



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment

HEARING DATE: MARCH 31, 2016

EXPIRATION DATE: JUNE 22, 2016

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Project Name: **Inclusionary Affordable Housing Fee and Requirements;
Preparation of Economic Feasibility Report; Establishing Inclusionary
Housing Technical Advisory Committee**

Case Number: **2016-003040PCA [Board File No. 160255]**

Initiated by: **Supervisor Kim and Supervisor Peskin / Introduced March 22, 2016**

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Recommendation: **Recommend Approval with Modifications**

PLANNING CODE AMENDMENT

The proposed ordinance amends the Planning and Administrative Codes to:

1. Increase the Inclusionary Affordable Housing fee, establish grandfathering provisions for existing pipeline projects, and establish other requirements;
2. Require the Controller to prepare an economic feasibility report regarding the City's inclusionary housing requirements and make recommendations by July 31, 2016 and every three years thereafter; and
3. Establish the Inclusionary Housing Technical Advisory Committee to provide advice about the economic feasibility of proposals to set maximum economically viable inclusionary housing requirements, and set forth the membership and duties of the Advisory Committee.

The ordinance would not take effect unless and until the voters approve amendments to the Charter at the June 7, 2016 election. This ordinance would supersede and replace the interim Inclusionary Housing requirements set forth in the proposed Charter amendment.

The Way It Is Now:

1. Qualifying Projects: Projects with 10 or more units are subject to the Planning Code's Inclusionary Housing Requirements.
2. On-Site Alternative: Planning Code Section 415.7 typically requires Project Sponsors electing the On-Site alternative to designate 12% of the total number of units constructed as inclusionary units. These units are dedicated to low and very low-income households

3. In-Lieu Fee Alternative: Planning Code Section 415.7 typically requires Project Sponsors electing the In-Lieu Fee to pay a fee equivalent to 17-20% of the total number of units produced in the principal project. The fee is deposited into the Housing Trust Fund and is generally required to be used to increase the supply of housing affordable to qualifying households.
4. Off-Site Alternative: Code Section 415.7 typically requires Project Sponsors electing the Off-Site alternative to construct off-site units equivalent to 17-20% of the total number of units produced in the principal project. These units are dedicated to low and very low-income households.
5. Existing Building Alternative: Currently, projects sponsors are not able to acquire an existing building that is *not* currently and primarily in residential use to fulfill all or part of their Off-Site requirement.
6. Economic Feasibility Analysis: The City commissioned an economic feasibility analysis in July of 2006 to examine the economic impacts of adjusted inclusionary requirements on market-rate housing projects. There is no need and no requirement for the City to conduct periodic economic feasibility analysis since the current rate is dictated by the City's Charter.
7. Inclusionary Housing Technical Advisory Committee: The 2006 Economic Feasibility Analysis was guided by the Planning Department and Mayor's Office of Housing and Community Development, and informed by a Technical Advisory Committee that was comprised of a variety of experts from the San Francisco Housing Development and Affordable Housing Advocacy Communities. There is no formal requirement that future economic feasibility analysis be informed by a Technical Advisory Committee, nor are there requirements on who must be on such a committee.
8. Permanent Changes & Non-grandfathered project applications: The City's current Inclusionary Housing rate is fixed within the City's Charter, and cannot be amended unless by a vote of the people. Should they be changed by voter initiative, there is no language that grandfather's existing projects from having to pay the new rates.
9. Expiration of Grandfathering Clauses: in general, the City does not place an expiration date on grandfathering clauses.
10. Small Sites Acquisition. The Small Sites Acquisition Program is a vehicle that MOHCD can use to purchase existing residential buildings in order to provide permanently affordable housing. This program is funded through a combination of Housing Trust Fund revenues and affordable housing fees paid by housing developers in San Francisco. MOHCD is required to designate 10% of Inclusionary Housing Fees, up to \$15 million, received to support acquisition and rehabilitation of properties consisting of less than 25 units. Program funding may be used to support a variety of housing development activities, including property acquisition and minor rehabilitation. The use of these "Small Sites Funds" are limited to the acquisition and rehabilitation of residential rental properties with fewer than 25 units that are designated as affordable for a minimum of 55 years. The sites may be rental properties, vacant properties that were formerly rental properties as long as they have been vacant for a minimum of two years, foreclosed upon properties, or buildings structured as Limited Equity Housing Coops or Community Land Trusts.
11. State Density Law: The State Density law allows project sponsors to get a "bonus" in exchange for the provision of affordable housing. A State Density Bonus project could provide less on-site affordable housing than the City's Inclusionary Requirements, given how the State law is written.

In San Francisco the on-site Inclusionary Requirement for affordable units is calculated as the percentage of the total units provided. Under the State law, the percentage of affordable units is determined by a “base case” project and then adding the “bonus” units to the final project. For example, under existing City law a project that proposes to build 100 units would provide 12 Inclusionary Units and 88 market-rate units. If a project sponsor used the State Density law with a rental project, the proposal could show a base project with 100 units (12 Inclusionary and 88 market-rate) and then use of the State Law could add 23 market-rate units (a 23% density bonus) to the final project. The resulting final project would have an overall percentage of affordable units of 9.7%.

The Way It Would Be:

1. Qualifying Projects: Projects with 10 or more units would be subject to the current Inclusionary Housing Requirements; however additional requirements will be placed on housing projects with 25 units or more.
2. Inclusionary Housing On-Site Alternative Grandfathering Provision: For qualifying projects consisting of ten to 24 dwelling units, 12% of the total units constructed on-site would be required to be dedicated to affordable to low and very low-income households. For qualifying projects with 25 dwelling units or more, 25 percent of all units constructed would be dedicated to the inclusionary program, with a minimum of 15 percent of the units affordable to low and very low-income households and another ten percent of the units affordable to very low, low- or middle income households.

Projects that are currently in the pipeline may be subject to a lower inclusionary rate, depending on when their Environmental Evaluation Application was submitted and where they are located. Application dates for the grandfathering of existing projects would be established by the dates of a completed EE application that was submitted as follows:

- prior to 1/1/2014, the inclusionary rate would be 13%
- prior to 1/1/2015, the inclusionary rate would be 13.5%
- on or prior to 1/12/2016, the inclusionary rate would be 14.5%

Projects in UMU zoning that propose the demolition of PDR, projects located within the Mission Street NCT, and projects in the SOMA Youth and Family Zone are not eligible for grandfathering and would be subject to the new inclusionary rates.

3. Inclusionary In-Lieu Fee Grandfathering Provision: Qualifying projects consisting of ten to 24 dwelling units would be required to pay an in-lieu fee equivalent 20 percent of the total number of units produced in the principal project. Qualifying projects that have 25 or more units AND under 120 feet in height would be required to pay 30 percent of the total number of units produced in the principal project. Qualifying projects that have 25 units or more AND over 120' in height would be required to pay 33 percent of the total number of units produced in the principal project.

Projects that are currently in the pipeline may be subject to a lower inclusionary rate, depending on when their Environmental Evaluation Application was submitted and where they are located.

Application dates for the grandfathering of existing projects would be established by the dates of a completed EE application that was submitted as follows:

- prior to 1/1/2014, the inclusionary rate would be 25%
- prior to 1/1/2015, the inclusionary rate would be 27.5%
- on or prior to 1/12/2016, the inclusionary rate would be 30%

Buildings with a height measured at 120 or greater are not grandfathered and have to pay a fee equal to 33% of the units constructed. Projects in UMU zoning that propose the demolition of PDR, projects located within the Mission Street NCT, and projects in the SOMA Youth and Family Zone are not eligible for grandfathering and would be subject to the new Inclusionary Rates.

4. Off-Site Alternative Grandfathering Provision: Qualifying projects consisting of ten to 24 dwelling units would be required to construct the equivalent of 20 percent of the total number of units produced in the principal project, which would be affordable to low and very low-income households. Qualifying projects that have 25 units or more would be required to construct the equivalent of 33 percent of the total number of units produced in the principal project with 20 percent of the units affordable to low and very low-income households and 13 percent affordable to middle income households.

Projects that are currently in the pipeline may be subject to a lower inclusionary rate, depending on when their Environmental Evaluation Application was submitted and where they are located. Application dates for the grandfathering of existing projects would be established by the dates of a completed EE application that was submitted as follows:

- prior to 1/1/2014, the inclusionary rate would be 25%
- prior to 1/1/2015, the inclusionary rate would be 27.5%
- on or prior to 1/12/2016, the inclusionary rate would be 30%

Buildings with a height measured at 120 or greater are not grandfathered and have to build off-site units equal to 33 percent of the units constructed. Projects in UMU zoning that propose the demolition of PDR, projects located within the Mission Street NCT, and projects in the SOMA Youth and Family Zone and that seek to build off-site units are not eligible for grandfathering and would be subject to the new Inclusionary Rates.

5. Existing Building Alternative for Off-site Alternative Grandfathering Provision: Projects sponsors would be able to acquire an existing building that is not currently and primarily in residential use to fulfill all or part of their Off-Site inclusionary requirements.
6. Economic Feasibility Analysis: The proposed Ordinance establishes an Economic Feasibility Study. The purpose of this study is to study how to set the inclusionary housing obligations in San Francisco at the maximum economically feasible amount in market rate housing development to create housing for lower-, moderate- and middle-income households, with guidance from the City's Nexus Study. The Controller, in consultation with relevant City Departments and the Inclusionary Housing Technical Advisory Committee, is responsible for conducting the study every three years. The first report is due on to the Board of Supervisors by July 31, 2016 and every other subsequent report is due by October 31.

7. Inclusionary Housing Technical Advisory Committee: The proposed ordinance establishes an Inclusionary Technical Advisory Committee that is intended to provide input and advice to the Controller, the Mayor, the Planning Department and the Board of Supervisors regarding the content of the Economic Feasibility Analysis report. The Advisory Committee would consist of eight members, four appointed by the Board of Supervisors and four appointed by the Mayor. All members must have experience and expertise in development finance. Each member would serve until three months after the date the Controller produces the first Economic Feasibility Analysis, and new members would be appointed in anticipate of each new report.
8. Permanent Changes & Non-grandfathered project applications: The text as drafted in the associated Charter Amendment necessitates that the proposed Ordinance now being considered by the Planning Commission *must* create a permanent change to the Inclusionary Requirements, in order to make grandfathering possible. Therefore, all of the projects not grandfathered by this Ordinance are subject to new higher requirements, which effectively are permanently changed. The combined effect of the passage of the proposed Charter Amendment (to be considered by the voters) and this proposed Ordinance (under consideration today), would create new, permanent and higher Inclusionary Requirements that could be altered through future action of the Board of Supervisors.
 - 20% for projects with 10-24 dwelling units
 - 30% for projects with 25+ dwelling units contained within buildings whose height is less than 120 feet, and
 - 33% for projects with 25+ dwelling units contained within buildings whose height is 120 feet or higher.
9. If the project sponsor does not procure a building permit or site permit for construction of the affordable housing units by December 7, 2018, the development project is no longer grandfathered.
10. Small Sites Acquisition. The proposed Ordinance would create a new option to satisfy of the requirements for pipeline projects subject to the grandfathering provisions that choose to pursue the off-site Inclusionary Option. In these cases, a project sponsor may provide “off-site affordable housing by acquiring an existing building that is not currently and primarily in residential use”.
11. State Density Law: The proposed Ordinance would ask that any proposed project [sponsor] seeking to use this state law, shall use “its best efforts to provide on-site affordable units in the amount of 25% of the units constructed on-site”. The project [sponsor] shall prepare a feasibility report of the on-site affordable housing and the effect of the density bonus on such feasibility.

