of permanently affordable housing. The Planning Department already has ways to define this. In fact, we know of at least two instances where developers have control of sites in the Mission district where 100-percent off-site affordable housing could be built, but are more than 1.25 miles from their principal projects.*
- 2. Allow the OSR to be waived for off-site projects that are built using the "Nonprofit Partner Provider Project" option, as defined in the draft legislation. We understand that the City's recognized nonprofit builders, some of whom are SFHAC members, already have sites intended for affordable housing, yet lack the financing necessary to begin building. Conversely, we have heard frequently from many of SFHAC's market-rate builders that they would be glad to partner with these nonprofits. It does not make sense to apply arbitrary restrictions that prevent mutually beneficial joint venture projects from building affordable housing.*

We urge you to consider these modifications and look forward to working with your office as this important housing legislation moves forward.

Sincerely,



Tim Colen, Executive Director

Cc: John Rahaim, Director SF Planning Department  
Olson Lee, Director, Mayor's Office of Housing  
President London Breed and Members of the SF Board of Supervisors  
President Rodney Fong and Members of the SF Planning Commission



**EXHIBIT B:**

**DETAILED DESCRIPTION OF PROPOSED AMENDMENTS TO THE INCLUSIONARY AFFORDABLE  
HOUSING PROGRAM**

## **The Way It Is Now:**

### Off-Site Affordable Housing Alternative

1. Planning Code Section 415.7 typically requires Project Sponsors electing the Off-Site Affordable Housing Alternative to construct 20% of the number of units produced in the Principal Project as Inclusionary Housing Units at an off-site location.
2. Planning Code Section 415.7(b) requires Inclusionary Housing Units constructed to satisfy the Off-Site Affordable Housing Alternative to have secured their First Certificate of Occupancy no later than the date the market rate units in the Principal Project received their First Certificate of Occupancy.
3. Planning Code Section 415.7(c) requires all Inclusionary Housing Units satisfying the Off-Site Housing Alternative to be located within one mile of the Principal Project.
4. Planning Code Section 415.7(g) requires the Project Sponsors to provide Inclusionary Housing Units at a quantity equivalent to 25% of the total number of units in the Principal Project for Project Sponsors using 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 the Off-Site Affordable Housing Alternative.
5. Planning Code Section 415.7 does not explicitly allow the aggregation of Inclusionary Housing Units satisfying the Off-Site Housing Alternative from multiple Principal Projects into one Off-Site project.

### Quantity and Pricing of Required Inclusionary Housing Units/Dial Program

6. Planning Code Sections 415.6 and 415.7 establish a baseline number of Inclusionary Housing Units to be constructed and AMI targets for households qualified to reside in those Inclusionary Housing Units for Project Sponsors electing either the On-Site or Off-Site Housing Alternative as a method of compliance with the Inclusionary Affordable Housing Program. The On-Site Affordable Housing Alternative requires Inclusionary Housing Units to be priced at 55% AMI for rental units and at 90% AMI for ownership units. The Off-Site Affordable Housing Alternative requires Inclusionary Housing Units to be priced at 55% AMI for rental units and at 70% AMI for ownership units.

### Alternatives to the Affordable Housing Fee / “Small Sites” Alternative

7. Sponsors of projects subject to Planning Code Section 415 are afforded three alternatives to paying the Affordable Housing Fee. The alternatives are (i) constructing On-Site Inclusionary Units; (ii) constructing Off-Site Inclusionary Units; or (iii) constructing a combination of On- and Off-Site units and/or paying the Affordable Housing Fee.

### Timing of and Amending the Declaration of the Method of Compliance

8. Planning Code Section 415.5(g) requires Project Sponsors to elect a method of compliance with the Inclusionary Affordable Housing Program prior to the Planning Department or Planning Commission acting on the project.
9. Planning Code Section 415.5(g)(4) allows a Project Sponsor choosing to provide affordable ownership units as a method of compliance with the Inclusionary Affordable Housing Program to instead immediately inform the Planning Department and MOHCD of a change in method of compliance in

favor of paying the applicable Affordable Housing Fee plus interest and any applicable penalties provided for under the Planning Code.

#### Program Definitions and Monitoring

10. Planning Code Sections 401, 415 and 419 use the term “Affordable to Qualifying Households” when referencing the income and pricing rules for units that satisfy Inclusionary Affordable Housing Program requirements, including units produced using the general Inclusionary and Small Sites Program fees and the Land Dedication Alternative in the Urban Mixed Use (UMU) and Mission Street Neighborhood Commercial Transit zoning districts.
11. Planning Code Section 401 defines the term “Household of Median Income” as a household with annual gross income not exceeding 90% of AMI and the term “Household of Moderate Income” as a household with annual gross income not exceeding 110% of AMI. Planning Code Section 419 makes reference to the “tenth unit” in Principal Projects as being the first unit subject to the Affordable Housing Requirements in the UMU zoning district.
12. Planning Code Section 415.8 establishes monitoring practices and provides that (i) below market rate (BMR) rental household income cannot exceed 200% of the income target noted in the Notice of Special Restrictions (NSR) for the unit; (ii) applicants for new BMR units are allowed to earn 10% above the AMI pricing level for the unit; and (iii) Program restrictions can be subordinated to assist a developer or buyer in obtaining financing.
13. Planning Code Section 415.9 requires that the Mayor’s Office on Housing and Community Development (MOHCD) evaluate the inclusionary requirements for developments of over 120 feet in height five years from their April 2007 enactment.

#### **The Way It Would Be:**

##### Off-Site Affordable Housing Alternative

1. Planning Code Section 415.7 would be amended to allow Project Sponsors electing the Off-Site Housing Alternative as a method of compliance a second method to meet this Alternative. The existing method would be considered the “Core Off-Site Project” method and the second method would be the “Nonprofit Provider Partner Project”. The “Nonprofit Provider Partner Project” requires Project Sponsors and a nonprofit affordable housing provider (or group of providers) to enter into an agreement to provide the required Off-Site Inclusionary Housing Units at an off-site affordable housing project. The “Nonprofit Provider Partner Project” must provide the Principal Project’s required Inclusionary Housing Units or provide 20% of the Principal Project’s Residential Floor Area as Off-Site Inclusionary Housing Units. The Off-Site Inclusionary Housing Units must (i) meet or exceed the weight average of unit type by bedroom count of the Principal Project and (ii) Provide the same number of bedrooms as would have been provided as a “Core Off-Site Project.”
2. Planning Code Section 415.7 would be amended to allow the Director of MOHCD to recommend to the Zoning Administrator (ZA) that an extension to the time limits regarding securing the First Certificate of Occupancy for the Inclusionary Housing Units in projects satisfying the Off-Site Housing Alternative be granted. The Director of MOHCD would only make this recommendation under the following circumstances:
  - a. Prior to receiving its First Certificate of Occupancy for the Principal Project the Project Sponsor provides the City with an irrevocable letter of credit in the amount of the Affordable

Housing Fee that would have been due plus interest and penalties from the date when it should have been paid until the last date of the requested extension; and

- b. The Off-Site Project is entitled before the Principle Project obtains its First Construction Document; and
- c. The Principal Project Partner, Nonprofit Provider Partner or entity that is owned or controlled by either party has acquired the Off-Site Project parcel before the Principal Project obtains its First Certificate of Occupancy; and
- d. The Off-Site Project has obtained its First Construction Document and has commenced construction before the Principal Project obtains its First Certificate of Occupancy; and
- e. An NSR reflecting the Off-Site Project's conditions of approval have been recorded on the Off-Site Project before the Principal Project obtains its First Certificate of Occupancy.

The Off-Site project in Core Off-Site Projects must receive its First Certificate of Occupancy within one year of the date the Principal Project obtained its First Certificate of Occupancy.

The Off-Site project in Nonprofit Provider Partner Projects must receive its First Certificate of Occupancy within two years of the date the Principal Project obtained its First Certificate of Occupancy. The Director of MOHCD may recommend an additional year extension for Nonprofit Provider Partner Projects demonstrating progress and ability to be completed within the additional year.

Failure to complete an Off-Site Project within the time extension results in the Project Sponsor forfeiting the letter of credit. However the Certificate of Occupancy for the Principal Project will not be withheld or withdrawn.

- 3. Planning Code Section 415.7(c) would be amended to allow Inclusionary Housing Units satisfying the Off-Site Housing Alternative to be located within either (i) the same neighborhood as the Principal Project<sup>1</sup> or (ii) a 1.25 mile radius of the Principal Project.
- 4. Planning Code Section 415.7 would be amended to require projects using CDLAC tax-exempt bond financing and 4% credits under TCAC to fund their obligation under the Off-Site Affordable Housing Alternative to provide Inclusionary Housing Units at a quantity equivalent to 20% of the total number of units in the Principal Project. This amendment would align with the existing requirement for Projects using CDLAC and TCAC financing and electing the On-Site Alternative.
- 5. Planning Code Section 415.7 would be amended to add a subsection 415.7(j) that would explicitly allow the aggregation of Inclusionary Housing Units satisfying the Off-Site Housing Alternative from multiple Principal Projects into one Off-Site project.

#### Quantity and Pricing of Required Inclusionary Housing Units/Dial Program

- 6. Planning Code Sections 415.6 and 415.7 would be amended to establish the Dial Alternative for the On-Site and Off-Site Housing Alternatives. The Dial Alternative would augment the existing baseline Inclusionary Housing Unit requirements and AMI Targets by creating additional combinations of

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<sup>1</sup> The proposed Ordinance suggests using a definition of "neighborhood" in common use by the Planning Department, such as the neighborhoods defined in the Planning Department's neighborhood notification map.

required Inclusionary Housing Unit counts and AMI Targets. Project Sponsors electing to serve households at AMI Targets above the baseline would be required to increase the number of Inclusionary Housing Units provided.

#### Alternatives to the Affordable Housing Fee / “Small Sites” Alternative

7. Planning Code Section 415.5(g) would afford a fourth alternative to paying the Affordable Housing Fee by allowing Project Sponsors to designate its payment of the Affordable Housing Fee into the Small Sites Program (Planning Code Section 415.7A). This program would be used to fund “Small Sites,” defined as properties consisting of two to 25 units targeted to low- or moderate-income households.

#### Timing of and Amending the Declaration of the Method of Compliance

8. Planning Code Section 415.5(g)(3) would be amended to require Project Sponsors to declare a method of compliance the earlier of (i) any neighborhood notification for the Principal Project or (ii) any Planning Department or Planning Commission action on the project.
9. Planning Code Section 415.5(g)(4) would be amended to require Project Sponsors seeking to change their method of compliance with Section 415 to elect one of the following ways:
  - a. Prior to issuance of First Construction Document, making a written request to the ZA to either change (i) from the Affordable Housing Fee to an Alternative to paying the Affordable Housing Fee or (ii) from any method of compliance to the On-Site Alternative; or
  - b. Prior to issuance of First Certificate of Occupancy, a Project Sponsor who has elected to comply via the On-Site or Off-Site affordable ownership-only units Alternatives but does not sell those units must immediately inform the Planning Department and MOHCD and apply to the Planning Department to either (i) change their method of compliance by paying the applicable Affordable Housing Fee plus interest and any applicable penalties provided for under the Planning Code or (ii) qualify to rent the units.

#### Program Definitions and Monitoring

10. Planning Code Sections 401, 415 and 419 would be amended to replace the term “Affordable to Qualifying Households” with the term “Inclusionary Housing Units.” In Planning Code Section 415, income and pricing rules for Inclusionary Housing Units, including the use of general Inclusionary and Small Sites Program fees, would explicitly state the AMI targets, such as “55% of AMI” or “90% of AMI.” Planning Code Section 419 would utilize the terms “Low-Income Household” and “Moderate-Income Household.”
11. Planning Code Section 401 would be amended to eliminate the terms “Household of Median Income” and “Household of Moderate Income” and use and define the terms “Median Income” as 100% of AMI and “Moderate Income” as 80 – 120% of AMI. References to the “tenth unit” in Planning Code Section 419 would be eliminated.
12. Planning Code Section 415.8 would be amended to provide that (i) BMR rental household income cannot exceed 200% of the income target noted in the Notice of Special Restrictions for the unit but never higher than Moderate Income; (ii) applicants for new *or resale* BMR units are allowed to earn

10% above the AMI pricing level for the unit; and (iii) Program restrictions can be subordinated to assist a buyer in obtaining financing.

13. Planning Code Section 415.9 would be amended to eliminate the rule that MOHCD evaluate the requirements for developments of over 120 feet in height and require a review of the proposed Dial Alternative and other amendments to the Off-Site Affordable Housing Alternative in 2016 with the next regular 5-year study.

[Planning Code - Inclusionary Affordable Housing Program]

**Ordinance amending the Planning Code to provide revised geographic, timing, pricing and other requirements for the off-site alternative to the Inclusionary Affordable Housing Fee; create a new option for off-site projects that qualify as Nonprofit Provider Partner Projects; create a new alternative for project sponsors of smaller market-rate projects to direct the Affordable Housing Fee to small sites projects; create an option for project sponsors of on- and off-site housing to provide higher amounts of affordable housing at higher levels of affordability termed “dialing up”; revise certain definitions and operating procedures related to the Inclusionary Housing Program and make conforming changes; 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-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. 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. \_\_\_\_ and is incorporated herein by reference. The Board affirms this determination.

(b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_, 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. \_\_\_\_\_, 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. \_\_\_\_\_, and the Board incorporates such reasons herein by reference.

Section 2. The Planning Code is hereby amended by revising Sections 401, 415.3, 415.4, 415.5, 415.6, 415.7, 415.8, 415.9, 419.3, 419.4 and 419.5 and adding Section 415.7A, to read as follows:

#### **SEC. 401. DEFINITIONS.**

In addition to the specific definitions set forth elsewhere in this Article, the following definitions shall govern interpretation of this Article:

~~"Affordable unit" or "affordable housing unit." A unit that is restricted as affordable under Section 415 et seq.~~

"Affordable to a Household" shall mean a purchase price adjusted for the household size indicated below that a household can afford to pay based on an annual payment for all housing costs, ~~as defined in California Code of Regulations ("CCR") Title 25, Section 6920, as amended from time to time,~~ of 33% percent of the combined household Annual Gross Income ~~annual gross income~~, assuming a down payment recommended by ~~the MOHCD Mayor's Office of Housing~~ in the Procedures Manual, and available financing, or a rent level adjusted for the household size



indicated below that does not exceed 30% ~~percent~~ of a household's combined annual gross income. Where applicable, the purchase price or rent may be adjusted to reflect the absence or existence of a parking space(s), subject to the Department's policy on unbundled parking for Inclusionary Housing Units as specified in the Procedures Manual and amended from time to time. In the case of Single Room Occupancy units and Group Housing units that are less than 350 square feet (both as defined in Section 102) such units shall be 75% of the maximum sales or rent level for studio units.

