



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Planning Code Text Amendment

HEARING DATE: FEBRUARY 14, 2019  
(CONTINUED FROM JANUARY 31, 2019)  
90-DAY DEADLINE: MARCH 5, 2019

*Project Name:* **Inclusionary Housing Fee for State Density Bonus Projects**  
*Case Number:* **2018-016562PCA** [Board File No. 181154]  
*Initiated by:* Supervisor Peskin / Introduced November 27, 2018  
*Staff Contact:* Jacob Bintliff, Senior Planner, Special Projects & Policy  
Jacob.Bintliff@sfgov.org, 415-575-9170  
*Reviewed by:* Kate Conner, Special Projects & Policy Manager  
Kate.Conner@sfgov.org, 415-575-6914  
*Recommendation:* **Disapproval**

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### PLANNING CODE AMENDMENT

The proposed ordinance would amend Planning Code Section 415 to require all projects using the State Density Bonus law, regardless of Environmental Evaluation Application date, to pay the Inclusionary Affordable Housing Fee on any additional units or square footage allowed by the state law.

#### The Way It Is Now:

Residential projects comprising 10 or more units that are subject to the Inclusionary Affordable Housing Program (Planning Code Sec. 415), and have filed a complete Environmental Evaluation Application (EEA) on or after January 12, 2016, are required to pay the Inclusionary Affordable Housing Fee (Fee) on all additional residential units and/or floor area obtained through the State Density Bonus law. This requirement is above and beyond any On-Site or Off-Site units or Fee provided in compliance with the Inclusionary program. Projects with EEAs filed before this date are not subject to this requirement.

#### The Way It Would Be:

The ordinance would remove the "grandfathering" provision for this requirement. All projects subject to the Inclusionary program and utilizing the State Density Bonus law to add residential units and/or floor area would be subject to the additional fee requirement, regardless of the date the project's EEA was filed.

### BACKGROUND

The Inclusionary program has been in effect since 2002, and was substantially revised in July 2017 (BF 161351) following the passage of Proposition C in June 2016. These amendments included the new requirement that projects utilizing the State Density Bonus law pay the additional fee as described above. At that time, projects with EEAs filed prior to January 12, 2016 were specifically "grandfathered" from this additional fee requirement; this was separate and apart from the overall "grandfathering" provisions of the Inclusionary program that were implemented following the passage of Proposition C.

## **ISSUES AND CONSIDERATIONS**

The ordinance should be evaluated in terms of fairness and consistency, implementation considerations, and potential impact.

### **Fairness and Consistency**

The Department's overarching concern is whether an ordinance that would retroactively discard "grandfathering" provisions that were previously established for a specific requirement is conducive to a fair and consistent application of City policy. Project applicants and the general public rely on the Planning Code and Planning Department to provide clear, predictable implementation of City policy, so any policy changes that impede this function should be considered carefully.

### **Implementation**

The Planning Code and longstanding practice dictate that the Department must apply and assess impact fees using the applicable fees and methodology in place at the time a project's Site Permit is issued. Following Site Permit issuance, there is a 15-day appeal period, after which the Permit is issued with no further administrative recourse or appeal, and the Department can only modify the assessment of impact fees in very limited circumstances, including for annual indexing, or when a project has been significantly altered to due litigation or other factors after the fact. This means that it would not be possible to apply the provisions of the ordinance to projects with an issued Site Permit.

Separately, any project that seeks significant modifications subsequent to being entitled or to filing a complete EEA or Development Application will be re-reviewed, and if it is determined that the modifications are significant to the relevant level of environmental and planning review, the application would be considered as a new project and the project's "grandfathering" status would be subject to change at that time. Additionally, the Department has updated Director's Bulletin No. 6: Implementing the State Density Bonus Program to clarify that projects that have not yet applied for the Density Bonus will not be subject to the "grandfathering" exemption for the additional State Density Bonus fee, regardless of the date the EEA was filed.

### **Potential Impact**

There are roughly three dozen projects in the current development pipeline that have invoked the State Density Bonus law, of which a total of six have filed an EEA prior to January 12, 2016. Of these, one project that was previously approved has subsequently applied to change to a Student Housing project, which would not be subject to the Inclusionary program, and another utilized the State Density Bonus law to shift building mass and height but did not obtain any additional units or floor area, so the ordinance would have no effect on either project.

Of the remaining four projects, all but one have already been issued a Site Permit, meaning that there is only one project to which the additional fee requirement could potentially be applied, and this project is currently under review for entitlement. The additional fee that would potentially be generated from this project under the ordinance would be roughly \$1 million.