BACKGROUND

Pending Charter Amendment

On March 1, 2016, the Board of supervisors unanimously adopted a Resolution (Board File Number 151274) that placed a proposed Charter Amendment on the June 7, 2016 ballot. The Charter Amendment would remove the existing inclusionary rates enshrined in the City’s Charter in 2012 by San Francisco voters under proposition and authorize the City to enact by ordinance subsequent changes to the inclusionary housing requirements, including changes to the minimum or maximum inclusionary or

affordable housing obligations applicable to market rate housing projects. The Charter Amendment would also set temporary Inclusionary Housing Requirements until the Board had adopted replacement rates. Those rates are as follows:

1. For housing development projects consisting of ten dwelling units or more, but less than twenty-five dwelling units, the existing requirements in effect on the date the charter amendment came into effect would still apply.
2. For housing development projects consisting of twenty-five dwelling units or more, the following would apply:
 - Fee: 33% of the total number of units in the principle project.
 - On-Site Housing: 25% of units in the principle projects, with 15% of the units affordable to low and very low income households and 10% affordable to middle income households.
 - Off-Site: to 33% of all units constructed on the principal project site as affordable housing, with 20% of the units affordable to low- and very low-income households and 13% of the units affordable to middle-income households

The charter amendment also adds interim definitions of "Lower Income" and "Middle Income" households. "Lower income" households would be defined as households whose total household income does not exceed 55 percent of Area Median Income for purposes of renting an affordable unit, or 80 percent of Area Median Income for purposes of purchasing an affordable unit. Currently those percentages are set at 55 percent and 90 percent respectively. "Middle income" households would be defined as households whose total household income does not exceed 100 percent of Area Median Income for purposes of renting an affordable unit, or 120 percent of Area Median Income for purposes of purchasing an affordable unit. Currently "middle Income" is defined as households whose combined annual gross income for all members is between 120 percent and 150 percent of the local median income for the City and County of San Francisco.

Origins of the Ordinance

Prior to the introduction of this ordinance, the Mayor put forward a ballot initiative that would have required periodic feasibility studies of the Inclusionary housing program. Based Supervisors' feedback that a legislative ordinance would be a preferable mechanism for instituting a feasibility requirement, the Mayor withdrew his ballot initiative and Supervisor Yee introduced a resolution (Enactment #079-16) laying out the general terms that formed the basis of this proposed ordinance. In addition to creating a clear process to conduct a feasibility analysis which would guide regular adjustments to the Inclusionary rate, this ordinance would also establish grandfathering provisions for pipeline projects, and an interim Inclusionary rate. The legislative sponsors' goal is to secure an adopted ordinance with these features by the time the charter amendment passes. This ordinance, if enacted in time, will supersede and replace the interim requirements set forth in the charter amendment. Effectively this means the only change that the Charter would effectuate would be the removal of the Inclusionary requirements from the Charter so that the Inclusionary rate may be regularly adjusted through Board of Supervisor action. The timely adoption of this ordinance will ensure that the rates and definitions promulgated in the charter amendment would not take effect. Towards that end, the Planning Department has brought the Ordinance to the Planning Commission for review and recommendation at the earliest possible date.

Grandfathering Background

A Resolution (Enactment #079-16) sponsored by Supervisor Yee laid out the terms of the proposed ordinance currently before the Commission, and also specified the intent behind the grandfathering

clause in the ordinance. The Resolution specified that any grandfathering clause “shall be constructed so as to allow continued economic feasibility for projects already in the pipeline” and that the grandfathering clause “may adjust the inclusionary or affordable housing obligations applicable to pipeline projects... such that the adjusted obligations generate ... approximately 200 (additional) units.” In other words the intention behind increasing the inclusionary rate on pipeline projects and not grandfathering them to the current inclusionary rate is to make up for units that could have been created if the Inclusionary rate had not been locked in by the voters in 2012 by Proposition C. It is worth noting that while the 2012 Proposition C did reduce the Inclusionary requirement, it also created the Housing Trust Fund which raised \$ 107,290,154, and to date has effectively subsidized the creation of 230 units.

Projects in three areas of the city were specifically not grandfathered in the proposed Ordinance, which include projects in UMU zoning that propose the demolition of PDR, projects located within the Mission Street NCT, and projects in the SOMA Youth and Family Zone. All three of these districts were chosen because they currently have a higher inclusionary rate than other districts. The legislative sponsors described their intent to narrow the impact from the whole of the UMU District to just parcels in this district that would see a loss of PDR space. Therefore, the proposed Ordinance excludes these projects in the UMU districts that would removing PDR space from the grandfathering provision, requiring more Inclusionary housing for these pipeline projects.

The date at which projects are no longer eligible for grandfathering is January 16, 2016, which is the day the Charter amendment was introduced. The basis for this provision is that project sponsors would be aware of a possible change to the Inclusionary Housing requirement of the time their application was submitted.

Loss of PDR

The loss of PDR to date has not been an amount beyond what was anticipated in the Eastern Neighborhoods EIR. The EN EIR anticipated the loss of 4.933 million sf of PDR space between 2009 and 2025. To date, the City has approved the loss of 1.494 million sf of PDR space. If all of the projects which would remove PDR were to be approved, the City would have approved a total of 2.042 million sf of PDR. This is in line with the expectations of the EN rezoning.

ISSUES AND CONSIDERATIONS

San Francisco Precedent Pairs Two Studies: Nexus and Feasibility.

San Francisco has one of the nation’s most comprehensive Inclusionary Housing programs, producing thousands of units and hundreds of millions of dollars for affordable housing development since its inception in 1992. The Program demonstrates that market rate residential developers can – and do – serve as critical partners in providing much-need housing in high cost urban areas. Our program is effective in large part because the base requirement is framed by two critical studies. The first, a *nexus study*, provides quantitative analysis of the affordable housing need generated by the creation of market rate housing. The second, a *financial feasibility analysis*, takes into account the cost of residential development and the ability of market rate residential development to provide certain levels of inclusionary housing.

Changes to the Inclusionary Program must be transparent and reflect economic realities in order to survive scrutiny and potential legal challenges. Of course, the program must also deliver affordable

housing—if the requirement is set too high, then the City will provide little or no Inclusionary Housing as residential market rate development will be financially unable to meet the requirements. Therefore, to ensure that San Francisco’s Inclusionary Housing stock increases, decision-makers should consider both the nexus and financial feasibility in order to provide assurance to the public that the requirements are fair.

Immediate Housing Crisis & Need to Update Inclusionary Fee

While above average housing costs in San Francisco are nothing new, the current economic cycle has created an unprecedented affordability crisis in the City. About 63% of the homes in San Francisco are worth more than a million dollars. The average rent for a one bedroom apartment is \$3,500, making the City the most expensive place in the country to rent an apartment¹. In fact, over the past 4 years, the median rent of a one bedroom has increased by 59% from \$2,195 to in 2011, to \$3,500 as of December 2015. Over just the last year, the median rent of a one bedroom has increased 11%, from \$3,120 in 2014 to \$3,452 as of June 2015.²

Mayor Edwin Lee recognized the crisis in 2013 when he issued Directive 13-01, which among other things called on all City Departments with legal authority over the permitting and mapping of new or existing housing to prioritize their work plans on the construction and development of all net new housing, including permanently affordable housing. In 2014, the Mayor also made a pledge to construct 30,000 new and rehabilitated homes throughout the City by 2020, with at least one-third of those permanently affordable to low and moderate income families, and the majority of those within financial reach of working, middle income San Franciscans. Other initiatives have also attempted to address this crisis such as allowing Accessory Dwelling Units in certain areas of the City, higher scrutiny on the removal of unwarranted units, allowing 100% affordable housing projects as of right, and the Affordable Housing Bonus Program. The Department has also stepped up its efforts, but giving priority processing to affordable housing projects, and improving the time it takes to review smaller projects.

To date, the City’s efforts are showing results. According to the Department’s current pipeline report 34,000 units have been entitled by Planning and another 27,760 are currently under review. However, the City has established through its nexus study that building market-rate units creates a need for more below market rate units. These units help offset the demand for the existing housing stock, which tends to be older more affordable. Inclusionary units also provide security from no fault evictions and steep rent increases, and importantly, they are built without tax payer subsidies. Therefore it is in the City’s interest to ensure that we are maximizing the number of inclusionary units we get from private developers through the Inclusionary Program. By increasing the inclusionary rate based on feasibility, the City will be able to maximize the potential of its inclusionary program, ensuring more permanently affordable housing units without using tax payer funds.

¹ Anderson, Tomikka. “Cost of average San Francisco rent actually fell (a little) last month. <http://www.sfgate.com/bayarea/article/San-Francisco-rent-cost-drop-rental-6690357.php>. Published: 12/11/2015, Accessed 3/23/2016

² Editor. “The San Francisco Rent Explosion Part III. <http://priceconomics.com/the-san-francisco-rent-explosion-part-iii/> Published 8/12/2015, Accessed 3/23/2016

Pipeline Projects Which May be Subject to Grandfathering Provisions & New Inclusionary Rates

Planning Department staff are refining the pipeline database so that the most accurate data may be brought to the Commission on the date that this proposed Ordinance is considered, currently scheduled to be 3/31/16.

Triennial Economic Feasibility Analysis & Technical Advisory Committee for Study.

The proposed Ordinance establishes a triennial report requirement to analyze how to establish inclusionary housing requirements to produce the most Inclusionary housing. The report is to be compiled by the Controller, in consultation with relevant City departments and the Inclusionary Housing Technical Advisory Committee. Technical Advisory Committee will be staffed by people who have experience and expertise in development finance, with four members appointed by the Mayor and four by the Board. This technical review and evaluation of the City's Inclusionary program by professionals is good public policy. Emphasizing the committee members' technical expertise will help ensure that this report is given thorough and detailed oversight.

IMPLEMENTATION

This proposal will 1) increase the complexity of implementing the inclusionary requirement for projects subject to the grandfathering provision and 2) increase the frequency of feasibility studies; however the Department will be in a supporting role for these reoccurring studies.

REQUIRED COMMISSION ACTION

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

RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance and adopt the attached Draft Resolution to that effect.

BASIS FOR RECOMMENDATION

The Department supports the Ordinance on balance because it establishes a process for regular feasibility analysis so that the City can continually adapt to changes in the real estate market and ensure the highest production of BMR housing in conjunction with new market-rate housing. The department recommends the modifications below to best reach this broad goal.

1. **Support the production of housing, especially affordable housing.** This long-standing policy of the City seeks equity in housing for future residents. Given the current housing crisis, this goal is all the more important. This ordinance seeks to establish a regular feasibility study to ensure the requirements are neither lower nor higher than the market will support. The ordinance also seeks to raise the Inclusionary Housing requirement, the City's most expensive impact fee. Increases to this exaction in the short-term may chill the production of housing. Some projects

will buckle under new onsite requirements or fees, particularly when land has already been purchased at high prices based upon an anticipated revenue. The resulting slowdown of housing production can cause harm to residents needing housing in the short-term. It is probable that over the longer term higher on-site requirements or fees set through a rigorous feasibility study could be absorbed into the costs of the land value. However, even over the long-term, the amount of additional on-site requirements or fees that can be absorbed is still limited. This is because in order for development to occur, it must offer a greater return to the landowner than the existing use. For example a parcel containing a retail/commercial use will only be developed into housing if the proposed residential project offers a greater return to the landowner than the retail/commercial rent it is already earning. By establishing a process for regular feasibility analysis, the City can continually adapt to changes in the real estate market and ensure the highest production of BMR housing in conjunction with new market-rate housing.

- a. **Ensure no reduction would occur to existing Inclusionary Requirements.** Some districts such as UMU, Mission Street NCT, and SoMa Youth and Family Zone and have higher requirements under existing controls than would be required under the proposal. The Department recommends keeping any existing requirements that are higher than the amounts proposed in the draft ordinance. Sections 415.6 On-site Alternative and 415.7 Off-Site Alternative include language enabling the higher requirement. Similar language should be added to 415.3 Application, Section 415.7 Off-Site Application, 415.5 Fee, and within the geographically specific Code Sections that have higher requirements such as Section 419 UMU. Within Section 419 UMU district, the proposed grandfathering provisions do not take into account the Tiers. For instance, the existing Code requirements are varied by tiers Tier A (on-site: 14.4%, off-site: 23%); Tier B (on-site: 16%, off-site: 25%); and Tier C (on-site: 17.6%, off-site: 27%). With the proposed grandfathering provision a 30 unit project in Tier B would be required to provide 25% because it is higher, but it would be 16% if using grandfathering. The “higher percentage” language needs to be added to the grandfathering section or separate percentages should be established for each UMU Tier.
- b. **Support the production of additional affordable housing through the use of density bonuses.** The proposed Ordinance encourages project sponsors to achieve 25% affordable housing on-site in association with the use of the existing State Density Bonus Law. Generally, the Planning Code should establish standards and requirements and should not have vague language. Encouragement language is better placed in policy documents. Further, by codifying language of encouragement such as “use best efforts” and “consult with the Planning Department about achieving [higher levels of affordability than required by the State] may set unrealistic community expectations that are unachievable under State Law. Such language of encouragement provides no real benefit as it does not prohibit a project sponsor from providing less than 25% and the City may not circumvent the State Law in this way. The Department agrees that a higher provision of affordable housing with density bonuses would better align the State Law with City policy, but State Law circumscribes the City's ability in denying a density bonus to projects providing of less than 25% affordable housing or in imposing a higher inclusionary requirement on a density bonus project. If the City adopts the local Affordable Housing Bonus Program (AHBP), the Local Program could incentivize an

even higher level of affordability while shaping the built form of projects to be more compatible with San Francisco's neighborhoods. At this time, the Department recommends removing the undefined term of "use best efforts" and an undefined process of "consultation" with the Department and instead encourages the Board to consider incentives such as the AHBP as the best vehicle for achieving higher affordability in light of the State Law.