<u>Number of Bedrooms (or, for live/work units square foot equivalency)</u>	<u>Number of Persons in Household</u>
<u>0 (Less than 600 square feet)</u>	<u>1</u>
<u>1 (601 to 850 square feet)</u>	<u>2</u>
<u>2 (851 to 1,100 square feet)</u>	<u>3</u>
<u>3 (1,101 to 1,300 square feet)</u>	<u>4</u>
<u>4 (More than 1,300 square feet)</u>	<u>5</u>

~~"Affordable to qualifying households."~~

~~— (A) — With respect to owned units, the average purchase price on the initial sale of all affordable owned units in a housing project shall not exceed the allowable average purchase price. Each unit shall be sold:~~

~~— (i) — Only to first-time homebuyer households, as defined in this Section;~~

1           ~~——(ii) Only to households with an annual gross income equal to or less than the qualifying~~  
2 ~~income limits for a household of moderate income, adjusted for household size, except for the~~  
3 ~~exceptions set forth in Section 415.8(a)(4)(C), (D) and (E);~~

4           ~~——(iii) Only to households that meet the household size requirements, as defined in the~~  
5 ~~Procedures Manual;~~

6           ~~——(iv) On the initial sale, at or below the maximum purchase price, as defined in this~~  
7 ~~Section;~~

8           ~~——(v) On subsequent sales at or below the prices to be determined according to the formula~~  
9 ~~specified in the Procedures Manual in place at the time of the affordable unit owner's purchase, as~~  
10 ~~amended from time to time, such that the units remain affordable to qualifying households. The formula~~  
11 ~~in the Procedures Manual shall permit the seller to include certain allowable capital improvements in~~  
12 ~~the new maximum purchase price. The formula shall include a per unit cap on capital improvements of~~  
13 ~~10% of the resale price in order to maintain affordability. Special Assessments shall be added to the~~  
14 ~~resale price at an uncapped rate. Capital improvement requests shall be evaluated by the Mayor's~~  
15 ~~Office of Housing according to the formula specified in the Procedures Manual.~~

16           ~~——(B) With respect to rental units in an affordable housing project, the average annual rent~~  
17 ~~shall not exceed the allowable average annual rent. Each unit shall be rented;~~

18           ~~——(i) Only to households with an annual gross income equal to or less than qualifying~~  
19 ~~limits for a household of lower income adjusted for household size, as defined in this Section, except for~~  
20 ~~the exceptions set forth in Section 415.8(a)(4)(A) and (B);~~

21           ~~——(ii) Only to households that meet the household size requirements, as defined in the~~  
22 ~~Procedures Manual;~~

23           ~~——(iii) At or less than the maximum annual rent.~~

24           ~~——"Allowable average purchase price." A price for all affordable owned units of the size~~  
25 ~~indicated below that are affordable to a household of median income as defined in this Section;~~

~~adjusted for the household size indicated below as of the date of the close of escrow, except for Single Room Occupancy units (as defined in Section 890.88), which shall be 75% of the maximum purchase price level for studio units, and, where applicable, adjusted to reflect the Department's policy on unbundled parking for affordable housing units as specified in the Procedures Manual and amended from time to time:~~

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<i>Number of Bedrooms (or, for live/work units square foot equivalency)</i>	<i>Number of Persons in Household</i>
<i>0 (Less than 600 square feet)</i>	<i>1</i>
<i>1 (601 to 850 square feet)</i>	<i>2</i>
<i>2 (851 to 1,100 square feet)</i>	<i>3</i>
<i>3 (1,101 to 1,300 square feet)</i>	<i>4</i>
<i>4 (More than 1,300 square feet)</i>	<i>5</i>

-

~~"Allowable average annual rent." Annual rent for an affordable rental unit of the size indicated below that is 30 percent of the annual gross income of a household of low income as defined in this Section, adjusted for the household size indicated below except for Single Room Occupancy units (as defined in Section 890.88), which shall be 75% of the maximum rent level for studio units, and, where applicable, adjusted to reflect the Department's policy on unbundled parking for affordable housing units as specified in the Procedures Manual and amended from time to time:~~

-

<i>Number of Bedrooms (or, for live/work units square foot equivalency)</i>	<i>Number of Persons in Household</i>
<i>0 (Less than 600 square feet)</i>	<i>1</i>

1 (601 to 850 square feet)	2
2 (851 to 1,100 square feet)	3
3 (1,101 to 1,300 square feet)	4
4 (More than 1,300 square feet)	5

~~At no time can a rent increase, or can multiple rent increases within one year, exceed the percentage change in Maximum Monthly Rent levels as published by MOH from the previous calendar year to the current calendar year.~~

"Area Median Income" or "AMI." The unadjusted median income levels as calculated by MOHCD using data derived from the Department of Housing and Urban Development ("HUD") on an annual basis for the San Francisco area, adjusted solely for household size, but not high housing cost area.

"Annual gross income." Gross income as defined in California Code of Regulations Title 25, Section 6914, as amended from time to time, except that MOHCD may, ~~in order to promote consistency with the procedures of the San Francisco Redevelopment Agency,~~ develop an asset test that differs from the State definition if it publishes that test in the Procedures Manual.

\* \* \* \*

"Homeowner Household." A household in which any member owns any interest in a dwelling unit.

~~"Household of low income." For purposes of Section 415 et seq., a household whose combined annual gross income for all members does not exceed 55 percent of AMI.~~

~~"Household of median income." For purposes of Section 415 et seq., a household whose combined annual gross income for all members does not exceed 90 percent of AMI.~~

~~"Household of moderate income." For purposes of Section 415 et seq., a household whose combined annual gross income for all members does not exceed 110 percent of AMI.~~

~~\* \* \* \*~~

~~"Inclusionary Housing Unit" or "Inclusionary Unit." A rental or ownership unit that is restricted as affordable under Section 415 et seq.~~

~~\* \* \* \*~~

~~"Maximum annual rent." The maximum rent that a housing developer may charge any tenant occupying an affordable unit for the calendar year. The maximum annual rent for an affordable housing unit of the size indicated below shall be no more than 30 percent of the annual gross income for a household of low income as defined in this Section, as adjusted for the household size indicated below, except in the case of Single Room Occupancy units (as defined in Section 890.88), which shall be 75% of the maximum rent level for studio units, as of the first date of the tenancy:~~

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<del><i>Number of Bedrooms (or, for live/work units square foot equivalency)</i></del>	<del><i>Number of Persons in Household</i></del>
<del><i>0 (Less than 600 square feet)</i></del>	<del><i>1</i></del>
<del><i>1 (601 to 850 square feet)</i></del>	<del><i>2</i></del>
<del><i>2 (851 to 1,100 square feet)</i></del>	<del><i>3</i></del>
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<del><i>4 (More than 1,300 square feet)</i></del>	<del><i>5</i></del>

-

~~At no time can a rent increase, or can multiple rent increases within one year, exceed the percentage change in Maximum Monthly Rent levels as published by MOH from the previous calendar year to the current calendar year.~~

~~—"Maximum purchase price." The maximum purchase price for an affordable owned unit of the size indicated below except in the case of Single Room Occupancy units (as defined in Section 890.88), which shall be 75% of the maximum purchase price level for studio units, that is affordable to a household of moderate income, adjusted for the household size indicated below, assuming an annual payment for all housing costs of 33 percent of the combined household annual gross income, a down payment recommended by MOH and set forth in the Procedures Manual, and available financing:~~

<del>Number of Bedrooms (or, for live/work units square foot equivalency)</del>	<del>Number of Persons in Household</del>
<del>0 (Less than 600 square feet)</del>	<del>1</del>
<del>1 (601 to 850 square feet)</del>	<del>2</del>
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<del>3 (1,101 to 1,300 square feet)</del>	<del>4</del>
<del>4 (More than 1,300 square feet)</del>	<del>5</del>

~~"Mayor's Office of Housing and Community Development" or "MOHCD." The Mayor's Office of Housing and Community Development, or its successor.~~

~~"Median-income." 100% of Area Median Income, as defined herein.~~

~~"Moderate-income." 80 - 120% of Area Median Income, as defined herein.~~

~~\* \* \* \*~~

1           "Nonprofit Provider Partner Project" shall mean an affordable housing project where a Non-  
2 profit Partner and a Sponsor of a Principal Project have entered into an agreement to provide Off-site  
3 units to satisfy the Off-site Inclusionary Housing requirements of a project subject to the Inclusionary  
4 Housing Program. The Director of MOHCD shall review and approve such Projects, including  
5 determining whether the Project has demonstrated that it has satisfactory funds necessary to commence  
6 construction and complete the Project.

7           "Nonprofit Partner" shall mean a nonprofit affordable housing provider or a group of  
8 nonprofit affordable housing developers that, in the case of a rental project, is eligible under the Tax  
9 Credit Allocation Committee (TCAC) as a tax credit-managing General Partner; and, in all cases, in  
10 the determination of the Director of MOHCD, as verified by a letter from MOHCD to the Director of  
11 the Planning Department, has (a) demonstrated, recent experience owning and/or managing affordable  
12 housing in San Francisco; (b) experience within the past five years of constructing housing of a  
13 comparable scale in San Francisco; and (c) sufficient financial capacity to undergo the off-site project.  
14 In the case where there is more than one Nonprofit Partner, then at least one of the Nonprofit Partners  
15 must meet each of the above requirements.

16           \* \* \* \*

17           ~~"Off-site Uunit." An Inclusionary Housing Uunit affordable to qualifying households~~  
18 ~~constructed pursuant to this Article 4 on a site other than the site of the Principal Project~~  
19 ~~principal project.~~

20           ~~"On-site Uunit." An Inclusionary Housing Uunit affordable to qualifying households~~  
21 ~~constructed pursuant to this Article 4 on the site of the Principal Project principal project.~~

22           ~~"Owned unit." A unit affordable to qualifying households which is a condominium, stock~~  
23 ~~cooperative, community apartment, or detached single family home. The owner or owners of an owned~~  
24 ~~unit must occupy the unit as their primary residence.~~

25           \* \* \* \*

1           "Project Sponsor" or "Sponsor." An applicant seeking approval for construction of a  
2 development project subject to this Article, such applicant's successor and assigns, and/or any entity  
3 which controls or is under common control with such applicant.

4           \* \* \* \*

5           Q

6           "Qualified Household." Defined in Sections 415.6 (d) and 415.7 (e).

7           "Qualifying Household." Defined in Sections 415.6 (d) and 415.7 (e).

8           \* \* \* \*

9           ~~"Rental unit." A unit affordable to qualifying households which is not a condominium, stock~~  
10 ~~cooperative, or community apartment.~~

11          \* \* \* \*

12          "Residential Floor Area." The area within the inside face of the walls enclosing a dwelling unit,  
13 including closets and the partitions that separate rooms that are within the same unit. Residential  
14 Floor Area shall not include common hallways, lobbies, amenity space, or storage areas located  
15 outside of individual dwelling units. Residential Floor Area within Group Housing is intended to  
16 capture all of the interconnected private and common living areas that would otherwise be included  
17 inside dwelling units, and to exclude nonessential, disconnected areas that are typically found on the  
18 ground floor or basement levels. Therefore, it shall only include the area within the inside face of the  
19 walls enclosing the Group Housing use, including bedrooms, closets, bathrooms, kitchens, common  
20 hallways, living rooms, and other common living areas. It shall not include spaces that are located  
21 outside of, or otherwise disconnected from, living areas within the Group Housing use, such as  
22 hallways, lobbies, stairways, elevator shafts, accessory parking, storage areas, or other similar spaces.

23          \* \* \* \*



1       ~~"Sponsor" or "project sponsor." An applicant seeking approval for construction of a~~  
2 ~~development project subject to this Article, such applicant's successor and assigns, and/or any entity~~  
3 ~~which controls or is under common control with such applicant.~~

4       \* \* \* \*

### 6       **SEC. 415.3. APPLICATION.**

7       (a) Notwithstanding any other provision to the contrary in this Code, Section 415.1 et  
8 seq. shall apply to any housing project that consists of ten or more units where an individual  
9 project or a phased project is to be undertaken and where the total undertaking comprises a  
10 project with ten or more units, even if the development is on separate but adjacent lots; and

11               (1) Does not require Commission approval as a Conditional Use authorization  
12 or Planned Unit Development;

13               (2) Requires Commission approval as a Conditional Use Authorization or  
14 Planned Unit Development;

15               (3) Consists of Live/Work Units as defined by Section 102 of this Code; or

16               (4) Requires Commission approval of replacement housing destroyed by  
17 earthquake, fire or natural disaster only where the destroyed housing included units restricted  
18 under the Inclusionary Affordable Housing Program or the City's predecessor inclusionary  
19 housing policy, condominium conversion requirements, or other affordable housing program.

20       (b) The effective date of these requirements shall be either April 5, 2002, which is the  
21 date that the requirements originally became effective, or the date a subsequent modification,  
22 if any, became operative. ~~The following table is designed to summarize the most significant~~  
23 ~~subsequent modifications to this Program and the dates those modifications went into effect.~~ The  
24 Planning Department and MOHCD~~the Mayor's Office of Housing~~ shall maintain a record for the  
25 public summarizing the most significant subsequent ~~various~~ amendments to this Program and

their effective or operative dates and make such information available on the City's website. To the extent there is a conflict between ~~the following table or~~ any summary produced by the Department or MOHCD and the provisions of the original implementing ordinances, the implementing ordinances shall prevail.

*Table 415.3*

<i>Program Modification</i>	<i>Effective or Operative Date</i>
<p><del>All projects with 5 or more units must participate in the Inclusionary Housing Program Section 415 (changed from a threshold of 10 units).</del></p> <p><del>Threshold changed back to 10 units or more such that the Section 415 et seq. no longer applies to buildings of 5-9 units.</del></p>	<p><del>All projects that submitted a first application on or after July 18, 2006</del></p> <p><del>Any 5-9 unit project, regardless of when it submitted a first application, that has not received a first construction document as of January 15, 2013.</del></p>
<p><del>Affordable Housing Percentages:</del></p> <ul style="list-style-type: none"> <li><del>• 20% Fee</del></li> <li><del>• 12% on-site*</del></li> <li><del>• 20% off-site*</del></li> </ul> <p><del>*Of total number of units</del></p> <p><del>(Percentages may vary in specific Area Plans or Special Use Districts. Please refer to those applicable Code Sections.)</del></p>	<p><del>All projects that submitted a first application on or after July 18, 2006</del></p> <p><del>(For off-site and fee: except buildings of over 120 feet in height that meet the requirements of Section 415.7(a)(1)(C))</del></p>

1           \*   \*   \*   \*

2

3           **SEC. 415.4. IMPOSITION OF REQUIREMENTS.**

4           (a) **Determination of Requirements.** The Department shall determine the  
5 applicability of Section 415.1 *et seq.* to any development project requiring a First Construction  
6 Document ~~first construction document~~ and, if Section 415.1 is applicable, shall impose any such  
7 requirements as a condition of approval for issuance of the First Construction Document ~~first~~  
8 ~~construction document~~. The ~~P~~project ~~S~~sponsor shall supply any information necessary to assist  
9 the Department in this determination.

10          (b) **Notice to Development Fee Collection Unit and MOHCD of Requirements.**  
11 After the Department has made its final determination regarding the application of the  
12 affordable housing requirements to a development project pursuant to Section 415.1 *et seq.*, it  
13 shall immediately notify the Development Fee Collection Unit at DBI and MOHCD in addition to  
14 the other information required by Section 402(b) of this Article.

15          (c) **Payment of Affordable Housing Fee or Project Sponsor's Eligibility for and**  
16 **Selection of Alternative.** Prior to issuance of ~~the~~ First Construction Document ~~first construction~~  
17 ~~document~~ for a development project subject to the requirements of Section 415.1 *et seq.*, the  
18 ~~S~~sponsor of the development project shall pay the Affordable Housing Fee set forth in Section  
19 415.5 or, if eligible to meet the requirements through an Alternative, prior to the time designated  
20 to select each Alternative, shall select one of the options listed in Section 415.5(gf).

