



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Planning Code Text Change

HEARING DATE: DECEMBER 13, 2012

*Project Name:* **Amendments relating to the Inclusionary Affordable Housing Program**

*Case Number:* 2012.1381I [Board File No. 121162]

*Initiated by:* Mayor Edwin Lee / Introduced December 6, 2012

*Staff Contact:* Sophie Hayward, Legislative Affairs  
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*Reviewed by:* AnMarie Rodgers, Manager Legislative Affairs  
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*Recommendation:* **Recommend Approval**

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### PLANNING CODE AMENDMENT

The proposed Ordinance would amend Planning Code Sections 401 and 415 (provisions of the Inclusionary Affordable Housing Ordinance), to update and to clarify provisions of the Inclusionary Affordable Housing Program by 1) providing a cap on rent increases; 2) clarifying the timing of off-site developments; 3) requiring rental units that convert to ownership to sell at less than the price for ownership units under certain circumstances; 4) establishing pricing for affordable Single Room Occupancy units; 5) changing the status of projects using California Debt Limit Allocation Committee tax exempt bonds so that such projects are subject to the Program, but that units may qualify as on- or off-site units under certain circumstances; 6) allowing incomes levels of qualifying households to exceed those specified in certain situations; 7) authorizing the Mayor's Office of Housing (hereinafter "MOH") to charge a monitoring fee to verify occupancy of affordable units; and 8) making technical clarifications and corrections.

#### The Way It Is Now:

The existing Inclusionary Affordable Housing Program (hereinafter the "Program") defined in Planning Code Section 415 requires that certain residential projects pay an Affordable Housing Fee or provide a percentage of units constructed as affordable to qualifying households, known as "Below Market Rate" or "BMR" units. As an alternative to providing BMR units on-site, Project Sponsors may provide a higher percentage of the total units as off-site BMR unit, or may pay an Affordable Housing Fee in-lieu of providing units on-or off-site. The Program Procedures Manual (hereinafter the "Manual") contains procedures for monitoring and enforcement of the Program.

### The Way It Would Be:

The proposed Ordinance would make a number of changes in order to facilitate updated implementation measures for the Inclusionary Affordable Housing Program. The legislation is proposed in conjunction with a related series of updates to the Manual. In addition to technical corrections, the proposed Ordinance would include the following amendments:

- Provide an explicit cap on rent increases for landlords of Below Market Rate units so that it is clear that landlords cannot “bank” rent increases from year to year (**Section 401, definitions for “Allowable average rent” and “Maximum annual rent”, and Section 415.8(c)(6)**);
- Clarify the timing of off-site BMR developments by requiring that the principal project may not get a certificate of occupancy until the required off-site units have a certificate of occupancy (**Section 415.7(b)**);
- Clarify the process to convert a BMR rental unit to a BMR ownership unit, and require rental units that convert to ownership to sell at less than the price for ownership units where a current tenant qualifies for the unit and wishes to purchase it (**Section 415.8(b)(5)**);
- Establish a pricing category for affordable SRO units where none currently exists (**Section 401, definitions for “Allowable purchase price,” “Allowable average rent,” “Maximum annual rent,” and “Maximum purchase price”**);
- Change the status of projects using California Debt Limit Allocation Committee (hereinafter “CDLAC”) tax exempt bonds so that such projects are subject to the Program, but that units may qualify as on- or off-site units under certain circumstances. Currently projects that use CDLAC tax exempt bonds and meet certain criteria are exempt from the Program. (**Section 415.3(c)(4) would remove the exemption for certain CDLAC projects, Section 415.6(f) would require CDLAC projects to provide 20% of units be provided as on-site BMR units, and Section 415.7(g) would allow certain CDLAC projects to provide 25% of units as affordable off-site units**);
- Allow income levels of qualifying households to exceed those specified in recorded use restrictions in certain situations including an updated pricing mechanism for new BMR units, for rental units that are converted to BMR ownership, for existing tenants of BMR rental units, and for re-sale ownership units, provided that in all cases the income level adjustment is approved by MOH (**Section 415.8(a)(4), subsections (A)-(E) and Section 415.8(b)(8)(1) and (2)**);
- Authorize MOH to charge a monitoring fee to verify occupancy of affordable units where that authority has not been explicit before (**Section 415.9(g)(3)**).