- c. **Allow some flexibility in the AMI requirements to encourage variety of levels of affordability.** The on-site requirement for projects with 25 units or more has a degree of flexibility written into the new requirements. It mandates 25% Inclusionary of on-site units provide 15% of the units are affordable to low, and very low-income and allows the remaining 10% of the requirement to be provided with housing serving either very low, low- or middle-income households. This flexibility in the final 10% allows for some projects to qualify for tax credits while other projects may serve middle-income households. This same flexibility should be added to the off-site requirement on page 17, line 8: 415.7 (a)(1) (B) The number of units constructed off-site shall be 33 percent, with a minimum of 20% of the units affordable to low- and very low-income households and another 13% of the units affordable to low-, very low-income and middle- income households, so that a project applicant shall construct .33 times the total number of units produced in the principal project.
2. **Create fair, uniform grandfathering provisions for pipeline projects.** Because projects that are further along in the entitlement process are less able to adapt to new fees, the proposal makes accommodations by stepping the rate upwards incrementally. However, as proposed, the grandfathering currently is unnecessarily complicated. Lastly the timeline for securing a site permit may not be feasible for certain projects.
 - a. **Ensure uniform treatment of pipeline projects across zoning districts and project building types until further analysis can support the rationale.** Remove the provision that exempts from the grandfathering provisions projects in the UMU zoning that propose the demolition of PDR, projects located within the Mission Street NCT, projects in the SOMA Youth and Family Zone, and project building types that exceed 120 feet in height. All projects that have been planned consistent with existing zoning controls should be treated equally under the proposed grandfathering provision and new, permanent controls. If the feasibility study or changes in City policy demonstrate a rationale for differentiating certain projects within the Inclusionary requirements, then more specific requirements should be applied to future projects not those in the pipeline.
 - b. **Ensure grandfathered projects have a reasonable, but not excessive amount of time to complete project.** Make the following modifications to the timeline restriction for grandfathering on page 10, Line 1:

Any development project that constructs on-site or off-site affordable housing units as set forth in this Section 415.3(b) shall diligently pursue completion of such units. In the event that the project sponsor does not procure a building permit is not issued for construction of the affordable housing units by within 36 months from the entitlement date in order to remain subject to grandfathering provisions. If the building permit is not issued within 36 months of entitlement December 7, 2018, the development project shall comply with the inclusionary

affordable housing requirements set forth in Planning Code Sections 415.5, 415.6 and/or 415.7, as applicable.

3. **Make a commitment to ensure that the City gets the most affordable housing even as the real estate market will vary over time.** The Board of Supervisors would need to hold a hearing within three months of the completion of the feasibility study to consider increasing, decreasing or keeping the fees in light of the results. The Planning Commission should also consider initiating legislative amendments to the Inclusionary Requirement for the Board's consideration as described in the proposed edits to the "Modifications to the Feasibility Report" language on Page 24, Lines 3-14 as follows:

(d) Planning Commission Hearing. *The Planning Commission shall hold a hearing within one to two months after publication of each Triennial Economic Feasibility study to consider initiating an ordinance that would update the inclusionary requirement based upon the Triennial Economic Feasibility Analysis.*

~~(d)~~(e) Report to Board of Supervisors. The Board of Supervisors will review the feasibility analyses, as well as the commensurate updates to the City's Nexus Study evaluating the necessary affordable housing in order to mitigate the impacts of market rate housing. The Board of Supervisors, in its sole and absolute discretion, will review the feasibility analyses within three *to four* months of completion and will consider legislative amendments to the City's Inclusionary Housing in-lieu fees, on-site, off-site or other alternatives recommended by the Controller and/or the Planning Commission adjusting levels of inclusionary or affordable housing obligations and income levels based on the feasibility analyses, with the objective of maximizing affordable Inclusionary Housing in market rate housing production, with guidance from the City's Nexus Study.

(b) Triennial Economic Feasibility Analysis. With the support of independent consultants as deemed appropriate by the Controller and with advice on setting qualifications and criteria for consultant selection from the ~~Inclusionary~~ *Inclusionary* Housing Technical Advisory Committee established in Administrative Code Chapter 5, Article XXIX, the Controller, in consultation with relevant City Departments and the Inclusionary Housing Technical Advisory Committee, shall conduct a feasibility study of the City's inclusionary affordable housing obligations set forth in Planning Code Section 415 et seq., including but not limited to the affordable housing fee and on-site and off-site alternatives, and shall submit a report to the Board of Supervisors by July 31, 2016 and by October 31 for subsequent years. *The Planning Commission shall hold a hearing within one to two months after publication of each Triennial Economic Feasibility to consider initiating an ordinance that would update the inclusionary requirement based upon the Triennial Economic Feasibility Analysis. The Board of Supervisors shall hold a hearing three to four months after the publication of each Triennial Economic Feasibility. At the hearing, the BOS shall consider increasing, decreasing or retaining the established inclusionary rate.* Thereafter, the Controller, in consultation with the Department and the Inclusionary Housing Technical Advisory Committee, shall repeat this process at least every 36 months, or more frequently as deemed necessary by the Controller in response to a significant shift in economic or market conditions.

4. **For projects pursuing a State Density Bonus, individual project sponsors are required to do a project-specific feasibility study, this should only be tied to requested concessions.** The proposed Ordinance requires a feasibility study if the project sponsor is not providing on-site affordable units in the amount of 25% of the number of units constructed. The Department recommends that such analysis be linked to a relevant decision, such as approval of a requested concession or incentive. Per State law, approvals of increased density are not reliant on feasibility; however, concessions do have feasibility thresholds. The feasibility of the density bonus itself, rather than the separate category of concessions, cannot factor into the City's decision as to whether or not to approve the density bonus when a proposed project does not meet the stated goal of 25% affordable units. The State has already determined that the added density is permitted. However, a feasibility study can help inform the City as to whether or not concessions should be granted.

5. **Small Sites Acquisition.** Ensure that this new option allowing pipeline projects to satisfy Inclusionary requirements through the acquisition of existing buildings is crafted to mirror applicable elements of the Small Sites Acquisition Program administered by MOHCD. Applicable elements would include income eligibility and requirements, financial underwriting guidelines, and use restrictions. Notably, the Ordinance creates new options that are specifically intended to differ from the existing Small Sites Acquisition program. As currently drafted, it appears that the explicit requirement is that buildings acquired for this purpose would be converted from a non-residential use to a residential use. This creates new policy implications to be weighed such as would the City encourage the conversion from a PDR use, for example, to housing. Further, policymakers should note that the inclusion of commercial property acquisition by private parties represents a change in policy as the small sites program currently is only a vehicle for MOHCD to implement by the purchase existing residential projects. Additional clarity should be added about what existing buildings would be appropriate and what is intended with the phrase "an existing building that is *not currently and primarily* in residential use" (emphasis added). Lastly, there is no mention of income eligibility in the current proposal.

6. **Various technical amendments** including:
 - a. Organizing the grandfathering dates and percentages into charts would make these sections easier to use and implement.
 - b. Section 415.6(a)(1) On-Site Alternative should be clarified to ensure that the 12% requirement is dedicated to low-income AMIs. Currently the ordinance is silent, but it is assumed that the 12% for buildings with 10-25 units serve to low-income AMIs.
 - c. If the Board retains the exemptions for certain projects within the UMU district, the proposed Ordinance should be amended to clarify whether or not a project in the UMU District is grandfathered if it demolishing PDR but would also replace the PDR use. Currently the proposed Ordinance is silent on projects that demolish and replace PDR in the UMU District.
 - d. The proposed provision for the state density bonus in Section 415.3(b)(1)(F) follows other grandfathering provisions and it would appear because of its location that this is also a grandfathering provision; however there is not acknowledgement in the specific section

that this provision only applies to projects already in the pipeline. This section should be amended to clarify that it applies only to projects submitted prior to January 12, 2016 if that is the intention of the sponsor.

- e. In order to preserve the higher inclusionary rate in certain districts, the following language should be added to Section 415.3(b)(1) which starts on page 6, line 19 of the ordinance: *“**Specific Geographic Areas.** For any housing development that is located in an area with a specific affordable housing requirement set forth in a Special Use District or in any other section of the Code such as Section 419, the higher housing requirement shall apply.”*
- f. The findings in Section 415.1 should be updated to reflect current available information. It should also be removed from the Planning Code and added to the proposed Ordinance as part of the findings. These findings are not legally required to be in the Planning Code and removing them will help simplify Section 415.
- g. Page 9, Line 13, and everywhere else in the ordinance that this type of provision occurs, the following amendments should be made: *“Notwithstanding the provisions set forth in subsections (b)(2)(A), (B) and (C) of this Section 415.3, if a development project proposes a building whose height is measured per the Planning Code to be over 120 feet ~~or greater~~, such development project shall pay a fee or provide off-site housing in an amount equivalent to 33% of the number of units constructed on-site.*

ENVIRONMENTAL REVIEW

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c)(2) and 15378 because they do not result in a physical change in the environment.

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance. At the 3/23/16 meeting of the Building Department’s Public Advisory Committee, the group requested that the grandfathering provisions within this draft Ordinance apply to all projects which have submitted PPAs prior to effective date of the Charter Amendment.

RECOMMENDATION:	Recommendation of Approval with Modification
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Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Draft Ordinance BF 160255 Inclusionary Affordable Housing Fee and Requirements; Preparation of Economic Feasibility Report; Establishing Inclusionary Housing Technical Advisory Committee



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Draft Resolution

HEARING DATE MARCH 31, 2016

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Project Name: **Inclusionary Affordable Housing Fee and Requirements;
Preparation of Economic Feasibility Report; Establishing Inclusionary
Housing Technical Advisory Committee**

Case Number: **2016-003040PCA [Board File No. 160255]**

Initiated by: **Supervisor Kim and Supervisor Peskin / Introduced March 22, 2016**

Staff Contact: **Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362**

Reviewed by: **AnMarie Rodgers, Senior Policy Advisor
anmarie.rodgers@sfgov.org, 415-558-6395**

Recommendation: **Recommend Approval with Modifications**

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT WITH MODIFICATIONS A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING AND ADMINISTRATIVE CODES TO INCREASE THE INCLUSIONARY AFFORDABLE HOUSING FEE AND OTHER REQUIREMENTS; REQUIRE THE CONTROLLER TO PREPARE AN ECONOMIC FEASIBILITY REPORT REGARDING THE CITY'S INCLUSIONARY HOUSING REQUIREMENTS AND MAKE RECOMMENDATIONS BY JULY 31, 2016 AND EVERY THREE YEARS THEREAFTER; AND ESTABLISH THE INCLUSIONARY HOUSING TECHNICAL ADVISORY COMMITTEE TO PROVIDE ADVICE ABOUT THE ECONOMIC FEASIBILITY OF PROPOSALS TO SET MAXIMUM ECONOMICALLY VIABLE INCLUSIONARY HOUSING REQUIREMENTS, AND SET FORTH THE MEMBERSHIP AND DUTIES OF THE ADVISORY COMMITTEE; AFFIRMING THE PLANNING DEPARTMENT'S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; MAKING FINDINGS OF PUBLIC CONVENIENCE, NECESSITY, AND WELFARE UNDER PLANNING CODE SECTION 302; AND MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE SECTION 101.1.