21          (d) **Department Notice to Development Fee Collection Unit of Sponsor's Choice.**  
22 After the ~~S~~sponsor has filled out a Declaration of Intent and, if necessary, an "Affidavit of  
23 Compliance with the Inclusionary Housing Program" ~~Affidavit of Eligibility for an Alternative to the~~  
24 ~~Affordable Housing Fee~~ indicating how it will fulfill the affordable housing requirements of  
25

1 Section 415.1 *et seq.*, the Department shall immediately notify the Development Fee  
2 Collection Unit at DBI and MOHCD of the Ssponsor's choice.

3 (e) **Development Fee Collection Unit Notice to Department Prior to Issuance of**  
4 **the First Certificate of Occupancy.** The Development Fee Collection Unit at DBI shall  
5 provide notice in writing or electronically to the Department and MOHCD prior to issuing the  
6 first Certificate of Occupancy for any development project subject to Section 415.1 *et seq.* that  
7 has elected to fulfill all or part of its requirement with an option other than payment of the  
8 Affordable Housing Fee. If the Department or MOHCD notifies the Unit at such time that the  
9 Ssponsor has not satisfied the requirements, the Director of DBI shall deny and all Certificates  
10 of Occupancy until the subject project is brought into compliance with the requirements of  
11 Section 415.1 *et seq.*

12 (f) **Process for Revisions of Determination of Program Requirements.** In the  
13 event that the Department or the Commission takes action affecting any development project  
14 subject to Section 415.1 *et seq.* and such action is subsequently modified, superseded,  
15 vacated, or reversed by the Board of Appeals, the Board of Supervisors, or by court action,  
16 the procedures of Section 402(c) shall be followed.

#### 17 **SEC. 415.5. AFFORDABLE HOUSING FEE.**

18 Except as provided in Section 415.5(g), all development projects subject to this  
19 Program shall be required to pay an Affordable Housing Fee subject to the following  
20 requirements:

21 (a) **Payment of a Fee.** The fee is due and payable to the Development Fee Collection  
22 Unit at DBI for deposit into the Citywide Affordable Housing Fund at the time of and in no  
23 event later than issuance of the First Construction Document ~~first construction document~~, with an  
24 option for the Project Ssponsor to defer payment to prior to issuance of the ~~first~~ First  
25 Certificate of Occupancy ~~certificate of occupancy~~ upon agreeing to pay a deferral surcharge that

1 would be deposited into the Downtown Park Fund, in accordance with Section 107A.13.15 of  
2 the San Francisco Building Code.

3 (b) **Amount of Fee.** The amount of the fee which may be paid by the Pproject  
4 Sponsor subject to this Program shall be determined by MOHCD utilizing the following  
5 factors:

6 (1) The number of units equivalent to the applicable off-site percentage of the  
7 number of units in the principal project. The applicable percentage shall be 20% ~~percent~~ or the  
8 percentage that applied to the project if the project is subject to the requirements of an earlier  
9 version of this Program due to the date it submitted its application or that percentage required  
10 in certain Special Use Districts or Area Plans or the requirements for buildings that are 120 feet or  
11 higher per Section 415.7(a)(1)(C). For the purposes of this Section 415.5, the City shall calculate  
12 the fee using the direct fractional result of the total number of units multiplied by the applicable  
13 percentage, rather than rounding up the resulting figure as required by Section 415.6(a).

14 (2) The affordability gap using data on the cost of construction of residential  
15 housing and the maximum purchase price for new ownership Inclusionary Housing Units allowed  
16 under Section 415.6 ~~Maximum Purchase Price~~ for the equivalent unit size. ~~As of the effective date of~~  
17 ~~this Ordinance No. 62-13,1~~ MOHCD shall use construction cost data from the "San Francisco  
18 Inclusionary Housing Program Financial Analysis 2012" prepared by Seifel Consulting. The  
19 Department and MOHCD shall update the technical report from time to time as they deem  
20 appropriate in order to ensure that the affordability gap remains current.

21 (3) No later than January 1 of each year ~~following the effective date of this~~  
22 ~~Ordinance No. 62-13,1~~ MOHCD shall adjust the fee. No later than December 1 ~~following the~~  
23 ~~effective date of this Ordinance No. 62-13,1~~ of each year, MOHCD shall provide the Planning  
24 Department, DBI, and the Controller with information on the adjustment to the fee so that it  
25 can be included in the Planning Department's and DBI's website notice of the fee adjustments

1 and the Controller's Citywide Development Fee and Development Impact Requirements  
2 Report described in Section 409(a). MOHCD shall index the fee annually based on the annual  
3 percent change in the Construction Cost Index for San Francisco as published by Engineering News-  
4 Record or a similar index selected by MOHCD. ~~MOH is authorized to develop an appropriate~~  
5 ~~methodology for indexing the fee, based on adjustments in the cost of constructing housing and the~~  
6 ~~Maximum Purchase Price for the equivalent unit size.~~ The method of indexing shall be published  
7 in the Procedures Manual.

8 (c) **Notice to Development Fee Collection Unit of Amount Owed.** Prior to issuance  
9 of the first construction document for a development project subject to Section 415.5, MOHCD  
10 or the Department shall notify the Development Fee Collection Unit at DBI electronically or in  
11 writing of its calculation of the amount of the fee owed.

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

18 (e) If a housing project is located in an Area Plan with an additional or specific  
19 affordable housing requirements such as those set forth in a special use district or section  
20 416, 417, and 419 or elsewhere in this code, the more specific provisions shall apply in lieu of  
21 or in addition to those provided in this Program, as applicable.

22 (f) **Use of Fees.** All monies contributed pursuant to this Section shall be deposited in  
23 the special fund maintained by the Controller called the Citywide Affordable Housing Fund.  
24 ~~The Mayor's Office of Housing and Community Development ("MOHCD")~~ shall use the funds in the  
25 following manner:

1 (1) Except as provided in subsection (2) below, the receipts in the Fund are  
2 hereby appropriated in accordance with law to be used to:

3 (A) increase the supply of housing affordable to Low-income or Moderate-  
4 income qualifying households ~~subject to the conditions of this Section; and~~

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

6 (C) pay the expenses of MOHCD in connection with monitoring and  
7 administering compliance with the requirements of the Program. MOHCD is authorized to use  
8 funds in an amount not to exceed \$200,000 every 5 years to conduct follow-up studies under  
9 Section 415.9(e) and to update the affordable housing fee amounts as described above in  
10 Section 415.5(b). All other monitoring and administrative expenses shall be appropriated  
11 through the annual budget process or supplemental appropriation for MOHCD. The fund shall  
12 be administered and expended by MOHCD, which shall have the authority to prescribe rules  
13 and regulations governing the Fund which are consistent with this Section.

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

15 (A) **Designation of Funds.** MOHCD shall designate and separately  
16 account for 10% ~~percent~~ of all fees that it receives under Section 415.1 *et seq.*, excluding fees  
17 that are geographically targeted such as those in Sections 415.6(a)(1) and 827(b)(1)(C), to  
18 support acquisition and rehabilitation of Small Sites ("Small Sites Funds"). MOHCD shall  
19 continue to divert 10% ~~percent~~ of all fees for this purpose until the Small Sites Funds reach a  
20 total of \$15 million at which point, MOHCD will stop designating funds for this purpose. At  
21 such time as designated Small Sites Funds are expended and dip below \$15 million, MOHCD  
22 shall start designating funds again for this purpose, such that at no time the Small Sites Funds  
23 shall exceed \$15 million. When the total amount of fees paid to the City under Section 415.1  
24 *et seq.* totals less than \$10 million over the preceding 12 month period, MOHCD is authorized  
25 to temporarily divert funds from the Small Sites Fund for other purposes. MOHCD must keep

1 track of the diverted funds, however, such that when the amount of fees paid to the City under  
2 Section 415.1 *et seq.* meets or exceeds \$10 million over the preceding 12 month period,  
3 MOHCD shall commit all of the previously diverted funds and 10% ~~percent~~ of any new funds,  
4 subject to the cap above, to the Small Sites Fund.

5 (B) **Use of Small Sites Funds.** The funds shall be used exclusively to  
6 acquire or rehabilitate "Small Sites" defined as properties consisting of ~~less than 2 to~~ 25 units.  
7 Units supported by monies from the fund shall be designated as housing affordable to  
8 ~~qualifying~~ Low-income or Moderate-income households as defined in Section ~~401 415.1~~ for no  
9 less than 55 years. Properties supported by the Small Sites Funds must be either

10 (i) rental properties that will be maintained as rental properties;  
11 (ii) vacant properties that were formerly rental properties as long  
12 as those properties have been vacant for a minimum of two years prior to the effective date of  
13 this legislation,

14 (iii) properties that have been the subject of foreclosure or  
15 (iv) a Limited Equity Housing Cooperative as defined in  
16 Subdivision Code Sections 1399.1 *et seq.* or a property owned or leased by a non-profit entity  
17 modeled as a Community Land Trust.

18 (C) **Initial Funds.** ~~If, within 18 months from the date of adoption of this~~  
19 ~~ordinance, MOHCD dedicates an initial one-time contribution of other eligible funds to be used~~  
20 ~~initially as Small Sites Funds, MOHCD may use the equivalent amount of Small Sites Funds received~~  
21 ~~from fees for other purposes permitted by the Citywide Affordable Housing Fund until the amount of~~  
22 ~~the initial one-time contribution is reached.~~

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



1                    (~~DE~~) **Intent.** In adopting Section 415.5(f)(2) ~~this ordinance~~ regarding the  
2 Small Sites Funds, the Board of Supervisors does not intend to preclude MOHCD from  
3 expending other eligible sources of funding on Small Sites as described in this Section, or  
4 from allocating or expending more than \$15 million of other eligible funds on Small Sites.

5                    (3) For all projects funded by the Citywide Affordable Housing Fund, MOHCD  
6 requires the Pproject Ssponsor or its successor in interest to give preference in occupying  
7 units first to Residential Certificate of Preference Holders under the San Francisco  
8 Redevelopment Agency's Property Owner and Occupant Preference Program, as reprinted  
9 September 11, 2008 and effective October 1, 2008 and on file with the Clerk of the Board in  
10 File No. 080521, who otherwise meet all of the requirements for a unit; and second to any  
11 Displaced Tenant, as defined in Administrative Code Section 24.8, who meets all of the  
12 qualifications for the unit or assistance, provided that the following limitations shall apply to the  
13 Displaced Tenant preference: (~~A~~) a Displaced Tenant may apply the preference to existing,  
14 currently-occupied developments only for three years from the date the landlord filed with the  
15 Residential Rent Stabilization and Arbitration Board ("Rent Board") a notice of intent to  
16 withdraw the tenant's unit from the rental market pursuant to the Ellis Act, California  
17 Government Code Section 7060 *et seq.* and the corresponding provisions of the San  
18 Francisco Rent Stabilization and Arbitration Ordinance ("Rent Ordinance"), Administrative  
19 Code Sections 37.9(a)(13) and 37.9A; (~~B~~) a Displaced Tenant may apply the preference to  
20 new developments going through the initial occupancy process only for six years from the  
21 date the landlord filed with the Rent Board a notice of intent to withdraw the tenant's unit from  
22 the rental market pursuant to the Ellis Act, cited above, and the corresponding provisions of  
23 the Rent Ordinance; and (~~C~~) for any new residential development going through the initial  
24 occupancy process, the Displaced Tenant preference shall apply only to ~~twenty percent (20%)~~  
25 of the units in such development. The Displaced Tenant's preference shall still apply even if

1 such Displaced Tenant declines a unit offered through application of the preference, but upon  
2 accepting and occupying a unit obtained using the preference, such Displaced Tenant's  
3 preference terminates. Otherwise, it is the policy of the City to treat all households equally in  
4 allocating Inclusionary Housing Units~~affordable units~~ under this Program.

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

6 (1) **Eligibility:** A ~~P~~project ~~S~~ponsor must pay the Affordable Housing Fee unless  
7 it qualifies for and chooses to meet the requirements of the Program through an Alternative  
8 provided in this Subsection. The ~~P~~project ~~S~~ponsor may choose one of the following  
9 Alternatives:

10 (A) **Alternative #1:** On-Site Units. ~~P~~project ~~S~~sponsors may elect to  
11 construct Inclusionary Housing Units~~affordable to qualifying households~~ on-site of the ~~p~~Principal  
12 ~~p~~Project pursuant to the requirements of Section 415.6.

13 (B) **Alternative #2:** Off-Site Units. ~~P~~project ~~S~~sponsors may elect to  
14 construct Inclusionary Housing Units~~affordable to qualifying households~~ at an alternative site  
15 within the City and County of San Francisco pursuant to the requirements of Section 415.7.  
16 Prior to Planning Commission or Planning Department approval, a Project Sponsor shall only be  
17 required to declare that they choose the off-site Alternative. The Project Sponsor shall provide a name  
18 and address of the off-site location prior to obtaining the Principal Project's First Construction  
19 Document. A Project Sponsor must also apply to and be approved by MOHCD for the ability to work  
20 with a Nonprofit Partner prior to obtaining the Principal Project's first construction document.

21 (C) **Alternative #3:** Small Sites. Qualifying Project Sponsors may elect to  
22 fund buildings as set forth in Section 415.7A.

23 (D) **Alternative #4:** Combination. ~~P~~project ~~S~~sponsors may elect any  
24 combination of payment of the Affordable Housing Fee as provided in Section 415.5,  
25 construction of ~~e~~On-site Units as provided in Section 415.6, or construction of ~~e~~Off-site Units

1 as provided in Section 415.7, provided that the Project Sponsor ~~project applicant~~ constructs or  
2 pays the fee at the appropriate percentage or fee level required for that option.

3 (2) **Qualifications:** If a ~~P~~project ~~S~~sponsor wishes to comply with the Program  
4 through one of the Alternatives described in subsection (g)(1) rather than pay the Affordable  
5 Housing Fee, ~~they~~ it must demonstrate that ~~they qualify~~ it qualifies for the Alternative to the  
6 satisfaction of the Department and MOHCD. A ~~P~~project ~~S~~sponsor may qualify for an  
7 Alternative by the following methods:

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

13 (~~ii~~B) **Method #2 - Government Financial Contribution.** Submit to the  
14 Department a contract demonstrating that the project's ~~e~~On - or ~~e~~Off-site Units are not  
15 subject to the Costa Hawkins Rental Housing Act, California Civil Code Section 1954.50  
16 because, under Section 1954.52(b), it has entered into an agreement with a public entity in  
17 consideration for a direct financial contribution or any other form of assistance specified in  
18 California Government Code Sections 65915 et seq. and it submits an Affidavit of such to the  
19 Department. All such contracts entered into with the City and County of San Francisco must  
20 be reviewed and approved by the Mayor's Office Housing and Community Development and  
21 the City Attorney's Office. All contracts that involve 100% affordable housing projects in the  
22 residential portion may be executed by the Mayor or the Director of MOHCD. Any contract  
23 that involves less than 100% affordable housing in the residential portion may be executed by  
24 either the Mayor, the Director of MOHCD or, after review and comment by MOHCD, the  
25 Planning Director. A Development Agreement under California Government Code Section

1 65864 et seq. and Chapter 56 of the ~~San Francisco~~ Administrative Code entered into between  
2 a ~~P~~project ~~S~~sponsor and the City and County of San Francisco may, but does not necessarily,  
3 qualify as such a contract.