## **RECOMMENDATION**

The Department recommends that the Commission *disapprove* the proposed ordinance and adopt the attached Draft Resolution to that effect.

## **BASIS FOR RECOMMENDATION**

The ordinance does not support fair, consistent application of City policy, would largely not be possible to implement as intended, and would have very limited effect in practice.

### **Fairness and Consistency**

The ordinance would retroactively discard “grandfathering” provisions that were established for a specific requirement at the time of its adoption. This would impede the Department’s ability to provide clear, predictable implementation of City policy, and degrade the credibility of City policymaking in general. Further, the ordinance would have the effect in practice of targeting a single development project for an additional fee that would not apply to other projects of similar characteristics, meaning that the ordinance would not be generally-applicable in nature, raising concerns of fairness in the application of the law.

### **Implementation and Potential Impact**

The City’s longstanding procedures for applying impact fees would limit the effect of the ordinance to only one potential project that has not yet been issued a Site Permit. The additional fee amount that could be generated from this project would be around \$1 million. This amount is significant in the context of a single development project budget and would come at the expense of other desired features of the project, such as design and quality of materials, community benefits, and potentially impede the ability of the project to proceed in delivering critically needed housing units, including on-site affordable housing units. In the context of the City’s overall budget and affordable housing policies, the fee amount would not have a significant impact on the City’s ability to meet affordable housing production goals. Finally, the ordinance would have no impact on the broader “grandfathering” provisions of the Inclusionary program or the number of affordable units expected to be provided through this program.

Additionally, the Department has revised Director’s Bulletin No. 6: Implementing the State Density Bonus Program to clarify that projects that have not yet submitted a State Density Bonus application cannot take advantage of the “grandfathering” exemption, regardless of the date an EEA was filed. This clarification ensures that the potential universe of projects to which the “grandfathering” exemption could apply will remain limited to only those projects that have been identified at this time.

While the Department supports the overall goal of increasing funding sources for the development and preservation of affordable housing units in the City, the ordinance would have very little impact toward this goal, while raising fundamental questions of fairness and consistent policy implementation. The resources that would be required to implement the ordinance can be instead utilized in furthering other affordable housing programs, including the implementation of the State Density Bonus fee requirement on the roughly thirty pipeline projects to date that are not “grandfathered,” and will be subject to the fee.

## **REQUIRED COMMISSION ACTION**

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

## **ENVIRONMENTAL REVIEW**

The proposed amendments are not defined as a project under CEQA Guidelines Sections 15378 and 15060(c) (2) because they do not result in a direct or indirect 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.

### **Attachments:**

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 181154
- Exhibit C: Director's Bulletin No. 6: Implementing the State Density Bonus Program



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Draft Resolution

HEARING DATE FEBRUARY 14, 2019

*Project Name:* **Inclusionary Housing Fee for State Density Bonus Projects**  
*Case Number:* **2018-016562PCA** [Board File No. 181154]  
*Initiated by:* Supervisor Peskin / Introduced November 27, 2018  
*Staff Contact:* Jacob Bintliff, Senior Planner, Special Projects & Policy  
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**RESOLUTION DISAPPROVING A PROPOSED ORDINANCE AMENDING THE PLANNING CODE TO REQUIRE ALL PROJECTS USING THE STATE DENSITY BONUS LAW, REGARDLESS OF ENVIRONMENTAL EVALUATION APPLICATION DATE, TO PAY THE INCLUSIONARY HOUSING FEE ON ANY ADDITIONAL UNITS OR SQUARE FOOTAGE ALLOWED BY THE STATE LAW; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.**

WHEREAS, on November 27, 2018 Supervisor Peskin introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 181154, which would amend Planning Code Section 415 to require all projects using the State Density Bonus law, regardless of Environmental Evaluation Application date, to pay the inclusionary housing fee on any additional units or square footage allowed by the state law; and,

WHEREAS, the Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on January 31, 2019; and

WHEREAS, the Commission continued consideration of the Ordinance to a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on February 14, 2019; and

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Guidelines Sections 15378 and 15060(c)(2); and

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

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

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

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare *do not* require the proposed amendment; and