WHEREAS, on March 22, 2016 Supervisors Kim and Peskin introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 160255, which would amend the Planning and Administrative Codes to increase the Inclusionary Affordable Housing fee and other requirements; require the Controller to prepare an economic feasibility report regarding the City's inclusionary housing requirements and make recommendations by July 31, 2016 and every three years thereafter; and establish the Inclusionary Housing Technical Advisory Committee to provide advice about the economic feasibility of proposals to set maximum economically viable inclusionary housing requirements, and set forth the membership and duties of the Advisory Committee

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on March 31, 2016; and,

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

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

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

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

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve with modifications** the proposed ordinance. The Commission's proposed modifications are as follows:

1. **Support the production of housing, especially affordable housing.** This long-standing policy of the City seeks equity in housing for future residents. Given the current housing crisis, this goal is all the more important. This ordinance seeks to establish a regular feasibility study to ensure the requirements are neither lower nor higher than the market will support. The ordinance also seeks to raise the Inclusionary Housing requirement, the City's most expensive impact fee. Increases to this exaction in the short-term may chill the production of housing. Some projects will buckle under new onsite requirements or fees, particularly when land has already been purchased at high prices based upon an anticipated revenue. The resulting slowdown of housing production can cause harm to residents needing housing in the short-term. It is probable that over the longer term higher on-site requirements or fees set through a rigorous feasibility study could be absorbed into the costs of the land value. However, even over the long-term, the amount of additional on-site requirements or fees that can be absorbed is still limited. This is because in order for development to occur, it must offer a greater return to the landowner than the existing use. For example a parcel containing a retail/commercial use will only be developed into housing if the proposed residential project offers a greater return to the landowner than the retail/commercial rent it is already earning. By establishing a process for regular feasibility analysis, the City can continually adapt to changes in the real estate market and ensure the highest production of BMR housing in conjunction with new market-rate housing.
 - a. **Ensure no reduction would occur to existing Inclusionary Requirements.** Some districts such as UMU, Mission Street NCT, and SoMa Youth and Family Zone and have higher requirements under existing controls than would be required under the proposal. The Commission recommends keeping any existing requirements that are higher than the amounts proposed in the draft ordinance. Sections 415.6 On-site Alternative and 415.7 Off-Site Alternative include language enabling the higher requirement. Similar language should be added to 415.3 Application, Section 415.7 Off-Site Application, 415.5 Fee, and within the geographically specific Code Sections that have higher requirements such as Section 419 UMU. Within Section 419 UMU district, the proposed grandfathering provisions do not take into account the Tiers. For instance, the existing Code

requirements are varied by tiers Tier A (on-site: 14.4%, off-site: 23%); Tier B (on-site: 16%, off-site: 25%); and Tier C (on-site: 17.6%, off-site: 27%). With the proposed grandfathering provision a 30 unit project in Tier B would be required to provide 25% because it is higher, but it would be 16% if using grandfathering. The “higher percentage” language needs to be added to the grandfathering section or separate percentages should be established for each UMU Tier.

- b. **Support the production of additional affordable housing through the use of density bonuses.** The proposed Ordinance encourages project sponsors to achieve 25% affordable housing on-site in association with the use of the existing State Density Bonus Law. Generally, the Planning Code should establish standards and requirements and should not have vague language. Encouragement language is better placed in policy documents. Further, by codifying language of encouragement such as “use best efforts” and “consult with the Planning Department about achieving [higher levels of affordability than required by the State] may set unrealistic community expectations that are unachievable under State Law. Such language of encouragement provides no real benefit as it does not prohibit a project sponsor from providing less than 25% and the City may not circumvent the State Law in this way. The Commission agrees that a higher provision of affordable housing with density bonuses would better align the State Law with City policy, but State Law circumscribes the City's ability in denying a density bonus to projects providing of less than 25% affordable housing or in imposing a higher inclusionary requirement on a density bonus project. If the City adopts the local Affordable Housing Bonus Program (AHBP), the Local Program could incentivize an even higher level of affordability while shaping the built form of projects to be more compatible with San Francisco’s neighborhoods. At this time, the Commission recommends removing the undefined term of “use best efforts” and an undefined process of “consultation” with the Department and instead encourages the Board to consider incentives such as the AHBP as the best vehicle for achieving higher affordability in light of the State Law.
 - c. **Allow some flexibility in the AMI requirements to encourage variety of levels of affordability.** The on-site requirement for projects with 25 units or more has a degree of flexibility written into the new requirements. It mandates 25% Inclusionary of on-site units provide 15% of the units are affordable to low, and very low-income and allows the remaining 10% of the requirement to be provided with housing serving either very low, low- or middle-income households. This flexibility in the final 10% allows for some projects to qualify for tax credits while other projects may serve middle-income households. This same flexibility should be added to the off-site requirement on page 17, line 8: 415.7 (a)(1) (B) The number of units constructed off-site shall be 33 percent, with a minimum of 20% of the units affordable to low- and very low-income households and another 13% of the units affordable to low-, very low-income and middle- income households, so that a project applicant shall construct .33 times the total number of units produced in the principal project.
2. **Create fair, uniform grandfathering provisions for pipeline projects.** Because projects that are further along in the entitlement process are less able to adapt to new fees, the proposal makes

accommodations by stepping the rate upwards incrementally. However, as proposed, the grandfathering currently is unnecessarily complicated. Lastly the timeline for securing a site permit may not be feasible for certain projects.

- a. **Ensure uniform treatment of pipeline projects across zoning districts and project building types until further analysis can support the rationale.** Remove the provision that exempts from the grandfathering provisions projects in the UMU zoning that propose the demolition of PDR, projects located within the Mission Street NCT, projects in the SOMA Youth and Family Zone, and project building types that exceed 120 feet in height. All projects that have been planned consistent with existing zoning controls should be treated equally under the proposed grandfathering provision and new, permanent controls. If the feasibility study or changes in City policy demonstrate a rationale for differentiating certain projects within the Inclusionary requirements, then more specific requirements should be applied to future projects not those in the pipeline.
 - b. **Ensure grandfathered projects have a reasonable, but not excessive amount of time to complete project.** Make the following modifications to the timeline restriction for grandfathering on page 10, Line 1:
Any development project that constructs on-site or off-site affordable housing units as set forth in this Section 415.3(b) shall diligently pursue completion of such units. In the event ~~that the project sponsor does not procure~~ a building permit is not issued for construction of the affordable housing units by within 36 months from the entitlement date in order to remain subject to grandfathering provisions. If the building permit is not issued within 36 months of entitlement December 7, 2018, the development project shall comply with the inclusionary affordable housing requirements set forth in Planning Code Sections 415.5, 415.6 and/or 415.7, as applicable.
3. **Make a commitment to ensure that the City gets the most affordable housing even as the real estate market will vary over time.** The Board of Supervisors would need to hold a hearing within three months of the completion of the feasibility study to consider increasing, decreasing or keeping the fees in light of the results. The Planning Commission should also consider initiating legislative amendments to the Inclusionary Requirement for the Board's consideration as described in the proposed edits to the "Modifications to the Feasibility Report" language on Page 24, Lines 3-14 as follows:
- (d) Planning Commission Hearing.** *The Planning Commission shall hold a hearing within one to two months after publication of each Triennial Economic Feasibility study to consider initiating an ordinance that would update the inclusionary requirement based upon the Triennial Economic Feasibility Analysis.*
- ~~(d)~~-(e) Report to Board of Supervisors.** The Board of Supervisors will review the feasibility analyses, as well as the commensurate updates to the City's Nexus Study evaluating the necessary affordable housing in order to mitigate the impacts of market rate housing. The Board of Supervisors, in its sole and absolute discretion, will review the feasibility analyses within three to four months of completion and will consider legislative amendments to the City's Inclusionary Housing in-lieu fees, on-site, off-site or other alternatives recommended by the Controller and/or the Planning Commission adjusting levels of inclusionary or affordable housing obligations and income levels

based on the feasibility analyses, with the objective of maximizing affordable Inclusionary Housing in market rate housing production, with guidance from the City's Nexus Study.

(b) Triennial Economic Feasibility Analysis. With the support of independent consultants as deemed appropriate by the Controller and with advice on setting qualifications and criteria for consultant selection from the ~~Inclusionary~~ Inclusionary Housing Technical Advisory Committee established in Administrative Code Chapter 5, Article XXIX, the Controller, in consultation with relevant City Departments and the Inclusionary Housing Technical Advisory Committee, shall conduct a feasibility study of the City's inclusionary affordable housing obligations set forth in Planning Code Section 415 et seq., including but not limited to the affordable housing fee and on-site and off-site alternatives, and shall submit a report to the Board of Supervisors by July 31, 2016 and by October 31 for subsequent years. The Planning Commission shall hold a hearing within one to two months after publication of each Triennial Economic Feasibility to consider initiating an ordinance that would update the inclusionary requirement based upon the Triennial Economic Feasibility Analysis. The Board of Supervisors shall hold a hearing three to four months after the publication of each Triennial Economic Feasibility. At the hearing, the BOS shall consider increasing, decreasing or retaining the established inclusionary rate. Thereafter, the Controller, in consultation with the Department and the Inclusionary Housing Technical Advisory Committee, shall repeat this process at least every 36 months, or more frequently as deemed necessary by the Controller in response to a significant shift in economic or market conditions.

4. **For projects pursuing a State Density Bonus, individual project sponsors are required to do a project-specific feasibility study, this should only be tied to requested concessions.** The proposed Ordinance requires a feasibility study if the project sponsor is not providing on-site affordable units in the amount of 25% of the number of units constructed. The Commission recommends that such analysis be linked to a relevant decision, such as approval of a requested concession or incentive. Per State law, approvals of increased density are not reliant on feasibility; however, concessions do have feasibility thresholds. The feasibility of the density bonus itself, rather than the separate category of concessions, cannot factor into the City's decision as to whether or not to approve the density bonus when a proposed project does not meet the stated goal of 25% affordable units. The State has already determined that the added density is permitted. However, a feasibility study can help inform the City as to whether or not concessions should be granted.
5. **Small Sites Acquisition.** Ensure that this new option allowing pipeline projects to satisfy Inclusionary requirements through the acquisition of existing buildings is crafted to mirror applicable elements of the Small Sites Acquisition Program administered by MOHCD. Applicable elements would include income eligibility and requirements, financial underwriting guidelines, and use restrictions. Notably, the Ordinance creates new options that are specifically intended to differ from the existing Small Sites Acquisition program. As currently drafted, it

appears that the explicit requirement is that buildings acquired for this purpose would be converted from a non-residential use to a residential use. This creates new policy implications to be weighed such as would the City encourage the conversion from a PDR use, for example, to housing. Further, policymakers should note that the inclusion of commercial property acquisition by private parties represents a change in policy as the small sites program currently is only a vehicle for MOHCD to implement by the purchase existing residential projects. Additional clarity should be added about what existing buildings would be appropriate and what is intended with the phrase “an existing building that is *not currently and primarily* in residential use” (emphasis added). Lastly, there is no mention of income eligibility in the current proposal.

6. **Various technical amendments** including:
 - a. Organizing the grandfathering dates and percentages into charts would make these sections easier to use and implement.
 - b. Section 415.6(a)(1) On-Site Alternative should be clarified to ensure that the 12% requirement is dedicated to low-income AMIs. Currently the ordinance is silent, but it is assumed that the 12% for buildings with 10-25 units serve to low-income AMIs.
 - c. If the Board retains the exemptions for certain projects within the UMU district, the proposed Ordinance should be amended to clarify whether or not a project in the UMU District is grandfathered if it demolishing PDR but would also replace the PDR use. Currently the proposed Ordinance is silent on projects that demolish and replace PDR in the UMU District.
 - d. The proposed provision for the state density bonus in Section 415.3(b)(1)(F) follows other grandfathering provisions and it would appear because of its location that this is also a grandfathering provision; however there is not acknowledgement in the specific section that this provision only applies to projects already in the pipeline. This section should be amended to clarify that it applies only to projects submitted prior to January 12, 2016 if that is the intention of the sponsor.
 - e. In order to preserve the higher inclusionary rate in certain districts, the following language should be added to Section 415.3(b)(1) which starts on page 6, line 19 of the ordinance: “*Specific Geographic Areas. For any housing development that is located in an area with a specific affordable housing requirement set forth in a Special Use District or in any other section of the Code such as Section 419, the higher housing requirement shall apply.*”
 - f. The findings in Section 415.1 should be updated to reflect current available information. It should also be removed from the Planning Code and added to the proposed Ordinance as part of the findings. These findings are not legally required to be in the Planning Code and removing them will help simplify Section 415.
 - g. Page 9, Line 13, and everywhere else in the ordinance that this type of provision occurs, the following amendments should be made: “Notwithstanding the provisions set forth in subsections (b)(2)(A), (B) and (C) of this Section 415.3, if a development project proposes a building whose height is measured *per the Planning Code* to be *over 120 feet or greater*, such development project shall pay a fee or provide off-site housing in an amount equivalent to 33% of the number of units constructed on-site.

