



Executive Summary

Planning Code Text Amendment

HEARING DATE: OCTOBER 14, 2021

90-Day Deadline: November 1, 2021

Project Name: Inclusionary Housing Program Updates
Case Number: 2021-007832PCA, Board File No. 210868
Initiated by: Supervisor Ronen / Introduced July 27, 2021, Substituted October 5, 2021
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Recommendation: Approval

Planning Code Amendment

This ordinance updates the Inclusionary Affordable Housing Program (Inclusionary Program) by clarifying the requirements for tenure of affordable units and formalizing a consistent process for changes to the Inclusionary Alternative or tenure after approval. The ordinance amends the timing for marketing the affordable units and establishes a monitoring requirement for approved projects. The ordinance creates definitions for rental and ownership housing projects, incorporates specific references, capitalizes defined terms, and includes other various clean-up items.

The Way It Is Now:

1. Tenure of Affordable Units

Planning Code Section 415.6 requires affordable units to be comparable to market rate units. Section 415 also sets different on-site and affordable housing fee rates for rental projects and ownership projects with more than 25 units. However, Section 415 does not explicitly state that the tenure of the affordable

units matches the tenure of the market-rate units.

2. Post-Approval Changes to Inclusionary Alternative or Tenure

Following approval, a project requires a Commission hearing to reduce the number of on-site units. Reduction of on-site units may result from a project switching from the On-Site Alternative to the Affordable Housing Fee Alternative, or by changing from On-site ownership to rental, because the rental Inclusionary rates are lower than the ownership rates.

If a project seeks to convert from rental to ownership once the building is occupied, it must follow the procedures set forth in Inclusionary Affordable Housing Program Monitoring and Procedures Manual (Procedures Manual). The Project Sponsor must file a request for a Letter of Determination to determine the Planning approvals that would be required to change tenure. The required Planning process would depend on various factors, including conditions of approval and which version of the Procedures Manual applies to the project.

3. Rental/Ownership Project Definitions

The definitions in Planning Code Section 415.2 only reference the tenure of the affordable units and not the entire project. The definition of Rental Housing Project incorrectly references a 100% affordable project.

The Planning Code includes definitions for “Rental Units” and “Affordable Units.” The Code also references “affordable rental units” and “affordable ownership units.”

There are two definitions of “Owned Units.” Section 401 defines an Owned Unit as an affordable unit, and Section 415.2 does not.

4. Mayor’s Office of Housing and Community Development (MOHCD) Marketing Requirements

The Planning Code requires that a project sponsor record a Notice of Special Restrictions (NSR) prior to the first construction document recording the location of the affordable units, and that affordable units be marketed at the same time as market rate units. The Planning Code does not include any other milestones related to the MOHCD marketing process.

5. Regulatory Agreements for projects receiving a density bonus under Section 207(c)

Projects receiving a density bonus pursuant to Planning Code Section 207(c) do not require a Regulatory Agreement.

6. Clean-Up

The Code references “MOH” or “Mayor’s Office of Housing.”

The Code does not consistently capitalize defined terms, including “Affordable Unit,” “Affordable to Qualifying Households,” “Principal Project,” “Unit” in “On-Site Unit” and “Off-site Unit,” “Land Dedication

Alternative,” and “Alternative.”

The Planning Code sets minimum affordable unit sizes by referencing the California Tax Credit Allocation Committee standards in place on May 16, 2017.

The Planning Code references the “effective date of Board File No. 161351.”

The Way It Would Be:

1. Tenure of Affordable Units

The ordinance would explicitly require the tenure of the affordable units match the tenure of the market-rate units. At least 50% of the units in a building must be sold before the BMRs can be sold. (p. 21)

2. Post-Approval Changes to Inclusionary Alternative or Tenure

After the original approval, Projects will require Commission approval if the sponsor seeks to pay the Affordable Housing Fee instead of providing affordable units on-site, or the On-site project changes tenure either prior to or after occupancy. The Planning Code would include findings for the Commission to disapprove changes to the Inclusionary Alternative or tenure after approval.

Projects that originally elected to pay the fee that switch to on-site, or change tenure, could be approved administratively.

3. Rental/Ownership Project Definitions

The ordinance would create definitions of Rental Housing Projects and Ownership Housing Projects and would reference these definitions in setting the rates for the On-Site Alternative, Off-Site Alternative, and the Affordable Housing Fee Alternative.

“Owned Unit(s)” would replace “affordable ownership unit.”

“Rental Unit(s)” would replace “affordable rental unit.”

4. MOHCD Marketing Requirements

Project sponsors would be required to record a NSR recording the locations of the affordable units prior to the issuance of architectural addendum, or 12 months prior to first certificate of occupancy, whichever is first. Project sponsors would also be required to submit a request for a pricing determination to MOHCD no later than eight (8) months prior to the first certificate of occupancy. Project sponsors must submit an estimated construction timeline to the Department following approval which includes these milestones.

The ordinance clarifies that failure to meet the milestones above or to submit the construction timeline would constitute a violation of the Planning Code. Project sponsors would not be able to obtain a temporary certificate of occupancy (TCO) or certificate of final completion (CFC) if they had not met the

marketing timelines.

5. Regulatory Agreements for projects receiving a density bonus under Section 207(c)

Projects seeking a density bonus under Section 207(c) would be required to enter into a Regulatory Agreement with the City.

6. Clean-Up

The Code would reference “MOHCD” or “Mayor’s Office of Housing and Community Development.”

Defined terms, including “Affordable Unit,” “Affordable to Qualifying Households,” “Principal Project,” “Unit” in “On-Site Unit” and “Off-site Unit,” “Land Dedication Alternative,” and “Alternative” would be capitalized.

The Planning Code states the minimum required unit sizes instead of referencing the California Tax Credit Allocation Committee standards in place on May 16, 2017

The Planning Code replaces the “effective date of Board File No. 161351” with “February 26, 2018.”

Background

Over the last decade, several local and state housing laws have been enacted to increase housing production, and to create and preserve affordable housing, which has led to projects with complex affordability restrictions. Project sponsors have also decided to make changes to their Inclusionary elections late in the construction period, which doesn’t provide adequate time to lease or sell the affordable units at the same time as the market rate units. Issues related to project tenure have created delays in the delivery of affordable housing in projects with on-site units. In addition to meeting Program requirements, on-site affordable units are necessary to meet eligibility requirements of state programs, so there is concern that these issues related to tenure will become more significant as the affordability requirements for projects become more complex.

The Inclusionary Housing Program

The history of the City’s Inclusionary Program through 2016 is attached as Exhibit C. On July 18, 2017, the Board of Supervisors unanimously approved legislation (Board File No. 161351) to significantly revise the key requirements and provisions contained in Section 415 of the Planning Code, including as they apply to “grandfathered” projects which were in the development pipeline at the time. The legislation was signed into law by Mayor Edwin Lee on July 27, 2017 and become effective on August 26, 2017. This legislation also added Section 207.7, which established dwelling unit mix requirements that applied to projects with 10 or more units Citywide. Additional trailing legislation (Board File No. 170834) came into effect on December 3, 2017 to make a handful of technical changes to Planning Code Section 415; including but not limited to the application of the Inclusionary Program in the Transbay Redevelopment Area and in certain areas including the Mission Plan Area, and how new requirements for feasibility studies of significant re-zoning actions will apply.

The ordinance contained in Board File No. 161351 not only established different rates for rental versus ownership projects with more than 25 units, but also introduced three income tiers for each tenure. It also included annual increases to all On-Site rates and set higher inclusionary rates in the Mission, North of Market Residential Special Use District, and the SOMA NCT (“carve-out areas”). A summary of the key requirements is included as Exhibit D.

A project’s Inclusionary requirement is determined by four different factors:

1. Tenure – rental project or ownership project
2. Location –in a zoning district with a unique affordable housing requirement, such as the Urban Mixed Use (UMU) District or a carve-out area.
3. Size –small (10-24 total units) or large (25 total units or more).
4. Application Date – date that the Department accepted a complete Environmental Evaluation Application or complete Project Application (whichever is applicable).

The applicant may select from a variety of alternatives to satisfy the Inclusionary Program, but most projects elect to provide affordable units on-site, pay the Affordable Housing Fee, or some combination of the two. Assuming a project would submit a complete application this year, the current Inclusionary requirements are as follows:

RENTAL TENURE			
Project Size	On-Site Rate	Affordability Levels (AMI)	Fee Rate
Small (10-24 Units)	14%	All at 55% AMI	20%
Large (25+ Units) – Citywide Rate	21%	12% at 55% AMI 4.5% % at 80% AMI 4.5% at 110% AMI	30%
Large (25+ Units) – Carve Outs	25%	15% at 55% AMI 5% % at 80% AMI 5% at 110% AMI	30%

OWNERSHIP TENURE			
Project Size	On-Site Rate	Affordability Levels (AMI)	Fee Rate
Small (10-24 Units)	14%	All at 80% AMI	20%
Large (25+ Units) – Citywide Rate	23%	12% at 80% AMI 5.5% % at 105% AMI 5.5% at 130% AMI	33%
Large (25+ Units) – Carve Outs	27%	15% at 80% AMI 6% % at 105% AMI 6% at 130% AMI	33%

Current Process for Selecting an Inclusionary Alternative

Projects are required to elect an Inclusionary Alternative at least 30 days prior to approval. On-site units that are provided to meet the Inclusionary Housing requirements may also be used to qualify for a density bonus under the State Density Bonus Law.

After a project is approved by the Commission or by the Department, those with affordable units on-site must record a Notice of Special Restrictions which identifies the location of the affordable units within the building (BMR NSR). The BMR NSR also includes the conditions of approval which are applicable to the affordable units, such as tenure, affordability levels (AMI), and affordable unit mix. The BMR NSR is usually completed during the Department's review of the architectural addendum of the site permit, which is when the building is under construction. This timing allows Department staff to designate affordable units when the unit layouts are less likely to change.

Once a BMR NSR is recorded, the Department "hands off" the project to MOHCD so staff can begin the pricing and marketing process. The marketing, lottery and lease up processes are outlined in MOHCD's Inclusionary Affordable Housing Program Monitoring and Procedures Manual (Inclusionary Procedures Manual), and Housing Preferences and Lottery Procedures Manual, both of which are amended from time to time. As reflected in the Inclusionary Procedures Manual, Rental Housing Projects and Ownership Housing Projects each take approximately 7 months from the submission of a pricing request to be occupied by a qualified household, either through lease or sale transaction. After MOHCD issues a pricing determination and approves the project sponsor's marketing plan, the units are listed on [DAHLIA](#), the City's online affordable housing portal, for a prescribed application period. Next, MOHCD staff administers a lottery applying the City's preferences as codified in Chapter 47 of the City's Administrative Code. The lottery results are published, after which project sponsors, with the assistance of marketing firms, seek to qualify applicants based on lottery rank and order. MOHCD closely monitors both the lease up and sales processes to ensure project sponsors adhere to program regulations and qualified households can occupy the units at the affordability levels prescribed in the BMR NSR.

Projects that seek density bonuses through HOME-SF or the State Density Bonus Law are required to enter into a regulatory agreement with the City prior to the issuance of the first construction document. Planning Staff generally require a recorded regulatory agreement prior the issuance of the site permit.

Projects that elect to pay the Affordable Housing Fee are required to pay the fee at the issuance of the first construction document, or generally, the first addendum to the Site Permit. Projects that pay the fee after the issuance of the first construction document must also pay interest and may be subject to enforcement penalties.

Current Process for Changes to Inclusionary Alternative and tenure after approval

Following approval, a project may change their elected alternative. Projects that switch from the fee to on-site affordable units may do so administratively. Projects which reduce the number of affordable units on-site must seek Commission approval, as it constitutes a change to the conditions of approval. The Commission is limited to considering issues related to Section 415 and cannot require a certain alternative, and therefore have little to no discretion over such items.

Currently there is no consistent process for changes to tenure after approval. Grandfathered projects occasionally requested changes to their tenure after approval or early during construction, but before the building was occupied, and those were largely granted if a MOHCD lottery had not yet taken place. After such time, conversion was governed by the Procedures Manual, which requires a sponsor to submit a request for a Letter of Determination to determine the process to switch tenure. Planning Staff review the conditions of approval, applicable Procedures Manual, and the Planning Code. Depending on the applicable regulations, some projects may be required to go to Commission to change, while others won't. For current projects, the change from ownership to rental would trigger a hearing since the on-site rate for ownership is higher than the on-site rate for rental, and the number of on-site units would be reduced.

The Procedures Manual sets forth the procedures for converting affordable rental units into affordable ownership units. An affordable rental unit renter is given at least one year from the time of official notice from the Project Owner to exercise the right to purchase. The sales price for existing renters will be either at the level of affordability for the unit as an affordable rental unit as specified in the BMR NSR or Conditions of Approval, or affordable to the actual income level of the current affordable renter household, whichever is higher. If the unit is not sold to the current affordable renter household, the sales price will correspond to the affordability level required for an affordable ownership unit under the BMR NSR or conditions of approval. For example, in a project seeking to convert a rental building into a condominium, an existing affordable renter household may purchase their unit for 55% AMI, but if they don't elect to purchase the unit, then the BMR sales price will increase to 80% AMI, the corresponding low-income rate set forth in the BMR NSR.

Applicability of State Law

State Density Bonus Law

Under the State Density Bonus Law and the Individually Requested State Density Bonus Program as defined in Planning Code 206.6, projects may only receive a density bonus for below market rate units provided at a single income level; projects cannot combine different below market rate income levels to receive a greater density bonus. The Inclusionary Program requires projects with 25 or more units that elect the On-Site Alternative to provide affordable units at three different income levels, or "tiers." These tiers 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 units to qualify for a density bonus, the project must include the required percentage of low-income (80% AMI) ownership units in both small and large projects. Rental projects will generally qualify for a greater bonus than ownership projects but note that projects that qualify for a bonus with rental affordable units may be restricted in the ability to convert from rental to ownership in the future. For purposes of State Density Bonus projects, the 55% AMI tier may be lowered to 50% AMI.

Housing Crisis Act of 2019 (SB 330)

The Housing Crisis Act requires housing projects that will demolish existing residential units to replace those units. The Act defines "protected" units as: 1) affordable units deed-restricted to households earning below 80% of AMI; 2) subject to a local rent control program; 3) occupied by low-income households earning below 80% of AMI; or 4) withdrawn from the rental market under the Ellis Act within 10 years prior to development application.

Any housing development project that would demolish any protected units shall as a condition of approval provide replacement units with the same number of bedrooms, and at an affordable rent or sales price to households of the same or lower income category as that of the last household in occupancy in the past five years. Where the household income of current or previous occupants is not known, the replacement units shall be provided as affordable to very-low (earning up to 50% AMI) and low-income households (earning between 50% and 80% of AMI) in an amount proportional to the number of very low and low-income households present in the jurisdiction. Where the existing units to be demolished are subject to a local rent control program and the last household in occupancy earned moderate or above moderate income (above 80 percent of AMI), the project shall provide either: 1) replacement units affordable to low-income households (i.e. earning up to 80% of AMI) for a period of at least 55 years; or 2) replacement units that are subject to the local rent control program.

If a Project Sponsor is subject to the provisions of SB 330 and is seeking to construct a rental project, then the replacement units may be either deed-restricted affordable units or rent-controlled, depending on the income of the previous tenant. If a Project Sponsor wants to build an ownership project, they do not have the option to build replacement rent-controlled units, and any required replacement units would be deed-restricted affordable units for a period of at least 55 years.

Transportation Demand Management

The Transportation Demand Management (TDM) Program’s primary purpose is to reduce vehicle miles traveled (VMT) generated by new development projects. The Program is designed to work with developers to provide more on-site amenities that will encourage additional travel options so people can get around more easily without a car. These choices are better for the environment, help reduce the amount of congestion that new projects contribute to, help to reduce risks to pedestrians and cyclists, and improve the overall efficiency of our transportation network. Development projects that create 10 or more dwelling units or group housing rooms are generally subject to the TDM program.

Based on the Development Project characteristics, a TDM point target is calculated. Projects score points based on the TDM measures which are incorporated into the project.

One TDM measure is the provision of on-site affordable housing, specifically low- and very low-income housing, as research indicates that Affordable Housing units generate fewer vehicle trips than market-rate housing units. Projects may be eligible for up to four points based on the amount of on-site affordable housing and the level of affordability.