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

## FINDINGS

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

1. The Ordinance would impede the City's ability to provide clear, consistent, and predictable implementation of City policy.
2. The Ordinance would have the effect in practice of targeting a single development project for an additional fee that would not apply to other projects of similar characteristics, and thus is not generally-applicable in nature.
3. The proposed Ordinance could not be implemented as intended under existing Planning Code requirements and longstanding practice by the Planning Department and other City agencies.
4. The proposed Ordinance would only potentially be applied to one development project, and the amount of funds generated through the application of the Ordinance to that project would not be materially significant to the City's overall affordable housing production goals.
5. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are *not* consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

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

*The proposed Ordinance would have no effect on neighborhood serving retail uses and will not have no effect on opportunities for resident employment in and ownership of neighborhood-serving retail.*

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

*The proposed Ordinance would have no effect on housing or neighborhood character.*

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

*The proposed Ordinance would have a minimal effect or no effect on the City's ability to support the development of affordable housing projects, and could have the negative effect of decreasing the number of on-site affordable units provided in private development projects.*

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

*The proposed Ordinance would have no effect on MUNI transit service or overburdening the streets or neighborhood parking.*

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

*The proposed Ordinance would have no effect on the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.*

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

*The proposed Ordinance would have no effect on City's preparedness against injury and loss of life in an earthquake.*

7. That the landmarks and historic buildings be preserved;

*The proposed Ordinance would have no effect on the City's Landmarks and historic buildings.*

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

*The proposed Ordinance would have no effect on the City's parks and open space and their access to sunlight and vistas.*

6. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare *do not* require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby DISAPPROVES the proposed ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on February 14, 2019.

Jonas P. Ionin  
Commission Secretary

AYES: List commissioners in alphabetical order

NOES: see above, or put: None

ABSENT: see above or put: None

ADOPTED: XXXXXX XX, 20XX



**BOARD of SUPERVISORS**



**City Hall**  
**1 Dr. Carlton B. Goodlett Place, Room 244**  
**San Francisco 94102-4689**  
**Tel. No. 554-5184**  
**Fax No. 554-5163**  
**TDD/TTY No. 554-5227**

December 5, 2018

Planning Commission  
Attn: Jonas Ionin  
1650 Mission Street, Ste. 400  
San Francisco, CA 94103

Dear Commissioners:

On November 27, 2018, Supervisor Peskin introduced the following legislation:

**File No. 181154**

**Ordinance amending the Planning Code to require all projects using the State Density Bonus law, regardless of environmental evaluation application date, to pay the inclusionary fee on any additional units or square footage allowed by the state law; and affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and making findings of public convenience, necessity, and welfare under Planning Code, Section 302.**

The proposed ordinance is being transmitted pursuant to Planning Code, Section 302(b), for public hearing and recommendation. The ordinance is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk  
Land Use and Transportation Committee

c: John Rahaim, Director of Planning  
Dan Sider, Director of Executive Programs  
Aaron Starr, Manager of Legislative Affairs  
AnMarie Rodgers, Director of Citywide Planning  
Scott Sanchez, Zoning Administrator  
Lisa Gibson, Environmental Review Officer  
Joy Navarrete, Environmental Planning  
Laura Lynch, Environmental Planning

[Planning Code - Inclusionary Housing Fee]

Ordinance amending the Planning Code to require all projects using the State Density Bonus law, regardless of environmental evaluation application date, to pay the inclusionary fee on any additional units or square footage allowed by the state law; and affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and making findings of public convenience, necessity, and welfare under Planning Code, Section 302.

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

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

Section 1. Environmental and Land Use Findings.

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

(b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_, adopted findings that the actions contemplated in this ordinance are consistent, on balance, with the City's General Plan and eight priority policies of Planning Code Section 101.1. The Board

1 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the  
2 Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.

3 (c) Pursuant to Planning Code Section 302, the Board finds that the actions  
4 contemplated in this ordinance will serve the public necessity, convenience, and welfare for  
5 the reasons set forth in Planning Commission Resolution No. \_\_\_\_\_ and the Board  
6 incorporates such reasons herein by reference. A copy of the Planning Commission  
7 Resolution No. \_\_\_\_\_ is on file with the Clerk of the Board of Supervisors in File  
8 No. \_\_\_\_\_.