### BACKGROUND

In 1992, the Planning Commission adopted the City’s first Inclusionary Affordable Housing Policy, requiring housing projects with 10 or more units that seek a conditional use permit or planned unit development to provide 10% of those units as affordable housing. In 2002 the City revised this policy to apply the Inclusionary Requirement to all housing projects with 10 or more units, with higher requirements for projects receiving a conditional use permit or planned unit development. More recently, in 2006 legislation passed which modified the requirements in several aspects; among them were: increasing inclusionary requirements, revisions to the Area Median Income calculations, expanding the requirements by lowering the unit threshold from projects with 10 or more units to projects with 5 or

more units. This year, the Commission and the voters approved two pieces of legislation that further revised the Inclusionary Requirement. These recent changes include: raising the unit number threshold of housing projects subject to affordable housing provisions to 10 or more units in conjunction with the newly adopted Housing Trust Fund. The Housing Trust Fund also lowered the requirements for the provision of on-site units. A description of these changes are provided here for the Commission's information, however the current proposed Ordinance is not intended to alter the guiding policies of the Inclusionary Housing program but instead are intended to provide greater clarity to the public in conjunction with the update to the Manual.

The current Program is codified in Section 415 of the Planning Code, and requires, of applicable projects, the provision of 15% of the project's units as on-site affordable units or the provision of 20% of project's units off-site as affordable to low- to moderate-income households. As an alternative to on- or off-site units, Project Sponsors may pay an "in-lieu" fee. The fee payment alternative is calculated based on the off-site requirement percentage (usually 20% with exceptions in the Eastern Neighborhoods), proportional to unit type (studio, 1-2-3 bedroom and so forth). This percentage is then multiplied by the Affordable Housing Fee, which is calculated based on the affordability gap, or the difference between the cost of producing the unit and the maximum unit sales price when sold as an affordable unit.

## **REQUIRED COMMISSION ACTION**

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

## **RECOMMENDATION**

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

## **BASIS FOR RECOMMENDATION**

The proposed Ordinance will enable updates to the existing Inclusionary Housing Program Monitoring and Procedures Manual (the "Manual"). The Inclusionary Housing Program Manual describes to the public and City agencies the specifics for implementation of the Inclusionary Housing Program..

The proposed updates to the Manual were presented to the Planning Commission during an informational presentation on November 8, 2012. The update to the Manual, and the associated required Planning Code changes outlined above, focus on addressing concerns and questions raised by consumers, tenants, and Project Sponsors over the course of the last five years of the Program. The proposed amendments also address changing market conditions, clarify monitoring and enforcement of the Program, and explicitly include SRO dwelling units in the program. During the November 8, 2012 hearing, the Commission appreciated the work by MOH to provide greater clarity to the Program. The Department too believes that these changes are warranted and help ensure that the Program is effectively implemented.

## **ENVIRONMENTAL REVIEW**

Pending

**PUBLIC COMMENT**

As of the date of this report, the Planning Department has not received public comment on this item. The Mayor's Office of Housing received one letter in support of updating the Procedures Manual.

<b>RECOMMENDATION:</b> <b>Recommendation of Approval</b>
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**Attachments:**

- Exhibit A:        Draft Planning Commission Resolution
- Exhibit B:        Board of Supervisors File No. 121162



# SAN FRANCISCO PLANNING DEPARTMENT

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## Draft Planning Commission Resolution No. \_\_\_\_\_

HEARING DATE: DECEMBER 13, 2012

*Project Name:* **Amendments relating to the Inclusionary Affordable Housing Program**

*Case Number:* 2012.1381T [Board File No. 121162]

*Initiated by:* Mayor Edwin Lee / Introduced December 6, 2012

*Staff Contact:* Sophie Hayward, Legislative Affairs  
sophie.hayward@sfgov.org, 415-558-6372

*Reviewed by:* AnMarie Rodgers, Manager Legislative Affairs  
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*Recommendation:* **Recommend Approval**