FINDINGS

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

1. The Planning Commission supports the Ordinance on balance because it establishes a process for regular feasibility analysis so that the City can continually adapt to changes in the real estate market and ensure the highest production of BMR housing in conjunction with new market-rate housing.
2. The current economic cycle has created an unprecedented affordability crisis in the City. It is in the City's interest to ensure that we are maximizing the number of inclusionary units we get from private developers through the Inclusionary Program. By increasing the inclusionary rate based on feasibility, the City will be able to maximize the potential of its inclusionary program, ensuring more permanently affordable housing units without using tax payer funds.
3. This proposed technical review and evaluation of the City's Inclusionary program by professionals is good public policy. Emphasizing the committee members' technical expertise will help ensure that this report is given thorough and detailed oversight.
4. The proposed amendments allow for some flexibility in the AMI requirements to encourage variety of levels of affordability. The Commission finds that this same flexibility should be allowed for the off-site requirement.
5. The Commission finds that in order to provide certainty for projects, the proposed ordinance should create a fair and uniform grandfathering provision for pipeline projects.
6. The Commission finds that in addition to the Board considering increasing, decreasing or keeping the fees in light of the results of the feasibility study, it should also consider initiating legislative amendments to the Inclusionary Requirement for the Board's consideration.
7. In general, the Commission finds that the Planning Code should establish standards and requirements and should not have vague language. Encouragement language is better placed in policy documents.
8. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

OBJECTIVE 4

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

Policy 4.4

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

The proposed ordinance will require more inclusionary units than is currently required in the Planning Code. Inclusionary units can be rental and are permanently affordable housing.

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.

On-site inclusionary housing units integrate permanently affordable housing into all of the city's neighborhoods, helping to establish a range of income levels across the city. This ordinance will increase the number of inclusionary units required for project of 25 units or more, further achieving this policy goal.

OBJECTIVE 7

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

Policy 7.1

Expand the financial resources available for permanently affordable housing, especially permanent sources.

The proposed ordinance will increase the amount of money that individual developers would have to pay into the City's Housing Trust Fund. This money would then be used to pay for permanently affordable housing.

Policy 7.7

Support housing for middle income households, especially through programs that do not require a direct public subsidy.

The proposed inclusionary program does not require public subsidies and a portion of the units or fees collect would be dedicated to middle income households.

OBJECTIVE 8

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

Policy 8.1

Support the production and management of permanently affordable housing.

This ordinance supports the production of permanently affordable housing by increasing the inclusionary housing requirement for individual projects.

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

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

The proposed Ordinance will not have a negative effect on existing neighborhood serving retail uses as it only addresses the City's inclusionary housing program.

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

The proposed Ordinance will help maintain a diversity of housing types and income types in the City's various neighborhoods; helping to preserving the cultural and economic diversity of the City's neighborhoods.

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

The proposed Ordinance will have a positive effect on the City's supply of affordable housing by increasing the inclusionary requirement for individual projects with 25 units or more.

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

The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking as it only addresses the City's inclusionary housing program.

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

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

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

The proposed Ordinance will not have an adverse effect on City's preparedness against injury and loss of life in an earthquake because the Ordinance modifies the City's inclusionary housing requirements.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance will not have an adverse effect on the City's Landmarks and historic buildings because the Ordinance only addresses the City's inclusionary housing requirements.

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

The proposed Ordinance will not have an adverse effect on the City's parks and open space and their access to sunlight and vistas because it only addresses the City's inclusionary housing requirements.

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

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on March 31, 2016.

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: March 31, 2016

FILE NO.

LEGISLATIVE DIGEST

[Planning, Administrative Codes - Inclusionary Affordable Housing Fee and Requirements; Preparation of Economic Feasibility Report; Establishing Inclusionary Housing Technical Advisory Committee]

Ordinance amending the Planning and Administrative Codes to increase the Inclusionary Affordable Housing fee and other requirements; require the Controller to prepare an economic feasibility report regarding the City's inclusionary housing requirements and make recommendations by July 31, 2016 and every three years thereafter; and establish the Inclusionary Housing Technical Advisory Committee to provide advice about the economic feasibility of proposals to set maximum economically viable inclusionary housing requirements, and set forth the membership and duties of the Advisory Committee; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of public convenience, necessity, and welfare under Planning Code Section 302; and making findings of consistency with the General Plan and the eight priority policies of Planning Code Section 101.1.

Existing Law

The Charter generally requires private developers of new market-rate housing to provide affordable housing ("Inclusionary Housing") in one of three ways:

- pay a fee equal to 17% to 20% of their project's units to support low-income housing;
- make at least 12% of the on-site housing units affordable; or
- create new affordable units off-site, equal to 17 to 20% of the project's units.

These requirements can be modified if a project meets an exception specified in the Charter (or if the Charter is amended). The Planning Code contains detailed requirements for implementation of these three Inclusionary Housing options, in the Inclusionary Affordable Housing Program set forth in Planning Code Sections 415 *et seq.*

Amendments to Current Law

The ordinance would not take effect unless and until the voters approve amendments to the Charter at the June 7, 2016 election. The ordinance is intended to adopt new Inclusionary Housing obligations following the process set forth in Section 16.110(g) of the proposed Charter amendment. This ordinance would supersede and replace the interim Inclusionary Housing requirements set forth in the proposed Charter amendment.

FILE NO.

The legislation provides that the Board would review and consider any recommended changes to the Inclusionary Affordable Housing Program after the completion of the proposed Economic Feasibility Study and the update of the City's Nexus Analysis.

There are 3 components to this ordinance. It sets forth new Inclusionary Housing requirements, requires preparation of an Inclusionary Housing economic feasibility study, and establishes a technical advisory committee to consult with the Controller on the economic feasibility study.

New Inclusionary Housing Requirements

The new Inclusionary Housing requirements could be satisfied by payment of a fee, or provision of on-site or off-site Inclusionary Housing:

1. Affordable Housing Fee: The development project would pay a fee equivalent to the applicable off-site percentage of the number of units in the principal project:
 - For development projects consisting of 10 dwelling units or more, but less than 25 dwelling units, the percentage would be 20%.
 - For development projects consisting of 25 dwelling units or more, the percentage would be 30% for buildings whose height is less than 120 feet, and 33% for buildings whose height is 120 feet or greater.
2. On-site Affordable Housing:
 - The number of affordable units constructed on-site would generally be 12% of all units constructed on the project site for housing development projects consisting of 10 dwelling units or more, but less than 25 dwelling units.
 - The number of affordable units constructed on-site would generally be 25% of all units constructed on the project site for housing development projects consisting of 25 dwelling units or more, with a minimum of 15% of the units affordable to low- and very low-income households and 10% of the units affordable to very low-, low- or middle-income households.
3. Off-site Affordable Housing:
 - For housing development projects consisting of 10 dwelling units or more but less than 25 units, the number of affordable units constructed off-site would be 20% of the number of units in the principal project.

FILE NO.

- For housing development projects consisting of 25 dwelling units or more, the number of affordable units required to be constructed off-site would be 33% of the number of units in the principal project, with 20% of the units affordable to low- and very low-income households and 13% of the units affordable to middle-income households.

4. Temporary Requirements. The ordinance would provide different temporary requirements for certain projects that contain 25 or more dwelling units, and have submitted complete environmental evaluation applications as follows.

On-site Temporary Requirements.

- Submittal of an application prior to January 1, 2014: 13% of the number of units constructed on-site.
- Submittal of an application prior to January 1, 2015: 13.5% of the number of units constructed on-site.
- Submittal of an application on or prior to January 12, 2016: 14.5% of the number of units constructed on-site.

Fee or Off-site Temporary Requirements.

- Submittal of an application prior to January 1, 2014: 25% of the number of units constructed on-site.
- Submittal of an application prior to January 1, 2015: 27.5% of the number of units constructed on-site.
- Submittal of an application on or prior to January 12, 2016: 30% of the number of units constructed on-site.

Exceptions to Temporary Requirements. The temporary requirements would not apply to: buildings over 120 feet in height; projects located in a UMU Zoning District and proposing to eliminate a Production, Distribution and Repair (PDR) use; projects located in the Mission NCT Zoning District; or projects located in the South of Market Youth and Family Zoning District.

General Exception. The new Inclusionary Housing requirements contained in Sections 415.5, 415.6, and 415.7, as well as the temporary requirements contained in Section 415.3(b), would not apply to any mixed use project that (i) is located on a site for which a height limit increase has been approved by the voters prior to January 12, 2016 to satisfy the requirements of Administrative Code Section 61.5.1, or (ii) has entered into a development agreement or other similar binding agreement with the City as of January 12, 2016.

FILE NO.

Economic Feasibility Study

The ordinance would require the Controller to study the economic feasibility of the City's inclusionary housing requirements and produce a report by July 31, 2016, and by October 31 every three years thereafter. The Board must consider the report within three months and consider legislative amendments to the City's Inclusionary Housing in-lieu fees, on-site, off-site, or other alternatives recommended by the Controller and/or the Planning Commission adjusting levels of inclusionary or affordable housing obligations and income levels based on the feasibility analyses and with guidance from the City's Nexus Study, with the objective of maximizing affordable Inclusionary Housing in market rate housing production.

Technical Advisory Committee

The ordinance would require the creation of a Technical Advisory Committee, consisting of eight members. The Mayor and the Board of Supervisors would each appoint four members. The Advisory Committee would provide input to the Controller, the Mayor, the Planning Department, and the Board of Supervisors regarding the content of the economic feasibility analysis. The Advisory Committee would hold technical workshops to evaluate the fiscal feasibility of various inclusionary housing fees and on-site and off-site alternatives.

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1 [Planning, Administrative Codes – Inclusionary Affordable Housing Fee and Requirements;
2 Preparation of Economic Feasibility Report; Establishing Inclusionary Housing Technical
3 Advisory Committee]

4 **Ordinance amending the Planning and Administrative Codes to increase the**
5 **Inclusionary Affordable Housing fee and other requirements; require the Controller to**
6 **prepare an economic feasibility report regarding the City’s inclusionary housing**
7 **requirements and make recommendations by July 31, 2016 and every three years**
8 **thereafter; and establish the Inclusionary Housing Technical Advisory Committee to**
9 **provide advice about the economic feasibility of proposals to set maximum**
10 **economically viable inclusionary housing requirements, and set forth the membership**
11 **and duties of the Advisory Committee; affirming the Planning Department’s**
12 **determination under the California Environmental Quality Act; making findings of**
13 **public convenience, necessity, and welfare under Planning Code Section 302; and**
14 **making findings of consistency with the General Plan and the eight priority policies of**
15 **Planning Code Section 101.1.**

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

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

24 Section 1. Findings.

25 (a) The Planning Department has determined that the actions contemplated in this
ordinance comply with the California Environmental Quality Act (California Public Resources

1 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
2 Supervisors in File No. ____ and is incorporated herein by reference.

3 (b) On _____, the Planning Commission, in Resolution No. _____, adopted
4 findings that the actions contemplated in this ordinance are consistent, on balance, with the
5 City's General Plan and the eight priority policies of Planning Code Section 101.1. The Board
6 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
7 Board of Supervisors in File No. _____, and is incorporated herein by reference.

8 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code
9 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth
10 in Planning Commission Resolution No. _____ and the Board incorporates such reasons
11 herein by reference.

12

13 Section 2. Findings Regarding Inclusionary Affordable Housing Requirements.

14 (a) The amendments to Planning Code Sections 415.1, 415.3, 415.5, 415.6 and 415.7
15 set forth in Section 3 of this ordinance will become effective only on the effective date of the
16 Charter amendment revising Section 16.110 at the June 7, 2016 election, permitting the City
17 to change the inclusionary affordable housing requirements. In the event the voters do not
18 adopt such Charter amendment, the amendments to Planning Code Sections 415.1, 415.3,
19 415.5, 415.6 and 415.7 set forth in Section 3 of this ordinance shall have no effect, and the
20 City Attorney shall not cause them to be published in the Municipal Code.

21 (b) The purpose of this ordinance is to adopt new inclusionary or affordable housing
22 obligations following the process set forth in Section 16.110(g) of the proposed Charter
23 amendment on the ballot at the June 7, 2016 election to revise the City's inclusionary
24 affordable housing requirements. The inclusionary affordable housing obligations set forth in
25 this ordinance will supersede and replace the interim requirements set forth in Section

1 16.110(g) of the Charter amendment, so that the interim requirements will be removed from
2 the Charter pursuant to the requirements set forth in the Charter amendment.