On-Site Affordable Housing TDM Measure

PERCENTAGE OF UNITS BY INCOME RANGE			
Option	Low Income – 55-80% AMI	Very Low Income – 55% AMI or less	Points
Option 1	≥ 5 ≤ 10%	≥ 3 ≤ 7%	1
Option 2	> 10 ≤ 20%	>7 ≤ 14%	2
Option 3	> 20 ≤ 25%	>14 ≤ 20%	3
Option 4		>20 ≤ 25%	4

Accessory Dwelling Units (ADUs) in New Construction

The Local ADU program allows a project to include ADUs in new construction; however, ADUs cannot be sold as separate condo units.

Issues and Considerations

Tenure

The Planning Code establishes different Inclusionary rates for each tenure, and it requires that the affordable units are comparable to the market rate units, but it does not explicitly require that the tenure of the affordable units match the market rate units. It is critical to the success of affordable households that the tenure of the project is consistent between the market rate and affordable units. If the affordable units are for sale while the rest of the building is for rent, the building fails to meet a Fannie Mae lending standard, and the potential affordable unit buyer cannot obtain a fair mortgage loan. Furthermore, the Inclusionary program is intended to create integrated, mixed-income projects. These buildings cannot be fully integrated if the tenure of the market rate units differs from that of the affordable units.

A consistent tenure across affordable and market rate units is critical to the success of the renters or buyers of the affordable units.

As described in the Background Section, the tenure of a project dictates how the Department will implement both state and local programs. Rental projects with on-site affordable units are required to provide more deeply affordable units than ownership projects (rents are set at 55% AMI versus sales prices set at 80% AMI); therefore, a rental project that selects the On-site Inclusionary Alternative would qualify for greater density bonuses and more TDM points than an ownership project. The replacement provisions of SB 330 are also different for rental projects than ownership projects. Projects demolishing protected units may be able to replace those protected units with rent-controlled units, while ownership projects that demolish protected units are required to replace them with deed-restricted affordable units. If a project seeks to change from a rental project to an ownership project at any time during the life of the project, the property owner may be required to provide significantly more on-site affordability to meet the requirements of these various programs.

Using the On-site Inclusionary Alternative, a rental project could qualify for greater density bonuses and more TDM points than an ownership project.

All the requirements of these various programs are recorded as conditions of approval for the project, which means that changes in tenure also require significant changes to these conditions. A large project has 22 standard conditions of approval for on-site affordable units provided to satisfy the Inclusionary Program, and at least ten (10) of those would be modified if tenure changed. Projects may also require a modified regulatory agreement and conditions of approval related to State Density Bonus requirements. Both MOHCD and Planning Staff use the approved Commission Motion and subsequent NSR as a tool to monitor compliance with the Planning Code. If the tenure changes, the NSR must be updated to ensure that agencies are correctly monitoring the project.

The proposed ordinance establishes a clear, consistent process for post-approval changes.

The Planning Code is unclear and inconsistent about changes to project tenure after approval. The proposed ordinance creates a single, consistent process for changing tenure and gives the Planning Commission a set of objective findings for projects seeking to modify their Inclusionary obligation. If a project sponsor requests a modification to its conditions of approval, the Planning Commission shall be limited to considering issues related to Section 415. in considering the request for modification. The Planning Commission shall approve such modification if it finds that:

(A) The project sponsor complied with the applicable requirements for modification set forth in the Procedures Manual including protections for current occupants, if any, of Rental Units or Owned Units;

(B) The modification will not result in a delay in marketing any affordable at the same time as the market-rate housing units in the project;

(C) If a Project was granted a density bonus, the project qualifies for the same density bonus, waivers, incentives and concessions that were granted to the Rental Housing Project;

(D) If a Rental Housing Project is converting to an Ownership Housing Project, the amount of Affordable Housing Fee or number of On-Site Units complies with Section 415.6(a)(7), which requires the project to make up the difference from the rental on-site rate to the ownership on-site rate;

(E) For projects that change from On-site or Off-site affordable units and seek to pay the Affordable Housing Fee *prior to the issuance of the first construction document*, the project sponsor shall pay the Affordable Housing Fee equivalent to the loss of On-site or Off-site Affordable Housing units that were approved in the original conditions of approval; and;

(F) For projects that chose to provide On-site or Off-site units and seek to pay the Affordable Housing Fee *after the issuance of the first construction document*, the project sponsor or its successor shall pay the Affordable Housing Fee equivalent to the loss of On-site or Off-site Affordable Housing units that were approved in the original conditions of approval, *plus interest and any applicable penalties*.

Post-Approval, Marketing and Pricing

The Planning Code requires that the affordable units be rented or sold at the same time as the market-rate units but does not specify a point in time when the project sponsor must begin the inclusionary marketing process with MOHCD. The MOHCD pricing, marketing, lease-up and sales process usually takes approximately seven months. When a project sponsor is late in contacting MOHCD to begin marketing the affordable units, they are less likely to meet the timing requirement set forth in the Planning Code. Furthermore, the project sponsor is not technically out of compliance with the Planning Code until the market-rate units are ready for lease up. This results in delays in delivering the affordable housing. The City's only leverage to ensure that the affordable units are delivered is to request that DBI not issue the temporary or final certificates of occupancy (TCO or CFC). Requesting this hold also slows the delivery of market-rate housing until the project sponsor can catch up and meet the Inclusionary requirements.

The ordinance requires a project sponsor to submit an estimated construction timeline for their projects with on-site units. It also sets specific milestones when a project sponsor must complete the BMR NSR (12 mos. prior

to TCO) and submit a pricing request (8 mos. prior to TCO). The estimated construction timeline will be a helpful tool for Planning and MOCHD in tracking the Inclusionary pipeline, while the milestones will establish a clear timeline for developers with approved on-site units. Projects that do not meet these timelines would be in violation of the Planning Code. Furthermore, it explicitly ties the issuance of the Temporary Certificate of Occupancy to MOHCD's approval of the project sponsor's marketing plan.

Regulatory Agreements

Project sponsors seeking density bonuses through the State Density Bonus Program or HOME-SF are required to enter into a regulatory agreement with the City, which is an agreement to preserve the on-site affordability for a required period. The Planning Code includes a density bonus for projects with between 20% and 25% on-site affordability in Planning Code Section 207(c). Amending the Planning Code to require a regulatory agreement for these projects ensures that the affordable units that are necessary to qualify for the density bonus are retained for the life of the project.

Housing Affordability

The Planning Department is tasked with implementing the Inclusionary Program, as well as various other local and state housing programs, each with different affordability requirements which depend on the tenure of the project. The proposed ordinance ensures the Department can review and implement all applicable affordability requirements whether the project has elected to construct a rental project or an ownership project. The ordinance also improves the Department's ability to deliver both affordable and market-rate units by adding more clarity to the post-approval process. Matching the tenure of affordable and market-rate units preserves the ability of an inclusionary first-time homebuyer to garner conventional mortgage loans on competitive terms, which improves the overall affordability of the unit, and ensures BMR homebuyers an equal vote in the project's homeowners association.

General Plan Compliance

The Ordinance is consistent with several policies set forth in the Housing Element of the General Plan. The Housing Element includes policies that encourage affordable housing across the City with a diversity of unit types and a range of income levels. The Inclusionary Program applies to projects across the City and is a critical program to deliver affordable housing at a range of income levels Citywide, and the Ordinance improves the ability to deliver a range of affordable housing options without public subsidy. The Housing Element also incorporates policies which encourage transparency and consistency in the development process. This Ordinance establishes a set of findings for the Commission to consider when reviewing changes to a project's Inclusionary election and establishes a clearer process for inclusionary NSR timing, marketing, pricing and lease up. Clear timelines and milestones will reduce undue project delays and lead to speedier delivery of housing.

Racial and Social Equity Analysis

Understanding the effects such as the potential benefits, burdens and the opportunities to advance racial and social equity that proposed Planning Code and Zoning Map amendments provide is part of the Department's Racial and Social Equity Action Plan. This is also consistent with the Mayor's Citywide Strategic Initiatives for equity and accountability, the Equity Resolutions passed by both Commissions in the summer of 2020, and with

the Office of Racial Equity mandates, which requires all Departments to address racial equity internally and externally through our programs and services. Below are some specific issues to consider:

The proposed ordinance aims to improve implementation of the Inclusionary Affordable Housing Program, as well as other state and local programs that incentivize on-site affordable housing, to speed the delivery of affordable housing for low- and moderate-income households. Overall, communities of color are over-represented in the low- and moderate-income households. By incorporating the current Fannie Mae lending standard into the definition of tenure, the ordinance also aims to protect first-time homebuyers by retaining their ability to seek and to secure competitive mortgage interest rates.

The proposed ordinance intends to build on the current goals of the Inclusionary Program, in that requiring that the tenure of the affordable units matches the market rate units promotes integrated projects but also more equitable communities of residents. If the BMR units were a different tenure, particularly if the project is ownership and the BMR units are rental it could result in an imbalance of power in residents' relations and homeowner associations, which favors residents in the market-rate units. BMR renters would have little or no decision making power or lesser status. Inequities and disparities in society and communities inherently mean that a group has less power or access to resources or decision-making, similar tenures help to avoid some of these imbalances that may reinforce inequity.

To ensure that these proposed provisions do not inadvertently result in less affordable housing units reducing the benefits for low and moderate-income household, staff intends to work with project sponsors, such as those doing small, one-time projects, who may need extra time or technical assistance before initiating an enforcement case. Staff will determine a specific timeframe to get a project to the Commission for hearings. If the ordinance passes, Planning staff, in coordination with MOHCD staff, will also develop clear and simple information for project sponsors, and translate as needed, to ensure prompt dissemination and understanding of new rules.

Planning staff recommends tracking and evaluating the outcomes of the ordinance on the provision of affordable BMR units, should any modifications be needed to address unforeseen unintended consequence on racial and social equity.

Implementation

The Department has determined that this ordinance will improve our current implementation procedures in the following ways:

1. Establishing a definition of tenure and requiring the tenure of affordable units match the tenure of market rate units. This improves Planning Staff's ability to correctly implement the Inclusionary Program, which assumes a project will have a single tenure.
2. Providing parity and consistency so that post-approval changes in tenure from rental to ownership are reviewed by the Planning Commission, consistent with the existing requirement for changes in tenure from ownership to rental.

3. Establishing a set of findings for the Planning Commission to consider when reviewing changes to the elected Inclusionary Alternative. The Planning Commission may disapprove the request if the project cannot meet these findings.
4. A project may provide on-site affordable housing to satisfy the requirements of more than one program, and the affordability requirements can differ greatly between rental and ownership tenure. Formally changing the conditions of approval of an approved project would allow Planning staff to establish a clear record of the correct conditions of approval, which in turn provides for improved monitoring and enforcement of these programs by the Department and MOHCD.
5. Provides more clarity for a developer at the outset of a project. For example, if a developer knows they want to convert to ownership 10 years after project completion, we can advise on the correct density bonus that considers that factor. Additionally, project sponsors can better incorporate the BMR requirements and timelines into their construction and TCO timing.
6. Provides a clear timeline to finalize the BMR NSR and to initiate pricing and marketing with MOHCD.
7. Improves pipeline monitoring.

Recommendation

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

Basis for Recommendation

The proposed Ordinance would improve the Department's ability to implement the Inclusionary Program and other local and state programs that incentivize on-site affordable housing. It would provide a clear process for post-approval changes, including objective findings for the Commission's consideration, and it would establish deadlines for pricing and marketing. Requiring that tenure match between affordable and market rate units protects low-income households and clarifies the intent of the program.

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 Section 15060(c) and 15378 because they do not result in a physical change in the environment.

Public Comment

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

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 210868
 - Draft Ordinance, Version 2
 - Legislative Digest, Version 2
 - CEQA Referral – Cover Sheet
 - CEQA Determination – September 17, 2021
 - Planning Commission Referral - Cover Sheet
 - Memorandum to the Director of the Mayor’s Office of Housing
- Exhibit C: History of San Francisco’s Inclusionary Affordable Housing Program - March 9, 2017
- Exhibit D: Summary of Inclusionary Changes – December 3, 2017
- Exhibit E: State Density Bonus Affordability Levels



PLANNING COMMISSION DRAFT RESOLUTION

HEARING DATE: OCTOBER 14, 2021

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Initiated by: Supervisor Ronen / Introduced July 27, 2021, Substituted October 5, 2021
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RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE SECTIONS 207, 401, 413.6, 413.9, 415, 415.2, 415.3, 415.5, 415.6, 415.7, 415.8, 415.9, 415.10, 416, 416.3, 416.5, 417, 417.5, 419, 419.1, 419.2, 419.4, 419.5, 419.6, 424, 424.4, 428.3, and 428.5 TO UPDATE THE INCLUSIONARY HOUSING PROGRAM, 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 July 27, 2021 Supervisor Ronen introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 210868, which would amend Sections 207, 401, 413.6, 413.9, 415, 415.2, 415.3, 415.5, 415.6, 415.7, 415.8, 415.9, 415.10, 416, 416.3, 416.5, 417, 417.5, 419, 419.1, 419.2, 419.4, 419.5, 419.6, 424, 424.4, 428.3, and 428.5 of the Planning Code to update the Inclusionary Housing Program by clarifying the requirements for tenure of affordable units and formalizing a consistent process for changes to the Inclusionary Alternative or tenure after approval, amending the timing for marketing the affordable units, establishing a monitoring requirement for approved projects, creating definitions for rental and ownership housing projects, incorporating specific references, capitalizing defined terms, and including other various clean-up items.

WHEREAS, The Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on October 14, 2021; 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 49 South Van Ness Avenue, Suite 1400, San Francisco; and

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

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

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

Findings

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

The proposed Ordinance would improve the Department’s ability to implement the Inclusionary Affordable Housing Program and other local and state programs that incentivize on-site affordable housing. It would provide a clear process for post-approval changes, including objective findings for the Commission’s consideration, and it would establish deadlines for pricing and marketing. It would also require that tenure match between affordable and market rate units, protecting low-income households, as well as clarifying the intent of the program.

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 4.6

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.

The Inclusionary Affordable Housing Program applies to projects across the City and is a critical program to deliver affordable housing at a range of income levels Citywide. This ordinance is consistent with Policy 4.6 as it updates the Inclusionary Affordable Housing Program to improve implementation and reduce delays in renting or selling affordable units.

OBJECTIVE 7

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

Policy 7.7

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

This ordinance is consistent with Policy 7.7 as the Inclusionary Affordable Housing Program creates affordable units at low, moderate, and middle incomes. The proposed updates to the Inclusionary Affordable Housing Program improve the ability to deliver affordable housing for a broad range of incomes between 55% and 130% of Area Median Income.

OBJECTIVE 10

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

Policy 10.1

Create certainty in the development entitlement process, by providing clear community parameters for development and consistent application of these regulations.

This ordinance is consistent with Policy 10.1 as it establishes a set of findings for the Commission to consider when reviewing changes to a project's Inclusionary Affordable Housing Program election.

Policy 10.2

Implement planning process improvements to both reduce undue project delays and provide clear information to support community review.

This ordinance is consistent with Policy 10.2 as it establishes a clearer process for affordable unit Notice of Special Restrictions timing, marketing, pricing and lease up, and establishes a monitoring process for the pipeline. Establishing clearer procedures during this period will reduce undue project delays and lead to speedier delivery of housing.

Planning Code Section 101 Findings

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

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

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

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

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

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

The proposed Ordinance would provide clear procedures for post-approval changes to the Inclusionary Affordable Housing Program election, improving the delivery of affordable housing.

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

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

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

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

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

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

7. That the landmarks and historic buildings be preserved;

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

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

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their

access to sunlight and vistas.

Planning Code Section 302 Findings.

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

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

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on October 14, 2021.

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: October 14, 2021

[Planning Code - Inclusionary Housing Program Updates]

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Ordinance amending the Planning Code to update inclusionary housing program requirements; affirming the Planning Department’s determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of necessity, convenience, 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 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.

1 (c) Pursuant to Planning Code Section 302, the Board of Supervisors find that this
2 ordinance will serve the public necessity, convenience, and welfare for the reasons set forth in
3 Planning Commission Resolution No. _____, and incorporates such reasons by this
4 reference thereto. A copy of said resolution is on file with the Clerk of the Board of
5 Supervisors in File No. _____.