4 (3) **Declaration of Intent.** The Planning Commission or the Department may not  
5 require a ~~P~~project ~~S~~sponsor to select a specific Alternative, but a Project Sponsor must make an  
6 affirmative election to pay the Affordable Housing Fee or to select an Alternative under this subsection  
7 (g) and demonstrate that it qualifies for such Alternative prior to the earlier of any neighborhood  
8 notification or project approval from the Planning Commission or Department through the submission  
9 of a form maintained by the Planning Department entitled "Affidavit of Compliance with the  
10 Inclusionary Housing Program." ~~If a project sponsor elects to meet the Program requirements through~~  
11 ~~one of the Alternatives described in this subsection (1g), they must choose it and demonstrate that they~~  
12 ~~qualify by submitting the "Affidavit of Compliance with the Inclusionary Housing Program" to the~~  
13 ~~Planning Department prior to any project approvals from the Planning Commission or Department.~~  
14 The Affordable Housing Fee or Alternative will be a condition of project approval and the Fee or  
15 an Alternative will be recorded against the property in an NSR. Notwithstanding the foregoing,  
16 if a ~~P~~project ~~S~~sponsor qualifies for an Alternative described in this subsection (1g) and elects to  
17 construct the Inclusionary Housing Units~~affordable units~~ on- or off-site, ~~they it~~ must submit the  
18 'Affidavit of Compliance with the Inclusionary Housing Program' based on the fact that the  
19 units will be sold as ownership units or qualify for a waiver under the Costa Hawkins Rental  
20 Housing Act to provide rental units. ~~A project sponsor who has elected to construct affordable~~  
21 ~~ownership units on- or off-site may only elect to pay the Affordable Housing Fee up to the issuance of~~  
22 ~~the first construction document if the project sponsor submits a new Affidavit establishing that the units~~  
23 ~~will not be sold as ownership units.~~ If a ~~P~~project ~~S~~sponsor fails to choose an Alternative before  
24 project approval by the Planning Commission or Planning Department or if a project becomes  
25 ineligible for an Alternative, the provisions of Section 415.5(a) through (f) shall apply.

1                   (4) **Change in the Method of Meeting the Requirement.** ~~If at any time, the project~~  
2 ~~sponsor eliminates the on-site or off-site affordable ownership-only units, then the project sponsor must~~  
3 ~~immediately inform the Department and MOH and pay the applicable Affordable Housing Fee plus~~  
4 ~~interest and any applicable penalties provided for under this Code. If a project sponsor requests a~~  
5 ~~modification to its conditions of approval for the sole purpose of complying with this Section, the~~  
6 ~~Planning Commission shall be limited to considering issues related to Section 415 et seq. in considering~~  
7 ~~the request for modification. A Project Sponsor may change its election of method of compliance in the~~  
8 ~~following ways:~~

9                   \_\_\_\_\_ (A) Prior to issuance of the First Construction Document, the Zoning  
10 Administrator may approve in writing a change (i) from the Affordable Housing Fee to an Alternative  
11 permitted under this subsection (g) or (ii) from any declaration of intent to the On-site Alternative.

12                   \_\_\_\_\_ (B) Prior to issuance of the First Certificate of Occupancy, a Project Sponsor  
13 who has submitted an Affidavit to provide On-site or Off-site Ownership Units who can establish that it  
14 is not selling the On- or Off-site Units as ownership units must immediately inform the Department and  
15 MOHCD and apply to the Department to (i) change to pay the applicable Affordable Housing Fee plus  
16 interest and any applicable penalties provided for under this Code or (ii) qualify to rent the units under  
17 subsection (g)(2).

18                   If a Project Sponsor requests a modification to its conditions of approval for the sole purpose of  
19 complying with this Section 415.5(g), the Planning Commission shall be limited to considering issues  
20 related to Section 415 et seq. in considering the request for modification.

21                   **SEC. 415.6. ON-SITE AFFORDABLE HOUSING ALTERNATIVE.**

22                   If a ~~P~~project ~~S~~sponsor is eligible and elects to provide ~~O~~en-site ~~U~~nits pursuant to  
23 Section 415.5(g), the development project shall meet the following requirements:

24                   (a) **Number of Units:** The number of Inclusionary Housing Units~~units~~ constructed on-  
25 site shall be as follows:

1 (1) The number of Inclusionary Housing Units~~units~~ constructed on-site shall  
2 generally be 12% of all units constructed on the project site. The Department shall require for  
3 housing projects covered by Section 415.3(a)(1), as a condition of Department approval of a  
4 project's building permit, or by Section 415.3(a)(2), (3) and (4), as a condition of approval of a  
5 Conditional Use Authorization or Planned Unit Development or as a condition of Department  
6 approval of a live/work project, that ~~12% percent~~ of all units constructed on the project site  
7 shall be Inclusionary Housing Units ~~affordable to qualifying households~~ so that a Pproject Ssponsor  
8 must construct .12 times the total number of units produced in the Pprincipal Pproject. If the  
9 total number of units is not a whole number, the Pproject Ssponsor shall round up to the  
10 nearest whole number for any portion of .5 or above. Notwithstanding the foregoing, a Project  
11 Sponsor may elect to participate in the Dial program set forth in subsection (e).

12 (2) **Specific Geographic Areas.** For any housing development that is located  
13 in an area with a specific affordable housing requirement set forth in a Special Use District or  
14 in any other section of the Code such as Section 419, the more specific housing requirement  
15 shall apply as long as it is consistent with Charter Section 16.110.

16 (3) If the principal project has resulted in demolition, conversion, or removal of  
17 affordable housing units renting or selling to households at income levels and/or for a rental  
18 rate or sales price below corresponding income thresholds for Inclusionary Housing Units  
19 ~~affordable to qualifying households~~, the Commission or the Department shall require that the  
20 Pproject Ssponsor replace the number of affordable units removed with units of a comparable  
21 number of bedrooms or provide that ~~12% percent~~ of all units constructed as part of the new  
22 project shall be Inclusionary Housing Units ~~affordable to qualifying households~~, whichever is  
23 greater.

24 (4) **Already Approved Projects.** Charter Section 16.110(g)(3) contains  
25 procedures for certain projects that have been approved but that have not received their first

1 construction document as defined in Section 107A.13.1 of the San Francisco Building Code  
2 by January 1, 2013 to modify their conditions of approval under limited circumstances.

3 (b) **Timing of Construction:** On-site ~~Units~~~~affordable housing~~ required by this Section  
4 415.6 must be constructed, completed, ready for occupancy, and marketed no later than the  
5 market rate units in the ~~P~~principal ~~P~~project.

6 (c) **Type of Housing:** All ~~O~~on-site ~~U~~nits constructed under this Section 415.6 must be  
7 provided as ownership units unless the ~~P~~project ~~S~~sponsor meets the eligibility requirement of  
8 Section 415.5(g). All ~~O~~on-site units must be ~~Inclusionary Housing Units~~~~Affordable to Qualifying~~  
9 ~~Households~~. In general, ~~Inclusionary Housing Units~~ ~~affordable units~~ constructed under this  
10 Section 415.6 shall be proportional in unit type by bedroom count and comparable in-number of  
11 bedrooms, exterior appearance and overall quality of construction to market rate units in the  
12 principal project. A Notice of Special Restrictions shall be recorded prior to issuance of the  
13 first construction document and shall specify the number, location and sizes for all Inclusionary  
14 Housing Units~~affordable units~~ required under this Subsection (c). The interior features in  
15 Inclusionary Housing Units~~affordable units~~ should be generally the same as those of the market  
16 rate units in the principal project, but need not be the same make, model or type of such item  
17 as long as they are of good and new quality and are consistent with then-current standards for  
18 new housing. The square footage of Inclusionary Housing Units ~~affordable units~~ do not need to  
19 be same as or equivalent to those in market rate units in the ~~P~~principal ~~P~~project, so long as it  
20 is consistent with then-current standards for new housing. Where applicable, parking shall be  
21 offered to the ~~affordable units~~ Inclusionary Housing Units subject to the terms and conditions of  
22 the Department's policy on unbundled parking for ~~affordable housing units~~ Inclusionary Housing  
23 Units as specified in the Procedures Manual and amended from time to time. On-site  
24 ~~affordable u~~Units shall be ownership units unless the project applicant meets the eligibility  
25 requirement of Section 415.5(g).

1           (d) **Income Requirements:** All On-site Inclusionary Housing Units must be sold or rented to  
2 Qualified Households. A Qualified Household must:

3                       (1) For ownership units, earn no more than an Annual Gross Income of 90% of AMI,  
4 except for the alternatives set forth in (e)(3) below.

5                       (2) For rental units, earn no more than an Annual Gross Income of 55% of AMI, except  
6 for the alternatives set forth in (e)(3) below.

7                       (3) Meet the household size requirements, as defined in the Procedures Manual.

8                       (4) For ownership units, be a First-time Homebuyer household, as defined in Section  
9 401.

10                      (5) For rental units, not be a Homeowner household, as defined in Section 401.

11           (e) **Pricing Requirements:** All On-site Inclusionary Housing Units shall adhere to the  
12 following pricing requirements.

13                      (1) For ownership units upon initial sale, Inclusionary Housing Units shall be priced to  
14 be Affordable to a Household earning no more or less than 90% of AMI, except for the alternatives set  
15 forth in (e)(3) below.

16                      (2) For ownership units on subsequent sale, Inclusionary Housing Units shall be priced  
17 at or below the prices determined by the formula specified in the Procedures Manual that reflects the  
18 change in AMI from the date of purchase to the date of resale, or the applicable standard set forth in  
19 the Procedures Manual in place at the time of the current Inclusionary Housing Unit owner's purchase.

20                      (3) For rental units, Inclusionary Housing Units shall be priced to be Affordable to a  
21 Household earning no more or less than 55% of AMI, except for the alternatives set forth in (e)(3)  
22 below. MOHCD shall publish such monthly rent levels on an annual basis.

23                      (4) Dial Alternative. The Dial program allows Project Sponsors to provide more  
24 Inclusionary Housing Units at a higher income level by “dialing up.” Dialing up meets the goals of  
25 expanding housing resources for households at slightly higher income levels, but still qualifying as Low



or Moderate-Income households, and producing more units than would otherwise be created under the Program. A Project Sponsor must declare the use of the Dial program, including the specific income targets and affordable unit count, upon submission of the Inclusionary Housing Program Affidavit in advance of project approval and such declaration will be recorded as a Condition of Approval. Any change to a Project Sponsor's Dial Program election requires Planning Commission approval if the original project required Planning Commission approval. Any project choosing the Dial program must adhere to any underlying unit mix zoning requirements and cannot apply for any unit mix exception.

Dialing up is permitted for On-site projects in the following circumstances:

<b><u>On-site Units - Baseline 12%</u></b>			
	<u>Unit Requirement</u>	<u>Ownership AMI Target</u>	<u>Rental AMI Target</u>
<u>Baseline requirement</u>	<u>12%</u>	<u>90% of AMI</u>	<u>55% of AMI</u>
<u>Dial up</u>	<u>13%</u>	<u>Not available</u>	<u>70% of AMI</u>
<u>Dial up</u>	<u>15%</u>	<u>120% of AMI</u>	<u>Not available</u>
<u>Dial up</u>	<u>16%</u>	<u>Not available</u>	<u>90% of AMI</u>

<b><u>On-site Units - Baseline 14.4%</u></b>			
	<u>Unit Requirement</u>	<u>Ownership AMI Target</u>	<u>Rental AMI Target</u>
<u>Baseline requirement</u>	<u>14.4 %</u>	<u>90% of AMI</u>	<u>55% of AMI</u>
<u>Dial up</u>	<u>16%</u>	<u>Not available</u>	<u>70% of AMI</u>
<u>Dial up</u>	<u>18%</u>	<u>120% of AMI</u>	<u>Not available</u>
<u>Dial up</u>	<u>19%</u>	<u>Not available</u>	<u>90% of AMI</u>

<b><u>On-site Units - Baseline 15%</u></b>			
	<u>Unit Requirement</u>	<u>Ownership AMI Target</u>	<u>Rental AMI Target</u>
<u>Baseline requirement</u>	<u>15%</u>	<u>90% of AMI</u>	<u>55% of AMI</u>
<u>Dial up</u>	<u>17%</u>	<u>Not available</u>	<u>70% of AMI</u>
<u>Dial up</u>	<u>19%</u>	<u>120% of AMI</u>	<u>Not available</u>
<u>Dial up</u>	<u>20%</u>	<u>Not available</u>	<u>90% of AMI</u>

<b><u>On-site Units - Baseline 16%</u></b>			
	<u>Unit Requirement</u>	<u>Ownership AMI Target</u>	<u>Rental AMI Target</u>
<u>Baseline requirement</u>	<u>16%</u>	<u>90% of AMI</u>	<u>55% of AMI</u>
<u>Dial up</u>	<u>18%</u>	<u>Not available</u>	<u>70% of AMI</u>
<u>Dial up</u>	<u>20%</u>	<u>120% of AMI</u>	<u>Not available</u>
<u>Dial up</u>	<u>21%</u>	<u>Not available</u>	<u>90% of AMI</u>

<b><u>On-site Units - Baseline 17.6%</u></b>			
	<u>Unit Requirement</u>	<u>Ownership AMI Target</u>	<u>Rental AMI Target</u>
<u>Baseline requirement</u>	<u>17.6%</u>	<u>90% of AMI</u>	<u>55% of AMI</u>
<u>Dial up</u>	<u>20%</u>	<u>Not available</u>	<u>70% of AMI</u>
<u>Dial up</u>	<u>22%</u>	<u>120% of AMI</u>	<u>Not available</u>
<u>Dial up</u>	<u>23%</u>	<u>Not available</u>	<u>90% of AMI</u>

1           On-site Inclusionary Housing Units that convert to ownership Inclusionary Housing Units after  
2           the unit was first rented under the Program are subject to the conversion AMI levels as published in the  
3           Procedures Manual.

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

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

24                 (2) **Preferences:** MOHCD shall create a lottery system that gives the following  
25          preferences:

1 (A) first to Residential Certificate of Preference Holders under the San  
2 Francisco Redevelopment Agency's Property Owner and Occupant Preference Program, as  
3 reprinted September 11, 2008 and effective October 1, 2008 and on file with the Clerk of the  
4 Board in File No. 080521, who meet the qualifications of the Program;

5 (B) second to any Displaced Tenant, as defined in Administrative Code  
6 Section 24.8, who meets all of the qualifications for the unit or assistance, provided that the  
7 following limitations shall apply to the Displaced Tenant preference: (i) a Displaced Tenant  
8 may apply the preference to existing, currently-occupied developments only for three years  
9 from the date the landlord filed with the Residential Rent Stabilization and Arbitration Board  
10 ("Rent Board") a notice of intent to withdraw the tenant's unit from the rental market pursuant  
11 to the Ellis Act, California Government Code Section 7060 et seq. and the corresponding  
12 provisions of the San Francisco Rent Stabilization and Arbitration Ordinance ("Rent  
13 Ordinance"), Administrative Code Sections 37.9(a)(13) and 37.9A; (ii) a Displaced Tenant  
14 may apply the preference to new developments going through the initial occupancy process  
15 only for six years from the date the landlord filed with the Rent Board a notice of intent to  
16 withdraw the tenant's unit from the rental market pursuant to the Ellis Act, cited above, and  
17 the corresponding provisions of the Rent Ordinance; and (iii) for any new residential  
18 development going through the initial occupancy process, the Displaced Tenant preference  
19 shall apply only to ~~twenty percent (20%)~~ of the units in such development; and

20 (C) third to people who live or work in San Francisco who meet the  
21 qualifications of the Program.