3

4 Section 3. The Planning Code is hereby amended by revising Sections 415.1, 415.3,
5 415.5, 415.6 and 415.7, to read as follows:

6 **SEC. 415.1 FINDINGS.**

7 A. The Board of Supervisors hereby finds and declares as follows:

8 **Affordable Housing:** The findings in former Planning Code Section 315.2 of the
9 Inclusionary Affordable Housing Ordinance are hereby readopted and updated as follows:

10 * * * *

11 9. The City wants to balance the burden on private property owners with the
12 demonstrated need for affordable housing in the City. The Housing Element calls for the City
13 to review its affordable Inclusionary Housing Program regularly to ensure a fair burden ~~and not~~
14 ~~without~~ constraining new housing production. The Board of Supervisors has reviewed the
15 Inclusionary Housing Program and finds that, for purposes of the Housing Element of the
16 General Plan, the current Affordable Housing Fee ~~—set at the equivalent to providing 20 percent~~
17 ~~of the total number of units as affordable units (or less for projects approved under prior requirements)~~
18 – ensures a more fair burden on all housing development and that it will not constrain new
19 housing production. The Board of Supervisors has reviewed the Inclusionary Housing
20 Program and finds that, for purposes of the Housing Element of the General Plan, a housing
21 project of ~~five~~ 10 units or more is a larger housing project. Applying the Inclusionary Housing
22 Program requirements to buildings of ~~five~~ 10 units or more ensures a more fair burden on all
23 housing development and will not constrain new housing production.

24 10. The findings of former Planning Code Section 313.2 for the Jobs-Housing
25 Linkage Program, now found in Planning Code Sections 413 *et seq.*, relating to the shortage

1 of affordable housing, the low vacancy rate of housing affordable to persons of lower and
2 moderate income, and the decrease in construction of affordable housing in the City are
3 hereby readopted.

4 11. The Land Use and Economic Development Committee of the Board of
5 Supervisors held hearings on ~~this~~ *its earlier adoption of inclusionary housing* legislation on July
6 12 and 19, 2006. At those hearings, the Committee heard testimony from Planning
7 Department staff and consultant Kate Funk of Keyser Marston and Associates regarding a
8 study undertaken at the direction of the Planning Department by the consultant Keyser
9 Marston Associates. The study was entitled Inclusionary Housing Program Sensitivity
10 Analysis, dated July 7, 2006, and was undertaken to examine the economic impacts of
11 adjusted inclusionary requirements on market-rate housing projects ("Sensitivity Analysis").
12 The study can be found in Board File No. 051685 and is incorporated herein by reference.
13 The study was guided by the Planning Department and MOHCD and informed by a Technical
14 Advisory Committee comprised of a variety of experts from the San Francisco ~~H~~housing
15 ~~D~~development and ~~A~~affordable ~~H~~housing ~~A~~advocacy ~~C~~communities. Planning Department
16 staff presented a report summarizing the findings of the Sensitivity Analysis and the
17 recommendations of the Technical Advisory Committee. That report, dated July 10, 2006, is
18 found in Board File No. 051685 and is incorporated herein by reference. After considering the
19 Sensitivity Analysis and staff report and hearing the recommendations and testimony of the
20 Planning Department, MOHCD, members of the Technical Advisory Committee, and members
21 of the public including representatives of housing developers, community members, and
22 affordable housing advocates, the Land Use and Economic Development Committee
23 considered various amendments to the legislation. The Committee found, among other things,
24 that it was in the public interest to increase the percentage requirements of the ordinance, but
25 not by as much as originally proposed; to modify the application dates of the ordinance to

1 grandfather more existing projects from the increased percentage requirements, but to make
2 most projects subject to the other requirements of the ordinance; and to require further study
3 on some issues by the Planning Department and MOHCD.

4 12. The City and County of San Francisco, under the direction of the Office of
5 the Controller, has undertaken a comprehensive program of analyses to update its programs
6 and supporting documentation for many types of fees, including updating nexus analyses in
7 support of development impact fees. At the direction of the Board of Supervisors and as part
8 of this larger analysis, the City contracted with Keyser Marston Associates to prepare a nexus
9 analysis in support of the Inclusionary Affordable Housing Program, or an analysis of the
10 impact of development of market rate housing on affordable housing supply and demand. The
11 Planning Department and MOHCD worked closely with the consultant and also consulted with
12 the Technical Advisory Committee, noted above, comprised of a variety of experts from the
13 San Francisco housing development and affordable housing advocacy communities.

14 The City's current position is that the City's Inclusionary Housing Program is not subject
15 to the requirements of the Mitigation Fee Act, Government Code Sections 66000 *et seq.* While
16 the City does not expect to alter its position on this matter, due to past legislative actions
17 supporting such a study, the Citywide study being undertaken to conduct nexus studies in
18 other areas, and a general interest in determining whether the Inclusionary Housing Program
19 can be supported by a nexus type analysis as an additional support measure, the City
20 contracted to undertake the preparation of a nexus analysis *at this time*.

21 The ~~final~~ 2007 Nexus-study can be found in the Board of Supervisors File No. 051685 and
22 is incorporated by reference herein. The Board of Supervisors has reviewed the study and
23 staff analysis and report of the study and, on that basis finds that the study supports the
24 current requirements of the Inclusionary Housing Program including, but not limited to, the
25 primary requirement that project applicants pay the Affordable Housing Fee. Specifically, the

1 Board finds that this study: identifies the purpose of the fee to mitigate impacts on the demand
2 for affordable housing in the City; identifies the use to which the fee is to be put as being to
3 increase the City's affordable housing supply; and establishes a reasonable relationship
4 between the use of the fee for affordable housing and the need for affordable housing and the
5 construction of new market rate housing. Moreover, the Board finds that the current
6 inclusionary requirements are less than the cost of mitigation and do not include the costs of
7 remedying any existing deficiencies. The Board also finds that the study establishes that the
8 current inclusionary requirements do not duplicate other city requirements or fees.

9 13. The Board of Supervisors recognizes that this Inclusionary Housing
10 Program is only one part of the City's overall strategy for providing affordable housing. The
11 Mayor's Office of Housing and Community Development committed over \$54 million in capital
12 funds to affordable housing development in 2009-10. Only \$5 million of those monies came
13 from contributions from private developers through this Program or other similar programs.
14 The MOHCD has budgeted approximately \$64 million for affordable housing development in
15 2010-11 and the ~~current~~ expectation is that about \$14 million of those monies will come from
16 contributions from private developers through this Program or other similar programs.

17
18 **SEC. 415.3. APPLICATION.**

19 (a) Notwithstanding any other provision to the contrary in this Code, Section 415.1 *et*
20 *seq.* shall apply to any housing project that consists of ten or more units where an individual
21 project or a phased project is to be undertaken and where the total undertaking comprises a
22 project with ten or more units, even if the development is on separate but adjacent lots. This
23 provision also applies to housing projects that requires Commission approval of replacement
24 housing destroyed by earthquake, fire, or natural disaster only where the destroyed housing
25 included units restricted under the Inclusionary Affordable Housing Program or the City's

1 predecessor inclusionary housing policy, condominium conversion requirements, or other
2 affordable housing program.

3 (b) ~~The effective date of these requirements shall be either April 5, 2002, which is the date that~~
4 ~~the requirements originally became effective, or the date a subsequent modification, if any, became~~
5 ~~operative. The following table is designed to summarize the most significant subsequent modifications~~
6 ~~to this Program and the dates those modifications went into effect. The Planning Department and the~~
7 ~~Mayor's Office of Housing shall maintain a record for the public summarizing various amendments to~~
8 ~~this Program and their effective or operative dates. To the extent there is a conflict between the~~
9 ~~following table or any summary produced by the Department or MOH and the provisions of the~~
10 ~~original implementing ordinances, the implementing ordinances shall prevail. The requirements set~~
11 ~~forth in Planning Code Sections 415.5, 415.6, and 415.7 shall apply to certain development projects~~
12 ~~consisting of 25 dwelling units or more during a limited period of time as follows.~~

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

16 (A) Any development project that has submitted a complete Environmental
17 Evaluation application prior to January 1, 2014, and is eligible and elects to provide on-site units
18 pursuant to Section 415.5(g), shall provide affordable units in the amount of 13% of the number of
19 units constructed on-site.

20 (B) Any development project that has submitted a complete Environmental
21 Evaluation application prior to January 1, 2015, and is eligible and elects to provide on-site units
22 pursuant to Section 415.5(g), shall provide affordable units in the amount of 13.5% of the number of
23 units constructed on-site.

24 (C) Any development project that has submitted a complete Environmental
25 Evaluation application on or prior to January 12, 2016 and is eligible and elects to provide on-site

1 units pursuant to Section 415.5(g), shall provide affordable units in the amount of 14.5% of the number
2 of units constructed on-site.

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

6 (E) Notwithstanding the provisions set forth in subsections (b)(1)(A), (B) and
7 (C) of this section 415.3, if a development project is (i) located in a UMU Zoning District and proposes
8 to eliminate a Production, Distribution and Repair (PDR) use, as defined in Planning Code Section
9 102, or (ii) located in the Mission NCT Zoning District, or (iii) located in the South of Market Youth
10 and Family Zoning District, and is eligible and elects to provide on-site units pursuant to Section
11 415.5(g), such development project shall comply with the on-site requirements set forth in Section
12 415.7 and shall not be eligible to use the lower inclusionary housing requirements set forth in this
13 subsection (b) of this Section 415.3.

14 (F) Any development project that seeks to utilize a density bonus under State
15 Law shall use its best efforts to provide on-site affordable units in the amount of 25% of the number of
16 units constructed on-site and shall consult with the Planning Department about how to achieve this
17 amount of inclusionary affordable housing. Any project seeking a density bonus under the provisions
18 of State Law shall prepare a report analyzing the feasibility of the on-site affordable housing and the
19 effect of the density bonus on such feasibility.

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

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

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

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

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

13 (E) Notwithstanding the provisions set forth in subsections (b)(2)(A), (B) and
14 (C) of this Section 415.3, if a development project proposes a building whose height is measured to be
15 120 feet or greater, such development project shall pay a fee or provide off-site housing in an amount
16 equivalent to 33% of the number of units constructed on-site.

17 (F) Notwithstanding the provisions set forth in subsections (b)(2)(A), (B) and
18 (C) of this Section 415.3, if a development project is (i) located in a UMU Zoning District and proposes
19 to eliminate a Production, Distribution and Repair (PDR) use, as defined in Planning Code Section
20 102, or (ii) located in the Mission NCT Zoning District, or (iii) located in the South of Market Youth
21 and Family Zoning District, and is eligible and elects to provide off-site units pursuant to Section
22 415.5(g), such development project shall comply with the requirements set forth in Sections 415.5 and
23 415.6 and shall not be eligible to use the lower inclusionary housing requirements set forth in this
24 subsection (b) of this Section 415.3.

1 (G) Any development project that has submitted a complete Environmental
2 Evaluation application on or prior to January 12, 2016, and is eligible and elects to provide off-site
3 affordable housing, may provide off-site affordable housing by acquiring an existing building that is
4 not currently and primarily in residential use to fulfill all or part of the requirements set forth in this
5 Section 415.3 and in Section 415.7, as reviewed and approved by the Mayor's Office of Housing and
6 Community Development consistent with the parameters of its Small Sites Acquisition and
7 Rehabilitation Program.

8 (3) Any development project that constructs on-site or off-site affordable housing units
9 as set forth in subsection (b) of this Section 415.3 shall diligently pursue completion of such units. In
10 the event the project sponsor does not procure a building permit or site permit for construction of the
11 affordable housing units by December 7, 2018, the development project shall comply with the
12 inclusionary affordable housing requirements set forth in Sections 415.5, 415.6, and/or 415.7, as
13 applicable.

14 (c) The new inclusionary affordable housing requirements contained in Sections 415.5, 415.6,
15 and 415.7, as well as the provisions contained in Sections 415.3(b), shall not apply to any mixed use
16 project that (i) is located on a site for which a height limit increase has been approved by the voters
17 prior to January 12, 2016 to satisfy the requirements of Administrative Code Section 61.5.1, or (ii) has
18 entered into a development agreement or other similar binding agreement with the City as of January
19 12, 2016.