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RECOMMENDING THAT THE BOARD OF SUPERVISORS PASS AN ORDINANCE THAT WOULD AMEND THE SAN FRANCISCO PLANNING CODE SECTIONS 401 AND 415 (PROVISIONS OF THE INCLUSIONARY AFFORDABLE HOUSING ORDINANCE), TO UPDATE AND TO CLARIFY PROVISIONS OF THE INCLUSIONARY AFFORDABLE HOUSING PROGRAM BY 1) PROVIDING A CAP ON RENT INCREASES; 2) CLARIFYING THE TIMING OF OFF-SITE DEVELOPMENTS; 3) REQUIRING RENTAL UNITS THAT CONVERT TO OWNERSHIP TO SELL AT LESS THAN THE PRICE FOR OWNERSHIP UNITS UNDER CERTAIN CIRCUMSTANCES; 4) ESTABLISHING PRICING FOR AFFORDABLE SINGLE ROOM OCCUPANCY UNITS; 5) CHANGING THE STATUS OF PROJECTS USING CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE TAX EXEMPT BONDS SO THAT SUCH PROJECTS ARE SUBJECT TO THE PROGRAM, BUT THAT UNITS MAY QUALIFY AS ON- OR OFF-SITE UNITS UNDER CERTAIN CIRCUMSTANCES; 6) ALLOWING INCOMES LEVELS OF QUALIFYING HOUSEHOLDS TO EXCEED THOSE SPECIFIED IN CERTAIN SITUATIONS; 7) AUTHORIZING THE MAYOR'S OFFICE OF HOUSING (HEREINAFTER "MOH") TO CHARGE A MONITORING FEE TO VERIFY OCCUPANCY OF AFFORDABLE UNITS; AND 8) MAKING TECHNICAL CLARIFICATIONS AND CORRECTIONS; AND MAKING ENVIRONMENTAL FINDINGS AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1 AND 302.

### PREAMBLE

Whereas, on December 6, 2012 Mayor Edwin Lee introduced a proposed Ordinance under Board File Number 12-1162 that would amend Planning Code by making amendments to the San Francisco Planning Code to update and to clarify provisions of the Inclusionary Affordable Housing Program ; and

Whereas, the proposed Ordinance would make necessary amendments to the Planning Code in response to the Mayor's Office of Housing's proposed amendments to the Procedures Manual for the Affordable Inclusionary Housing Program; and

Whereas on November 8, 2012 this Commission heard an informational presentation about the proposed amendments to the Procedures Manual for the Affordable Inclusionary Housing Program;

Whereas, since the introduction of the proposed Ordinance, the Planning Department recommended approval of the proposed Ordinance; and

Whereas, on December 13th, 2012 the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed amendments to the Procedures Manual for the Affordable Inclusionary Housing Program and to consider this proposed Ordinance; and

Whereas, the proposed Ordinance has been found exempt from the California Environmental Quality Act per sections 15060(c)(2); and

Whereas, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented by Department staff, and other interested parties; and

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

Whereas, the Commission has reviewed the proposed Ordinance; and

**MOVED**, that the Commission hereby recommends that the Board of Supervisors recommend *approval* of the proposed Ordinance.

## FINDINGS

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

1. The Affordable Inclusionary Housing Program helps the City address the critical need for affordable housing.
2. The City must seek to increase clarity and efficiency in implementing this program.
3. **General Plan Compliance.** The proposed Ordinance is, on balance, consistent with the following Objectives and Policies of the General Plan:

**OBJECTIVE 1**

**Identify and make available for development adequate sites to meet the City's housing needs, especially permanently affordable housing.**

**POLICY 1.1**

**Plan for the full range of housing needs in the City and County of San Francisco, especially affordable housing.**

San Franciscans are a diverse population, with a diverse set of housing needs. Future housing policy and planning efforts must take into account the diverse needs for housing. The RHNA projections indicate housing goals for various income levels, these provide basic planning goals for housing affordability. San Francisco's housing policies and programs should provide strategies that promote housing at each income level, and furthermore identify sub-groups, such as middle income and extremely low income households that require specific housing policy. In addition to planning for affordability, the City should plan for housing that serves a variety of household types and sizes.