9  
10 Section 2. Article 4 of the Planning Code is hereby amended by revising Section 415.5  
11 and 415.6, to read as follows:

12  
13 **415.5 AFFORDABLE HOUSING FEE**

14 The fees set forth in this Section 415.5 will be reviewed when the City completes an  
15 Economic Feasibility Study. Except as provided in Section 415.5(g), all development projects  
16 subject to this Program shall be required to pay an Affordable Housing Fee subject to the  
17 following requirements:

18 \* \* \* \*

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

21  
22 \* \* \* \*

23 (6) The fee shall be imposed on any additional units or square footage  
24 authorized and developed under California Government Code Sections 65915 et seq. *This*  
25

1 ~~subsection 415.5(b)(6) shall not apply to development projects that have submitted a complete~~  
2 ~~Environmental Evaluation application on or before January 1, 2016.~~

3  
4 \* \* \* \*

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

6 (1) Eligibility: A project sponsor must pay the Affordable Housing Fee unless it  
7 chooses to meet the requirements of the Program through an Alternative provided in this  
8 subsection (g). The project sponsor may choose one of the following Alternatives:

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

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

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

17 (D) Alternative #4: Combination. Project sponsors may elect any  
18 combination of payment of the Affordable Housing Fee as provided in Section 415.5,  
19 construction of on-site units as provided in Section 415.6, or construction of off-site units as  
20 provided in Section 415.7, provided that the project applicant constructs or pays the fee at the  
21 appropriate percentage or fee level required for that option. Development Projects ~~that have~~  
22 ~~submitted a complete Environmental Evaluation application after January 12, 2016~~ that are providing  
23 on-site units under Section 415.6 and that qualify for and receive additional density under  
24 California Government Code Section 65915 et seq. shall use Alternative #4 to pay the  
25

1 Affordable Housing Fee on any additional units or square footage authorized under Section  
2 65915.

3  
4 \* \* \* \*

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

6 If a project sponsor elects to provide on-site units pursuant to Section 415.5(g), the  
7 development project shall meet the following requirements:

8  
9 \* \* \* \*

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

15  
16 \* \* \* \*

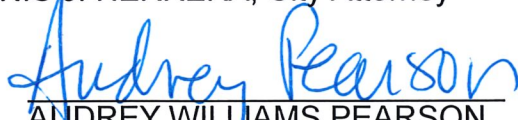
17  
18 Section 3. Effective Date. This ordinance shall become effective 30 days after  
19 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
20 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
21 of Supervisors overrides the Mayor's veto of the ordinance.

22  
23 Section 4. 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

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

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

By:

  
AUDREY WILLIAMS PEARSON  
Deputy City Attorney

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## **LEGISLATIVE DIGEST**

[Planning Code - Inclusionary Housing Fee]

**Ordinance amending the Planning Code to require all projects using the State Density Bonus law, regardless of environmental evaluation application date, to pay the inclusionary fee on any additional units or square footage allowed by the state law; and affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and making findings of public convenience, necessity, and welfare under Planning Code, Section 302.**

### **Existing Law**

Currently, residential projects of 10 or more units must comply with the Inclusionary Housing Ordinance. Projects may pay a fee, or provide units on-site or off-site. Projects must pay the fee on the entire project, including any additional units or square footage provided under the State Density Bonus Law if the project's environmental evaluation application was filed on or after January 12, 2016.

### **Amendments to Current Law**

This Ordinance would require all projects, regardless of environmental evaluation application date, to pay the fee on the entire project, including additional units or square footage provided under the State Density Bonus Law.

### **Background Information**

Projects that comply with the Inclusionary Housing Ordinance by providing affordable units on-site may also elect to proceed under the State Density Bonus Law, Government Code section 65915. That law requires cities to allow additional density (up to 35%) and other development bonuses if the project includes on-site affordable housing.

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This Bulletin is an overview of the State Density Bonus Law and describes the implementation procedures for projects seeking to use the program in San Francisco.

# PLANNING DIRECTOR BULLETIN NO. 6

## Implementing the State Density Bonus Program

**First Issued:**  
DECEMBER 2018  
**Revised:**  
FEBRUARY 2019

**References:**  
Government Code Section 65915  
Planning Code Section 206.6

### BACKGROUND:

The California State Density Bonus Law offers development incentives to projects that provide on-site affordable housing. The State Law offers three categories of benefits to incentivize on-site affordable housing:

1. A project may seek up to 35% additional density;
2. A project may receive up to three incentives or concessions (generally, defined as a reduction of development standards, modifications of zoning code requirements, or approval of mixed use zoning) to offset the costs of providing affordable housing on-site; and
3. A project may receive waivers from any local development standard if needed to construct on-site affordable housing within the project.

The amount of the density bonus and the number of incentives and concessions depends on the amount and level of affordability of the affordable units in the project.

In 2017, the City codified the State Density Bonus Law as the Individually Requested State Density Bonus Program (PC Section 206.6). This program incorporates additional requirements and standards for local implementation of the State Program.