6
7 Section 2. The Planning Code is hereby amended by revising Sections 207, 401,
8 413.6, 413.9, 415, 415.2, 415.3, 415.5, 415.6, 415.7, 415.8, 415.9, 415.10, 416, 416.3, 416.5,
9 417, 417.5, 419, 419.1, 419.2, 419.4, 419.5, 419.6, 424, 424.4, 428.3, and 428.5 to read as
10 follows:

11
12 **SEC. 207. DWELLING UNIT DENSITY LIMITS.**

13 * * * *

14 (c) **Exceptions to Dwelling Unit Density Limits.** An exception to the
15 calculations under this Section 207 shall be made in the following circumstances:

16 (1) **Affordable Units in Projects with 20% Percent or More Affordable**
17 **Units.** For projects that are not located in any RH-1 or RH-2 zoning district, or are not seeking
18 and receiving a density bonus under the provisions of California Government Code Section
19 65915, where 20% percent or more of the Dwelling Units on-site are "Affordable Units," the on-
20 site Affordable Units shall not count towards the calculation of dwelling unit density. This
21 Planning Code Section does not provide exceptions to any other Planning Code requirements
22 such as height or bulk. For purposes of this Section 207, "Affordable Units" shall be defined
23 as meeting (A) the criteria of Section 406(b); (B) the requirements of Section 415 et seq. for
24 on-site units; or (C) restricted units in a project using California Debt Limit Allocation
25 Committee (CDLAC) tax-exempt bond financing and 4% percent tax credits under the Tax

1 Credit Allocation Committee (TCAC). If a project sponsor proposes to provide "Affordable
2 Units" that are not restricted by any other program, in order to receive the benefit of the
3 additional density permitted under this Subsection (c)(1) or Subsection (c)(2), the project
4 sponsor shall elect and the Planning Department and MOHCD shall be authorized to enforce,
5 restricting the units as affordable under Planning Code Section 415.6 up to a maximum of
6 ~~25% percent~~ of the units in the ~~principal project~~ Principal Project. The project sponsor shall
7 make such election through the procedures described in Section 415.5(g) including submitting
8 an Affidavit of Compliance indicating the project sponsor's election to pursue the benefits of
9 Subsection (c)(1) or (c)(2) and committing to up to ~~25% percent~~ on-site units restricted under
10 Section 415.6 prior to approval by the Planning Commission or Planning Department staff. If a
11 project sponsor obtains the exemption from the density calculation for Affordable Units
12 provided in this subsection, the exemption shall be documented and recorded against the
13 property under the terms of a Regulatory Agreement as defined under Section 206.2 and consistent
14 with the provisions set forth in Section 206.6(f)(4). Any later request to decrease the number of
15 Affordable Units shall require the project to go back to the Planning Commission or Planning
16 Department, whichever entity approved the project as a whole.

17 * * * *

18
19 **SEC. 401. DEFINITIONS.**

20 In addition to the specific definitions set forth in Section 102 and elsewhere in this
21 Article 4, the following definitions shall govern interpretation of this Article:

22
23 "Affordable ~~unit~~ Unit" or "~~affordable housing unit~~ Affordable Housing Unit." A unit that is
24 Affordable to Qualifying Households ~~restricted as affordable~~ under Section 415 et seq.

25 * * * *

1 "Affordable to ~~qualifying households~~ Qualifying Households."

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

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

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

9 (iii) Only to households that meet the household size requirements, as
10 defined in the Procedures Manual;

11 (iv) On the initial sale, at or below the maximum purchase price, as
12 defined in this Section;

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

23 (B) With respect to Rental Units ~~rental units in an affordable housing project~~, the average
24 annual rent shall not exceed the allowable average annual rent. Each unit shall be rented:

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

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

6 (iii) At or less than the maximum annual rent.

7 "Allowable average purchase price." A price for all ~~affordable owned units~~ Owned Units of
8 the size indicated below that are affordable to a household of median income as defined in
9 this Section, adjusted for the household size indicated below as of the date of the close of
10 escrow, except for Single Room Occupancy units and Group Housing units that are less than
11 350 square feet (both as defined in Section 102), which shall be 75% of the maximum
12 purchase price level for studio units, and, where applicable, adjusted to reflect the
13 Department's policy on unbundled parking for affordable housing units as specified in the
14 Procedures Manual and amended from time to time:

15 * * * *

16 "Allowable average annual rent." Annual rent for a Rental Unit ~~an affordable rental unit~~ of
17 the size indicated below that is 30% percent of the annual gross income of a household of low
18 income as defined in this Section, adjusted for the household size indicated below except for
19 Single Room Occupancy units and Group Housing units that are less than 350 square feet
20 (both as defined in Section 102), which shall be 75% of the maximum rent level for studio
21 units, and, where applicable, adjusted to reflect the Department's policy on unbundled parking
22 for affordable housing units as specified in the Procedures Manual and amended from time to
23 time:

24 * * * *

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

4 * * * *

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

9 * * * *

10 "Average annual rent." The total annual rent for the calendar year charged by a
11 housing project for all ~~affordable rental units~~ Rental Units in the project of an equal number of
12 bedrooms divided by the total number of ~~affordable units~~ Affordable Units in the project with that
13 number of bedrooms.

14 "Average purchase price." The purchase price for all Owned Units ~~affordable owned units~~
15 in an affordable housing project of an equal number of bedrooms divided by the total number
16 of ~~affordable units~~ Affordable Units in the project with that number of bedrooms.

17 * * * *

18 "Maximum annual rent." The maximum rent that a housing developer may charge any
19 tenant occupying an affordable unit for the calendar year. The maximum annual rent for an
20 affordable housing unit of the size indicated below shall be no more than 30% ~~percent~~ of the
21 annual gross income for a household of low income as defined in this Section, as adjusted for
22 the household size indicated below, except in the case of Single Room Occupancy units and
23 Group Housing units that are less than 350 square feet (both as defined in Section 102),
24 which shall be 75% of the maximum rent level for studio units, as of the first date of the
25 tenancy:

1 * * * *

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

5 "Maximum purchase price." The maximum purchase price for an Owned Unit affordable
6 ~~owned unit~~ of the size indicated below except in the case of Single Room Occupancy units and
7 Group Housing units that are less than 350 square feet (both as defined in Section 102),
8 which shall be 75% of the maximum purchase price level for studio units, that is affordable to
9 a household of moderate income, adjusted for the household size indicated below, assuming
10 an annual payment for all housing costs of 33 percent of the combined household annual
11 gross income, a down payment recommended by MOHCD and set forth in the Procedures
12 Manual, and available financing:

13 * * * *

14 "Mayor's Office of Housing" or "MOH." The Mayor's Office of Housing and Community
15 Development or its successor.

16 * * * *

17 "MOH." The Mayor's Office of Housing, or the Mayor's Office of Housing and Community
18 Development, or its successor.

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

20 * * * *

21 "Off-site Unit." A unit ~~affordable to qualifying households~~ Affordable to Qualifying
22 Households constructed pursuant to this Article on a site other than the site of the ~~principal~~
23 ~~project~~ Principal Project. If a Housing Project is constructed in multiple phases or consists of multiple
24 buildings, Affordable Units may be constructed in one building or phase.

1 "On-site Unit." A unit ~~affordable to qualifying households~~ Affordable to Qualifying
2 Households constructed pursuant to this Article on the site of the principal project. If a Housing
3 Project is constructed in multiple phases or consists of multiple buildings, Affordable Units shall be
4 distributed proportionally throughout the building or phase.

5 "Owned Unit ~~unit~~." A unit Affordable to Qualifying Households that ~~affordable to qualifying~~
6 ~~households which~~ is a condominium, stock cooperative, community apartment, or detached
7 single-family home. The owner or owners of an ~~owned unit~~ Owned Unit must occupy the unit as
8 their primary residence.

9 * * * *

10 "Procedures Manual." The City and County of San Francisco Inclusionary Affordable
11 Housing Program Monitoring Procedures Manual issued by the Mayor's Office of Housing and
12 Community Development, San Francisco Department of City Planning, as amended from time to
13 time.

14 * * * *

15 "Rental Unit ~~unit~~." A unit Affordable to Qualifying Households that ~~affordable to qualifying~~
16 ~~households which~~ is not a condominium, stock cooperative, or community apartment.

17 * * * *

18 **SEC. 413.6. COMPLIANCE BY LAND DEDICATION.**

19 (a) Controls. Projects may satisfy all or a portion of the requirements of Section 413.1
20 et seq. via dedication of land to the City for the purpose of constructing units Affordable to
21 Qualifying Households ~~affordable to qualifying households~~. Projects may receive a credit against
22 such requirements up to the value of the land donated, calculated pursuant to subsection (b)
23 below.

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SEC. 413.9. CITYWIDE AFFORDABLE HOUSING FUND.

(a) Use of Fees. All monies contributed pursuant to the Jobs Housing Linkage Fee Program in Section 413.1 et seq. shall be deposited in the Citywide Affordable Housing Fund ("Fund"), established in Administrative Code Section 10.100-49. The receipts in the Fund collected under Section 413.1 et seq. shall be used solely to increase the supply of housing ~~*Affordable to Qualifying Households*~~ ~~*affordable to qualifying households*~~ subject to the conditions of this Section 413.9. The fees collected under this Section may not be used, by way of loan or otherwise, to pay any administrative, general overhead, or similar expense of any entity. MOHCD shall develop procedures such that, for all projects funded by the Citywide Affordable Housing Fund, MOHCD requires the project sponsor or its successor in interest to give preference in occupying units as provided for in Administrative Code Chapter 47.

* * * *

SEC. 415. HOUSING REQUIREMENTS FOR RESIDENTIAL AND LIVE/WORK DEVELOPMENT PROJECTS.

Sections 415.1 through 415.11, hereafter Section 415.1 et seq., set forth the requirements and procedures for the Inclusionary Affordable Housing Program ("Program" or "Inclusionary Housing Program").

The Planning Department and MOHCD shall periodically publish a Procedures Manual containing procedures for monitoring and enforcement of the policies and procedures for implementation of this Program. The Procedures Manual must be made available on the Department's web site. The Procedures Manual shall not be amended, except for an annual update of the affordability housing guidelines, which reflect updated income limits, prices, and rents, without approval of the Commission or as otherwise specified herein.

1 The Procedures Manual in effect at the time of initial purchase or initial rental of an
2 Affordable Unit ~~a unit~~ shall govern the regulation of that unit until it is sold or re-rented unless
3 an owner or current tenant chooses to be governed by all of the more up-to-date provisions of
4 the then-current Procedures Manual. In that case, the owner or tenant must agree to be
5 governed by the totality of the new regulations – an owner or tenant may not pick some
6 provisions from the Procedures Manual in effect at the time of initial purchase or initial rental
7 and some in effect in the then-current Procedures Manual. If the owner or tenant chooses to
8 be governed by the then-current Procedures Manual he or she shall sign an agreement with
9 the City to that effect, and the Department and MOHCD shall apply all of the rules and
10 regulations in the then-current Procedures Manual to the unit.

11
12 **SEC. 415.2. DEFINITIONS.**

13 See Section 401 of this Article.

14 ~~“Owned Unit” shall mean a dwelling unit that is a condominium, stock cooperative, community~~
15 ~~apartment or detached single family home. The owner or owners of an owned unit must occupy the unit~~
16 ~~as their primary residence.~~

17 ~~“Rental Housing Project” shall mean a housing project consisting solely of Rental Units, as~~
18 ~~defined in Section 401, which meets the following requirements:~~

19 ~~(1) The units shall be rental housing for not less than 30 years from the issuance of the~~
20 ~~certificate of occupancy pursuant to an agreement between the developer and the City. This agreement~~
21 ~~shall be in accordance with applicable State law governing rental housing. All such agreements~~
22 ~~entered into with the City must be reviewed and approved by the Planning Director and the City~~
23 ~~Attorney’s Office, and may be executed by the Planning Director;~~

24 ~~(2) The agreement shall be recorded against the property prior to issuance of the~~
25 ~~certificate of occupancy.~~

1 “Ownership Housing Project” shall mean a housing project consisting solely of units that are
2 condominiums, stock cooperatives, community apartments, or detached single-family homes.

3 Ownership Housing Projects include all of the units in a housing development including Affordable
4 Units and Market Rate Housing.

5 “Rental Housing Project” shall mean a housing project consisting solely of units owned by a
6 single entity and rented to individual tenants. Rental Housing Projects include all of the units in a
7 housing development including Affordable and Market Rate Housing.

8
9 **SEC. 415.3. APPLICATION.**

10 * * * *

11 (b) Except as provided in subsection (3) below, any development project that has
12 submitted a complete Environmental Evaluation application prior to January 12, 2016 shall
13 comply with the Affordable Housing Fee requirements, the on-site affordable housing
14 requirements or the off-site affordable housing requirements, and all other provisions of
15 Section 415.1 et seq., as applicable, in effect on January 12, 2016. For development projects
16 that have submitted a complete Environmental Evaluation application on or after January 1,
17 2013, the requirements set forth in Planning Code Sections 415.5, 415.6, and 415.7 shall
18 apply to certain development projects consisting of 25 dwelling units or more during a limited
19 period of time as follows.

20 * * * *

21 (2) If a development project pays the Affordable Housing Fee or elects to
22 provide off-site affordable housing, the development project shall provide the following fee
23 amount or amounts of off-site affordable housing during the limited periods of time set forth
24 below.

25 * * * *

1 (F) Notwithstanding the provisions set forth in subsections (b)(2)(A), (B)
2 and (C) of this Section 415.3, if a development project is located in a UMU Zoning District or
3 in the South of Market Youth and Family Zoning District, and pays the Affordable Housing Fee
4 or elects to provide off-site affordable housing pursuant to Section 415.5(g), or elects to
5 comply with a ~~land dedication alternative~~ Land Dedication Alternative, such development project
6 shall comply with the fee, off-site or land dedication requirements applicable within such
7 Zoning Districts, as they existed on January 12, 2016, plus the following additional amounts
8 for the Affordable Housing Fee or for land dedication or off-site affordable units: (i) if the
9 development project has submitted a complete Environmental Evaluation application prior to
10 January 1, 2014, the Project Sponsor shall pay an additional fee, or provide additional land
11 dedication or off-site affordable units, in an amount equivalent to 5% of the number of units
12 constructed on-site; (ii) if the development project has submitted a complete Environmental
13 Evaluation application prior to January 1, 2015, the Project Sponsor shall pay an additional
14 fee, or provide additional land dedication or off-site affordable units, in an amount equivalent
15 to 7.5% of the number of units constructed on-site; or (iii) if the development project has
16 submitted a complete Environmental Evaluation application on or prior to January 12, 2016,
17 the Project Sponsor shall pay an additional fee, or provide additional land dedication or off-site
18 affordable units, in an amount equivalent to 10% of the number of units constructed on-site.
19 Notwithstanding the foregoing, a development project shall not pay a fee or provide off-site
20 units in a total amount greater than the equivalent of 30% of the number of units constructed
21 on-site.

22 * * * *

23 (d) Notwithstanding the provisions set forth in Section 415.3(b), or the inclusionary
24 affordable housing requirements contained in Sections 415.5, 415.6, and 415.7, such
25 requirements shall not apply to any project, consisting of 25 dwelling units or more, that has

1 not submitted a complete Environmental Evaluation Application on or before January 12,
2 2016, if the project is located within the Eastern Neighborhoods Mission Planning Area, the
3 North of Market Residential Special Use District Subarea 1 or Subarea 2, or the SOMA
4 Neighborhood Commercial Transit District, because inclusionary affordable housing levels for
5 those areas will be addressed in forthcoming area plan processes or an equivalent community
6 planning process. Until such planning processes are complete and new inclusionary housing
7 requirements for projects in those areas are adopted, projects consisting of 25 ~~dwelling~~ units
8 or more shall (1) pay a fee or provide off-site housing in an amount equivalent to 30% if the
9 ~~principal housing project~~ Principal Project is a Rental Housing Project, or 33% if the ~~principal~~
10 ~~housing project~~ Proposed Project is an Ownership Housing Project consists of Owned Units, or (2)
11 provide ~~affordable units~~ Affordable Units in the amount of 25% of the number of ~~Rental Units~~
12 ~~units~~ constructed on-site in a Rental Housing Project, or 27% of the number of ~~Owned Units~~ units
13 constructed on-site in an Ownership Housing Project. For Rental Housing Projects Units, 15% of
14 the on-site ~~affordable units~~ Affordable Units shall be affordable to low-income households, 5%
15 shall be affordable to moderate-income households and 5% shall be affordable to middle-
16 income households. For Ownership Housing Projects Owned Units, 15% of the on-site ~~affordable~~
17 ~~units~~ Affordable Units shall be affordable to low-income households, 6% shall be affordable to
18 moderate- income households and 6% shall be affordable to middle-income households.