**OBJECTIVE 7**

**Secure funding and resources for permanently affordable housing, including innovative programs that are not solely reliant on traditional mechanisms or capital.**

**POLICY 7.1**

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

San Francisco should continue to be a leader in identifying, securing and mandating funding for permanently affordable housing. Building on a good track record for securing federal and state funds, the City shall continue to lobby for necessary funding in coordination with regional entities. Local programs such as HOPE-SF, inclusionary housing and 50% set asides of Redevelopment Areas' Tax Increment Financing dollars demonstrate a strong dedication to providing local funding to affordable housing. These programs should be continued and expanded as feasible.

A dedicated, permanent source of local funding for housing programs will also help address the need for affordability over the long-term. Currently, local funding for affordable housing is dependent on annual budgeting, which makes long-term planning difficult. It also creates a situation where affordable housing funding is dramatically effected by downturns in the economy, which further exacerbates issues already faced by low-income families. Ultimately San Francisco's affordable housing programs should have a permanent funding source.

*The proposed Ordinance would advance this Objective and Policy by ensuring that the Affordable Inclusionary Housing Program is easy for the public to use and efficient for the City to implement.*

4. **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.

5. **Planning Code Section 101 Findings.** The proposed replacement project is generally consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

- A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

*The proposed Ordinance will have no adverse impact on the neighborhood-serving retail uses.*

- B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

*The proposed Ordinance will have no adverse effect on existing housing and neighborhood character. The proposed Ordinance will help ensure that neighborhoods maintain a mix of housing for diverse economic levels.*

- C) The City's supply of affordable housing will be preserved and enhanced:

*By making the Affordable Inclusionary Housing Program more transparent, the proposed Ordinance will ensure that it continues to produce the greatest amount of affordable housing possible within the limited funding streams available.*

- D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

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

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

*The proposed Ordinance will not result in displacement of industrial or service sectors.*

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

*The proposed Ordinance would not affect the preparedness against injury and loss of life in an earthquake.*

- G) That landmark and historic buildings will be preserved:

*The proposed Ordinance would not adversely affect landmark and historic buildings.*

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

*The proposed Ordinance would not adversely affect parks and open spaces in terms their access to sunlight and vistas.*

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on December 13<sup>th</sup>, 2012.

Jonas P. Ionin  
Acting Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED:

FILE NO.

**LEGISLATIVE DIGEST**

[Planning Code – Inclusionary Affordable Housing Program, Updates and Clarifications.]

**Ordinance amending the San Francisco Planning Code by amending Section 401, and provisions of the Inclusionary Affordable Housing Ordinance, Sections 415 et seq., to update and clarify provisions of the Inclusionary Affordable Housing Program (“Program”) by 1) providing a cap on rent increases; 2) clarifying the timing of off-site developments; 3) requiring rental units that convert to ownership to sell at less than the price for ownership units under certain circumstance; 4) establishing pricing for affordable Single Room Occupancy units; 5) changing the status of projects using California Debt Limit Allocation Committee tax exempt bonds so that such projects are subject to the Program, but that units may qualify as on- or off-site units under certain circumstances; 6) allowing income levels of qualifying households to exceed those specified in certain situations; 7) authorizing the Mayor’s Office of Housing to charge a monitoring fee to verify occupancy of affordable units; and 8) making technical clarifications and corrections; and 9) making environmental findings and findings of consistency with general plan.**

Existing Law

The Inclusionary Affordable Housing Program, Planning Code Section 415 et seq. (the “Program”), requires that certain housing projects pay an Affordable Housing Fee or provide a certain percentage of units constructed on-site as affordable to qualifying households (“Below Market Rate” or “BMR” units) or a higher percentage if constructed off-site. The Program Procedures Manual (“Procedures Manual”) contains procedures for monitoring and enforcement of the Program.

Amendments to Current Law

The proposed legislation makes a number of changes to the Program to update the way that the Program is implemented. **The legislation is being proposed in connection with an update to the Procedures Manual.** In addition to some technical corrections, the proposed legislation:

- provides an explicit cap on rent increases for landlords of Below Market Rate units where it is not clear if landlords can currently “bank” rent increases from year to year;
- clarifies the timing of off-site developments by requiring that the principal project may not get a certificate of occupancy until the required off-site units have a certificate of occupancy;

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## FILE NO.