### HOW DOES SAN FRANCISCO IMPLEMENT THE STATE DENSITY BONUS PROGRAM?

#### Calculating a Density Bonus

##### *Base Density*

In order to determine how much of a density bonus State Law will allow, the density allowed by current controls (“base density”) must first be calculated. The “base density” is the maximum allowable gross residential density. Residential density regulations in San Francisco vary by zoning district. In some districts residential density is regulated by a ratio of units to lot area, such as one unit per 600 square feet. In these districts, base density is the maximum number of units allowed by the Zoning District. Other districts use form-based density, where residential density is regulated by the permitted volume – either the maximum floor area ratio (FAR) or a maximum building volume controlled by height, bulk, and setback controls (“form-based zoning”). In areas with form-based zoning, the base density will be represented as the maximum residential gross floor area.

In some cases, an entitlement is required to increase or modify the allowable building envelope, which would generally result in additional density. However, in some Zoning Districts, a project may require an entitlement based on the location or size of a lot. For example, projects in Neighborhood Commercial Districts (NC) often require a Conditional Use Authorization for projects on lots greater than 10,000 square feet. In these cases, a project may still seek approval under the State Density Program as long as the base project is Code compliant in regard to density and building envelope. However, a



project may not assume the density that would be conditionally permitted by the Planning Code as the base density. For example, projects in the Residential Transit Oriented (RTO) District permit a dwelling unit density of one unit per 600 square feet of lot area and require a Conditional Use Authorization to exceed one unit per 600 feet of lot area. The base density calculation for a project in the RTO would assume the permitted density of one unit per 600 feet of lot area, and could not assume a greater base density. The Department has found that the base density does not need to account for compliance with wind or shadow requirements.

*How does the Inclusionary Affordable Housing Ordinance overlap with the State Density Bonus Program?*

San Francisco's Inclusionary Housing Program applies to new residential projects of 10 or more units. These projects must 1) pay an Affordable Housing Fee, 2) provide a percentage of the units within the project as "below market rate" (BMR) units at a price that is affordable to low, moderate or middle income households, or 3) provide a percentage of the units "off-site" at another location in the City as "below market rate" (BMR) units at a price that is affordable to low or middle income households. Projects may use required on-site BMR units to qualify for a density bonus under the State Density Bonus Program.

The project must comply with the Inclusionary Affordable Housing Requirement set forth in Planning Code Section 415, but the project may only seek a bonus at a single income level. State Law does not allow for a mix of affordability levels to achieve a greater density bonus. For example, if the Inclusionary requirement requires 10 units at 80% Average Median Income (AMI), 5 units at 105% AMI, and 5 units at 130% AMI, only the 10 units at 80% AMI can count as on-site affordable units under the State Density Bonus Law.

Planning Code Section 415 requires projects that provide over 25 units to provide BMR units at three different income levels or "tiers." These income levels are set at different levels depending on the tenure of the proposed projects. Rental projects must provide units at 55% AMI, 80% AMI, and 110% AMI. Ownership projects must provide units at 80% AMI, 105% AMI, and 130% AMI. When using the required on-site Inclusionary Units to qualify for a density bonus, the tiers may not be lowered or combined in any way, except that the 55% AMI tier may be lowered to 50% AMI. In practice, rental projects may qualify for a maximum bonus with the minimum number of on-site BMR units required by Section 415. Ownership units will not qualify for the maximum 35% bonus using only the required on-site BMR units.

Additionally, Section 415 also requires that any project that qualifies for and receives additional units or floor area under the State Density Bonus Program pay an additional Inclusionary Affordable Housing Fee on the additional floor area received. An example of how this fee is calculated is provided under the Review Process section of this Bulletin. Note that projects that submitted a completed Environmental Evaluation Application before January 12, 2016 are exempt from this requirement, but that any project that submits an Individually Requested State Density Bonus Supplemental Application after this time will be subject to the additional fee requirement.