19 * * * *

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

21 * * * *

22 (5) A Student Housing project that meets all of the following criteria:

23 * * * *

24 (C) MOHCD The Mayor's Office of Housing and Community Development

25 (~~MOHCD~~) is authorized to monitor the Student Housing program described in this subsection

1 (f)(5) and shall develop a monitoring form. An annual monitoring fee of \$792 per building
2 exempted from the Inclusionary Housing Program pursuant to this Section 415.3(f)(5) shall be
3 paid to MOHCD by the owner of the real property or the Post-Secondary Educational
4 Institution or Religious Institutions, as defined in Section 102 of this Code. Beginning with the
5 setting of fees for fiscal year 2018-2019, the Controller shall annually adjust the base
6 monitoring fee amount referenced in this subsection (f)(5)(C) without further action by the
7 Board of Supervisors, to reflect changes in the two-year average Consumer Price Index (CPI)
8 change for the San Francisco/San Jose Primary Metropolitan Area (PMSA). This process
9 shall occur as follows:

10 * * * *

11
12 **SEC. 415.5. AFFORDABLE HOUSING FEE.**

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

17 (a) **Timing of Fee Payments.** The fee shall be paid to DBI for deposit into the
18 Citywide Affordable Housing Fund at the time required by Section 402(d).

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 (1) The number of units equivalent to the applicable off-site percentage of the
22 number of units in the ~~principal housing project~~Principal Project.

23 (A) For housing development projects consisting of 10 ~~dwelling~~ units or
24 more, but less than 25 ~~dwelling~~ units, the applicable percentage shall be 20%.

1 (B) For development projects consisting of 25 ~~dwelling~~ units or more, the
2 applicable percentage shall be 33% if such units are Owned Units.

3 (C) For development projects consisting of 25 ~~dwelling~~ units or more, the
4 applicable percentage shall be 30% if ~~such units are Rental Units in the development project is a~~
5 Rental Housing Project. In the event ~~one or more of the Rental Units in the principal a~~ Rental
6 Housing Project becomes an Ownership Housing Project ownership units, for each Rental Unit or
7 ~~for the principal Rental Housing Project in its entirety, as applicable~~, the Project Sponsor shall
8 either (A) reimburse the City the proportional amount of the Inclusionary Affordable Housing
9 Fee, which would be equivalent to the current Inclusionary Affordable Housing Fee
10 requirement for Ownership Housing Projects Owned Units, or (B) provide additional on-site or off-
11 site ~~affordable units~~ Affordable Units equivalent to the current inclusionary requirements for
12 Ownership Housing Projects Owned Units, apportioned among the required number of units at
13 various income levels in compliance with the requirements in effect at the time of conversion.
14 Any additional Affordable Units provided on-site or off-site shall comply with Section 415 and the
15 Procedures Manual.

16 * * * *

17 (f) **Use of Fees.** All monies contributed pursuant to the Inclusionary Affordable
18 Housing Program shall be deposited in the Citywide Affordable Housing Fund (“Fund”),
19 established in Administrative Code Section 10.100-49, except as specified below. MOHCD
20 shall use the funds collected under this Section 415.5 in the following manner:

21 (1) Except as provided in subsection (2) below, the funds collected under this
22 Section shall be used to:

23 (A) increase the supply of housing ~~affordable to qualifying households~~
24 Affordable to Qualifying Households subject to the conditions of this Section; and
25

1 * * * *

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

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

6 (A) **Alternative #1: On-Site Units.** Project sponsors may elect to
7 construct units Affordable to Qualifying Households ~~affordable to qualifying households~~ on-site of
8 the ~~principal project~~ Principal Project pursuant to the requirements of Section 415.6.

9 (B) **Alternative #2: Off-Site Units.** Project sponsors may elect to
10 construct units Affordable to Qualifying Households ~~affordable to qualifying households~~ at an
11 alternative site within the City and County of San Francisco pursuant to the requirements of
12 Section 415.7.

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

15 (D) **Alternative #4: Combination.** Project sponsors may elect any
16 combination of payment of the Affordable Housing Fee as provided in Section 415.5,
17 construction of on-site units as provided in Section 415.6, or construction of off-site units as
18 provided in Section 415.7, provided that the project applicant constructs or pays the fee at the
19 appropriate percentage or fee level required for that option. Development Projects that are
20 providing on-site units under Section 415.6 and that qualify for and receive additional density
21 under California Government Code Sections 65915 et seq. shall use Alternative #4 to pay the
22 Affordable Housing Fee on any additional units or square footage authorized under Section
23 65915.

24 (2) A project sponsor who elects to satisfy Section 415.1 et seq through one of the
25 alternatives described in Section 415.5(g)(1), must provide written notice of their election 30 days prior

1 to project approval by the Planning Commission or Department, as applicable. The Planning
2 Commission or the Department may not require a project sponsor to select a specific
3 Alternative. ~~If a project sponsor elects to meet the Program requirements through one of the~~
4 ~~Alternatives described in subsection (g)(1), they must choose it 30 days prior to any project approvals~~
5 ~~from the Planning Commission or Department.~~ The Alternative will be a condition of project
6 approval and recorded against the property in a Notice of Special Restrictions. an NSR. Any
7 ~~subsequent change by a project sponsor that results in the reduction in the number of on-site units shall~~
8 ~~require public notice for a hearing and approval from the Planning Commission.~~

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

15 (3) Modification of Elected Alternative. Except as specified below, after project
16 approval, any proposed change in the alternative elected by a project sponsor under Section
17 415.5(g)(1), or any proposed change from an Ownership Project to a Rental Project, or from a Rental
18 Project to an Ownership Project, shall require public notice for a hearing and approval from the
19 Planning Commission to amend the conditions of approval. Public notice shall be as required by the
20 original entitlement.

21 (4) Notwithstanding subsection (g)(3), if such modification is requested prior to
22 issuance of a first construction document, the Zoning Administrator or the Zoning Administrator's
23 designee may modify conditions of approval to allow a project that had elected to pay the Affordable
24 Housing Fee to change from an Ownership Project to a Rental Project or a Rental Project to an
25

1 Ownership Project, or to allow a project that had elected to pay the Affordable Housing Fee to provide
2 on-site units under Section 415.6.

3 (5) If a project sponsor requests a modification to its conditions of approval for the sole
4 purpose of complying with this Section 415.5(g)(3), the Planning Commission shall be limited to
5 considering issues related to Section 415 et seq. in considering the request for modification. The
6 Planning Commission shall approve such modification if it finds all of the following:

7 (A) The project sponsor complied with the applicable requirements for
8 modification set forth in the Procedures Manual including protections for current occupants, if any, of
9 Rental Units or Owned Units;

10 (B) The modification will not result in a delay in marketing any On-Site Units at
11 the same time as the market-rate housing in the project;

12 (C) If a Rental Housing Project was granted a density bonus pursuant to Section
13 206, the change from a Rental Housing Project to an Ownership Housing Project provides On-Site
14 Units in an amount such that the Ownership Housing Project qualifies for the same density bonus,
15 waivers, and/or incentives and concessions that were granted to the Rental Housing Project;

16 (D) If a Rental Housing Project is converting to an Ownership Housing Project,
17 the amount of Affordable Housing Fee or number of On-Site Units complies with Section 415.6(a)(7);

18 (E) For projects that chose to provide On-site or Off-site units and seek a
19 modification of the conditions of approval to pay the Affordable Housing Fee prior to the issuance of
20 the first construction permit, the project sponsor shall pay the Affordable Housing Fee equivalent to the
21 loss of On-site or Off-site Affordable Housing units that were approved in the original conditions of
22 approval; and

23 (F) For projects that chose to provide On-site or Off-site units and seek a
24 modification of the conditions of approval to pay the Affordable Housing Fee after the issuance of the
25 first construction document, the project sponsor or its successor shall pay the Affordable Housing Fee

1 equivalent to the loss of On-site or Off-site Affordable Housing units that were approved in the original
2 conditions of approval, plus interest and any applicable penalties provided for under this Code.

3
4 **SEC. 415.6. ON-SITE AFFORDABLE HOUSING ALTERNATIVE.**

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

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

8 * * * *

9 (2) For any Ownership Housing Project ~~housing development project~~ consisting of
10 25 or more units ~~Owned Units~~, the number of Affordable Units ~~affordable units~~ constructed on-site
11 shall generally be 20% of all units constructed on the project site. A minimum of 10% of the
12 units shall be affordable to low-income households, 5% of the units shall be affordable to
13 moderate-income households, and 5% of the units shall be affordable to middle-income
14 households. In no case shall the total number of Affordable Units ~~affordable units~~ required
15 exceed the number required as determined by the application of the applicable on-site
16 requirement rate to the total project units. Owned Units for low-income households shall have
17 an affordable purchase price set at 80% of Area Median Income or less, with households
18 earning up to 100% of Area Median Income eligible to apply for low-income units. Owned
19 Units for moderate-income households shall have an affordable purchase price set at 105% of
20 Area Median Income or less, with households earning from 95% to 120% of Area Median
21 Income eligible to apply for moderate-income units. Owned Units for middle-income
22 households shall have an affordable purchase price set at 130% of Area Median Income or
23 less, with households earning from 120% to 150% of Area Median Income eligible to apply for
24 middle-income units. For any Affordable Units ~~affordable units~~ with purchase prices set at
25 130% of Area Median Income, the units shall have a minimum occupancy of two persons.

1 This unit requirement shall be outlined within the Mayor's Office of Housing Preferences and
2 Lottery Procedures Manual no later than February 26, 2018. ~~6 months following the effective date~~
3 ~~of the Ordinance contained in Board of Supervisors File No. 161351~~. MOHCD may reduce Area
4 Median Income pricing and the minimum income required for eligibility in each ownership
5 category.

6 (3) For any Rental Housing Project consisting of 25 or more units ~~Rental Units~~,
7 the number of Affordable Units ~~affordable units~~ constructed on-site shall generally be 18% of all
8 units constructed on the project site, with a minimum of 10% of the units affordable to low-
9 income households, 4% of the units affordable to moderate-income households, and 4% of
10 the units affordable to middle-income households. In no case shall the total number of
11 Affordable Units ~~affordable units~~ required exceed the number required as determined by the
12 application of the applicable on-site requirement rate to the total project units. Rental Units for
13 low-income households shall have an affordable rent set at 55% of Area Median Income or
14 less, with households earning up to 65% of Area Median Income eligible to apply for low-
15 income units. Rental Units for moderate-income households shall have an affordable rent set
16 at 80% of Area Median Income or less, with households earning from 65% to 90% of Area
17 Median Income eligible to apply for moderate-income units. Rental Units for middle-income
18 households shall have an affordable rent set at 110% of Area Median Income or less, with
19 households earning from 90% to 130% of Area Median Income eligible to apply for middle-
20 income units. For any Affordable Units ~~affordable units~~ with rental rates set at 110% of Area
21 Median Income, the units shall have a minimum occupancy of two persons. This unit
22 requirement shall be outlined within the Mayor's Office of Housing Preferences and Lottery
23 Procedures Manual no later than February 26, 2018. ~~6 months following the effective date of the~~
24 ~~Ordinance contained in Board of Supervisors File No. 161351~~. MOHCD may reduce Area Median
25 Income pricing and the minimum income required for eligibility in each rental category.

1 * * * *

2 (5) Starting on January 1, 2018, and no later than January 1 of each year
3 thereafter, MOHCD shall increase the percentage of units required on-site for projects
4 consisting of 10 - 24 units, as set forth in Section 415.6(a)(1), by increments of 0.5% each
5 year, until such requirement is 15%. For all development projects with 25 or more units Owned
6 ~~or Rental Units~~, the required on-site affordable ownership housing to satisfy this Section 415.6
7 shall increase by 1.0% annually for two consecutive years starting January 1, 2018. The
8 increase shall be apportioned to units affordable to low-income households, as defined above
9 in subsection 415.6(a)(3). Starting January 1, 2020, the increase to on-site ~~rental and~~
10 ~~ownership housing~~ developments with 25 or more units shall increase by 0.5% annually, with
11 such increases allocated equally ~~for rental and ownership units~~ to moderate and middle income
12 households, as defined above in subsection 415.6(a)(3). The total on-site inclusionary
13 affordable housing requirement shall not exceed 26% for Ownership Housing Projects
14 ~~development projects consisting of Owned Units~~ or 24% for Rental Housing Projects ~~development~~
15 ~~projects consisting of Rental Units~~, and the increases shall cease at such time as these limits are
16 reached. MOHCD shall provide the Planning Department, DBI, and the Controller with
17 information on the adjustment to the on-site percentage so that it can be included in the
18 Planning Department's and DBI's website notice of the fee adjustments and the Controller's
19 Citywide Development Fee and Development Impact Requirements Report described in
20 Section 409(a).

21 (6) The Department shall require as a condition of Department approval of a
22 project's building permit, or as a condition of approval of a Conditional Use Authorization or
23 Planned Unit Development or as a condition of Department approval of a live/work project,
24 that 12%, 18%, or 20%, as applicable, or such percentage that has been adjusted annually by
25 MOHCD, of all units constructed on the project site shall be Affordable to Qualifying Households

1 ~~affordable to qualifying households~~ so that a project sponsor must construct .12, .18, or .20
2 times, or such current number as adjusted annually by MOHCD, as applicable, the total
3 number of units produced in the ~~principal project~~Principal Project. If the total number of units is
4 not a whole number, the project sponsor shall round up to the nearest whole number for any
5 portion of .5 or above. In no case shall the total number of Affordable Units ~~affordable units~~
6 required exceed the number required as determined by the application of the applicable on-
7 site requirement rate to the total project units.

8 (7) A project seeking to convert from a Rental Housing Project to an Ownership
9 Housing Project, or from an Ownership Housing Project to a Rental Housing Project, shall require
10 public notice for a hearing and approval from the Planning Commission to amend the conditions of
11 approval for the Principal Project.

12 (7) (8) In the event that a Rental Housing Project converts to an Ownership Housing
13 Project, one or more of the Rental Units in the principal Rental Housing Project become ownership
14 units, for each converted Rental Unit, or for the principal Rental Housing Project in its entirety, as
15 applicable, the project sponsor shall either (A) reimburse the City the proportional amount of
16 the inclusionary affordable housing fee, which would be equivalent to the then-current
17 inclusionary affordable fee requirement for ~~Owned Units~~ Ownership Housing Projects, or (B)
18 provide additional on-site or off-site Affordable Units ~~affordable units~~ equivalent to the then-
19 current inclusionary requirements for ~~Owned Units~~ Ownership Housing Projects, apportioned
20 among the required number of units at various income levels in compliance with the
21 requirements in effect at the time of conversion.

22 (9) Notwithstanding subsection 415.6(a)(10) below, Affordable Units in Rental Housing
23 Projects shall be Rental Units, and Affordable Units in Ownership Housing Projects shall be Owned
24 Units. In the event an Ownership Housing Project converts to a Rental Housing Project, or more than
25 50% of the total units in the Principal Project operate as a Rental Housing Project, on-site Affordable

1 Units shall be offered as Rental Units. Affordable Units may only be sold as Owned Units if more than
2 50% of the units in the building shall be sold to unaffiliated third-party homebuyers and are operated
3 as an Ownership Housing Project.

4 (10) A development project consisting of multiple buildings may include both a Rental
5 Housing Project and an Ownership Housing Project with written notice to the Department and
6 MOHCD, at least 30 days prior to approval of the project by the Planning Commission or the Planning
7 Department.

8 **(§11) Specific Geographic Areas.** For any housing development that is
9 located in an area with a specific affordable housing requirement set forth in a Special Use
10 District or in any other section of the Code such as Section 419, the higher housing
11 requirement shall apply. The Planning Department, in consultation with the Controller, shall
12 undertake a study of areas greater than five acres in size, where an Area Plan, Special Use
13 District, or other re-zoning is being considered for adoption or has been adopted after January
14 1, 2015, to determine whether a higher on-site inclusionary affordable housing requirement is
15 feasible on sites that have received a 20% or greater increase in developable residential
16 gross floor area or a 35% or greater increase in residential density over prior zoning, and shall
17 submit such information to the Planning Commission and Board of Supervisors.