22 The Displaced Tenant's preference shall still apply even if such Displaced Tenant  
23 declines a unit offered through application of the preference, but upon accepting and  
24 occupying a unit obtained using the preference, such Displaced Tenant's preference  
25 terminates. MOHCD shall propose policies and procedures for implementing these

1 preferences to the Planning Commission for inclusion in the Procedures Manual. Otherwise,  
2 it is the policy of the City to treat all households equally in allocating Inclusionary Housing  
3 Units~~affordable units~~ under this Program.

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

12 (fh) Projects Using California Debt Limit Allocation Tax-exempt Bond Financing.  
13 Notwithstanding the provisions of Section 415.6(eg) above, a project may use California Debt  
14 Limit Allocation Committee (CDLAC) tax-exempt bond financing and 4% tax credits under the  
15 Tax Credit Allocation Committee (TCAC) to help fund its obligations under this Inclusionary  
16 Affordable Housing Program ~~ordinance~~ as long as the project provides 20% ~~percent~~ of the units  
17 as Inclusionary Housing Units affordable to households at 50% ~~percent~~ of AMI ~~Area Median~~  
18 ~~Income~~ for on-site housing, and also meets the relevant on-site requirement for the project under  
19 Section 415.6(a). The income table to be used for such projects when the units are priced at  
20 50% ~~percent~~ of AMI ~~Area Median Income~~ is the income table used by MOHCD for the  
21 Inclusionary Affordable Housing Program, not that used by TCAC or CDLAC. Except as  
22 provided in this subsection (h), all units provided under this Section 415.6 must meet all of the  
23 requirements of the Inclusionary Housing Program ~~this ordinance~~ and the Procedures Manual for  
24 on-site housing. When the terms of the tax-exempt bond financing have expired, the units shall be  
25

1 subject to the requirements for On-site Units for the remaining Life of the Project, including any  
2 additional units that were required as a stipulation of government financing.

3 (g) **Benefits:** If the Pproject Ssponsor is eligible for and elects to satisfy the affordable  
4 housing requirements through the production of on-site affordable housing in this Section  
5 415.6, the Pproject Ssponsor shall be eligible to receive a refund for only that portion of the  
6 housing project which is affordable for the following fees: a Conditional Use Authorization or  
7 other fee required by Section 352 of this Code, if applicable; an environmental review fee  
8 required by Administrative Code Section 31.21 and following 31.46B, if applicable; a building  
9 permit fee required by the Building Code and by Section 355 of this Code for the portion of the  
10 housing project that is affordable. The Pproject Ssponsor shall pay the building fee for the  
11 portion of the project that is market-rate.

12 The Controller shall refund fees from any appropriated funds to the Pproject Ssponsor  
13 on application by the Pproject Ssponsor. The application must include a copy of the Certificate  
14 of Occupancy for all Inclusionary Housing ~~Units~~ affordable to a qualifying household required by  
15 the Inclusionary Housing Program. It is the policy of the Board of Supervisors to appropriate  
16 money for this purpose from the General Fund.

#### 17 **SEC. 415.7. OFF-SITE AFFORDABLE HOUSING ALTERNATIVE.**

18 If the Pproject Ssponsor is eligible and ~~selects~~ pursuant to Section 415.5(g) to provide  
19 Off-site Units to satisfy the requirements of Section 415.1 et seq., the Pproject Ssponsor  
20 shall notify the Planning Department and the ~~Mayor's Office of Housing and Community~~  
21 ~~Development~~ ("MOHCD") of its intent as early as possible. The Planning Department and  
22 MOHCD shall provide an evaluation of the project's compliance with this Section 415.7 prior to  
23 approval by the Planning Commission or Planning Department. There are two ways a Principal  
24 Project may propose to meet the off-site requirements: by meeting "Core off-site requirements," or by  
25 applying to MOHCD to develop a "Nonprofit Provider Partner Project" as defined in Section 401.

1 The development project shall meet the following requirements:

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

3 (1) ~~(A) Core Off-site projects: The number of units constructed off-site shall be as~~  
4 ~~follows:~~

5 \_\_\_\_\_ (A) For any housing development of any height that is located in an area  
6 with a specific affordable housing requirement, set forth in Section 419, or elsewhere in this  
7 Code, the more specific off-site housing requirement shall apply. Notwithstanding the foregoing,  
8 a Project Sponsor may elect to participate in the Dial program set forth in subsection (f).

9 (B) Buildings of 120 feet and under in height or buildings of over 120 feet  
10 in height that do not meet the criteria in Subsection (C) below: Except as provided in  
11 Subsection (A), the Department shall require for housing projects described in Section  
12 415.3(a)(1), (2), (3), and (4) 20% so that a project applicant must construct .20 times the total  
13 number of units produced in the principal project. If the total number of units is not a whole  
14 number, the project applicant shall round up to the nearest whole number for any portion of .5  
15 or above. Notwithstanding the foregoing, a Project Sponsor may elect to participate in the Dial  
16 program set forth in subsection (f).

17 (C) Buildings of over 120 feet in height. Except as provided in  
18 subsection (A) above, the requirements of this Subsection shall apply to any project that is  
19 over 120 feet in height and does not require a Zoning Map amendment or Planning Code text  
20 amendment related to its project approvals which (i) results in a net increase in the number of  
21 permissible residential units, or (ii) results in a material increase in the net permissible  
22 residential square footage as defined in Section 415.3(b)(2); or has not received or will not  
23 receive a Zoning Map amendment or Planning Code text amendment as part of an Area Plan  
24 adopted after January 1, 2006 ~~which~~ that: a. (i) results in a net increase in the number of  
25 permissible residential units, or b. (ii) results in a material increase in the net permissible

1 residential square footage as defined in Section 415.3(b)(2). The Department shall require for  
2 housing projects covered by this Subsection and Section 415.3(a)(1), as a condition of  
3 Planning Department approval of a project's building permit, or by this Subsection and by  
4 Section 415.3(a)(2), (3) and (4), as a condition of approval of a Conditional Use Authorization  
5 or Planned Unit Development or as a condition of Department approval of a live/work project,  
6 that 17% of all units constructed on the project site shall be Inclusionary Housing Units  
7 ~~affordable to qualifying households~~ so that a Pproject Ssponsor must construct .17 times the total  
8 number of units produced in the Pprincipal Pproject. If the total number of units is not a whole  
9 number, the Pproject Ssponsor shall round up to the nearest whole number for any portion of  
10 .5 or above. ~~Consistent with the conclusions of the MOH study authorized in Section 415.9(e), MOH~~  
11 ~~shall recommend and the Board of Supervisors shall consider whether the requirements of this~~  
12 ~~Subsection for buildings of over 120 feet in height shall continue or expire after approximately five~~  
13 ~~years from April 24, 2007. Notwithstanding the foregoing, a Project Sponsor may elect to participate~~  
14 ~~in the Dial program set forth in subsection (f)(4).~~

15 (2) Non-profit Provider Partner Projects. Such Projects must provide a minimum of  
16 20% or the project's applicable percentage requirement under Section 415.7(a)(1)(A) of the Principal  
17 Project units, but may meet their off-site requirement on a square footage basis and would be required  
18 to provide 20% of their Principal Project Residential Floor Area as Off-Site Units.

19 The off-site units must:

20 (A) Meet or exceed the weighted average of unit type by bedroom count of the  
21 Principal Project; and

22 (B) Provide at minimum the same total number of bedrooms as would have  
23 been provided in a bedroom mix proportional to the Principal Project under Subsection (a)(1)(B)  
24 above.

25 **(b) Timing of Construction:**



1           (1) Core Off-site projects. The ~~P~~project ~~S~~ponsor shall ~~i~~ensure that the off-site  
2 units are constructed, completed, ready for occupancy, and marketed no later than the market  
3 rate units in the ~~P~~Principal ~~P~~project. ~~In no case shall the~~ The Principal Project shall not receive its  
4 ~~F~~irst ~~C~~ertificate of ~~O~~ccupancy until the ~~o~~ff-site project has received its ~~F~~irst ~~C~~ertificate of  
5 ~~O~~ccupancy.

6           (2) Nonprofit Provider Partner Projects. The Project Sponsor shall ensure that the Off-  
7 site Units are constructed, completed, ready for occupancy, and marketed no later than the market rate  
8 units in the Principal Project. The Principal Project shall not receive its First Certificate of  
9 Occupancy until the Off-site project has received its First Certificate of Occupancy.

10           (3) If the Director of MOHCD makes a recommendation to the Zoning Administrator,  
11 the Zoning Administrator may grant an exception within the time limits set forth in subsection (4) to the  
12 timing requirements above. MOHCD shall only recommend and the Zoning Administrator shall only  
13 grant an exception if the Project Sponsor has demonstrated that the requirements of the Inclusionary  
14 Affordable Housing Program will be met and if all of the following conditions are met:

15           (A) Prior to receiving its First Certificate of Occupancy for the Principal  
16 Project, the Project Sponsor provides the City with an irrevocable standby letter of credit, acceptable  
17 in form and substance and from a provider reasonably acceptable to MOHCD and the City Attorney's  
18 Office each of whose consent will not be unreasonably withheld, in the amount of the Affordable  
19 Housing Fee that would have been due from the Principal Project Sponsor under Section 415.5 plus  
20 interest and penalties from the date when it should have been paid until the last date of the requested  
21 extension, less any amount of equity that the Principal Project Sponsor has paid in cash that has  
22 already been spent on constructing the off-site project;

23           (B) The Off-site Project is entitled before the Principal Project obtains its First  
24 Construction Document; and

1                    (C) The following rules are met before the Principal Project obtains its First  
2 Certificate of Occupancy: (i) the Off-site Project parcel has been acquired by the Principal Project  
3 Sponsor, Nonprofit Provider Partner, or an entity that is owned or controlled by either such party; (ii)  
4 the Off-site Project has obtained its First Construction Document and has commenced construction;  
5 and (iii) a Notice of Special Restrictions reflecting the Off-site Project's conditions of approval,  
6 including but not limited to the requirements of Planning Code Section 415 et. al. and the Procedures  
7 Manual, has been recorded on the Off-site Project.

8                    (4) The maximum amount of time permitted for an exception is as follows:

9                    (A) Core Off-site Projects. The Off-site project must receive its First Certificate  
10 of Occupancy within one year of the date the Principal Project obtained its First Certificate of  
11 Occupancy.

12                    (B) Nonprofit Provider Partner Projects. The Off-site project must receive its  
13 First Certificate of Occupancy within two years of the date the Principal Project obtained its First  
14 Certificate of Occupancy. The Director of MOHCD may recommend that the Zoning Administrator  
15 grant an additional year in the case of projects that have demonstrated significant progress and can  
16 demonstrate ability to be completed within the additional extension period.

17                    (5) Failure to complete an off-site project within the time exception permitted per  
18 subsections (3) and (4) above shall result in forfeiting the Project Sponsor's letter of credit, but the  
19 Certificate of Occupancy for the Principal Project will not be withheld or withdrawn.

20                    (6) The Director of MOHCD may recommend that the Zoning Administrator allow  
21 exceptions to the timing requirements in subsections (4)(A) and (B) above if the CEQA decision,  
22 building permit, or other entitlement for the off-site project is appealed or the off-site project is the  
23 subject of a later court challenge.

24                    **(c) Location of off-site housing:** ~~The project sponsor must insure that off-site units are~~  
25 ~~located within one mile of the principal project.~~

1 (1) Core Off-site projects. MOHCD shall not permit a Core Off-site project unless the  
2 off-site units are located within a one-mile radius of the Principal Project, or MOHCD, in consultation  
3 with the Planning Department, determines that the off-site project is within the same neighborhood as  
4 the Principal Project using a definition of “neighborhood” in common use by the Planning  
5 Department, such as the Planning Department’s 37-neighborhood notification map. If the Director of  
6 MOHCD makes an affirmative recommendation, the Zoning Administrator may allow the off-site  
7 project to be located an additional one quarter mile beyond the one-mile radius.

8 (2) Nonprofit Provider Partner Projects. The requirements for location of Off-site  
9 housing are the same as for the Core Off-site projects.

10 **(d) Type of Housing:**

11 (1) Core Off-site projects. All Off-site Units constructed under this Section 415.7 must  
12 be provided for the Life of the Project. All off-site units constructed under this Section must be  
13 provided as ownership housing ~~for the life of the project~~ unless the project applicant meets the  
14 eligibility requirement of Section 415.5(g). ~~If offered for ownership, all off-site units must be~~  
15 ~~affordable to households earning no more than 70 percent of the AMI, or if offered for rent, Affordable~~  
16 ~~to Qualifying Households at the rental level.~~ Nothing in this Section shall limit a ~~P~~project ~~S~~sponsor  
17 from meeting the requirements of this Section through the construction of units in a limited  
18 equity or land trust form of ownership if such units otherwise meet all of the requirements for  
19 off-site housing. In general, Off-site Units constructed under Section 415.7 shall be  
20 ~~proportional in unit type by bedroom count and~~ comparable in number of bedrooms, ~~exterior~~  
21 ~~appearance~~ and overall quality of construction to market rate units in the Principal Project  
22 ~~principal project~~. The total square footage of the Off-site Units ~~off-site affordable units~~  
23 constructed under Section 415.7 shall be no less than the calculation of the total square  
24 footage of the on-site market-rate units in the Principal Project ~~principal project~~ multiplied by  
25 the relevant on-site percentage requirement for the project specified in Section 415.7. The

Notice of Special Restrictions or conditions of approval shall include a specific number of units at specified unit sizes - including number of bedrooms and minimum square footage - for Inclusionary Housing Units~~affordable units~~. The interior features in Inclusionary Housing Units~~affordable units~~ should generally be the same as those of the market rate units in the Principal Project ~~principal project~~ but need not be the same make model or type of such item as long as they are of new and good quality and are consistent with then-current standards for new housing and so long as they are consistent with the "Quality Standards for Off-Site Inclusionary Affordable Housing Units" found in the Procedures Manual. Where applicable, parking shall be offered to the Inclusionary Housing Units~~affordable units~~ subject to the terms and conditions of the Department's policy on unbundled parking for Inclusionary Housing Units~~affordable housing units~~ as specified in the Procedures Manual and amended from time to time. If the residential units in the Pprincipal Pproject are live/work units which do not contain bedrooms or are other types of units which do not contain bedrooms separated from the living space, the Offoff-site Units shall be comparable in size according to the following equivalency calculation between live/work and units with bedrooms:

Number of Bedrooms (or, for live/work units square foot equivalency)	Number of Persons in Household
0 (Less than 600 square feet)	1
1 (601 to 850 square feet)	2
2 (851 to 1,100 square feet)	3
3 (1,101 to 1,300 square feet)	4
4 (More than 1,300 square feet)	5

(2) Nonprofit Provider Partner Projects. The requirements for location of Off-site housing are the same as for the Core Off-site projects.

1           (e) **Income Requirements:** All Off-site Inclusionary Housing Units must be sold or rented to  
2 Qualified Households. A Qualified Household must:

3                     (1) For ownership units, earn no more than an Annual Gross Income of 90% of AMI,  
4 except for as provided in the Dial in (e)(4) below.

5                     (2) For rental units, earn no more than an Annual Gross Income of 55% of AMI, except  
6 for the as provided in the Dial in (e)(4) below.

7                     (3) Meet the household size requirements, as defined in the Procedures Manual.

8                     (4) For ownership units, be a First-time Homebuyer household, as defined in Section  
9 401.

10                    (5) For rental units, not be a Homeowner household, as defined in Section 401.

11           (f) **Pricing Requirements:** All Off-site Inclusionary Housing Units shall adhere to the  
12 following pricing requirements.