### *Bonus Project*

The amount of density bonus that a project may seek is set forth in the State Law. The maximum density bonus is an additional 35% above the base density. The table below summarizes the amount of density bonus allowed based on the level of affordability. In areas where density is controlled as a ratio of units to lot area, the density bonus will be calculated as 135% of the base density represented as number of units allowed on the site. Any resulting remainder is rounded up to the next whole number. In areas with form-based density, the density bonus will be calculated as 135% of the residential gross floor area permitted in the “base” project.

| Restricted Affordable Units Category | Minimum Percentage of Restricted Units | Percent of Density Bonus Granted | Additional Bonus for Each 1% Increase in Restricted Units | Percentage of Restricted Units Required for Max. Bonus |
|--------------------------------------|----------------------------------------|----------------------------------|-----------------------------------------------------------|--------------------------------------------------------|
| Very Low Income (up to 50% AMI)      | 5%                                     | 20%                              | 2.5%                                                      | 11%                                                    |
| Low Income (up to 80% AMI)           | 10%                                    | 20%                              | 1.5%                                                      | 20%                                                    |
| Moderate Income (up to 120% AMI)     | 10%                                    | 5%                               | 1%                                                        | 40%                                                    |
| Senior Housing                       | 100%                                   | 50%                              | -                                                         | -                                                      |
| Transitional Aged Youth              | 10%                                    | 20%                              | -                                                         | -                                                      |

### **Requests for Waivers, Incentives, and Concessions**

#### *Incentives and Concessions*

The State Law offers project the right to receive one, two, or three incentives or concessions “that are required to provide for affordable housing costs.”<sup>1</sup> A concession or incentive can be a reduction in site development standards, or a modification of zoning code requirements, approval of mixed-use zoning, or other regulatory concessions or incentives that “result in identifiable, financially sufficient, and actual cost reductions.”<sup>2</sup> The phrase “incentives and concessions” references a single request for exceptions, so for the purposes of this document, “incentives and concessions” are referenced as “incentives” only. An applicant may not seek an incentive from a required entitlement process or any required development impact fees. The number of incentives the project may receive depends on the number of affordable units provided and the level of affordability, as described in the table below.

| Target Group                 | Restricted Affordable Units |     |     |
|------------------------------|-----------------------------|-----|-----|
| Very Low Income              | 5%                          | 10% | 15% |
| Low Income                   | 10%                         | 20% | 30% |
| Moderate Income              | 10%                         | 20% | 30% |
| Maximum Number of Incentives | 1                           | 2   | 3   |

The Project Sponsor must provide a written statement describing the requested incentives and may request a meeting with Planning staff to discuss the request. Requested incentives must be approved unless the City finds that they 1) will not result in identifiable and actual cost reductions; 2) will have specific adverse impacts on public health or safety of the physical environment, or 3) will have specific adverse impacts on property that is listed on the California Register of Historic Resources. The Project Sponsor must include the requested incentives in the [Individually Requested State Density Bonus Supplemental Application](#) when they submit a base density study and density bonus project. The Department may request additional documentation and verification regarding cost reductions and/or impacts on public health, safety, or historic property. Verification may include a site specific or general analysis of the costs savings to a project available through the requested incentive.

1 CA Govt. Code Section 65915(k)

2 CA Govt. Code Section 65915(k)

A common incentive is a reduced parking requirement, which is known to lower project costs by an average of \$60,000 to \$150,000 dollars per parking space (depending on construction type). In some cases, where the financial benefit of a requested incentive is less clear, the Project Sponsor may be required to submit financial information or a pro-forma statement to the Department as evidence that the requested incentive results in an “identifiable, financially sufficient, and actual cost reduction.”

The financial analysis must address two scenarios: 1) the Bonus Project with the density bonus units and the affordable units, and 2) the Bonus Project incorporating the aforementioned plus the requested incentives. The information submitted must show the actual cost reduction or financial benefit achieved through the incentive. The Department may require an evaluation of the financial analysis by a qualified third-party consultant.

#### *Waivers*

The Planning Code currently regulates the physical dimensions of residential development through requirements limiting height and bulk, or requiring open space, rear yards, dwelling unit exposure, and many other requirements that can preclude the ability to construct the project with the bonus density and the requested incentives.

In accordance with the State Density Bonus Law, the City will waive any Planning Code requirements that will preclude the construction of the project with the bonus density within the permitted building envelope. A waiver will be granted unless the City finds that it would have a “specific, adverse impact upon health, safety, or the physical environment,” or it would have an “adverse impact on any property listed in the California Register of Historical Resources.”

To determine whether waivers are necessary to construct the density bonus project, Project Sponsors must submit a base density study and a bonus project. The Project Sponsor must inform the City which development standards need to be waived or reduced to allow for construction of the increased density. Project Sponsors may also request waivers from other development standards such as open space, rear yard, bulk, parking, unit mix requirements, or any other Planning Code requirement that constrains development capacity. The Department may request additional documentation to demonstrate that a requested waiver is necessary to accommodate the extra density conferred by the Bonus Program.