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

23
24 ~~Table 415.3~~

<i>Program Modification</i>	<i>Effective or Operative Date</i>
<p><i>All projects with 5 or more units must participate in the Inclusionary Housing Program Section 415 (changed from a threshold of 10 units). Threshold changed back to 10 units or more such that the Section 415 et seq. no longer applies to buildings of 5-9 units.</i></p>	<p><i>All projects that submitted a first application on or after July 18, 2006. 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.</i></p>
<p><i>Affordable Housing Percentages:</i></p> <ul style="list-style-type: none"> <i>• 20% Fee</i> <i>• 12% on site*</i> <i>• 20% off site*</i> <p><i>*Of total number of units (Percentages may vary in specific Area Plans or Special Use Districts. Please refer to those applicable Code Sections.)</i></p>	<p><i>All projects that submitted a first application on or after July 18, 2006 (For off-site and fee: except buildings of over 120 feet in height that meet the requirements of Section 415.7(a)(1)(C))</i></p>
<p><i>On-Site units must be priced and sold at 90% of AMI and rented at 55% of AMI</i></p>	<p><i>All projects that receive a first site or building permit on or after September 9, 2006</i></p>
<p><i>Project sponsor must select Program compliance option upon project approval and cannot alter their compliance option</i></p>	<p><i>All projects that received Planning Commission or Planning Department approval on or after September 9, 2006</i></p>
<p><i>All off-site units must be located within 1 mile of the principal project and Off-site units must be</i></p>	<p><i>All Projects that receive Planning Commission or Planning Department approval after September 9,</i></p>

1	priced and sold at 70% of AMI	2006
2	Lottery preference for applicants living or working	All projects that are marketed on or after June 4,
3	in San Francisco	2007
4	Lottery preference for applicants holding a	All projects that are marketed on or after December
5	Certificate of Preference from the Redevelopment	30, 2008
6	Agency	
7		All projects that are marketed on or after September
8	Lottery required for all new and resale units	9, 2006
9		
10	Must provide on-site units as owner-occupied only	All projects beginning February 11, 2010
11	unless specifically exempted pursuant to Section	
12	415	
13	All off-site units must follow standards set out in	Projects that receive Planning Commission or
14	Procedures Manual	Planning Department approval on or after June 4,
15		2007

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

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

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

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

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

10 * * * *

11 ~~(d) For projects that have received a first site or building permit prior to the effective date of~~
12 ~~Section 415.1 et seq., the requirements in effect prior to the effective date of Section 415.1 et seq. shall~~
13 ~~apply.~~

14 ~~(e) In November 2012 the voters amended the Charter by adopting Proposition C "The~~
15 ~~Affordable Housing Trust Fund and Housing Production Incentives" which is, in part, codified as~~
16 ~~Charter Section 16.110 ("Proposition C"). To the extent that there is any inconsistency between the~~
17 ~~provisions of Proposition C and Sections 415 et seq. or any other Planning Code provisions,~~
18 ~~the provisions of Proposition C shall control.~~

19
20 **SEC. 415.5. AFFORDABLE HOUSING FEE.**

21 The fees set forth in this Section 415.5 will be reviewed when the City completes an Economic
22 Feasibility Study or an updated Nexus Study. Except as provided in Section 415.5(g), all
23 development projects subject to this Program shall be required to pay an Affordable Housing
24 Fee subject to the following requirements:
25

1 (a) **Payment of a Fee.** The fee is due and payable to the Development Fee Collection
2 Unit at DBI for deposit into the Citywide Affordable Housing Fund at the time of and in no
3 event later than issuance of the first construction document, with an option for the project
4 sponsor to defer payment to prior to issuance of the first certificate of occupancy upon
5 agreeing to pay a deferral surcharge that would be deposited into the ~~Downtown Park~~ Citywide
6 Affordable Housing Fund, in accordance with Section 107A.13.15 of the San Francisco Building
7 Code.

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

10 (1) The number of units equivalent to the applicable off-site percentage of the
11 number of units in the principal project. The applicable percentage shall be ~~20% percent for~~
12 housing development projects consisting of 10 dwelling units or more, but less than 25 dwelling units.
13 The applicable percentage for development projects consisting of 25 dwelling units or more shall be
14 30% for buildings whose height is measured to be less than 120 feet, or 33% percent for buildings
15 whose height is measured to be 120 feet or greater or the percentage that applied to the project if the
16 project is subject to the requirements of an earlier version of this Program due to the date it submitted
17 its application or that percentage required in certain Special Use Districts or Area Plans. For the
18 purposes of this Section 415.5, the City shall calculate the fee using the direct fractional result
19 of the total number of units multiplied by the applicable percentage, rather than rounding up
20 the resulting figure as required by Section 415.6(a).

21 (2) The affordability gap using data on the cost of construction of residential
22 housing and the Maximum Purchase Price for the equivalent unit size. ~~As of the effective date of~~
23 ~~this Ordinance No. 62-13,1 MOH shall use construction cost data from the "San Francisco~~
24 ~~Inclusionary Housing Program Financial Analysis 2012" prepared by Seifel Consulting.~~ The
25

1 Department and MOHCD shall update the technical report from time to time as they deem
2 appropriate in order to ensure that the affordability gap remains current.

3 (3) No later than January 1 of each year ~~following the effective date of this~~
4 ~~Ordinance No. 62-13~~, MOHCD shall adjust the fee. ~~No later than December 1 following the effective~~
5 ~~date of this Ordinance No. 62-131 of each year~~, MOHCD shall provide the Planning Department,
6 DBI, and the Controller with information on the adjustment to the fee so that it can be included
7 in the Planning Department's and DBI's website notice of the fee adjustments and the
8 Controller's Citywide Development Fee and Development Impact Requirements Report
9 described in Section 409(a). MOHCD is authorized to develop an appropriate methodology for
10 indexing the fee, based on adjustments in the cost of constructing housing and the Maximum
11 Purchase Price for the equivalent unit size. The method of indexing shall be published in the
12 Procedures Manual.

13 * * * *

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

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

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

21 (1) The number of units constructed on-site shall generally be 12% of all units
22 constructed on the project site for housing development projects consisting of 10 dwelling units or
23 more, but less than 25 dwelling units. The number of units constructed on-site shall generally be 25%
24 of all units constructed on the project site for housing development projects consisting of 25 dwelling
25 units or more, with a minimum of 15% of the units affordable to low- and very low-income households

1 and 10% of the units affordable to very low, low- or middle income households. The Department
2 shall require ~~for housing projects covered by Section 415.3(a)(1),~~ as a condition of Department
3 approval of a project's building permit, or ~~by Section 415.3(a)(2), (3) and (4),~~ as a condition of
4 approval of a Conditional Use Authorization or Planned Unit Development or as a condition of
5 Department approval of a live/work project, that 12% or 25% percent, as applicable, of all units
6 constructed on the project site shall be affordable to qualifying households so that a project
7 sponsor must construct .12 or .25 times, as applicable, the total number of units produced in the
8 principal project. If the total number of units is not a whole number, the project sponsor shall
9 round up to the nearest whole number for any portion of .5 or above.

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

14 (3) If the principal project has resulted in demolition, conversion, or removal of
15 affordable housing units renting or selling to households at income levels and/or for a rental
16 rate or sales price below corresponding income thresholds for units affordable to qualifying
17 households, the Commission or the Department shall require that the project sponsor replace
18 the number of affordable units removed with units of a comparable number of bedrooms or
19 provide that ~~12~~ 25% percent of all units constructed as part of the new project shall be
20 affordable to qualifying households, whichever is greater.

21 ~~(4) Already Approved Projects. Charter Section 16.110(g)(3) contains procedures for~~
22 ~~certain projects that have been approved but that have not received their first construction document as~~
23 ~~defined in Section 107A.13.1 of the San Francisco Building Code by January 1, 2013 to modify their~~
24 ~~conditions of approval under limited circumstances.~~

1 (b) **Timing of Construction.** On-site affordable housing required by this Section
2 415.6 ~~must~~ shall be constructed, completed, ready for occupancy, and marketed no later than
3 the market rate units in the principal project.

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

22 * * * *

23
24 **SEC. 415.7. OFF-SITE AFFORDABLE HOUSING ALTERNATIVE.**

1 The requirements set forth in this Section 415.7 will be reviewed when the City completes an
2 Economic Feasibility Study or an updated Nexus Study. If the project sponsor is eligible and
3 selects pursuant to Section 415.5(g) to provide off-site units to satisfy the requirements of
4 Section 415.1 *et seq.*, the project sponsor shall notify the Planning Department and the
5 Mayor's Office of Housing and Community Development ("MOHCD") of its intent as early as
6 possible. The Planning Department and MOHCD shall provide an evaluation of the project's
7 compliance with this Section 415.7 prior to approval by the Planning Commission or Planning
8 Department. The development project shall meet the following requirements:

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

10 (1) ~~(A)~~ For any housing development ~~of any height~~ that is located in an area
11 with a specific affordable housing requirement, set forth in Section 419, or elsewhere in this
12 Code, the ~~more specific~~ higher off-site housing requirement shall apply.

13 ~~(B)~~ For housing development projects consisting of 10 dwelling units or more
14 but less than 25 units, the number of units constructed off-site shall be 20%, so that a project applicant
15 shall construct .20 times the total number of units produced in the principal project. If the total number
16 of units is not a whole number, the project applicant shall round up to the nearest whole number for
17 any portion of .5 or above.

18 ~~(C)~~ For housing development projects consisting of 25 dwelling units or more,
19 the number of units constructed off-site shall be 33%, with 20% of the units affordable to low- and very
20 low-income households and 13% of the units affordable to middle-income households, so that a project
21 applicant shall construct .33 times ~~Buildings of 120 feet and under in height or buildings of over 120~~
22 ~~feet in height that do not meet the criteria in Subsection (C) below: Except as provided in Subsection~~
23 ~~(A), the Department shall require for housing projects described in Section 415.3(a)(1), (2), (3), and~~
24 ~~(4)~~ the total number of units produced in the principal project. If the total number of units is not
25

1 a whole number, the project applicant shall round up to the nearest whole number for any
2 portion of .5 or above.

3 ~~(C) —Buildings of over 120 feet in height. Except as provided in subsection (A)~~
4 ~~above, the requirements of this Subsection shall apply to any project that is over 120 feet in height and~~
5 ~~does not require a Zoning Map amendment or Planning Code text amendment related to its project~~
6 ~~approvals which (i) results in a net increase in the number of permissible residential units, or (ii)~~
7 ~~results in a material increase in the net permissible residential square footage as defined in Section~~
8 ~~415.3(b)(2); or has not received or will not receive a Zoning Map amendment or Planning Code text~~
9 ~~amendment as part of an Area Plan adopted after January 1, 2006 which (i) results in a net increase in~~
10 ~~the number of permissible residential units, or (ii) results in a material increase in the net permissible~~
11 ~~residential square footage as defined in Section 415.3(b)(2). The Department shall require for housing~~
12 ~~projects covered by this Subsection and Section 415.3(a)(1), as a condition of Planning Department~~
13 ~~approval of a project's building permit, or by this Subsection and by Section 415.3(a)(2), (3) and (4), as~~
14 ~~a condition of approval of a Conditional Use Authorization or Planned Unit Development or as a~~
15 ~~condition of Department approval of a live/work project, that 17 percent of all units constructed on the~~
16 ~~project site shall be affordable to qualifying households so that a project sponsor must construct .17~~
17 ~~times the total number of units produced in the principal project. If the total number of units is not a~~
18 ~~whole number, the project sponsor shall round up to the nearest whole number for any portion of .5 or~~
19 ~~above. Consistent with the conclusions of the MOH study authorized in Section 415.9(e), MOH shall~~
20 ~~recommend and the Board of Supervisors shall consider whether the requirements of this Subsection~~
21 ~~for buildings of over 120 feet in height shall continue or expire after approximately five years from~~
22 ~~April 24, 2007.~~

23 (b) **Timing of Construction:** The project sponsor shall ~~insure~~ ensure that the off-site
24 units are constructed, completed, ready for occupancy, and marketed no later than the market
25

1 rate units in the principal project. In no case shall the Principal Project receive its first
2 certificate of occupancy until the off-site project has received its first certificate of occupancy.