18 ~~(9)~~(12) If the ~~principal project~~ Principal Project has resulted in demolition,
19 conversion, or removal of affordable housing units that are subject to a recorded covenant,
20 ordinance, or law that restricts rents to levels affordable to persons and families of moderate-,
21 low- or very-low-income, or housing that is subject to any form of rent or price control through
22 a public entity's valid exercise of its police power and determined to be affordable housing, the
23 Commission or the Department shall require that the project sponsor replace the number of
24 Affordable Units ~~affordable units~~ removed with units of a comparable number of bedrooms and
25 sales prices or rents, in addition to compliance with the requirements set forth in this Section.

1 (~~1013~~) The applicable amount of the percentage required for the on-site housing
2 units shall be determined based upon the date that the project sponsor has submitted a
3 complete Environmental Evaluation application. Any development project that constructs on-
4 site affordable housing units as set forth in this Section 415.6 shall diligently pursue
5 completion of such units. In the event the project sponsor does not procure a building permit
6 or site permit for construction of the ~~principal project~~ Principal Project within 30 months of the
7 project's approval, the development project shall comply with the inclusionary affordable
8 housing requirements applicable thereafter at the time when the project sponsor procures a
9 building permit. Such deadline shall be extended in the event of any litigation seeking to
10 invalidate the City's approval of such project, for the duration of the litigation.

11 * * * *

12 (e) Timing of Construction. On-site affordable housing required by this Section 415.6
13 shall be constructed, completed, ready for occupancy, and marketed no later than the market
14 rate units in the ~~principal project~~ Principal Project. A project shall not receive its first certificate of
15 occupancy until MOHCD has approved the marketing plan.

16 (f) **Type of Housing.**

17 (1) **Equivalency of Units.** In general, Affordable Units ~~affordable units~~
18 constructed under this Section 415.6 shall be comparable in number of bedrooms, exterior
19 appearance, and overall quality of construction to market rate units in the ~~principal project~~
20 Principal Project. A Notice of Special Restrictions shall be recorded prior to issuance of the
21 ~~first construction document~~ architectural addendum to the Site Permit for the project or building
22 permit for the project, whichever is earlier and shall specify the number, location, and sizes for all
23 Affordable Units ~~affordable units~~ required under this subsection (f). The Affordable Units
24 ~~affordable units~~ shall be evenly distributed throughout the building. For buildings over 120 feet
25 in height, as measured under the requirements set forth in the Planning Code, the Affordable

1 Units ~~affordable units~~ may be distributed throughout the lower 2/3 of the building, as measured
 2 by the number of residential floors. The interior features in Affordable Units ~~affordable units~~
 3 should be generally the same as those of the market rate units in the ~~principal project~~ Principal
 4 Project, but need not be the same make, model or type of such item as long as they are of
 5 good and new quality and are consistent with then-current standards for new housing. Where
 6 applicable, parking shall be offered to the Affordable Units ~~affordable units~~ subject to the terms
 7 and conditions of the Department’s policy on unbundled parking for affordable housing units
 8 as specified in the Procedures Manual and amended from time to time.

9 (2) **Minimum Size of Affordable Units.** The Affordable Units ~~affordable units~~ are
 10 not required to be the same size as the market rate units. For buildings over 120 feet in
 11 height, as measured under the requirements set forth in the Planning Code, the average size
 12 of the unit type may be calculated for the lower 2/3 of the building, as measured by the
 13 number of residential floors. All units shall be no smaller than the minimum unit sizes set forth
 14 by the California Tax Credit Allocation Committee as of May 16, 2017 as indicated in the table
 15 below, and no smaller than 300 square feet for studios.

<u>Unit Type</u>	<u>Minimum Unit Size (in gross square feet)</u>
<u>One-bedroom</u>	<u>450</u>
<u>Two-bedroom</u>	<u>700</u>
<u>Three-bedroom</u>	<u>900</u>
<u>Four-bedroom</u>	<u>1,000</u>

22
 23 The total residential floor area devoted to the affordable units shall not be less than the
 24 applicable percentage applied to the total residential floor area of the ~~principal project~~ Principal
 25 Project, provided that a 10% variation in floor area is permitted.

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

18 (1) The Notice of Special Restrictions ("NSR") required pursuant to Section 415.6 shall
19 be completed and recorded by the project sponsor no later than the issuance of the architectural
20 addendum for the site permit and at least 12 months prior to the first certificate of occupancy.

21 (2) The project sponsor shall submit a request for a pricing determination from
22 MOHCD at least 8 months prior to issuance of a first certificate of occupancy.

23 (3) After the project has been approved by the Planning Commission or Department,
24 the project sponsor must submit an update to the Department and MOHCD which includes an
25 estimated timeline for the construction of the project. The estimated construction timeline must assume

1 the requirements of subsections (1) and (2) above. Failure to finalize the NSR or initiate marketing
2 within the time frames set forth in this Section 415.6(g), or to submit an estimated construction timeline
3 will be deemed a violation of the Planning Code subject to enforcement and penalties.

4 (12) **Lottery.** At the initial offering of ~~affordable units~~ Affordable Units in a housing
5 project and when ~~ownership units~~ Affordable Units become available for re-sale or re-rent in any
6 housing project subject to this Program after the initial offering, MOHCD must require the use
7 of a public lottery approved by MOHCD to select purchasers or tenants.

8 (23) **Preferences.** MOHCD shall create a lottery system that gives preference
9 according to the provisions of Administrative Code Chapter 47. MOHCD shall propose policies
10 and procedures for implementing these preferences to the Planning Commission for inclusion
11 as an addendum to the Procedures Manual. Otherwise, it is the policy of the City to treat all
12 households equally in allocating affordable units under this Program.

13 * * * *

14
15 **SEC. 415.7. OFF-SITE AFFORDABLE HOUSING ALTERNATIVE.**

16 If the project sponsor elects pursuant to Section 415.5(g) to provide off-site units to
17 satisfy the requirements of Sections 415.1 et seq., the project sponsor shall notify the
18 Planning Department and ~~MOHCD the Mayor's Office of Housing and Community Development~~
19 ~~(“MOHCD”)~~ of its intent ~~as early as possible prior to approval of the project by the Planning~~
20 ~~Commission or Department.~~ The Planning Department and MOHCD shall provide an evaluation
21 of the project's compliance with this Section 415.7 prior to approval by the Planning
22 Commission or Planning Department. The development project shall meet the following
23 requirements:

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

25 * * * *

1 (2) For housing development projects consisting of 10 ~~dwelling~~ units or more but
2 less than 25 units, the number of Affordable Units ~~affordable-units~~ constructed off-site shall be
3 20%, so that a project applicant shall construct .20 times the total number of units produced in
4 the ~~principal project~~ Principal Project. If the total number of units is not a whole number, the
5 project applicant shall round up to the nearest whole number for any portion of .5 or above. In
6 no case shall the total number of Affordable Units ~~affordable-units~~ required exceed the number
7 required as determined by the application of the applicable off-site requirement rate to the
8 total project units. Owned Units shall be affordable to households earning up to 100% of Area
9 Median Income, with an affordable sales price set at 80% of Area Median Income or less.
10 Rental Units shall be affordable to households earning up to 65% of Area Median Income,
11 with an affordable rent set at 55% of Area Median Income or less.

12 (3) For any Ownership Housing Project ~~housing development project~~ consisting of
13 25 or more units ~~Owned Units~~, the number of Affordable Units ~~affordable-units~~ constructed off-site
14 shall be 33% of all units constructed on the project site, with a minimum of 18% of the units
15 affordable to low-income households, 8% of the units affordable to moderate-income
16 households, and 7% of the units affordable to middle income households. In no case shall the
17 total number of Affordable Units ~~affordable-units~~ required exceed the number required as
18 determined by the application of the applicable off-site requirement rate to the total project
19 units. Owned Units for low-income households shall have an affordable purchase price set at
20 80% of Area Median Income or less, with households earning up to 100% of Area Median
21 Income eligible to apply for low-income units. Owned Units for moderate-income households
22 shall have an affordable purchase price set at 105% of Area Median Income or less, with
23 households earning from 95% to 120% of Area Median Income eligible to apply for moderate-
24 income units. Owned Units for middle-income households shall have an affordable purchase
25 price set at 130% of Area Median Income or less, with households earning from 120% to

1 150% of Area Median Income eligible to apply for middle-income units. For any Affordable
2 Units ~~affordable units~~ with purchase prices set at 100% of Area Median Income or above, the
3 units shall have a minimum occupancy of two persons. This unit requirement shall be outlined
4 within the Mayor’s Office of Housing Preferences and Lottery Procedures Manual no later
5 than February 26, 2018. ~~6 months following the effective date of the Ordinance contained in Board of~~
6 ~~Supervisors File No. 161351~~. MOHCD may reduce Area Median Income pricing and the
7 minimum income required for eligibility in each rental category.

8 * * * *

9 (5) In the event that a Rental Housing project converts to an Ownership
10 Housing project one or more of the Rental Units in the principal Rental Housing Project become
11 ownership units, for each Rental Unit or for the principal Rental Housing Project in its entirety, as
12 applicable, the Project Sponsor shall either (A) reimburse the City the proportional amount of
13 the Inclusionary Affordable Housing Fee, which would be equivalent to the then-current
14 Inclusionary Affordable Housing Fee requirement for Ownership Housing Projects Owned Units,
15 or (B) provide additional on-site or off-site Affordable Units ~~affordable units~~ equivalent to the
16 then-current inclusionary requirements for Ownership Housing Projects Owned Units,
17 apportioned among the required number of units at various income levels in compliance with
18 the requirements in effect at the time of conversion.

19 * * * *

20 (e) **Marketing the Units:** The Project Sponsor shall submit a proposed marketing plan to
21 MOHCD to begin marketing the Affordable Units at least six months prior to the beginning of
22 marketing for any unit in the Principal Project. MOHCD shall approve the marketing plan for the
23 Affordable Units prior to the Project Sponsor marketing any unit in the Principal Project. Failure to
24 comply shall be deemed a violation of the Planning Code subject to enforcement and penalties as set
25 forth in Section 415.9. MOHCD shall be responsible for overseeing and monitoring the

1 marketing of Affordable Units ~~affordable-units~~ under this Section 415.7. In general, the
2 marketing requirements and procedures shall be contained in the Procedures Manual as
3 amended from time to time and shall apply to the Affordable Units ~~affordable-units~~ in the project.
4 MOHCD may develop occupancy standards for units of different bedroom sizes in the
5 Procedures Manual in order to promote an efficient allocation of Affordable Units ~~affordable~~
6 ~~units~~. MOHCD may require in the Procedures Manual that prospective purchasers complete
7 homebuyer education training or fulfill other requirements. MOHCD shall develop a list of
8 minimum qualifications for marketing firms that market Affordable Units ~~affordable-units~~ under
9 Section 415.1 *et seq.*, referred to in the Procedures Manual as Below Market Rate (BMR
10 units). No project sponsor marketing units under the Program shall be able to market BMR
11 units except through a firm meeting all of the minimum qualifications. The Notice of Special
12 Restrictions or conditions of approval shall specify that the marketing requirements and
13 procedures contained in the Procedures Manual as amended from time to time, shall apply to
14 the Affordable Units ~~affordable-units~~ in the project.

15 (1) **Lottery:** At the initial offering of affordable units in a housing project
16 and when Affordable Units ~~ownership-units~~ become available for resale or re-lease in any
17 housing project subject to this Program after the initial offering, MOHCD must require the use
18 of a public lottery approved by MOHCD to select purchasers or tenants.

19 * * * *

20
21 **SEC. 415.8. DURATION AND MONITORING OF AFFORDABILITY.**

22 (a) For any units permitted under the Program:
23 (1) All units constructed pursuant to Sections 415.6 (~~on-site-alternative~~ On-site
24 Alternative) and 415.7 (~~off-site-alternative~~ Off-site Alternative) must be owner-occupied, as
25

1 defined in the Procedures Manual, in the case of Owned Units ~~ownership units~~ or occupied by
2 qualified households in the case of Rental Units ~~rental units~~.

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

5 (3) All units constructed pursuant to Sections 415.6 and 415.7 must remain
6 Affordable to Qualifying Households ~~affordable to qualifying households~~ for the life of the project.

7 (4) The income levels specified in the Notice of Special Restrictions and/or
8 conditions of approval for the project shall be the required income percentages for the life of
9 the project. Notwithstanding the foregoing, if approved by MOHCD and as provided in the
10 Procedures Manual, an exception to the required income percentage may be made in the
11 following cases:

12 (A) a rental unit that converts to an Owned Unit ~~ownership unit~~, up to a
13 maximum of 120% of AMI;

14 (B) where there is an existing tenant, the household income may
15 increase by up to 200% of the levels specified in the Notice of Special Restrictions or
16 conditions of approval;

17 (C) new Owned Units ~~ownership units~~ where the project sponsor has used
18 good faith efforts to secure a contract with a qualified buyer but is unable to secure such a
19 contract in a timely manner from the initiation of marketing;

20 (D) resale Owned Units ~~ownership units~~ where the owner has used good
21 faith efforts to secure a contract with a qualified buyer but is unable to secure a buyer contract
22 at a maximum resale price specified by MOH in a timely manner; or

23 (E) the qualifying income level for new Owned Units ~~ownership units~~ may
24 be set at 10% above the income level stated in the Notice of Special Restrictions or conditions
25 of approval.

1 * * * *

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

4 (1) ~~establish~~ Establish and implement a process for reselling an affordable unit in
5 the Procedures Manual;

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

8 (3) ~~provide~~ Provide that owners must comply with refinancing procedures and
9 limitations as published in the Procedures Manual.

10 (4) ~~provide~~ Provide that, in order to retain all units restricted as affordable under
11 this Program within the City's affordable housing stock, the specific procedures for passing an
12 affordable unit through inheritance are contained in the Procedures Manual. All transfers
13 through inheritance must be reviewed and approved by MOHCD and, in all cases, the heir
14 must acknowledge and agree to the provisions of the Program. The following households may
15 inherit the ability to occupy a unit restricted under this Program: (1) a spouse or registered
16 domestic partner, regardless of income; or (2) a child of the owner if the child is a qualifying
17 household for the unit. If the heir qualifies under one of these categories, the heir must occupy
18 the unit or the heir must market and sell the unit at the restricted price through a public lottery
19 process and retain the proceeds from the sale. If the heir does not qualify to occupy the unit,
20 the heir must market and sell the unit at the restricted price to a qualified buyer through a
21 public lottery process. The heir would retain the proceeds of such sale.

22 (5) Require that affordable Rental Units ~~rental units~~ permitted by the Commission
23 to be converted to Owned Units ~~ownership units~~ must satisfy the requirements of the
24 Procedures Manual, as amended from time to time, including that the units shall be sold at
25 restricted sales prices to households meeting the income qualifications specified in the Notice

1 of Special Restrictions or conditions of approval, with a right of first refusal for the occupant(s)
2 of such units at the time of conversion. If the current tenant qualifies for and purchases the
3 unit, the unit shall be sold at a sales price corresponding to the affordability level required for
4 rental units or to the affordability level for the specific tenant household, whichever is higher,
5 with a maximum allowable qualifying income level up to 120% of AMI. If the unit is sold to
6 anyone else, the sales price shall correspond to the affordability level required for Owned Units
7 ~~ownership units~~. Upon conversion to ownership, the units are subject to the resale and other
8 restrictions of this Program for the life of the project, as defined in the Notice of Special
9 Restrictions or conditions of approval for the Project.

10 (6) For Owned Units ~~ownership units~~ approved pursuant to Sections 415.6 or
11 415.7, the Notice of Special Restrictions or conditions of approval will include provisions
12 restricting resale prices and purchaser income levels according to the formula specified in the
13 Procedures Manual, as amended from time to time. In the case that subordination of the
14 Affordability Conditions contained in a recorded Notice of Special Restrictions may be
15 necessary to ensure the Project Applicant's receipt of adequate construction and/or
16 permanent financing for the project, or to enable first time home buyers to qualify for
17 mortgages, the project applicant may follow the procedures for subordination of affordability
18 restrictions as described in the ~~principal project's~~ Principal Project's conditions of approval or in
19 the Procedures Manual. A release following foreclosure or other transfer in lieu of foreclosure
20 may be authorized if required as a condition to financing pursuant to the procedures set forth
21 in the Procedures Manual.