A common example of a waiver is height. If a 100-unit project is receiving a 35-unit density bonus, height requirements may need to be waived to accommodate the additional 35 units.

### **Review Process**

#### *Eligibility*

A project must provide at least five net new units in the base portion of the project to qualify for the State Density Bonus Program. Please see Section 206.6(b) for other eligibility requirements.

#### *Submittal Requirements*

Project Sponsors must complete the [Individually Request State Density Bonus Supplemental Application](#). Project Sponsors will be required to provide a calculation of the base density founded on the existing Planning Code requirements, and a calculation of the allowable density bonus.

In Zoning Districts where density is regulated by volume, Project Sponsors must demonstrate that the base density can be achieved as a Code-conforming project that requires no waivers, modification, or variances from zoning requirements. This evidence must be presented in the form of a “base density study” submittal, which is a set of schematic plans that comply with [Planning Department's Plan Submittal Guidelines](#). Architectural details, including floor plans for each floor, will not be required for a base density study. The sponsor must submit a code-compliant building massing, building section, and floor plans for the ground floor and any floors below grade that contain residential uses. This is an academic exercise; for example, Planning Code requirements regarding rear yard must be met; however, the Department would not require that the base density study be designed to meet all urban design guidelines. The purpose of the base density study is to determine the maximum allowable residential density. Therefore, performance-based standards, such as wind controls, will not be evaluated as part of the base project.

In addition to the base density study, the Project Sponsor must submit a density bonus project. The bonus project must be compliant with the [Department's Plan Submittal Guidelines](#) and have a stable project description before the application will be accepted.

The bonus project submittal must include a description of the requested waivers and incentives, and all relevant supporting documentation. Graphic representations to support the requests for waivers and incentives are highly encouraged. Such graphic representations should include a step-by-step illustration of how the massing of the proposed project shifts as the density bonus, waivers and incentives are incorporated into the project. The first step should illustrate a code-compliant base project massing and should include the total residential gross floor area<sup>3</sup> included in the massing. Each subsequent step should demonstrate how the proposed massing is changing and should include the corresponding increase in residential gross square feet, as well as any waivers, incentives, or concessions that are required to achieve that massing. The final step should illustrate the final massing, describe the final requested waivers, incentives and concessions, and the final residential gross floor area. A sample massing diagram is included as Exhibit A of this document.

If the Project Sponsor is seeking to qualify for the density bonus using on-site Inclusionary Affordable Housing units, then the applicable Inclusionary Rate will be determined by the location of the project, project tenure, number of units in the bonus project, and the date that the Project Application was deemed complete. The applicant must submit a description of the percentage of the on-site units and the various income levels required by Section 415, and how those units will allow the project to qualify for a Density Bonus under the State Program. The Inclusionary On-Site requirement will be applied to the total number of units within the area or the number of units represented by the base density study. The base floor area must equate to a whole number of units (not fractional units). In addition, the required Inclusionary Affordable Housing Fee will be applied to the applicable percentage of the total gross floor area of the project obtained through the density bonus.

For example, a project proposes to construct a project in the C-3-G District, which is a District with form-based zoning. The base density study would result in an allowable density of 100,000 square feet on the project site. The project is a rental project which would qualify for a maximum density bonus of 35%, resulting in a bonus project of 135,000 square feet. The bonus project contains 200 dwelling units. The required inclusionary fee would be calculated on the 35,000 square feet of floor area between the base density study and the proposed bonus project. Then the on-site Inclusionary rate would be applied to any units that were located in the remainder of the project. This remainder would be calculated by finding the ratio of the base density study to the bonus project. In this case, 100,000/135,000 is equal to 74%. 74% of the units in the project is equal to 148 units, so the on-site Inclusionary rate would be applied to 148 units only. Finally, the Inclusionary Affordable Housing Fee would be applied to the 35,000 square feet of bonus area at the rental rate of 30% (35,000 square feet x 30% x Affordable Housing Fee rate per square foot = additional fee fee). The rate of ownership projects is 33%, and the Affordable Housing Fee rate per square foot is provided in the Citywide Development Impact Fee Register, as updated January 1 of each year.

Note that the requirements of the Inclusionary Housing Ordinance, specifically the required income tiers, may not be modified or combined, except that a project sponsor may provide units at 50% AMI instead of at 55% AMI for rental projects. Projects may not reduce the affordability levels required in Planning Code Section 415.6, nor may they combine two or three income tiers into one.