- clarifies the process to convert a BMR rental unit to a BMR ownership unit and requires rental units that convert to ownership to sell at less than the price for ownership units where a current tenant qualifies for the unit and wishes to purchase it. These provisions modify a provision of the former Procedures Manual that required all units that convert to ownership to sell at a price affordable to renters under the Program;
- establishes a pricing category for affordable SRO units where none currently exists;
- changes the status of projects using California Debt Limit Allocation Committee tax exempt bonds so that such projects are subject to the Program, but that units may qualify as on- or off-site units under certain circumstances. Currently projects that use CDLAC tax exempt bonds and meet certain criteria are exempt from the Program;
- allows income levels of qualifying households to exceed those specified in recorded use restrictions in certain situations including an updated pricing mechanism for new BMR units; **an allowance to exceed the maximum qualifying income level for new buyers of BMR units at the initial sale by up to 20% above the maximum income level allowed;** an allowance to exceed the specified maximum income level when a project sponsor or current owner cannot sell a BMR ownership unit in a timely manner; and allowing the income of current BMR renters to increase upon recertification. Currently such allowances do not exist;
- authorizes MOH to charge a monitoring fee to verify occupancy of affordable units where that authority has not been explicit before.

1 [Planning Code – Inclusionary Affordable Housing Program, Updates and Clarifications]

2  
3 **Ordinance amending the San Francisco Planning Code by amending Section 401, and**  
4 **provisions of the Inclusionary Affordable Housing Ordinance, Sections 415 et seq., to**  
5 **update and clarify provisions of the Inclusionary Affordable Housing Program**  
6 **(“Program”) by 1) providing a cap on rent increases; 2) clarifying the timing of off-site**  
7 **developments; 3) requiring rental units that convert to ownership to sell at less than**  
8 **the price for ownership units under certain circumstance; 4) establishing pricing for**  
9 **affordable Single Room Occupancy units; 5) changing the status of projects using**  
10 **California Debt Limit Allocation Committee tax exempt bonds so that such projects are**  
11 **subject to the Program, but that units may qualify as on- or off-site units under certain**  
12 **circumstances; 6) allowing income levels of qualifying households to exceed those**  
13 **specified in certain situations; 7) authorizing the Mayor’s Office of Housing to charge a**  
14 **monitoring fee to verify occupancy of affordable units; and 8) making technical**  
15 **clarifications and corrections; and 9) making environmental findings and findings of**  
16 **consistency with general plan.**

17 NOTE: Additions are *single-underline italics Times New Roman*;  
18 deletions are ~~*strike-through italics Times New Roman*~~.  
19 Board amendment additions are double-underlined;  
20 Board amendment deletions are ~~strikethrough normal~~.

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

22 Section 1. The Planning Department has determined that the actions contemplated in  
23 this ordinance comply with the California Environmental Quality Act (California Public  
24

25 \*Name of Supervisor/Committee/Department\*  
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1 Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the  
2 Board of Supervisors in File No. \_\_\_\_\_ and is incorporated herein by reference.

3 (b) On \_\_\_\_\_, 2012, the Planning Commission, in Resolution No.  
4 \_\_\_\_\_ approved and recommended for adoption by the Board this legislation  
5 and adopted findings that it is consistent, on balance, with the City's General Plan and eight  
6 priority policies of Planning Code Section 101.1. The Board adopts these findings as its own.  
7 A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No.  
8 \_\_\_\_\_, and is incorporated by reference herein.

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

13 Section 2. The San Francisco Planning Code is hereby amended by amending  
14 selected definitions in Section 401, to read as follows:

15 **SEC. 401. DEFINITIONS.**

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

18 . . .

19 "Affordable to qualifying households."

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

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

24

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

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

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

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

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

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

22 (ii) Only households that meet the household size requirements, as defined in the  
23 Procedures Manual;

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

25 \*Name of Supervisor/Committee/Department\*  
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1 "Allowable average purchase price." A price for all affordable owned units of the size  
 2 indicated below that are affordable to a household of median income as defined in this  
 3 Section, adjusted for the household size indicated below as of the date of the close of escrow,  
 4 except for Single Room Occupancy units (as defined in Section 890.88), which shall be 75% of the  
 5 maximum purchase price level for studio units, and, where applicable, adjusted to reflect the  
 6 Department's policy on unbundled parking for affordable housing units as specified in the  
 7 Procedures Manual and amended from time to time:

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

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

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

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

...

