



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Planning Code Text Amendment

**HEARING DATE: 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 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 currently required to pay the Inclusionary Affordable Housing Fee (Fee) on all additional residential units and/or residential 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 as part of the project's 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 fair and consistent 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 long-standing 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.

Additionally, 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.

### **Potential Impact**

There are a total of six projects that have invoked the State Density Bonus law and filed an EEA prior to January 12, 2016. Of these, one project that was previously approved has subsequently submitted an application 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 fee requirement could potentially be applied, and this project is seeking entitlement from the Planning Commission in February. This project proposes a roughly 33% increase in residential floor area; therefore, the additional fee that would potentially be generated under the Ordinance is roughly \$1 million.

### **General Plan Compliance**

The proposed Ordinance is not consistent with applicable Objectives and Policies of the General Plan, as detailed in the attached Draft Planning Commission Resolution.

## 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 implemented as intended, and would have very limited effect in practice.

### Fairness and Consistency

The Ordinance would retroactively discard “grandfathering” provisions that were previously established for a specific requirement. This would impede the Department’s ability to provide clear, predictable implementation of City policy. 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 City policy.

### Implementation and Potential Impact

The City’s standard procedures for applying impact fees would limit the Ordinance’s effect to only one potential project that meets the criteria of the Ordinance and has not yet been issued a Site Permit. The additional fee about that could be generated from this project would be roughly \$1 million. This amount is significant in the context of a single development project and would come at the expense of other desired features of the projects such as design and quality of materials, community benefits associated with the project, 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.

To further ensure that any projects currently considered as “grandfathered” for the purposes of this fee requirement do not remain so in the event of significant modifications made via the State Density Bonus or otherwise after an initial EEA or Development Application has been filed, the Department will review and revise relevant procedural guidance documents, including Director’s Bulletin No. 6: Implementing the State Density Bonus Program, as appropriate.

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 for 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 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



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Draft Resolution HEARING DATE JANUARY 31, 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  
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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 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 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 long-standing 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. **General Plan Compliance.** The proposed Ordinance is *not* consistent with the following Objectives and Policies of the General Plan:

## HOUSING ELEMENT

### OBJECTIVE 8

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

*The proposed Ordinance would have a minimal impact or no impact on the City's ability to support the development of affordable housing projects, and would could have the negative effect of decreasing the number of on-site affordable units provided in private development projects by applying additional requirements to such projects after relevant City permits have been finally issued.*

### OBJECTIVE 10

ENSURE A STREAMLINED, YET THOROUGH AND TRANSPARENT DECISION-MAKING PROCESS

*The proposed Ordinance would directly contradict this Objective by retroactively discarding a specific exception from the application of a particular fee requirement for certain projects, causing significant*

*uncertainty for project applicants, the general public, and City implementing agencies, and would degrade the ability of the City to provide clear, consistent, predictable implementation of City policies.*

6. **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.*

7. **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 January 31, 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

## **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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[Planning Code - Inclusionary Housing Fee]

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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 ~~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

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

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

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

**415.5 AFFORDABLE HOUSING FEE**

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

\* \* \* \*

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

\* \* \* \*

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

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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