22 (7) Purchasers of Affordable Units ~~affordable units~~ shall secure the obligations
23 contained in the Notice of Special Restrictions or conditions of approval by executing and
24 delivering to the City a promissory note secured by a deed of trust encumbering the applicable
25

1 affordable unit as described in the Procedures Manual or by an alternative means if so
2 provided for in the Procedures Manual, as amended from time to time.

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

12 (A) **Waiver of Re-Sale Requirements and Maximum Qualifying**
13 **Income Level for New Buyers of Resale BMR Units.** The Board recognizes that the risk to
14 low and moderate income homeowners during times of economic downturn can increase the
15 risk of default and foreclosure of units restricted under this Program. The Board directs
16 MOHCD to study ways to reduce such risks in the below market rate unit context and, if it
17 deems appropriate, to make recommendations to the Planning Commission to amend the
18 Procedures Manual to allow MOHCD discretion, in certain limited circumstances, to waive
19 requirements for owners of Affordable Units ~~affordable units~~ who have used good faith efforts to
20 secure a contract with a qualified buyer but are unable to resell their unit in a timely manner.
21 Such amendments to the Procedures Manual may include, but are not limited to, authorizing
22 MOHCD to make one or more allowances for owners of Affordable Units ~~affordable units~~ unable
23 to resell such as: (1) a one-time waiver of the first-time homebuyer rule for the purchasing
24 household; (2) a one-time waiver of qualifying household size requirements for the purchasing
25 household; (3) and a one-time waiver of owner occupancy rules to allow a temporary rental;

1 (4) a one-time modification of the asset test for the new buyer household and (5) allowing
2 MOHCD discretion to increase the qualifying income level for the unit by up to 20% above the
3 maximum income limit currently allowed by the Use Restrictions for the Unit but at no time
4 higher than 120% of AMI. MOHCD and the Commission shall set forth criteria for granting
5 such allowances such as establishing a minimum time that the units must have been
6 advertised by MOHCD without selling; establishing criteria related to unusual economic or
7 personal circumstances of the owner; providing a maximum percentage for the increase
8 above the maximum income limit currently allowed; providing that the increase may only be
9 granted on a one-time basis; and requiring the owner to clearly establish that the BMR unit is
10 being resold at the original purchase price plus the current repricing mechanism under the
11 Program which calculates the percentage change in AMI from the time of purchase to resale
12 plus the commission and any eligible capital improvements or special assessments.

13 (B) **Waiver of Maximum Qualifying Income Level For New Buyers of**
14 **Initial Sale BMR Units.** The Board of Supervisors recognizes that the current Program
15 provides that the income of a new buyer of a below market rate household cannot exceed the
16 maximum income stated in the Planning Approval or Notice of Special Restrictions for the
17 BMR Unit. Due to ~~a~~ less desirable developments or geographic areas, a Project Sponsor is
18 sometimes unable to find a buyer for a BMR Unit within the maximum income stated in the
19 Planning Approval or Notice of Special Restrictions for the Unit. This situation makes it
20 difficult, if not impossible, for certain current owners of below market rate units to sell their
21 units. In order to minimize this situation, the Board of Supervisors directs ~~MOHCD the Mayor's~~
22 ~~Office of Housing~~ to study ways to address this issue and, if it deems appropriate, to make
23 recommendations to the Planning Commission to amend the Procedures Manual to allow
24 MOHCD to assist Project Sponsors who have used good faith efforts to secure a contract with
25 a qualified buyer but who are unable to secure such a contract in a timely manner from the

1 initiation of marketing. Such amendments may include allowing MOHCD discretion to increase
2 the qualifying income level for the unit by up to 20% above the maximum income limit
3 currently allowed by the Use Restrictions for the Unit but at no time higher than 120% of AMI.
4 MOHCD and the Planning Commission shall establish limits to this or a similar proposal such
5 as: providing a maximum percentage for the increase above the maximum income limit
6 currently allowed; requiring that a certain period without securing a buyer would pass before
7 such an allowance would be made; providing that the increase may only be granted on a one-
8 time basis.

9 (c) For any units permitted to be Rental Units ~~rental units~~ under the Program, MOHCD
10 shall establish:

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

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

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

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

19 (5) criteria for granting affordable rental households the right of first refusal in
20 purchasing an ~~affordable unit~~ Affordable Unit that is converted from a Rental Unit to an Owned
21 Unit ~~rental to ownership~~ and propose such restrictions to the Commission for inclusion in the
22 Procedures Manual.

23 (6) that at no time shall an annual increase exceed the actual allowable
24 increase for that year. In cases where the rent has decreased, the tenant's rent must be
25 decreased. In cases where the annual adjustments have not been applied year to year, the

1 Project Owner may not take advantage of any increases that were not applied until the Unit is
2 vacant and re-rented.

3
4 **SEC. 415.9. ENFORCEMENT PROVISIONS AND MONITORING OF PROGRAM.**

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

8 (b) If, after issuance of the first Certificate of Occupancy, the Commission or
9 Department determines that a project sponsor has failed to comply with any requirement in
10 Section 415.1 et seq. or any reporting requirements detailed in the Procedures Manual, or has
11 violated the Notice of Special Restrictions, the Commission, Department, or DBI may, until the
12 violation is cured, (a) revoke the Certificate of Occupancy for the ~~principal project~~ Principal
13 Project or required Affordable Units ~~affordable-units~~, (b) impose a penalty on the project
14 pursuant to Section 176(c) of this Code, and/or (c) the Zoning Administrator may enforce the
15 provisions of Section 415.1 et seq. through any means provided for in Section 176 of this
16 Code.

17 (c) The Department shall notify MOHCD of any housing project subject to the
18 requirements of Section 415.1 et seq., including the name of the project sponsor and the
19 number and location of the Affordable Units ~~affordable-units~~, within 30 days of the Department's
20 approval of a building, or site permit for the project. MOHCD shall provide all project sponsors
21 with information concerning the City's first-time home-buyer assistance programs and any
22 other related programs MOHCD shall deem relevant to the Inclusionary Affordable Housing
23 Program.

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

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

8 (2) The number of, location of, and project sponsor for, housing projects which
9 applied for a waiver, adjustment, or reduction from the requirements of Section 415.1 et ~~seq.~~
10 seq. pursuant to Section 406 of this Article, and the number of, location of, and project sponsor
11 for, housing projects which were granted such a waiver, adjustment, or reduction and, if a
12 reduction, to what percentage; and

13 (3) The number of, location of, and project sponsor for, every housing project to
14 which Section 415.1 et seq. applied and the number of market rate units and the number of
15 affordable on- and off-site units provided, including the location of all of the affordable units;
16 and

17 (e) A study is authorized to be undertaken under the direction of MOHCD
18 approximately every five years to update the requirements of Section 415.1 et seq. MOHCD
19 shall make recommendations to the Board of Supervisors and the Commission regarding any
20 legislative changes. MOHCD shall specifically evaluate the different inclusionary housing
21 requirements for developments of over 120 feet approximately five years from the enactment
22 of the requirement or as deemed appropriate by MOHCD. MOHCD shall coordinate this report
23 with the five-year evaluation by the Director of Planning required by Section 410 of this Article.

24 (f) **Annual or Bi-annual Monitoring**;
25

1 (1) MOHCD shall monitor and require occupancy certification for Owned Units
2 and Rental Units ~~affordable ownership and rental units~~ on an annual or bi-annual basis, as
3 outlined in the Procedures Manual.

4 (2) MOHCD may require the owner of ~~an~~ a Rental Unit, ~~affordable rental unit~~, the
5 owner's designated representative, or the tenant in an affordable unit to verify the income
6 levels of the tenant on an annual or bi-annual basis, as outlined in the Procedures Manual.

7
8 **SEC. 415.10. REPORTING TO BOARD OF SUPERVISORS.**

9 * * * *

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

23 * * * *

24 (d) **Report to Board of Supervisors.** The Board of Supervisors may review the
25 feasibility analyses, as well as the periodic updates to the City's Nexus Study evaluating the

1 necessary affordable housing in order to mitigate the impacts of market rate housing. The
2 Board of Supervisors will review the feasibility analyses within three months of completion and
3 may consider legislative amendments to the City's Inclusionary Housing in-lieu fees, ~~on-site~~
4 ~~On-site or, off-site~~ Off-site ~~or other alternatives~~ Alternatives, and in so doing will seek consultation
5 from the Planning Commission, adjusting levels of inclusionary or affordable housing
6 obligations and income levels up to maximums as defined in Section 415.2, based on the
7 feasibility analyses, with the objective of maximizing affordable Inclusionary Housing in market
8 rate housing production, and with guidance from the City's Nexus Study. Any adjustment in
9 income levels shall be adjusted commensurate with the percentage of units required so that
10 the obligation for inclusionary housing is not reduced by any change in income levels. The
11 Board of Supervisors may also utilize the Nexus Study in considering legislative amendments
12 to the Inclusionary Housing requirements. Updates to the City's Inclusionary Housing
13 requirements shall address affordable housing fees, ~~on-site~~ On-site affordable housing and ~~off-~~
14 ~~site~~ Off-site affordable housing, as well as the provision of affordable housing available to low-
15 income households at or below 55% of Area Median Income for Rental Units ~~rental units~~ and up
16 to 80% of Area Median Income for Owned Units ~~ownership units~~, and moderate/middle-income
17 households from 80% to 120% of Area Median Income.

18 **SEC. 416. MARKET AND OCTAVIA AREA PLAN AND UPPER MARKET**
19 **NEIGHBORHOOD COMMERCIAL DISTRICT AFFORDABLE HOUSING FEE.**

20 Sections 416.1 through 416.5, hereafter referred to as Section 416.1 et seq., set forth
21 the requirements and procedures for the Market and Octavia Area Plan and Upper Market
22 Neighborhood Commercial District Affordable Housing Fee. The effective date of these
23 requirements shall be either May 30, 2008, which is the date that the requirements originally
24 became effective, or the date a subsequent modification, if any, became effective.

25 **SEC. 416.3. APPLICATION OF AFFORDABLE HOUSING FEE REQUIREMENT.**

1 * * * *

2 (b) Other Fee Provisions. This additional affordable housing fee shall be subject to the
3 inflation adjustment provisions of Section 409 and the waiver and reduction provisions of
4 Section 406. This additional affordable housing fee may not be met through the in-kind
5 provision of community improvements or Community Facilities (Mello Roos) financing options
6 of Sections 421.3(d) and (e). Pursuant to Section 249.33, in the Van Ness & Market
7 Residential Special Use District this fee may be paid in any of the ~~alternatives~~ Alternatives set
8 forth in Section 415.5(g).

9
10 **SEC. 416.5. USE OF FUNDS.**

11 The additional affordable housing requirement specified in this Section 416.5 for the
12 Market and Octavia Plan Area and the Upper Market NCT District shall be paid into the
13 Citywide Affordable Housing Fund, established in Administrative Code Section 10.100-49, but
14 the funds shall be separately accounted for. MOHCD shall expend the funds according to the
15 following priorities: First, to increase the supply of housing ~~affordable to qualifying households~~
16 Affordable to Qualifying Households in the Market and Octavia Plan Area and the Upper Market
17 NCT District; second, to increase the supply of housing ~~affordable to qualifying households~~
18 Affordable to Qualifying Households within ~~±~~ one mile of the boundaries of the Plan Area and the
19 Upper Market NCT District; third, to increase the supply of housing affordable to qualifying
20 households in the City and County of San Francisco. The funds may also be used for
21 monitoring and administrative expenses subject to the process described in Section 415.5(f).

22
23 **SEC. 417. EASTERN NEIGHBORHOODS AREA PLAN AFFORDABLE HOUSING**
24 **REQUIREMENT.**

1 Sections 417.1 through 417.5, hereafter referred to as Section 417.1 et seq., set forth
2 the requirements and procedures for the Eastern Neighborhoods Area Plan Alternate
3 Affordable Housing Fee. The effective date of these requirements shall be either January 19,
4 2009, which is the date that the requirements originally became effective, or the date a
5 subsequent modification, if any, became effective.

6 **SEC. 417.5. USE OF FUNDS.**

7 The Eastern Neighborhoods Area Plan Alternate Affordable Housing Fee shall be paid
8 into the Citywide Affordable Housing Fund, but the funds shall be separately accounted for.
9 MOH shall expend the funds according to the following priorities: First, to increase the supply
10 of housing ~~affordable to qualifying households~~ Affordable to Qualifying Households in the Eastern
11 Neighborhoods Project Areas; second, to increase the supply of housing ~~affordable to~~
12 ~~qualifying households~~ Affordable to Qualifying Households within ~~one~~ mile of the boundaries of
13 the Eastern Neighborhoods Project Areas; third, to increase the supply of housing ~~affordable to~~
14 ~~qualifying households~~ Affordable to Qualifying Households in the City and County of San
15 Francisco. The funds may also be used for monitoring and administrative expenses subject to
16 the process described in Section 415.5(e). All monies contributed pursuant to the Eastern
17 Neighborhoods Area Plan Alternate Affordable Housing Fee and collected within the Central
18 SoMa Special Use District shall be paid into the Citywide Affordable Housing Fund, but the
19 funds shall be separately accounted for. Such funds shall be expended within the area
20 bounded by Market Street, the Embarcadero, King Street, Division Street, and South Van
21 Ness Avenue.

22
23 **SEC. 419. HOUSING REQUIREMENTS FOR RESIDENTIAL DEVELOPMENT**
24 **PROJECTS IN THE UMU ZONING DISTRICTS OF THE EASTERN NEIGHBORHOODS**
25

1 **AND THE LAND DEDICATION ALTERNATIVE IN THE UMU DISTRICT, MISSION NCT**
2 **DISTRICT, AND CENTRAL SOMA SPECIAL USE DISTRICT.**

3 Sections 419.1 through 419.6, hereafter referred to as Section 419.1 et seq., set forth
4 the housing requirements for residential development projects in the UMU Zoning Districts of
5 the Eastern Neighborhoods and the Land Dedication Alternative in the UMU District, Mission
6 NCT District, and Central SoMa Special Use District. The effective date of these requirements
7 shall be either December 19, 2008, which is the date that the requirements originally became
8 effective, or the date a subsequent modification, if any, became effective.

9
10 **SEC. 419.1. FINDINGS.**

11 * * * *

12
13 **(c) Requirements for New Development To Contribute Towards Housing**

14 **Objectives.** A key policy goal of the Eastern Neighborhoods Plans is to provide a significant
15 amount of new housing affordable to low, moderate, and middle income families and
16 individuals, along with "complete neighborhoods" that provide appropriate amenities for these
17 new residents. The Plans obligate all new development within the Eastern Neighborhoods to
18 contribute towards these goals, by providing a contribution towards affordable housing needs
19 and by paying for a reasonable share of their impact on the neighborhood's infrastructure.
20 They further require new development in transitioning formerly industrial areas to contribute a
21 higher share towards the City's exponentially high affordability needs.

22 To address the full range of housing needs of all income categories, including low,
23 moderate, and middle income families and individuals, the Plans provide programs which
24 address all of these income levels, as follows:

1 (1) **Low**: Current housing programs funded by federal and State funds, private
2 equity raised through Low-Income Housing Tax Credits, and local funds such as inclusionary
3 in-lieu and Jobs-Housing Linkage fees and run by MOHCD and the San Francisco
4 Redevelopment Agency fund affordable housing primarily at very low and low income levels,
5 to households making below 80% of the area median income; but due to the low supply and
6 high costs of land in the City, are at a disadvantage for sites upon which to provide such
7 housing. An alternative to the city's Inclusionary Housing Program will allow developers to
8 dedicate sites for very low and low income level units.