#### *Process*

Projects that are subject to specific entitlements without the density bonus must still secure that specific entitlement with the density bonus. For example, a project in Eastern Neighborhoods that requires a Large Project Authorization approval by the Planning Commission because the base project is over 25,000 square feet will continue to require approval by the Planning Commission, even though it is a State Density Bonus project. For projects that do not require a Planning Commission entitlement, the Planning Commission will consider a motion to adopt findings that the requested incentives will result in actual cost reductions for the project, and the requested waivers and incentives will not negatively impact public health, safety, or historic property. An applicant may not seek an incentive from a required entitlement process or any required development impact fees.

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3 "Residential Gross Floor Area" means any floor area that would be counted as Gross Floor Area, as defined in Planning Code Section 102 that is dedicated to the residential uses in the property.

Planning Code Section 206.6 requires that the Project Sponsor enter into a regulatory agreement with the City that will be recorded on the deed of the property. The agreement will include details on the number, location, and affordability of the restricted units, a description of incentives and waivers approved by the City, and other provisions to ensure compliance with Section 206.6. The regulatory agreement must be finalized and recorded prior to the issuance of the first construction document. Please contact the staff planner prior to the issuance of the site permit for the project to request a draft regulatory agreement. Applicants must submit a Supplemental Application for the Individually Requested State Density Bonus along with their Preliminary Project Assessment (PPA) Application or Project Application. Note that projects that do not submit a complete base density study and bonus project will be considered incomplete.

## CONTACTS

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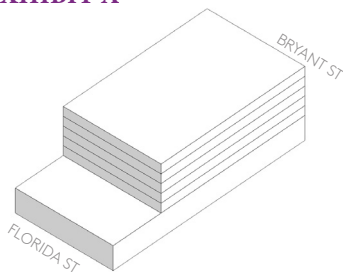
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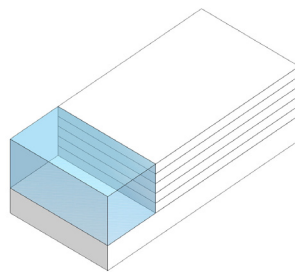
## RESOURCES

[Individually Requested State Density Bonus Informational and Supplemental Application Packet](#)  
[Planning Code Section 206.6](#)  
[Planning Code Section 415](#)  
[Planning Department Plan Submittal Guidelines](#)

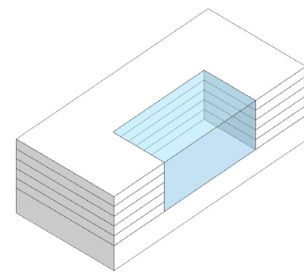
## EXHIBIT A



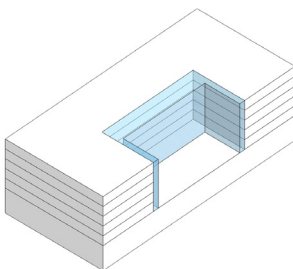
**BASELINE:** Full ground floor with 5 stories of housing above;  
*resid. gross sq. ft. = approx. 87,500*



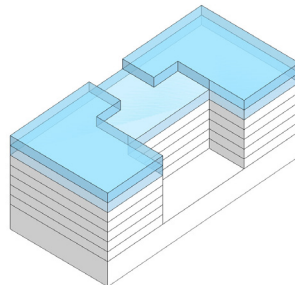
**STEP ONE:** Size of code-compliant rear yard = 25% of lot depth located along one of the street frontages



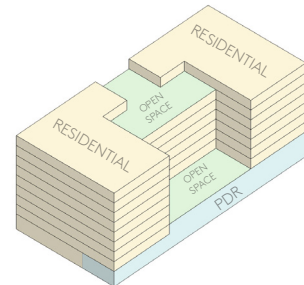
**STEP TWO:** Relocate rear yard to center of massing as courtyard



**STEP THREE:** Reduce rear yard and unit exposure to allow room for double-loaded corridors  
*+ approximately 10,750 residential SF*



**STEP FOUR:** ADD one full story of units and one partial story of units with additional roof-top open space  
*+ approximately 19,800 residential SF*



**FINAL MASSING:** full ground floor with 8-9 stories of housing above  
*resid. gross sq. ft. = approx. 118,050*



**SAN FRANCISCO  
PLANNING  
DEPARTMENT**

**FOR MORE INFORMATION:**  
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1650 Mission Street, Suite 400  
San Francisco CA 94103-2479

TEL: **415.558.6378**  
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*Planning staff are available by phone and at the PIC counter.  
No appointment is necessary.*