13                    (1) For ownership units upon initial sale, Inclusionary Housing Units shall be priced to  
14 be Affordable to a Household earning no more or less than 90% of AMI, except for as provided in the  
15 Dial in (e)(4) below.

16                    (2) For ownership units on subsequent sale, Inclusionary Housing Units shall be priced  
17 at or below the prices determined by the formula specified in the Procedures Manual that reflects the  
18 change in AMI from the date of purchase to the date of resale, or the applicable standard set forth in  
19 the Procedures Manual in place at the time of the current Affordable Housing Unit owner's purchase.

20                    (3) For rental units, Inclusionary Housing Units shall be priced to be Affordable to a  
21 Household earning no more or less than 55% of AMI, except as provided in the Dial in (e)(4) below.  
22 MOHCD shall publish such monthly rent levels on an annual basis. At no time can a rent increase, or  
23 can multiple rent increases within one year, exceed the percentage change in the monthly rent levels as  
24 published by MOHCD from the previous calendar year to the current calendar year.

*(4) Dial Alternative. The Dial program allows Project Sponsors to provide more Inclusionary Housing Units at a higher income level by “dialing up.” Dialing up meets the goals of expanding housing resources for households at slightly higher income levels, but still qualifying as Low or Moderate Income households, and producing more units than would otherwise be created under the Program. A Project Sponsor must declare the use of the Dial program, including the specific income targets and affordable unit count, upon submission of the Inclusionary Housing Program Affidavit in advance of project approval and such declaration will be recorded as a Condition of Approval. Any change to a Project Sponsor’s Dial Program election requires Planning Commission approval if the original project required Planning Commission approval. Any project choosing the Dial program must adhere to any underlying unit mix zoning requirements and cannot apply for any unit mix exception.*

*Dialing up is permitted for Off-site projects in the following circumstances:*

<b><u>Off-site Units - Baseline 20%</u></b>			
	<b><u>Unit Requirement</u></b>	<b><u>Ownership AMI Target</u></b>	<b><u>Rental AMI Target</u></b>
<b><u>Baseline requirement</u></b>	<b><u>20%</u></b>	<b><u>90% of AMI</u></b>	<b><u>55% of AMI</u></b>
<b><u>Dial up</u></b>	<b><u>23%</u></b>	<b><u>Not available</u></b>	<b><u>70% of AMI</u></b>
<b><u>Dial up</u></b>	<b><u>30%</u></b>	<b><u>Not available</u></b>	<b><u>90% of AMI</u></b>
<b><u>Dial up</u></b>	<b><u>31%</u></b>	<b><u>120% of AMI</u></b>	<b><u>Not available</u></b>

<b><u>Off-site Units - Baseline 17%</u></b>			
	<b><u>Unit Requirement</u></b>	<b><u>Ownership AMI Target</u></b>	<b><u>Rental AMI Target</u></b>
<b><u>Baseline requirement</u></b>	<b><u>17%</u></b>	<b><u>90% of AMI</u></b>	<b><u>55% of AMI</u></b>
<b><u>Dial up</u></b>	<b><u>20%</u></b>	<b><u>Not available</u></b>	<b><u>70% of AMI</u></b>

<u>Dial up</u>	<u>26%</u>	<u>120% of AMI</u>	<u>90% of AMI</u>
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<b><u>Off-site Units - Baseline 23%</u></b>			
	<u>Unit Requirement</u>	<u>Ownership AMI Target</u>	<u>Rental AMI Target</u>
<u>Baseline requirement</u>	<u>23%</u>	<u>90% of AMI</u>	<u>55% of AMI</u>
<u>Dial up</u>	<u>27%</u>	<u>Not available</u>	<u>70% of AMI</u>
<u>Dial up</u>	<u>35%</u>	<u>120% of AMI</u>	<u>90% of AMI</u>

<b><u>Off-site Units - Baseline 25%</u></b>			
	<u>Unit Requirement</u>	<u>Ownership AMI Target</u>	<u>Rental AMI Target</u>
<u>Baseline requirement</u>	<u>25%</u>	<u>90% of AMI</u>	<u>55% of AMI</u>
<u>Dial up</u>	<u>29%</u>	<u>Not available</u>	<u>70% of AMI</u>
<u>Dial up</u>	<u>38%</u>	<u>120% of AMI</u>	<u>90% of AMI</u>

<b><u>Off-site Units - Baseline 27%</u></b>			
	<u>Unit Requirement</u>	<u>Ownership AMI Target</u>	<u>Rental AMI Target</u>
<u>Baseline requirement</u>	<u>27%</u>	<u>90% of AMI</u>	<u>55% of AMI</u>
<u>Dial up</u>	<u>32%</u>	<u>Not available</u>	<u>70% of AMI</u>
<u>Dial up</u>	<u>41%</u>	<u>120% of AMI</u>	<u>90% of AMI</u>

1 Off-site Inclusionary Housing Units that convert to ownership Inclusionary Housing Units after the unit  
2 was first rented under the Program are subject to the conversion AMI levels as published in the  
3 Procedures Manual.

4 (g) **Marketing the Units:**

5 (1) Core Off-site projects. MOHCD shall be responsible for overseeing and  
6 monitoring the marketing of Inclusionary Housing Units~~affordable units~~ under this Section. In  
7 general, the marketing requirements and procedures shall be contained in the Procedures  
8 Manual as amended from time to time and shall apply to the Inclusionary Housing  
9 Units~~affordable units~~ in the project. MOHCD may develop occupancy standards for units of  
10 different bedroom sizes in the Procedures Manual in order to promote an efficient allocation of  
11 Inclusionary Housing Units~~affordable units~~. MOHCD may require in the Procedures Manual that  
12 prospective purchasers complete homebuyer education training or fulfill other requirements.  
13 MOHCD shall develop a list of minimum qualifications for marketing firms that market  
14 Inclusionary Housing Units~~affordable units~~ under Section 415.1 et seq., referred to the  
15 Procedures Manual as Below Market Rate (BMR units). No ~~P~~project ~~S~~sponsor marketing units  
16 under the Program shall be able to market BMR units except through a firm meeting all of the  
17 minimum qualifications. The Notice of Special Restrictions or conditions of approval shall  
18 specify that the marketing requirements and procedures contained in the Procedures Manual  
19 as amended from time to time, shall apply to the Inclusionary Housing Units~~affordable units~~ in  
20 the project.

21 (A) **Lottery:** At the initial offering of Inclusionary Housing Units~~affordable~~  
22 ~~units~~ in a housing project and when ownership units become available for resale in any  
23 housing project subject to this Program after the initial offering, MOHCD must require the use  
24 of a public lottery approved by MOHCD to select purchasers or tenants.



1 (B2) **Preferences:** MOHCD shall create a lottery system that gives the  
2 following preferences:

3 (iA) first to Residential Certificate of Preference Holders under the  
4 San Francisco Redevelopment Agency's Property Owner and Occupant Preference Program,  
5 as reprinted September 11, 2008 and effective October 1, 2008 and on file with the Clerk of  
6 the Board in File No. 080521, who meet the qualifications of the Program;

7 (iiB) second to any Displaced Tenant, as defined in Administrative  
8 Code Section 24.8, who meets all of the qualifications for the unit for assistance, provided that  
9 the following limitations shall apply to the Displaced Tenant preference: ~~(i)~~

10 \_\_\_\_\_ ~~a.)~~ a Displaced Tenant may apply the preference to  
11 existing, currently-occupied developments only for three years from the date the landlord filed  
12 with the Residential Rent Stabilization and Arbitration Board ("Rent Board") a notice of intent  
13 to withdraw the tenant's unit from the rental market pursuant to the Ellis Act, California  
14 Government Code Section 7060 et seq. and the corresponding provisions of the San  
15 Francisco Rent Stabilization and Arbitration Ordinance ("Rent Ordinance"), Administrative  
16 Code Sections 37.9(a)(13) and 37.9A; ~~(ii)~~

17 \_\_\_\_\_ ~~b.~~ a Displaced Tenant may apply the preference to new  
18 developments going through the initial occupancy process only for six years from the date the  
19 landlord filed with the Rent Board a notice of intent to withdraw the tenant's unit from the  
20 rental market pursuant to the Ellis Act, cited above, and the corresponding provisions of the  
21 Rent Ordinance; ~~and (iii)~~

22 \_\_\_\_\_ ~~c.~~ for any new residential development going through the initial  
23 occupancy process, the Displaced Tenant preference shall apply only to ~~twenty percent (20%)~~  
24 of the units in such development; and  
25

~~€iii.€~~ third to people who live or work in San Francisco who meet the qualifications of the Program. The Displaced Tenant's preference shall still apply even if such Displaced Tenant declines a unit offered through application of the preference, but upon accepting and occupying a unit obtained using the preference, such Displaced Tenant's preference terminates. MOHCD shall propose policies and procedures for implementing these preferences to the Planning Commission for inclusion in the Procedures Manual. Otherwise, it is the policy of the City to treat all households equally in allocating Inclusionary Housing Units~~affordable units~~ under this Program.

(2) Nonprofit Provider Partner Projects. The Marketing Procedures shall be the same  
as those for the Core Off-site units.

***(h) Development Subsidies.***

(1) Core Off-site units. Individual Inclusionary Housing Units~~affordable units~~ constructed as part of a larger off-site project under 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 Inclusionary Housing Unit~~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 MOHCD, to deepen the affordability of Inclusionary Housing Units~~an affordable unit~~ beyond the level of affordability required by this Program.

(2) Nonprofit Provider Partner Projects. The limitations on the use of development subsidies shall be the same as those for the Core Off-site units.

(i) **Projects Using California Debt Limit Allocation Committee Tax-exempt Bond Financing.**

(1) Core Off-site projects. Notwithstanding the provisions of Section 415.7(hf) above, a project may use California Debt Limit Allocation Committee (CDLAC) tax-exempt

1 bond financing and 4% credits under the Tax Credit Allocation Committee (TCAC) to help  
2 fund its obligations under this ordinance as long as the project provides a minimum of 20% 25  
3 ~~percent~~ of the units as Inclusionary Housing Units affordable at 50% of AMI area median income  
4 for off-site housing, and also meets the relevant off-site requirement for the projects per Section  
5 415.7(a). The income table to be used for such projects when the units are priced at 50%  
6 ~~percent of AMI area median income~~ is the income table used by MOHCD for the Inclusionary  
7 Housing Program, not that used by TCAC or CDLAC. Except as provided in this subsection,  
8 all units provided under this Section 415.7 must meet all of the requirements of this  
9 ~~ordinance~~ Section 415 and the Procedures Manual for off-site housing. When the terms of the tax-  
10 exempt bond financing have expired, the units shall be subject to the requirements for Off-site Units for  
11 the remaining Life of the Project, including any additional units that were required as a stipulation of  
12 government financing.

13 (2) Nonprofit Provider Partner Projects. The requirement for Core Off-site projects  
14 apply.

15 (j) Aggregation of Principal Project Off-site Units: As long as all of the other requirements of  
16 this Section 415.7 are met, any Core or Nonprofit Partner Provider Off-site project may include units  
17 to satisfy the off-site requirements of one or more Principal Projects.

18 **SEC. 415.7A. SMALL SITES AFFORDABLE HOUSING ALTERNATIVE.**

19 A Project Sponsors of a Principal Project comprised of up to 25 residential units may elect  
20 under Section 415.5(g) to meet its Inclusionary Affordable Housing requirement by designating its  
21 payment of the Affordable Housing Fee due under Section 415.5 into a Small Sites Program that  
22 MOHCD shall establish for this purpose. MOHCD shall expend the funds from a Principal Project on  
23 a Small Sites Project that meets the requirements set forth in Section 415.5(f)(2)(B) within the  
24 geographic area described in Section 415.7. If MOHCD is unable to identify a qualifying Small Sites  
25 Project and apply the fee to a Small Sites Project within the geographic area required in Section 415.7

1 within two years of the payment of the fee, such fee shall be released into the Affordable Housing Fund  
2 to fund other qualifying Small Sites Projects in San Francisco.

3 **SEC. 415.8. DURATION AND MONITORING OF AFFORDABILITY.**

4 (a) For any units permitted under the Program:

5 (1) All units constructed pursuant to Sections 415.6 (on-site alternative) and  
6 415.7 (off-site alternative) must be owner-occupied, as defined in the Procedures Manual, in  
7 the case of ownership units or occupied by Qualified Households~~qualified households~~ in the case  
8 of rental units.

9 (2) Units shall not remain vacant for a period exceeding 60 days without the  
10 written consent of MOHCD.

11 (3) All units constructed pursuant to Sections 415.6 and 415.7 must remain  
12 Inclusionary Housing Units~~affordable to qualifying households~~ for the Life of the Project~~life of the~~  
13 ~~project~~.

14 (4) The income levels specified in the Notice of Special Restrictions and/or  
15 Conditions of Approval~~conditions of approval~~ for the project shall be the required income  
16 percentages for the Life of the Project~~life of the project~~. Notwithstanding the foregoing, if  
17 approved by MOHCD and as provided in the Procedures Manual, an exception to the required  
18 income percentage may be made in the following cases:

19 (A) a rental unit that converts to an ownership unit, up to a maximum of  
20 120% of AMI;

21 (B) where there is an existing tenant, the household income may  
22 increase by up to 200% of the levels specified in the Notice of Special Restrictions or  
23 conditions of approval but at no time higher than Moderate Income;

1 (C) new ownership units where the ~~P~~project ~~S~~sponsor has used good  
2 faith efforts to secure a contract with a Qualified Household~~qualified buyer~~ but is unable to  
3 secure such a contract in a timely manner from the initiation of marketing;

4 (D) resale ownership units where the owner has used good faith efforts  
5 to secure a contract with a Qualified Household~~qualified buyer~~ but is unable to secure a buyer  
6 contract at a maximum resale price specified by MOHCD in a timely manner; or

7 (E) the qualifying income level for ~~new~~ ownership units may be set at  
8 10% above the income level stated in the Notice of Special Restrictions or Conditions of  
9 Approval~~conditions of approval~~.

10 (5) The price levels specified in Sections 415.6 (e)(1) and 415.7 (e)(1) shall apply  
11 except in the case where a Project Sponsor at the time of completion of the project makes a request to  
12 the Director of MOHCD and the Director approves the request in writing to sell the Inclusionary  
13 Housing Units at a lower price on initial sale.

14 (6) The Commission or the Department shall require all Housing Projects~~housing~~  
15 ~~projects~~ subject to Section 415.1 et seq. to record a Notice of Special Restrictions with the  
16 Recorder of the City and County of San Francisco. The Notice of Special Restrictions must  
17 incorporate the affordability restrictions. All projects described in Section 415.3(a)(1) and  
18 415.3(a)(3) must incorporate all of the requirements of this Section 415.8 into the Notice for  
19 Special Restrictions, including any provisions required to be in the Conditions of  
20 Approval~~conditions of approval~~ for Housing Projects~~housing projects~~ described in Section  
21 415.3(a)(2). These Section 415.3(a)(2) projects which are Housing Projects~~housing projects~~  
22 ~~which that~~ go through the conditional use or planned unit development process shall have  
23 Conditions of Approval~~conditions of approval~~. The Conditions of Approval~~conditions of approval~~  
24 shall specify that project applicants shall adhere to the marketing, monitoring, and  
25 enforcement procedures outlined in the Procedures Manual, as amended from time to time.,~~in~~

1 ~~effect at the time of project approval. The Commission shall file the Procedures Manual in the case file~~  
2 ~~for each project requiring inclusionary housing pursuant to this Program.~~ The Procedures Manual  
3 ~~will~~ shall be referenced in the Notice of Special Restrictions for each project.