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

5 (d) **Type of Housing:** All off-site units constructed under this Section 415.7 shall must
6 be provided as ownership housing for the life of the project unless the project applicant meets
7 the eligibility requirement of Section 415.5(g). If offered for ownership, all off-site units must be
8 affordable to households earning no more than 70% percent of the AMI, or if offered for rent,
9 Affordable to Qualifying Households at the rental level. Nothing in this Section shall limit a
10 project sponsor from meeting the requirements of this Section through the construction of
11 units in a limited equity or land trust form of ownership if such units otherwise meet all of the
12 requirements for off-site housing. In general, affordable units constructed or otherwise provided
13 under this Section ~~415.7~~ shall be comparable in number of bedrooms, exterior appearance and
14 overall quality of construction to market rate units in the principal project. The total square
15 footage of the off-site affordable units constructed or otherwise provided under this Section
16 ~~415.7~~ shall be no less than the calculation of the total square footage of the on-site market-
17 rate units in the principal project multiplied by the relevant on-site percentage requirement for
18 the project specified in this Section ~~415.7~~. The Notice of Special Restrictions or conditions of
19 approval shall include a specific number of units at specified unit sizes - including number of
20 bedrooms and minimum square footage - for affordable units. The interior features in
21 affordable units should generally be the same as those of the market rate units in the principal
22 project but need not be the same make, model, or type of such item as long as they are of
23 new and good quality and are consistent with then-current standards for new housing and so
24 long as they are consistent with the "Quality Standards for Off-Site Affordable Housing Units"
25 found in the Procedures Manual. Where applicable, parking shall be offered to the affordable

1 units subject to the terms and conditions of the Department's policy on unbundled parking for
2 affordable housing units as specified in the Procedures Manual and amended from time to
3 time. If the residential units in the principal project are live/work units which do not contain
4 bedrooms or are other types of units which do not contain bedrooms separated from the living
5 space, the off-site units shall be comparable in size according to the following equivalency
6 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

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14
15 Section 4. The Planning Code is hereby amended by adding Section 415.10, to read
16 as follows:

17 **SEC. 415.10. ECONOMIC FEASIBILITY STUDY TO MAXIMIZE HOUSING**

18 **AFFORDABILITY.**

19 **(a) Findings.**

20 *San Francisco continues to experience a housing crisis that requires a broad spectrum*
21 *of land use and financing tools to address. The Housing Element of the City's General Plan calls for*
22 *38% of all new housing production to be affordable for lower income households below 80% of area*
23 *median income and 19% of new housing affordable to be built for moderate/middle income households*
24 *up to 120% of area median income. San Francisco's inclusionary housing program, which requires*
25

1 housing developers to provide affordable units as part of their projects, is a critical component of the
2 City's programs to expand affordable housing options. The Inclusionary Housing program is one of the
3 City's tools for increasing affordable housing dedicated to lower income San Franciscans without
4 using public subsidies, and in particular it is a useful tool for creating any affordable housing to meet
5 the growing need of moderate/middle income households.

6 The City adopted an Inclusionary Housing ordinance in 2002 that set requirements on market
7 rate development to include affordable units at 12% of the total for the first time. The inclusionary
8 program successfully resulted in more than 2,000 units of below-market, permanently affordable
9 housing since its adoption. The City prepared a Nexus Study in 2007 in support of the program. The
10 report demonstrated the necessary affordable housing in order to mitigate the impacts of market rate
11 housing, and the inclusionary requirements were increased to 15% of total units. The City's
12 inclusionary housing requirements are codified in Section 415 of the Planning Code. The City is now
13 in the process of updating that nexus analysis.

14 In 2011, Governor Jerry Brown dissolved the State Redevelopment Agency, which was the
15 City's primary permanent funding stream for affordable housing. In 2012, in response to this loss, the
16 voters amended the San Francisco Charter to create the Affordable Housing Trust Fund, which
17 included a provision to lower the on-site inclusionary requirement to 12%. In November 2014, in
18 response to an escalating housing crisis, the voters passed Proposition K, which set forth a policy
19 directive to the City to provide additional affordable housing in the amount of 33% of its overall
20 housing production to low- to moderate-income households and 17% to middle-income households.

21 The Board of Supervisors has proposed to the voters a Charter amendment that will appear on
22 the June 7, 2016 ballot. The Charter amendment would authorize the City to enact by ordinance
23 subsequent changes to the inclusionary housing requirements, including changes to the minimum or
24 maximum inclusionary or affordable housing obligations applicable to market rate housing projects.

1 On March 1, 2016, the Board of Supervisors unanimously adopted Resolution No. XXX
2 declaring that (1) it shall be City policy to maximize the economically feasible percentage of affordable
3 inclusionary housing in market rate housing development to create housing for lower and
4 moderate/middle income households; (2) if the voters adopt the proposed Charter amendment on June
5 7, the Board intends to adopt a future ordinance requiring the Controller and other City departments to
6 conduct a periodic economic study to maximize affordability in the City's inclusionary housing
7 requirements; and (3) the future ordinance would create an advisory committee to ensure that the
8 economic study is the result of a transparent and inclusive public process.

9 The purpose of this Section 415.10 is to study how to set inclusionary housing obligations in
10 San Francisco at the maximum economically feasible amount in market rate housing development to
11 create housing for lower-, moderate- and middle-income households, at the income levels set forth in
12 Section 415.10(d), and with guidance from the City's Nexus Study, which should be periodically
13 updated.

14 (b) **Triennial Economic Feasibility Analysis.** With the support of independent consultants as
15 deemed appropriate by the Controller and with advice on setting qualifications and criteria for
16 consultant selection from the Inclusionary Housing Technical Advisory Committee established in
17 Administrative Code Chapter 5, Article XXIX, the Controller, in consultation with relevant City
18 Departments and the Inclusionary Housing Technical Advisory Committee, shall conduct a feasibility
19 study of the City's inclusionary affordable housing obligations set forth in Planning Code Section 415
20 et seq., including but not limited to the affordable housing fee and on-site and off-site alternatives, and
21 shall submit a report to the Board of Supervisors by July 31, 2016 and by October 31 for subsequent
22 years. Thereafter, the Controller, in consultation with the Department and the Inclusionary Housing
23 Technical Advisory Committee, shall repeat this process at least every 36 months, or more frequently
24 as deemed necessary by the Controller in response to a significant shift in economic or market
25 conditions.

1 (c) Elements of the Economic Feasibility Analysis. The economic feasibility analysis required
2 by subsection (b) of this Section 415.10 shall include sensitivity analyses of key economic parameters
3 that can vary significantly over time, such as, but not limited to: interest rates; capitalization rates;
4 equity return rates; land prices; construction costs; project scale, available state and federal housing
5 finance programs including Low Income Housing Tax Credits readily available for market rate
6 housing; tax-exempt bond financing; Federal Housing Administration and U.S. Department of Housing
7 and Urban Development mortgage insurance; available City or local housing finance programs, such
8 as Enhanced Infrastructure District (EIFD) and tax increments; zoning changes that increase or
9 decrease development potential; variable City exactions, including community benefit fees, capacity
10 charges, community facilities districts; and public-private partnership development agreements where
11 applicable and other factors as deemed reasonably relevant.

12 (d) Report to Board of Supervisors. The Board of Supervisors will review the feasibility
13 analyses, as well as the commensurate updates to the City's Nexus Study evaluating the necessary
14 affordable housing in order to mitigate the impacts of market rate housing. The Board of Supervisors,
15 in its sole and absolute discretion, will review the feasibility analyses within three months of
16 completion and will consider legislative amendments to the City's Inclusionary Housing in-lieu fees,
17 on-site, off-site or other alternatives recommended by the Controller and/or the Planning Commission
18 adjusting levels of inclusionary or affordable housing obligations and income levels based on the
19 feasibility analyses, with the objective of maximizing affordable Inclusionary Housing in market rate
20 housing production, with guidance from the City's Nexus Study. In the event the City's Nexus Study in
21 support of the Inclusionary Affordable Housing Program demonstrates a lower affordable housing fee
22 based on an analysis of all relevant impacts, the Board of Supervisors may utilize the method of fee
23 calculation supported by the Nexus Analysis in lieu of the requirements set forth in Planning Code
24 Sections 415.3, 415.5, 415.6 and 415.7. Updates to the City's Inclusionary Housing requirements shall
25 address affordable housing fees, on-site affordable housing and off-site affordable housing, as well as

1 the provision of affordable housing available to low-income households at or below 55% of Area
2 Median Income for rental units and up to 80% of Area Median Income for ownership units, and
3 moderate/middle-income households from 80% to 120% of Area Median Income.

4
5 Section 5. The Administrative Code is hereby amended by adding Article XXIX,
6 Sections 5.29-1 through 5.29-7, to Chapter 5, to read as follows:

7 **ARTICLE XXIX:**

8 **INCLUSIONARY HOUSING TECHNICAL ADVISORY COMMITTEE**

9 **Sec. 5.29-1. Creation of Advisory Committee.**

10 **Sec. 5.29-2. Findings.**

11 **Sec. 5.29-3. Membership.**

12 **Sec. 5.29-4. Organization and Terms of Office.**

13 **Sec. 5.29-5. Duties.**

14 **Sec. 5.29-6. Meetings and Procedures.**

15 **Sec. 5.29-7. Sunset.**

16 **SEC. 5.29-1. CREATION OF ADVISORY COMMITTEE.**

17 The Board of Supervisors hereby establishes the Inclusionary Housing Technical Advisory
18 Committee (the "Advisory Committee") of the City and County of San Francisco.

19 **SEC. 5.29-2. FINDINGS.**

20 The Board of Supervisors intends that the economic feasibility analysis required by Planning
21 Code Section 415.10 shall be prepared through a transparent and inclusive public process that will
22 include the Advisory Committee. The feasibility study inputs and assumptions should be based on
23 documented and verifiable costs of housing development over the full course of a business cycle.

24 **SEC. 5.29-3. MEMBERSHIP.**

1 The Advisory Committee shall consist of eight members. All members shall have experience
2 and expertise in development finance. The Board of Supervisors shall appoint members to Seats 1
3 through 4, and the Mayor shall appoint members to Seats 5 through 8.

4 **SEC. 5.29-4. ORGANIZATION AND TERMS OF OFFICE.**

5 (a) Each member shall serve at the pleasure of the member's appointing authority. Each
6 member appointed to the Advisory Committee in 2016 shall serve until three months after the date the
7 Controller produces the first economic feasibility analysis required by Planning Code Section 415.10,
8 at which point the member's term shall expire. The Board of Supervisors and the Mayor shall appoint
9 new members to the Advisory Committee in anticipation of each subsequent economic feasibility
10 analysis by the Controller, and those members' terms shall similarly expire three months after the date
11 the Controller produces the economic feasibility analysis required by Planning Code Section 415.10.
12 Members shall not hold over after the expiration of their terms.

13 (b) If a vacancy occurs in any seat on the Advisory Committee, the appointing authority for
14 the vacated seat shall appoint a successor to that seat.

15 (c) Members of the Advisory Committee shall receive no compensation from the City for
16 servicing on the Advisory Committee.

17 (d) Any member who misses three regular meetings of the Advisory Committee without the
18 express approval of the Advisory Committee at or before each missed meeting shall be deemed by
19 operation of law to have resigned from the Advisory Committee ten days after the third unapproved
20 absence. The Advisory Committee shall inform the appointing authority of the resignation.

21 (e) The Controller's Office shall provide clerical and administrative support and staffing
22 for the Advisory Committee.

23 **SEC. 5.29-5. DUTIES.**

24 (a) The Advisory Committee shall provide input and advice to the Controller, the Mayor, the
25 Planning Department and the Board of Supervisors regarding the content of the economic feasibility

1 analysis required by Planning Code Section 415.10. The Advisory Committee shall hold technical
2 workshops to evaluate the fiscal feasibility of various inclusionary housing fees and on-site and off-site
3 alternatives, including evaluating a range of project types, inclusionary percentages, and resident
4 income levels, and assessing whether fiscal feasibility varies within the City across different
5 neighborhoods. The Advisory Committee may, but is not required to, prepare written reports.

6 (b) All City departments, commissions, boards, and agencies shall cooperate with the
7 Advisory Committee in conducting its business.

8 **SEC. 5.29-6. MEETINGS AND PROCEDURES.**

9 The Advisory Committee shall hold a regular meeting not less than once every four months until
10 the sunset date set forth in Section 5.29-7.

11 **SEC. 5.29-7. SUNSET.**

12 The Board of Supervisors and Mayor intend the Advisory Committee to last until the enactment
13 of an ordinance removing this Article XXIX from the Administrative Code. Notwithstanding Rule 2.21
14 of the Board of Supervisors Rules of Order, which provides that advisory bodies created by the Board
15 should sunset within three years, the Board intends the Advisory Committee to exist for longer than
16 three years.

17
18 Section 6. Severability. Clauses of this ordinance are declared to be severable, and if
19 any provision or clause of this ordinance or the application thereof is held to be
20 unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such
21 invalidity shall not affect other provisions of this ordinance.

22
23 Section 7. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
24 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
25 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal

1 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
2 additions, and Board amendment deletions in accordance with the "Note" that appears under
3 the official title of the ordinance.

4

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

9

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

12

By: _____
KATE H. STACY
Deputy City Attorney

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