9 * * * *

10
11 **SEC. 419.2. DEFINITIONS.**

12 (a) In addition to the definitions set forth in Section 401 of this Article:

13 ~~(1) "Rental Housing Project" shall mean a project consisting solely of rental housing~~
14 ~~units, as defined in Section 401 that meets the following requirements:~~

15 ~~(A) The units shall be rental housing for not less than 30 years from the issuance~~
16 ~~of the certificate of occupancy pursuant to an agreement between the developer and the City. This~~
17 ~~agreement shall be in accordance with applicable State law governing rental housing;~~

18 ~~(B) A Notice of Special Restrictions (NSR), with the City as a third party~~
19 ~~beneficiary and subject to written approval of the Director, shall be recorded on the title of the~~
20 ~~property prior to final map approval containing the terms of the agreement described above in~~
21 ~~subsection (1). Once the agreement is recorded against the property, the NSR shall terminate.~~

22 ~~(2) "Tier A."~~

23 (i) All development on sites within the UMU District which received a
24 height increase of eight feet or less, or received a reduction in height, as part of the Eastern
25 Neighborhoods Plan (on file with the Clerk of the Board of Supervisors in File No. 081154),

1 and all sites within the Mission NCT District utilizing the land dedication alternative specified in
2 Section 419.5(a)(2).

3 (ii) All changes of use within existing structures.

4 (~~32~~) "Tier B." All development on sites within the UMU District which received a
5 height increase of nine to 28 feet as part of the Eastern Neighborhoods Plan (on file with the
6 Clerk of the Board of Supervisors in File No. 081154).

7 (~~43~~) "Tier C." All development on sites within the UMU District which received a
8 height increase of 29 feet or more as part of the Eastern Neighborhoods Plan (on file with the
9 Clerk of the Board of Supervisors in file No. 081154).

10
11 **SEC. 419.4. IMPOSITION OF UMU AFFORDABLE HOUSING REQUIREMENTS.**

12 * * * *

13 (c) Sponsor's Choice to Fulfill Requirements. Prior to issuance of a building or site
14 permit for a development project subject to the requirements of Section 419.1 et seq., the
15 sponsor of the development project shall select one of the options described in Section 419.3
16 above or the ~~alternatives~~ Alternatives described in Section 419.5 below to fulfill the affordable
17 housing requirements and notify the Department of their choice.

18 * * * *

19
20 **SEC. 419.5. ALTERNATIVES TO THE INCLUSIONARY HOUSING COMPONENT.**

21 (a) **Alternatives to the Inclusionary Housing Component.** In addition to the
22 ~~alternatives~~ Alternatives specified in Section 415.5(9g) the project sponsor may elect to satisfy
23 the requirements of Section 415.5 by one of the ~~alternatives~~ Alternatives specified in this
24 Section. The project sponsor has the choice between the ~~alternatives~~ Alternatives and the
25 Planning Commission may not require a specific ~~alternative~~ Alternative. The project sponsor

1 must elect an ~~alternative~~ Alternative before it receives project approvals from the Planning
2 Commission or Planning Department and that ~~alternative~~ Alternative will be a condition of
3 project approval. The ~~alternatives~~ Alternatives are as follows:

4 (1) **Middle Income Alternative.** On sites with less than 50,000 square feet of
5 total developable area, applicants may provide units as affordable to qualifying "middle
6 income" households as follows:

7 (A) A minimum percent of the total units constructed shall be affordable
8 to and occupied affordable to qualifying "middle income" households upon initial sale,
9 according the schedule in Table 419.5. If the total number of units is not a whole number, the
10 project applicant shall round up to the nearest whole number for any portion of .5 or above.
11 Units shall be affordable to households between 120% ~~percent~~ and 150% ~~percent~~ of the San
12 Francisco Area Median Income, with an average affordability level of 135% ~~percent~~ for all units
13 provided through this Alternative ~~alternative~~.

14 (B) Where market rate sales prices exceed restricted sales prices, the
15 difference between the market rate sales prices and the restricted sales prices shall be held
16 by the ~~Mayor's Office of Housing~~ MOHCD as a silent second mortgage according to the
17 Procedures Manual. The City shall hold a deed of trust and promissory note for the second
18 mortgage. MOHCD shall hold this mortgage and shall release it when the original note and
19 proportional share of the appreciation are paid in full to the City.

20 (C) Units shall initially be sold at or below prices to be determined by
21 MOHCD in the Conditions of Approval or Notice of Special Restrictions according to the
22 formula specified in the Procedures Manual to make them affordable to middle income
23 households. Upon resale, the seller shall be permitted to sell the units at their market price.
24 The City will waive its right of first refusal to the seller when the promissory note and deed of
25

1 trust are paid, along with the City's share of the appreciation of the unit. The promissory note
2 shall accrue no interest and shall require no monthly payments.

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

10 (E) The City shall monitor units provided under this option during the 2-
11 and 5-year Monitoring Report specified in Section 342 of this Code and in separate resolution.
12 Should this monitoring report indicate that units constructed under this program do not meet
13 the programs *program's* stated goals of providing affordable housing to Middle Income
14 Households, the Planning Department and MOHCD shall consider changes to this program,
15 including, but not limited to, legislative changes.

16 (F) If the project sponsor elects to satisfy the requirements of Section
17 415.5 and of this Section by the Alternative ~~alternative~~ specified above, the dwelling unit mix
18 required by Section 207.6 may be waived provided the minimum percent of total units
19 affordable to qualifying "middle income" households as required by Table 419.5 is increased by
20 10%.

21 (2) **Land Dedication Alternative.** Applicants may dedicate a portion of the total
22 developable area of the principal site to the City and County of San Francisco for the purpose
23 of constructing units Affordable to Qualifying Households ~~affordable to qualifying households~~. A
24 minimum percentage of developable area, representing an equivalent percent of total
25 potential units to be constructed, shall be dedicated to the City according the schedule in

1 Table 419.5. To meet the requirements of this *Alternative alternative*, the developer must
2 convey title to land in fee simple absolute to MOHCD according to the Procedures Manual,
3 provided the dedicated site is deemed of equivalent or greater value to the principal site per
4 those procedures and is in line with the following requirements:

5 (A) The dedicated site will result in a total amount of inclusionary units not less
6 than ~~forty (40)~~ units. MOHCD may conditionally approve and accept dedicated sites which
7 result in no less than ~~twenty five (25)~~ units at its discretion.

8 (B) The dedicated site will result in a total amount of inclusionary units that is
9 equivalent or greater than the minimum percentage of the units that will be provided on the
10 principal site, as required by Table 419.5. MOHCD may also accept dedicated sites that
11 represent the equivalent of or greater than the required percentage of units for all units that
12 could be provided on a collective of sites within a one-mile radius, provided the total amount
13 of inclusionary units provided on the dedicated site is equivalent to or greater than the total
14 requirements for all principal sites participating in the collective, according to the requirements
15 of Table 419.5.

16 (C) The dedicated site is suitable from the perspective of size, configuration,
17 physical characteristics, physical and environmental constraints, access, location, adjacent
18 use, and other relevant planning criteria. The site must allow development of affordable
19 housing that is sound, safe, and acceptable.

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

22 (E) The developer must submit full environmental clearance for the dedicated
23 site before the land can be considered for conveyance, and before a first site or building
24 permit may be conferred upon the ~~principal project~~ *Principal Project*.

1 (F) The City may accept dedicated sites that vary from the minimum threshold,
2 provided such a dedication is deemed generally equivalent to the original requirement by the
3 *Mayor's Office of Housing* MOHCD.

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

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

10 (I) If the project sponsor elects to satisfy the requirements of Section 415.5 and
11 of this Section by the Alternative *alternative* specified above, the dwelling unit mix required by
12 Section 207.6 may be waived.

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

17 * * * *

18 **SEC. 419.6. LAND DEDICATION ALTERNATIVE IN THE MISSION NCT DISTRICT**
19 **AND CENTRAL SOMA SPECIAL USE DISTRICT.**

20 (a) Mission NCT District. The Land Dedication Alternative *alternative* is available for any
21 project within the Mission NCT District under the same terms and conditions as provided for in
22 Section 419.5(a)(2)(A)-(J).

23 (b) Central SoMa Special Use District. The Land Dedication Alternative *alternative* is
24 available for projects within the Central SoMa Special Use District under the same terms and
25 conditions as provided for in Section 419.5(a)(2), except that in lieu of the Land Dedication

1 Alternative requirements of Table 419.5, projects may satisfy the requirements of Section
2 415.5 by dedicating land for affordable housing if the dedicated site will result in a total
3 amount of dedicated Gross Floor Area that is equal to or greater than 45% of the potential
4 Gross Floor Area that could be provided on the principal site, as determined by the Planning
5 Department. Any dedicated land shall be within the area bounded by Market Street, the
6 Embarcadero, King Street, Division Street, and South Van Ness Avenue.

7 * * * *

8
9 **SEC. 424. VAN NESS AND MARKET AFFORDABLE HOUSING AND**
10 **NEIGHBORHOOD INFRASTRUCTURE FEE AND PROGRAM.**

11 Sections 424.1 through 424.5, hereafter referred to as Section 424.1 et seq., set forth
12 the requirements and procedures for the Van Ness and Market Affordable Housing and
13 Neighborhood Infrastructure Program. The effective date of these requirements shall be either
14 May 30, 2008, which is the date that the requirements original became effective, or the date a
15 subsequent modification, if any, became effective.

16
17 **SEC. 424.4. VAN NESS & MARKET RESIDENTIAL SPECIAL USE DISTRICT**
18 **AFFORDABLE HOUSING FUND.**

19 (a) That portion of gross floor area subject to the \$30.~~00~~ per gross square foot fee
20 referenced in Section 424.3(b)(1) above shall be deposited into the special fund maintained
21 by the Controller called the Citywide Affordable Housing Fund established by Section 413.9.
22 Except as specifically provided in this Section, collection, management, enforcement, and
23 expenditure of funds shall conform to the requirements related to in-lieu fees in Planning Code
24 Section 415.1 et seq., specifically including, but not limited to, the provisions of Section 415.7.

1 (b) Priorities for SUD Affordable Housing Fees Implementation. In order to increase
2 the supply of housing ~~affordable to qualifying households~~ Affordable to Qualifying Households in
3 the Market and Octavia Plan Area, the Upper Market NCT District, and to the City, the
4 following is the prioritization of the use of these fees;

5 (1) First, to increase the supply of housing ~~affordable to qualifying households in~~
6 Affordable to Qualifying Households in the Van Ness & Market Residential Special Use District;

7 (2) Second, to increase the supply of housing Affordable to Qualifying Households
8 ~~affordable to qualifying households~~ within one mile of the boundaries of the Market and Octavia
9 Area Plan;

10 (3) Third, to increase the supply of housing Affordable to Qualifying Households
11 ~~affordable to qualifying households~~ in the City and County of San Francisco.

12
13 **SEC. 428.3. APPLICATION OF AFFORDABLE HOUSING FEE REQUIREMENT.**

14 (a) For any project for which a complete development application has been submitted
15 before October 1, 2018, the Inclusionary Affordable Housing Program set forth in Planning
16 Code Sections 415.1 *et seq.* shall apply in the Divisadero Street NCT, except the temporary
17 provisions of Planning Code Section 415.3(b) shall not apply and except as set forth in
18 Section 428.3(a). For any development site for which the Planning Department determines
19 that the residential development potential within the Divisadero Street NCT has been
20 increased through the adoption of the NCT rezoning set forth in Ordinance No. 127-15, as
21 detailed in Section 428.1(e) herein, the requirements of Sections 415.1 *et seq.* of the Planning
22 Code shall apply, except as set forth in subsections (a)(1), (a)(2), and (a)(3), below, and the
23 temporary provisions of Planning Code Section 415.3(b) shall not apply.

24 (1) **Fee.** For a development project of 10 or more dwelling units that is subject
25 to the Inclusionary Affordable Housing Program, the development project shall pay an

1 affordable housing fee equivalent to a requirement to provide 33% of the units in the *principal*
2 ~~project~~ Principal Project as affordable units if those units are Owned Units, or 30% of the units
3 if the project is a Rental Housing Project, using the method of fee calculation set forth in
4 Section 415.5(b).

5 (2) **On-site.** For a development project of 10 or more units that is subject to the
6 Inclusionary Affordable Housing Program that elects to construct units Affordable to Qualifying
7 Households ~~affordable to qualifying households~~ on-site of the *principal project* Principal Project as
8 set forth in Planning Code Section 415.5(g), the development project shall comply with all
9 otherwise applicable requirements of Section 415.6, except that for all housing development
10 projects consisting of 10 or more units, the following requirements shall apply.

11 (A) For ~~a housing development project consisting of Owned Units an~~
12 Ownership Housing Project, the number of affordable units constructed on site shall be 23% of
13 all units constructed on the site. A minimum of 12% of the units shall be affordable to low-
14 income households, 5.5% of the units shall be affordable to moderate-income households,
15 and 5.5% of the units shall be affordable to middle-income households. In no case shall the
16 total number of affordable units required exceed the number required as determined by the
17 application of the applicable on-site requirement rate to the total project units. Owned Units for
18 low-income households shall have an affordable purchase price set at 80% of Area Median
19 Income or less, with households earning up to 100% of Area Median Income eligible to apply
20 for low-income units. Owned Units for moderate-income households shall have an affordable
21 purchase price set at 105% of Area Median Income or less, with households earning from
22 95% to 120% of Area Median Income eligible to apply for moderate-income units. Owned
23 Units for middle-income households shall have an affordable purchase price set at 130% of
24 Area Median Income or less, with households earning from 120% to 150% of Area Median
25 Income eligible to apply for middle-income units.

1 * * * *

2 (3) **Off-site.** If the project sponsor of a housing development project of 10 or
3 more units that is subject to the Inclusionary Affordable Housing Program elects to provide
4 units ~~affordable to qualifying households~~ Affordable to Qualifying Households off-site of the
5 ~~principal project~~ Principal Project as set forth in Section 415.5(g), the project sponsor shall
6 construct or cause to be constructed affordable housing equal to 33% of all units constructed
7 on the ~~principal project~~ Principal Project site as affordable housing if the units in the ~~principal~~
8 ~~project~~ Principal Project are owned units, and 30% if the project is a Rental Housing Project.

9 (b) For any project for which a complete development application has been submitted
10 on or after October 1, 2018, the Inclusionary Affordable Housing Program set forth in Planning
11 Code Sections 415.1 *et seq.* shall apply in the Divisadero Street NCT except as set forth in
12 this subsection (b). For any development site for which the Planning Department has
13 determined that the residential development potential has been increased through the
14 adoption of the NCT rezoning set forth in Ordinance No. 127-15, as detailed in Section
15 428.1(e) herein, the requirements of Planning Code Sections 415.1 *et seq.* shall apply, except
16 that the following affordable housing requirements shall be applied to residential development
17 on such sites:

18 (1) **Fee.** For a development project of 10 or more dwelling units that is subject
19 to the Inclusionary Affordable Housing Program, the development project shall pay an
20 affordable housing fee equivalent to a requirement to provide 33% of the units in the ~~principal~~
21 ~~project~~ Principal Project as Affordable Units ~~affordable units~~ if those units are Owned Units, or
22 30% of the units if the project is a Rental Housing Project, using the method of fee calculation
23 set forth in Section 415.5(b).

24 (2) **On-site.** If the housing development project of 10 or more dwelling units that
25 is subject to the Inclusionary Affordable Housing Program elects to construct units Affordable

1 ~~to Qualifying Households~~ ~~affordable-to-qualifying-households~~ on-site of the ~~principal project~~
2 Principal Project as set forth in Planning Code Section 415.5(g), the project sponsor shall
3 comply with all otherwise applicable requirements of Section 415.6, except that for all housing
4 development projects consisting of 10 or more units, the number of Affordable Units ~~affordable~~
5 ~~units~~ constructed on-site shall be provided as follows.

6 (A) A project that consists of Owned Units shall provide 23% of units as
7 Affordable Units ~~affordable-units~~ at the following levels: 10% shall have an average affordable
8 purchase price set at 80% of Area Median Income; 8% shall have an average affordable
9 purchase price set at 105% of Area Median Income; and 5% shall have an average affordable
10 purchase price set at 130% of Area Median Income.

11 (B) A project that consists of Rental Units shall provide 23% of units as
12 Affordable Units ~~affordable-units~~ at the following levels: 10% shall have an average affordable
13 rent set at 55% of Area Median Income; 8% shall have an average affordable rent set at 80%
14 of Area Median Income; and 5% shall have an average affordable rent set at 110% of Area
15 Median Income.