4 (b) For any units permitted to be ownership units under the Program, MOHCD~~the~~  
5 ~~Mayor's Office of Housing~~ shall:

6 (1) establish and implement a process for reselling an Inclusionary Housing  
7 Unit~~affordable unit~~ in the Procedures Manual;

8 (2) provide that owners may not change title on the unit without review and  
9 approval by MOHCD and according to guidelines published in the Procedures Manual.

10 (3) provide that owners must comply with refinancing procedures and limitations  
11 as published in the Procedures Manual.

12 (4) provide that, in order to retain all units restricted as affordable under this  
13 Program within the City's affordable housing stock, the specific procedures for passing an  
14 Inclusionary Housing Unit~~affordable unit~~ through inheritance are contained in the Procedures  
15 Manual. All transfers through inheritance must be reviewed and approved by MOHCD and, in  
16 all cases, the heir must acknowledge and agree to the provisions of the Program. The  
17 following households may inherit the ability to occupy a unit restricted under this Program:

18 (A) a spouse or registered domestic partner, regardless of income; or (B) a child of the  
19 owner if the child is a Qualifying Household~~qualifying household~~ for the unit. If the heir qualifies  
20 under one of these categories, the heir must occupy the unit or the heir must market and sell  
21 the unit at the restricted price through a public lottery process and retain the proceeds from  
22 the sale. If the heir does not qualify to occupy the unit, the heir must market and sell the unit  
23 at the restricted price to a Qualifying Household ~~qualified buyer~~ through a public lottery process.  
24 The heir would retain the proceeds of such sale.

1 (5) Require that ~~affordable~~ rental Inclusionary Housing Units~~units~~ permitted by the  
2 Commission to be converted to ownership units must satisfy the requirements of the  
3 Procedures Manual, as amended from time to time, including that the units shall be sold at  
4 restricted sales prices to households meeting the income qualifications specified in the Notice  
5 of Special Restrictions or Conditions of Approval~~conditions of approval~~, with a right of first refusal  
6 for the occupant(s) of such units at the time of conversion. If the current tenant qualifies for  
7 and purchases the unit, the unit shall be sold at a sales price corresponding to the affordability  
8 level required for rental units or to the affordability level for the specific tenant household,  
9 whichever is higher, with a maximum allowable qualifying income level up to 120% of AMI. If  
10 the unit is sold to anyone else, the sales price shall correspond to the affordability level  
11 required for ownership units. Upon conversion to ownership, the units are subject to the  
12 resale and other restrictions of this Program for the Life of the Project~~life of the project~~, as  
13 defined in the Notice of Special Restrictions or Conditions of Approval~~conditions of approval~~ for  
14 the Project.

15 (6) For ownership units approved pursuant to Sections 415.6 or 415.7, the  
16 Notice of Special Restrictions or Conditions of Approval~~conditions of approval~~ will include  
17 provisions restricting resale prices and purchaser income levels according to the formula  
18 specified in the Procedures Manual, as amended from time to time. ~~In the case that~~  
19 ~~subordination of the Affordability Conditions contained in a recorded Notice of Special Restrictions~~  
20 ~~may be necessary to ensure the Project Applicant's receipt of adequate construction and/or permanent~~  
21 ~~financing for the project, or to enable first time home buyers to qualify for mortgages, the project~~  
22 ~~applicant may follow the procedures for subordination of affordability restrictions as described in the~~  
23 ~~principal project's conditions of approval or in the Procedures Manual.~~—A release following  
24 foreclosure or other transfer in lieu of foreclosure may be authorized if required as a condition  
25 to buyer financing pursuant to the procedures set forth in the Procedures Manual.

1 (7) Purchasers of Inclusionary Housing Unit~~affordable units~~ shall secure the  
2 obligations contained in the Notice of Special Restrictions or Conditions of Approval~~conditions of~~  
3 ~~approval~~ by executing and delivering to the City a promissory note secured by a deed of trust  
4 encumbering the applicable Inclusionary Housing Unit~~affordable unit~~ as described in the  
5 Procedures Manual or by an alternative means if so provided for in the Procedures Manual,  
6 as amended from time to time.

7 (8) **Procedures For Units Unable To Resell.** The Board of Supervisors finds  
8 that certain requirements of this Program and the Procedures Manual may create hardship for  
9 owners of Inclusionary Housing Unit~~affordable units~~ restricted under this Program. However,  
10 the Board also recognizes that the requirements of this Program are important to preserve the  
11 long-term affordability of units restricted under the Program. In order to allow some relief for  
12 owners of Inclusionary Housing Unit~~affordable units~~ during a time of economic downturn, but to  
13 provide the maximum protection for the long-term affordability of the units, the Board directs  
14 MOHCD to analyze the following issues and, if it deems appropriate, to propose amendments  
15 to the Procedures Manual to address the issues:

16 (~~1A~~) **Waiver of Re-Sale Requirements and Maximum Qualifying**  
17 **Income Level for New Buyers of Resale BMR Units.** The Board recognizes that the risk to  
18 low and moderate income homeowners during times of economic downturn can increase the  
19 risk of default and foreclosure of units restricted under this Program. The Board directs  
20 MOHCD to study ways to reduce such risks in the Inclusionary Housing Unit~~unit~~ context and, if  
21 it deems appropriate, to make recommendations to the Planning Commission to amend the  
22 Procedures Manual to allow MOHCD discretion, in certain limited circumstances, to waive  
23 requirements for owners of Inclusionary Housing Unit~~affordable units~~ who have used good faith  
24 efforts to secure a contract with a Qualified Buyer~~qualified buyer~~ but are unable to resell their  
25 unit in a timely manner. Such amendments to the Procedures Manual may include, but are



not limited to, authorizing MOHCD to make one or more allowances for owners of Inclusionary Housing Unit~~affordable units~~ unable to resell such as: (i~~1~~) a one-time waiver of the First-time Homebuyer~~first-time homebuyer~~ rule for the purchasing household; (ii~~2~~) a one-time waiver of Qualifying Household~~qualifying household~~ size requirements for the purchasing household; (iii~~3~~) ~~and~~ a one-time waiver of owner occupancy rules to allow a temporary rental; -(iv~~4~~) a one-time modification of the asset test for the new buyer household; and (v~~5~~) allowing MOHCD discretion to increase the qualifying income level for the unit by up to 20% above the maximum income limit currently allowed by the Use Restrictions for the Inclusionary Housing Unit but at no time higher than 120% of AMI. MOHCD and the Commission shall set forth criteria for granting such allowances such as establishing a minimum time that the units must have been advertised by MOHCD without selling; establishing criteria related to unusual economic or personal circumstances of the owner; providing a maximum percentage for the increase above the maximum income limit currently allowed; providing that the increase may only be granted on a one-time basis; and requiring the owner to clearly establish that the Inclusionary Housing Unit~~BMR unit~~ is being resold at the original purchase price plus the current repricing mechanism under the Program which calculates the percentage change in AMI from the time of purchase to resale plus the commission and any eligible capital improvements or special assessments.

(2B) **Waiver of Maximum Qualifying Income Level For New Buyers of Initial Sale BMR Units.** The Board of Supervisors recognizes that the current Program provides that the income of a new buyer of a below market rate household cannot exceed the maximum income stated in the Planning Approval or Notice of Special Restrictions for the BMR-Inclusionary Housing Unit. Due to a less desirable developments or geographic areas, a Project Sponsor is sometimes unable to find a buyer for an BMR-Inclusionary Housing Unit within the maximum income stated in the Planning Approval or Notice of Special Restrictions

1 for the Unit. This situation makes it difficult, if not impossible, for certain current owners of  
2 Inclusionary Housing Units ~~below market rate units~~ to sell their units. In order to minimize this  
3 situation, the Board of Supervisors directs MOHCD ~~the Mayor's Office of Housing~~ to study ways  
4 to address this issue and, if it deems appropriate, to make recommendations to the Planning  
5 Commission to amend the Procedures Manual to allow MOHCD to assist Project Sponsors  
6 who have used good faith efforts to secure a contract with a Qualified Buyer ~~qualified buyer~~ but  
7 who are unable to secure such a contract in a timely manner from the initiation of marketing.  
8 Such amendments may include allowing MOHCD discretion to increase the qualifying income  
9 level for the unit by up to 20% above the maximum income limit currently allowed by the Use  
10 Restrictions for the Unit but at no time higher than 120% of AMI. MOHCD and the Planning  
11 Commission shall establish limits to this or a similar proposal such as: providing a maximum  
12 percentage for the increase above the maximum income limit currently allowed; requiring that  
13 a certain period without securing a buyer would pass before such an allowance would be  
14 made; and providing that the increase may only be granted on a one-time basis.

15 (c) For any units permitted to be rental units under the Program, MOHCD shall  
16 establish:

17 (1) restrictions on lease changes and propose such restrictions to the  
18 Commission for inclusion in the Procedures Manual.

19 (2) additional eligibility criteria for subleasing and propose such restrictions to  
20 the Commission for inclusion in the Procedures Manual.

21 (3) criteria for continued eligibility for occupied rental units and propose such  
22 restrictions to the Commission for inclusion in the Procedures Manual.

23 (4) criteria for homeownership status and propose such restrictions to the  
24 Commission for inclusion in the Procedures Manual.

1 (5) criteria for granting affordable rental households the right of first refusal in  
2 purchasing an affordable unit that is converted from rental to ownership and propose such  
3 restrictions to the Commission for inclusion in the Procedures Manual.

4 (6) that at no time shall an annual increase exceed the actual allowable  
5 increase for that year. In cases where the rent has decreased, the tenant's rent must be  
6 decreased. In cases where the annual adjustments have not been applied year to year, the  
7 Project Owner may not take advantage of any increases that were not applied until the Unit is  
8 vacant and re-rented.

9 **SEC. 415.9. ENFORCEMENT PROVISIONS AND MONITORING OF PROGRAM.**

10 (a) A First Construction Document~~first construction document~~ or first Certificate of  
11 Occupancy, whichever applies, shall not be issued by the Director of DBI to any unit in the  
12 Principal Project~~principal project~~ until all of the ~~affordable housing~~ requirements of Sections  
13 415.1 et seq. are satisfied.

14 (b) If, after issuance of the first Certificate of Occupancy, the Commission or  
15 Department determines that a Pproject Ssponsor has failed to comply with any requirement in  
16 Section 415.1 et seq. or any reporting requirements detailed in the Procedures Manual, or has  
17 violated the Notice of Special Restrictions, the Commission, Department, or DBI may, until the  
18 violation is cured, (~~1a~~) revoke the Certificate of Occupancy for the Principal Project~~principal~~  
19 ~~project~~ or required Inclusionary Housing Units~~affordable units~~, (~~2b~~) impose a penalty on the  
20 project pursuant to Section 176(c) of this Code, and/or (~~3e~~) the Zoning Administrator may  
21 enforce the provisions of Section 415.1 et seq. through any means provided for in Section 176  
22 of this Code.

23 (c) The Department shall notify MOHCD of any housing project subject to the  
24 requirements of Section 415.1 et seq., including the name of the Pproject Ssponsor and the  
25 number and location of the Inclusionary Housing Units~~affordable units~~, within 30 days of the

1 Department's approval of a building, or site permit for the project. MOHCD shall provide all  
2 ~~P~~project ~~S~~sponsors with information concerning the City's first time home-buyer assistance  
3 programs and any other related programs MOHCD shall deem relevant to the Inclusionary  
4 Affordable Housing Program.

5 (d) The Department shall, as part of the annual Housing Inventory, report to the Board  
6 of Supervisors on the results of Section 415.1 et seq. including, but not limited to, a report on  
7 the following items:

8 (1) The number of, location of, and project applicant for housing projects which  
9 came before the Commission for a Conditional Use Authorization or Planned Unit  
10 Development, and the number of, location of, and project applicant for housing projects which  
11 were subject to the requirements of Section 415.1 et seq.;

12 (2) The number of, location of, and ~~P~~project ~~S~~sponsor for housing projects which  
13 applied for a waiver, adjustment, or reduction from the requirements of Section 415.1 et seq.  
14 pursuant to Section 406 of this Article, and the number of, location of, and ~~P~~project ~~S~~sponsor  
15 for Housing Projects~~housing projects~~ which were granted such a waiver, adjustment, or  
16 reduction and, if a reduction, to what percentage;

17 (3) The number of, location of, and ~~P~~project ~~S~~sponsor for every Housing  
18 Project~~housing project~~ to which Section 415.1 et seq. applied and the number of market rate  
19 units and the number of affordable On- and Off-~~on- and off-~~site Units~~units~~ provided, including the  
20 location of all of the Inclusionary Housing Units~~affordable units~~; and

21 (e) A study is authorized to be undertaken under the direction of MOHCD  
22 approximately every five years to update the requirements of Section 415.1 et seq. MOHCD  
23 shall make recommendations to the Board of Supervisors and the Commission regarding any  
24 legislative changes. In the 2016 study, MOHCD shall specifically evaluate: (1) the Dial program to  
25 evaluate its impact on the production of Inclusionary Housing Units at the baseline AMI levels; and (2)

1 changes to the Off-site alternative including, but not limited to, timing, geography, and requirements  
2 for Nonprofit Provider Partner Projects. MOH shall specifically evaluate the different inclusionary  
3 housing requirements for developments of over 120 feet approximately five years from the enactment of  
4 the requirement or as deemed appropriate by MOH. MOHCD shall coordinate this report with the  
5 five-year evaluation by the Director of Planning required by Section 410 of this Article.

6 (g) Annual or Bi-annual Monitoring:

7 (1) MOHCD shall monitor and require occupancy certification for rental and  
8 ownership Inclusionary Housing Units~~affordable ownership and rental units~~ on an annual or bi-  
9 annual basis, as outlined in the Procedures Manual.

10 (2) MOHCD may require the owner of an Inclusionary Housing Unit~~affordable~~  
11 ~~rental unit~~, the owner's designated representative, or the tenant in an Inclusionary Housing  
12 Unit~~affordable unit~~ to verify the income levels of the tenant on an annual or bi-annual basis, as  
13 outlined in the Procedures Manual.

#### 14 **SEC. 419.3. APPLICATION OF UMU AFFORDABLE HOUSING REQUIREMENTS.**

15 (a) Section 419.1 et seq. shall apply to any housing project located in the UMU Zoning  
16 District of the Eastern Neighborhoods, that is subject to the requirements of Sections 415 et  
17 seq.

18 (b) Additional UMU Affordable Housing Requirements to the Section 415 Inclusionary  
19 Affordable Housing Program Requirements. The requirements of Section 415 through 415.9  
20 shall apply subject to the following exceptions:

21 (1) For all projects sites designated as Tier A, a minimum of 14.4% ~~percent~~ of  
22 the total units constructed shall be Inclusionary Housing Units ~~affordable to and occupied by~~  
23 ~~qualifying persons and families as defined in Section 415 et seq. elsewhere in this Code~~, so that a  
24 ~~P~~project ~~S~~sponsor must construct .144 times the total number of units produced in the  
25 Principal Project ~~principal project beginning with the construction of the tenth unit~~. If the total

1 number of units is not a whole number, the Ssponsor shall round up to the nearest whole  
2 number for any portion of .5 or above.

3 (A) If the Pproject Ssponsor is eligible for and elects pursuant to Section  
4 415.5(g) to build off-site units to satisfy the requirements of this program, the Ssponsor shall  
5 construct ~~23% percent~~ so that a Ssponsor must construct .23 times the total number of units  
6 produced in the Principal Project ~~principal project beginning with the construction of the tenth unit.~~  
7 If the total number of units is not a whole number, the Ssponsor shall round up to the nearest  
8 whole number for any portion of .5 or above.