16 (C) Notwithstanding subsections (b)(2)(A) and (b)(2)(B), the percentage
17 and affordability levels of Affordable Units ~~affordable-units~~ constructed on-site as set forth in
18 subsections (b)(2)(A) and (b)(2)(B) shall be the same percentage and affordability levels as
19 set forth in Section 206.3(f)(2)(A), as it may be amended from time to time, and in no case
20 shall the percentage of Affordable Units ~~affordable-units~~ constructed on-site pursuant to this
21 subsection (b)(2) be less than the percentage required by Section 415.6 for projects
22 consisting of 25 or more units. If the percentage of Affordable Units ~~affordable-units~~ constructed
23 on-site pursuant to this subsection (b)(2) would be less than the percentage set forth in
24 Section 415.6 for projects consisting of 25 or more units, the percentage of Affordable Units
25 ~~affordable-units~~ set forth in Section 415.6 for projects consisting of 25 or more units shall apply.

1 (3) **Off-site.** If the project sponsor of a housing development project of 10 or
2 more units is eligible and elects to provide units Affordable to Qualifying Households ~~affordable to~~
3 ~~qualifying households~~ off-site of the ~~principal project~~ Principal Project as set forth in Section
4 415.5(g), the project sponsor shall construct or cause to be constructed affordable housing
5 equal to 33% of all units constructed on the ~~principal project~~ Principal Project site as affordable
6 housing if the units in the ~~principal project~~ Principal Project are owned units, and 30% if the
7 project is a Rental Housing Project.

8
9 **SEC. 428.5. USE OF FUNDS.**

10 The affordable housing fee specified in Sections 428.1 *et seq.* for the Divisadero Street
11 NCT shall be paid into the Citywide Affordable Housing Fund, established in Administrative
12 Code Section 10.100-49, and the funds shall be separately accounted for. The Mayor's Office
13 of Housing and Community Development shall expend the funds to increase the supply of
14 housing Affordable to Qualifying Households ~~affordable to qualifying households~~ in the City. The
15 funds may also be used for monitoring and administrative expenses subject to the process
16 described in Planning Code Section 415.5(f).

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

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

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

8 By: /s/
9 AUDREY W. PEARSON
 Deputy City Attorney

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LEGISLATIVE DIGEST
(Substituted, 10/5/2021)

[Planning Code – Inclusionary Housing Program Updates]

Ordinance amending the Planning Code to update inclusionary housing program requirements; affirming the Planning Department’s determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of necessity, convenience, and welfare under Planning Code, Section 302.

Existing Law

The Inclusionary Housing Program, Planning Code section 415 et seq., as well several localized inclusionary housing programs, requires developers of housing with 10 or more units to pay an inclusionary housing fee, or provide affordable units on-site or off-site. The amount of the fee or the number of affordable units depends on the size of the housing development, and whether the housing development is rental housing, or ownership housing. Developers of affordable units must market the units in compliance with requirements set forth in the Planning Code and the Mayor’s Office of Housing and Community Development’s Procedures Manual. Developers must choose program options (fee, on-site or off-site) prior to Planning Commission or department approval of the housing development, and inclusionary housing restrictions are contained in the development’s conditions of approval.

Amendments to Current Law

This ordinance updates the Inclusionary Housing Program by specifically defining certain terms, formalizes requirements to change program alternatives after Planning Commission or department approval, amends the timing for marketing the affordable units, and requires a Planning Commission hearing to amend conditions of approval if a development changes from rental to ownership housing, or ownership to rental housing.

Background Information

The Inclusionary Housing Program is set forth in Planning Code section 415. Localized inclusionary programs are also contained in Planning Code Article 4. Section 415 was amended in 2017 to include different requirements based on the tenure of the development

This version makes additional changes to the process for requesting a modification of the conditions of approval to change inclusionary housing options (fee, on-site, off-site) and/or housing tenure.

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BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

August 3, 2021

File No. 210868

Lisa Gibson
Environmental Review Officer
Planning Department
49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103

Dear Ms. Gibson:

On July 27, 2021, Supervisor Ronen submitted the following legislation:

File No. 210868

Ordinance amending the Planning Code to update inclusionary housing requirements; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of necessity, convenience, and welfare under Planning Code, Section 302.

This legislation is being transmitted to you for environmental review.

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

Attachment

c: Joy Navarrete, Environmental Planning
Don Lewis, Environmental Planning

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Lisa Gibson
Environmental Review Officer
Planning Department
49 South Van Ness Avenue, Suite 1400
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On July 27, 2021, Supervisor Ronen submitted the following legislation:

File No. 210868

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This legislation is being transmitted to you for environmental review.

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

Attachment

c: Joy Navarrete, Environmental Planning
Don Lewis, Environmental Planning

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment.

9/17/2021 A handwritten signature in cursive script, appearing to read "Joy Navarrete".

BOARD of SUPERVISORS



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TDD/TTY No. (415) 554-5227

August 3, 2021

Planning Commission
Attn: Jonas Ionin
49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103

Dear Commissioners:

On July 27, 2021, Supervisor Ronen submitted the following legislation:

File No. 210868

Ordinance amending the Planning Code to update inclusionary housing requirements; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of necessity, convenience, and welfare under Planning Code, Section 302.

The proposed ordinance is being transmitted for review. 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: Rich Hillis, Director
Scott Sanchez, Deputy Zoning Administrator
Corey Teague, Zoning Administrator
Lisa Gibson, Environmental Review Officer
Devyani Jain, Deputy Environmental Review Officer
Adam Varat, Acting Director of Citywide Planning
AnMarie Rodgers, Legislative Affairs
Dan Sider, Director of Executive Programs
Aaron Starr, Manager of Legislative Affairs
Joy Navarrete, Environmental Planning

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MEMORANDUM

TO: Eric D. Shaw, Director, Mayor's Office of Housing and Community Development
Robert Collins, Executive Director, Rent Board
Sally Oerth, Interim Executive Director, Office of Community Investment and Infrastructure

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

DATE: August 3, 2021

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Ronen on July 27, 2021:

File No. 210868

Ordinance amending the Planning Code to update inclusionary housing requirements; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of necessity, convenience, and welfare under Planning Code, Section 302.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: erica.major@sfgov.org.

cc: Eugene Flannery, Mayor's Office of Housing and Community Development
Amy Chan, Mayor's Office of Housing and Community Development
Lucinda Nguyen, Office of Community Investment and Infrastructure
Jaimie Cruz, Office of Community Investment and Infrastructure

I. INTRODUCTION

A. HISTORY OF SAN FRANCISCO'S INCLUSIONARY AFFORDABLE HOUSING PROGRAM

The Inclusionary Affordable Housing Program is one of the City's key tools for increasing the availability of affordable housing dedicated to low and moderate income San Franciscans, and has resulted in more than 4,649 units of permanently affordable housing since its adoption. Units have been created through four primary means: 1) on-site units within market rate developments; 2) in-lieu fees that fund units in 100% affordable housing development; 3) off-site developments; and 4) land dedication. Inclusionary housing is distinguished from other affordable housing programs in that it provides new affordable units without the use of public subsidies. For this reason, the program can address the growing needs of low, moderate, and middle income households that cannot be served by other common affordable housing funding sources, such as federal Low Income Housing Tax Credits.

From 1992 until 2002 the City required inclusionary affordable units for certain projects of 10 units or more that received conditional use approvals. The City adopted an Inclusionary Housing Ordinance in 2002 that set requirements on market rate development to include affordable units at 12% of the total¹.

The City prepared a Nexus Study in 2007 in support of the program. The report demonstrated the necessity of affordable housing in order to mitigate the impacts of market rate housing, and the inclusionary requirements were increased to 15% of total units. The City's inclusionary housing requirements are codified in Section 415 of the Planning Code. The City updated that nexus analysis in 2016².

¹ Inclusionary Affordable Housing Program, [Board File 00-1262/ Ord. No. 37-02], approved April 5, 2002. Available at: <https://sfgov.legistar.com/View.ashx?M=F&ID=2607162&GUID=834416F9-DCED-42CF-A972-81D26DED2D9F>

²City & County of San Francisco, prepared by Keyser Marston Associates, Inc. "Residential Affordable Housing Nexus Analysis", November 2016. Retrieved on February 21, 2017, retrieved from:

Inclusionary requirements are one of several funding sources for the city's affordable housing program. Prior to 2011, the San Francisco Redevelopment Authority had been the city's largest provider of affordable housing funds. In 2011 Governor Jerry Brown and the state legislature dissolved Redevelopment Agencies throughout the state. In 2012, in response to this loss and the slowing of housing development during the Great Recession, the voters amended the San Francisco Charter to create the Affordable Housing Trust Fund, which included a provision to lower and to set the on-site inclusionary requirement at 12%. As a Charter amendment, the Inclusionary rate could only be revised again by the voters.

In March 2016, the Board of Supervisors unanimously adopted a resolution³ declaring that it shall be City policy to maximize the economically feasible percentage of inclusionary affordable housing in market rate housing development. In June, as housing prices rose drastically, San Francisco voters approved a Charter Amendment (Proposition C), which restored the City's ability to adjust affordable housing requirements for new development by ordinance.

The passage of the Proposition C then triggered the provisions of the so-called "trailing ordinance" [BF 160255, Ord. 76-16⁴], adopted by the Board of Supervisors in May 2016, which amended the Planning and Administrative Codes to 1) increase the Inclusionary Affordable Housing requirements, pending further action by the Board of Supervisors; 2) require an Economic Feasibility Study by the Office of the Controller; and 3) establish an Inclusionary Housing Technical Advisory Committee (TAC) to advise the Controller.

<http://commissions.sfplanning.org/cpcpackets/2016%20%20Residential%20Affordable%20Housing%20Ne%20Analysis.pdf>

³ Establishing City Policy Maximizing a Feasible Inclusionary Affordable Housing Requirement [Board File No 160166, Reso. No. 79-16], approved March 11, 2016. Available at:

<https://sfgov.legistar.com/View.ashx?M=F&ID=4302571&GUID=8243D8E2-2321-4832-A31B-C47B52F71DB2>

⁴ The ordinance titled, "Inclusionary Affordable Housing Fee and Requirements; Preparation of Economic Feasibility Report; Establishing Inclusionary Housing Technical Advisory Committee," was considered by the Planning Commission on March 31, 2016. The Commission's recommendations are available here:

<https://sfgov.legistar.com/View.ashx?M=F&ID=4387468&GUID=8D639936-88D9-44E0-B7C4-F61E3E1568CF>

SECTION 415: INCLUSIONARY HOUSING PROGRAM – CODE CHANGE SUMMARY		EFFECTIVE 12/3/17
Topic	Summary of Inclusionary Requirements as Amended	
1. Application	<ul style="list-style-type: none"> Applies to 10 or more units; projects of 25 or more units have different requirements Specific requirements in some areas (see below) 	
2. “Grandfathering”	<ul style="list-style-type: none"> EEA before 1/1/2013: no change to requirements or rates EEA 1/1/2013 – 1/11/2016: no change to requirements, except increased rates apply* EEA on or after 1/12/2016: new inclusionary requirements and rates <p><i>*Increased rates apply to large projects (25+ units) only, and vary by EEA date. See Inclusionary Program Compliance Affidavit to determine the exact requirement. For On-Site or Off-site projects, if no site or building permit is issued by 12/7/2018 the rate will be reset.</i></p>	
3. Inclusionary Requirements	<p>Small projects (10-24 units):</p> <ul style="list-style-type: none"> On-Site: 12% of units at 55% of AMI (rental) or 80% of AMI (ownership) Off-Site/Fee: equivalent to 20% of project units <p>Large projects (25+ units), requirement varies by project tenure, as follows:</p> <p><u>Rental projects:</u></p> <ul style="list-style-type: none"> On-Site: 18% total, designated to households at three income tiers: <ul style="list-style-type: none"> 10% of units at 55% AMI average 4% of units at 80% AMI average 4% of units at 110% AMI average Off-Site/Fee*: equivalent to 30% of project units <p><u>Ownership projects:</u></p> <ul style="list-style-type: none"> On-Site: 20% total, designated to households at three income tiers: <ul style="list-style-type: none"> 10% of units at 80% AMI average 5% of units at 105% AMI average 5% of units at 130% AMI average Off-Site/Fee*: equivalent to 33% of project units <p><i>*Fee rates subject to change following Technical Advisory Committee study by Jan. 2018</i></p>	
4. Annual Increases to On-Site Rate	<p>On-Site rate will increase on an annual schedule as follows. (Off-Site/Fee rate is not subject)</p> <p>Small projects (10-24 units):</p> <ul style="list-style-type: none"> Beginning Jan 1, 2018 increase by 0.5% annually until the rate is 15% (in 2023) <p>Large projects (25+ units):</p> <ul style="list-style-type: none"> Jan 1, 2018 and Jan 1, 2019: 1.0% increase to lowest AMI tier only Jan 1, 2020: 0.5% increase split between middle and highest AMI tiers, continuing annually until the total rates are 24% for Rental and 26% for Ownership projects (in 2025) <p><i>NOTE: Rate is determined at date when EEA is accepted. The rate will be re-set to the prevailing rate if a site or building permit has not been issued within 30 months from entitlement.</i></p>	

5. Area-Specific Requirements	<p>Inclusionary requirements for certain areas will be as follows until the conclusion of pending Planning Department analysis and further legislative action:</p> <ul style="list-style-type: none"> • On-Site: 25% (rental); 27% (ownership) for all projects of 25 or more units • Off-Site/Fee: 30% (rental); 33% (ownership) for all projects of 25 or more units <p>These areas include:</p> <ul style="list-style-type: none"> • Mission Planning Area • North of Market Residential SUD (Tenderloin) • SoMa NCT (6th Street)
6. Minimum Unit Size (BMR units only)	<p>On-Site inclusionary units must meet the minimum unit size standards established by the California Tax Credit Allocation Committee (TCAC):</p> <ul style="list-style-type: none"> • Studio: 300 square feet* • 1BR: 450 square feet • 2BR: 700 square feet • 3BR: 900 square feet • 4BR: 1,000 square feet <p><i>*Studio minimum size is specified in Section 415 of the Planning Code.</i></p>
7. Middle-Income Studio Units	<p>Inclusionary units at the highest income tier – 110% of AMI for rental units or 130% of AMI for ownership units – shall have a minimum occupancy of 2 persons.</p>
8. Rental to Owner Conversions	<p>If a project converts from a rental to an ownership project, the City will require payment of the Affordable Housing Fee in the amount corresponding to the difference between the Fee or Alternative requirement met by the rental project and the Fee requirement in effect for ownership projects at the time of conversion.</p>
9. Replacement of Existing Affordable Units	<p>If any existing affordable units, including any units subject to rent control that are deemed affordable, are demolished or removed by the project, these units must be replaced with additional On-Site or Off-Site inclusionary units or by payment of an additional Affordable Housing Fee.</p>
10. State Density Bonus (SDB) Units	<p>For any project that receives a density increase through the State Density Bonus Law, the additional units obtained through the Bonus will be subject to the Affordable Housing Fee.</p>

Please visit www.sfplanning.org for more information regarding these and any future modifications to the Inclusionary Affordable Housing Program.

EXHIBIT E: DENSITY BONUS BASED ON AFFORDABILITY LEVEL

If a project is subject to the Inclusionary Program, on-site affordable units may be used to qualify for a bonus. Projects may only qualify for a density bonus at one income level.

Maximum Bonus for Lower Income Households (80% AMI)

This chart will generally be used for mixed-income ownership projects. Ownership projects with 10-24 units are only required to provide on-site affordable units at the 80% AMI tier. Projects with more than 25 units require affordable units at three different tiers and will use the lowest inclusionary tier to qualify for the bonus. Rental projects will use the chart below titled Maximum Bonus for Very Low-Income Households.

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
16	29
17	30.5
18	32
19	33.5
20	35
21	38.75
22	42.5
23	46.25
24	50

Maximum Bonus for Very -Low Income Households (50% AMI)

This chart will generally be used for rental projects. Rental projects with 10-24 units are only required to provide on-site affordable units at the 55% AMI tier. Projects with more than 25 units require affordable units at three different tiers and will use the lowest inclusionary tier to qualify for the bonus. Ownership projects will use the chart above titled Maximum Bonus for Lower Income Households.

Percentage Very Low Income	Percentage Density Bonus
5	20
6	22.5
7	25

8	27.5
9	30
10	32.5
11	35
12	38.75
13	42.5
14	46.25
15	50