9 (B) If the Pproject Ssponsor elects pursuant to Section 415.5 to pay the  
10 fee to satisfy the requirements of this program, the Ssponsor shall meet the requirements of  
11 Section 415 according to the number of units required above if the Project Sponsor ~~project~~  
12 ~~applicant~~ were to elect to meet the requirements of this Section by off-site housing  
13 development. For the purposes of this Section 419.3, the City shall calculate the fee using the  
14 direct fractional result of the total number of units multiplied by the percentage of off-site  
15 housing required, rather than rounding up the resulting figure.

16 (2) For all project sites designated Tier B, a minimum of ~~16% percent~~ of the total  
17 units constructed shall be Inclusionary Housing Units as defined in Section 415 et seq. ~~affordable to~~  
18 ~~and occupied by qualifying persons and families as defined elsewhere in this Code~~, so that a Pproject  
19 Ssponsor must construct .16 times the total number of units produced in the Principal Project  
20 ~~principal project beginning with the construction of the tenth unit.~~ If the total number of units is not  
21 a whole number, the Ssponsor shall round up to the nearest whole number for any portion of  
22 .5 or above.

23 (A) If the Pproject Ssponsor is eligible for and elects pursuant to Section  
24 415.5(g) to build off-site units to satisfy the requirements of this program, the Ssponsor shall  
25 construct ~~25% percent~~ so that a Ssponsor must construct .25 times the total number of units

1 produced in the Principal Project ~~principal project beginning with the construction of the tenth unit.~~  
2 If the total number of units is not a whole number, the Ssponsor shall round up to the nearest  
3 whole number for any portion of .5 or above.

4 (B) If the Pproject Ssponsor elects pursuant to Section 415.5(g) to pay the  
5 fee to satisfy the requirements of this program, the Ssponsor shall meet the requirements of  
6 Section 415 according to the number of units required above if the Ssponsor were to elect to  
7 meet the requirements of this Section 419.3 by off-site housing development. For the  
8 purposes of this Section, the City shall calculate the fee using the direct fractional result of the  
9 total number of units multiplied by the percentage of off-site housing required, rather than  
10 rounding up the resulting figure.

11 (3) For all project sites designated Tier C, a minimum of 17.6% ~~percent~~ of the  
12 total units constructed shall be Inclusionary Housing Units as defined in Section 415 et seq.  
13 ~~affordable to and occupied by qualifying persons and families as defined elsewhere in this Code~~, so  
14 that a Pproject Ssponsor must construct .176 times the total number of units produced in the  
15 Principal Project ~~principal project beginning with the construction of the tenth unit.~~ If the total  
16 number of units is not a whole number, the Ssponsor shall round up to the nearest whole  
17 number for any portion of .5 or above.

18 (A) If the Pproject Ssponsor is eligible for and elects pursuant to Section  
19 415.5(g) to build off-site units to satisfy the requirements of this program, the Ssponsor shall  
20 construct 27% ~~percent~~ so that a Ssponsor must construct .27 times the total number of units  
21 produced in the Principal Project ~~principal project beginning with the construction of the tenth unit.~~  
22 If the total number of units is not a whole number, the Ssponsor shall round up to the nearest  
23 whole number for any portion of .5 or above.

24 (B) If the Pproject Ssponsor elects pursuant to Section 415.5 to pay the  
25 fee to satisfy the requirements of this program, the Ssponsor shall meet the requirements of

1 Section 415 according to the number of units required above if the Ssponsor were to elect to  
2 meet the requirements of this Section by off-site housing development. For the purposes of  
3 this Section, the City shall calculate the fee using the direct fractional result of the total  
4 number of units multiplied by the percentage of off-site housing required, rather than rounding  
5 up the resulting figure.

6 (c) Timing and Payment of Fee. Any fee required by Section 419.1 et seq. shall be  
7 paid to the Development Fee Collection Unit at DBI at the time of and in no event later than  
8 issuance of the First Construction Document~~first construction document~~, with an option for the  
9 Pproject Ssponsor to defer payment to prior to issuance of the ~~first~~First Certificate of  
10 Occupancy~~certificate of occupancy~~ upon agreeing to pay a deferral surcharge in accordance with  
11 Section 107A.13.3 of the San Francisco Building Code.

#### 12 **SEC. 419.4. IMPOSITION OF UMU AFFORDABLE HOUSING REQUIREMENTS.**

13 (a) The Department shall determine the applicability of Section 419.1 et seq. to any  
14 development project requiring a First Construction Document~~first construction document~~ and, if  
15 Section 419.1 et seq. is applicable, the additional requirements~~affordable housing required~~  
16 pursuant to Section 419.1 et seq. and shall impose these requirements as condition on the  
17 approval for issuance of the First Construction Document~~first construction document~~ for the  
18 development project. The Pproject Ssponsor shall supply any information necessary to assist  
19 the Department in this determination.

20 (b) **Notice to Development Fee Collection Unit at DBI and MOHCD.** After the  
21 Department has made its final determination of the additional requirements~~affordable housing~~  
22 ~~required~~ pursuant to Section 419.1 et seq., it shall immediately notify the Development Fee  
23 Collection Unit at DBI and MOHCD of its determination in addition to the other information  
24 required by Section 402(b) of this Article.



1           (c) **Sponsor's Choice to Fulfill Requirements.** Prior to the earlier of any neighborhood  
2 notification or project approval from the Planning Commission or Planning Department ~~issuance of a~~  
3 ~~building or site permit~~ for a development project subject to the requirements of Section 419.1 et  
4 seq., the Sponsor of the development project shall select one of the options described in  
5 Section 419.3 above or the alternatives described in Section 419.5 below to fulfill the  
6 affordable housing requirements and notify the Department of their choice.

7           (d) **Department Notice to Development Fee Collection Unit of Sponsor Choice.**  
8 After the Sponsor has submitted to the Department the "Affidavit of Compliance with the  
9 Inclusionary Housing Ordinance" indicating how it will ~~notify the Department of their choice to~~  
10 fulfill the additional affordable housing requirements of Section 419.1 et seq., the Department  
11 shall immediately notify the Development Fee Collection Unit at DBI and MOHCD of the  
12 Sponsor's choice.

13           (e) **The Development Fee Collection Unit Notice to Department Prior to Issuance**  
14 **of the First Certificate of Occupancy.** The Development Fee Collection Unit at DBI shall  
15 provide notice in writing or electronically to the Department and MOHCD prior to issuing the  
16 first Certificate of Occupancy ~~certificate of occupancy~~ for any development project subject to  
17 Section 419.1 et seq. that has elected to fulfill its requirement with an option other than  
18 payment of the Affordable Housing Fee ~~an in-lieu fee~~. If the Department or MOHCD notifies the  
19 Unit at such time that the Sponsor has not satisfied the requirements, the Director of DBI  
20 shall deny any and all certificates of occupancy until the subject project is brought into  
21 compliance with the requirements of Section 419.1 et seq.

22           (f) **Process for Revisions of Determination of Requirements.** In the event that the  
23 Department or the Commission takes action affecting any development project subject to  
24 Section 419.1 et seq. and such action is subsequently modified, superseded, vacated, or  
25

1 reversed by the Department or the Commission, Board of Appeals, the Board of Supervisors,  
2 or by court action, the procedures of Section 402(c) of this Article shall be followed.

3 **SEC. 419.5. ALTERNATIVES TO THE INCLUSIONARY HOUSING COMPONENT.**

4 (a) **Alternatives to the Inclusionary Housing Component.** In addition to the  
5 alternatives specified in Section 415.5(9) the ~~P~~project ~~S~~sponsor may elect to satisfy the  
6 requirements of Section 415.5 by one of the alternatives specified in this Section 419.5. The  
7 ~~P~~project ~~S~~sponsor has the choice between the alternatives and the Planning Commission may  
8 not require a specific alternative. The ~~P~~project ~~S~~sponsor must elect an alternative before it  
9 receives project approvals from the Planning Commission or Planning Department and that  
10 alternative will be a condition of project approval. The alternatives are as follows:

11 (1) **Middle Income Alternative.** On sites with less than 50,000 square feet of  
12 total developable area, applicants may provide Inclusionary Housing Units for Middle-income  
13 Qualifying Households~~units as affordable to qualifying "middle income" households as follows:~~

14 (A) A minimum percent of the total units constructed shall be Inclusionary  
15 Housing Units affordable to and occupied ~~affordable to by qualifying "middle income"~~ Middle  
16 Income Qualifying Households~~households~~ upon initial sale, according to the schedule in Table  
17 419.5. If the total number of units is not a whole number, the project applicant shall round up  
18 to the nearest whole number for any portion of .5 or above. Units shall be Affordable to  
19 Households~~affordable to households~~ between 120% percent and 150% percent of AMI~~the San~~  
20 ~~Francisco Area Median Income~~, with an average affordability level of 135% percent of AMI for all  
21 units provided through this alternative.

22 (B) Where market rate sales prices exceed restricted sales prices, the  
23 difference between the market rate sales prices and the restricted sales prices shall be held  
24 by MOHCD~~the Mayor's Office of Housing~~ as a silent second mortgage according to the  
25 Procedures Manual. The City shall hold a deed of trust and promissory note for the second

1 mortgage. MOHCD shall hold this mortgage shall release it when the original note and  
2 proportional share of the appreciation are paid in full to the City.

3 (C) Units shall initially be sold at or below prices to be determined by  
4 MOHCD in the Conditions of Approval or Notice of Special Restrictions according to the  
5 formula specified in the Procedures Manual to make them affordable to Middle Income  
6 Households ~~middle-income households~~. Upon resale, the seller shall be permitted to sell the units  
7 at their market price. The City will waive its right of first refusal to the seller when the  
8 promissory note and deed of trust are paid, along with the City's share of the appreciation of  
9 the unit. The promissory note shall accrue no interest and shall require no monthly payments.

10 (D) Upon first resale, the seller shall have a right to keep a percentage of  
11 the total appreciation of the unit proportional to every year the original seller owns the unit as  
12 an owner occupant. The remainder of the proceeds of the sale, after the first mortgage, the  
13 second mortgage, and any other subordinate financing is paid off, shall be repaid to MOHCD.  
14 Detailed resale procedures shall be specified in the Middle Income Housing Procedures  
15 Manual published by MOHCD and approved by the Planning Commission. The Director of  
16 MOHCD shall amend the Procedures Manual as needed with the Commission's approval.

17 (E) The City shall monitor units provided under this option during the 2-  
18 and 5-year Monitoring Report specified in Section 342 of this Code ~~and in a separate resolution~~.  
19 Should this monitoring report indicate that units constructed under this program do not meet  
20 the programs stated goals of providing Inclusionary Housing Units for affordable housing to  
21 Middle Income Households, the Planning Department and MOHCD shall consider changes to  
22 this program, including, but not limited to, legislative changes.

23 (F) If the Project Sponsor elects to satisfy the requirements of Section  
24 415.5 and of this Section by the alternative specified above, the dwelling unit mix required by  
25 Section 207.6 may be waived provided the minimum percent of total units affordable to

1 qualifying Middle Income Households "~~middle-income~~" as required by Table 419.5 is increased by  
2 10%.

3 (2) **Land Dedication Alternative.** Applicants may dedicate a portion of the  
4 total developable area of the principal site to the City and County of San Francisco for the  
5 purpose of constructing units ~~affordable to~~ Affordable to Low-income and Moderate-income  
6 Households~~qualifying households~~. A minimum percentage of developable area, representing an  
7 equivalent percent of total potential units to be constructed, shall be dedicated to the City  
8 according the schedule in Table 419.5. To meet the requirements of this alternative, the  
9 developer must convey title to land in fee simple absolute to MOHCD according to the  
10 Procedures Manual, provided the dedicated site is deemed of equivalent or greater value to  
11 the principal site per those procedures and is in line with the following requirements:

12 (A) The dedicated site will result in a total amount of affordable  
13 housing~~inclusionary~~ units not less than ~~forty (40)~~ units. MOHCD may conditionally approve and  
14 accept dedicated sites which result in no less than ~~twenty-five (25)~~ affordable housing units at its  
15 discretion.

16 (B) The dedicated site will result in a total amount of affordable  
17 housing~~inclusionary~~ units that is equivalent or greater than the minimum percentage of the units  
18 that ~~would~~will be provided on the principal site, as required by Table 419.5. MOHCD may also  
19 accept dedicated sites that represent the equivalent of or greater than the required  
20 percentage of units for all units that could be provided on a collective of sites within a one-mile  
21 radius, provided the total amount of affordable housing~~inclusionary~~ units provided on the  
22 dedicated site is equivalent to or greater than the total requirements for all principal sites  
23 participating in the collective, according to the requirements of Table 419.5.

24 (C) The dedicated site is suitable from the perspective of size,  
25 configuration, physical characteristics, physical and environmental constraints, access,

1 location, adjacent use, and other relevant planning criteria. The site must allow development  
2 of affordable housing that is sound, safe and acceptable.

3 (D) The dedicated site includes infrastructure necessary to serve the  
4 inclusionary units, including sewer, utilities, water, light, street access and sidewalks.

5 (E) The developer must submit full environmental clearance for the  
6 dedicated site before the land can be considered for conveyance, and before a first site or  
7 building permit may be conferred upon the principal project.

8 (F) The City may accept dedicated sites that vary from the minimum  
9 threshold provided such a dedication is deemed generally equivalent to the original  
10 requirement by the MOHCD~~Mayor's Office of Housing~~.

11 (G) The City may accept dedicated sites that meet the above  
12 requirements in accordance with the Procedures Manual, in combination with fees or on-site  
13 units, provided such a combination is deemed generally equivalent by MOHCD to the original  
14 requirement.

15 (H) The project applicant has a letter from MOHCD verifying acceptance  
16 of site before it receives project approvals from the Planning Commission or Planning  
17 Department, which shall be used to verify dedication as a condition of approval.

18 (I) If the Pproject Ssponsor elects to satisfy the requirements of Section  
19 415.5 and of this Section by the alternative specified above, the dwelling unit mix required by  
20 Section 207.6 may be waived.

21 (J) The Land Dedication Alternative may be satisfied through the  
22 dedication to the City of air space above or adjacent to the project, upon the approval of  
23 MOHCD, or a successor entity, and provided the other requirements of subsection (a)(2)(A)-(I)  
24 are otherwise satisfied.

**Table 419.5**

**HOUSING REQUIREMENTS FOR THE UMU DISTRICT**

<b>Tier</b>	<b>On-Site Housing Requirement</b>	<b>Off-Site/<del>In-</del> <u>Lieu Fee</u> Requirement</b>	<b>Middle Income Alternative*</b>	<b>Land Dedication Alternative for sites that have less than 30,000 square feet of developable area</b>	<b>Land Dedication Alternative for sites that have at least 30,000 square feet of developable area</b>
A	14.4%	23%	30%	35%	30%
B	16%	25%	35%	40%	35%
C	17.6%	27%	40%	45%	40%

\*Requirement increases by 5% if dwelling unit mix required by Section 207.6 is waived.

Section 3. 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 4. 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

1 additions, and Board amendment deletions in accordance with the "Note" that appears under  
2 the official title of the ordinance.

3  
4 APPROVED AS TO FORM:  
5 DENNIS J. HERRERA, City Attorney

6 By: SUSAN CLEVELAND-KNOWLES  
7 Deputy City Attorney

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