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

Number of Bedrooms (or, for live/work units square foot equivalency)	Number of Persons in Household

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0 (Less than 600 square feet)	1
1 (601 to 850 square feet)	2
2 (851 to 1,100 square feet)	3
3 (1,101 to 1,300 square feet)	4
4 (More than 1,300 square feet)	5

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

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

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

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3 (1,101 to 1,300 square feet)	4
4 (More than 1,300 square feet)	5

...

Section 3. The San Francisco Planning Code is hereby amended by amending selected portions of Section 415.3, to read as follows:

**SEC. 415.3. APPLICATION.**

(a) Section 415.1 *et seq.* shall apply to any housing project that consists of five or more units where an individual project or a phased project is to be undertaken and where the total undertaking comprises a project with five or more units, even if the development is on separate but adjacent lots; and

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

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

(3) Consists of live/work units as defined by Section 102.13 of this Code; or

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

(b) The effective date of these requirements shall be either April 5, 2002, which is the date that the requirements originally became effective, or the date a subsequent modification, if any, became operative. The following table is designed to summarize the most significant subsequent modifications to this Program and the dates those modifications went into effect.

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1 The Planning Department and the Mayor's Office of Housing shall maintain a record for the  
 2 public summarizing various amendments to this Program and their effective or operative  
 3 dates. To the extent there is a conflict between the following table or any summary produced  
 4 by the Department or MOH and the provisions of the original implementing ordinances, the  
 5 implementing ordinances shall prevail.

6 Table 415.3

Program Modification	Effective or Operative Date
All projects with 5 or more units must participate in the Inclusionary Housing Program Section 415 (changed from a threshold of 10 units).	All projects that submitted a first application on or after July 18, 2006
Affordable Housing Percentages: 20% Fee 15% on-site* 20% off-site* *Of total number of units <i>(Percentages may vary in specific Area Plans. Please refer to those applicable Code Sections.)</i>	All projects that submitted a first application on or after July 18, 2006 (except <i>buildings of over 120 feet in height that meet the requirements of Section 415.6(a)(1)(C) or 415.7(a)(1)(C) projects which require a rezoning to increase buildable residential units or square footage</i> )
On-Site units must be priced and sold at 90% of AMI and rented at 55% of AMI	All projects that receive a first site or building permit on or after September 9, 2006

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1 2 3 4	Project sponsor must select Program compliance option upon project approval and cannot alter their compliance option	All projects that received Planning Commission or Planning Department approval on or after September 9, 2006
5 6 7 8	All off-site units must be located within 1 mile of the principal project and Off-site units must be priced and sold at 70% of AMI	All Projects that receive Planning Commission or Planning Department approval after September 9, 2006
9 10 11	Lottery preference for applicants living or working in San Francisco	All projects that are marketed on or after June 4, 2007
12 13 14	Lottery preference for applicants holding a Certificate of Preference from the Redevelopment Agency	All projects that are marketed on or after December 30, 2008
15 16 17	Lottery required for all new and resale units	All projects that are marketed on or after September 9, 2006
18 19 20 21	Must provide on-site units as owner-occupied only unless specifically exempted pursuant to Section 415	All projects beginning February 11, 2010
22 23 24	All off-site units must follow standards set out in Procedures Manual	Projects that receive Planning Commission or Planning Department approval on or after June 4, 2007

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

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

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

9 (3) That portion of a housing project located on property under the jurisdiction of the  
10 San Francisco Redevelopment Agency or the Port of San Francisco where the application of  
11 Section 415.1 *et seq.* is prohibited by California or local law.

12 (4) ~~Selected projects that are otherwise providing affordable units comparable to or exceeding  
13 the requirements of this program as follows:~~

14 ~~(A) Qualifying Projects. Projects that meet either of the requirements of subsection (i) or (ii)  
15 below for as long as they meet all of the requirements and conditions of this subsection.~~

16 ~~(i) A project using California Debt Limit Allocation Committee (CDLAC) tax exempt bond  
17 financing as long as the project provides 20 percent of the units as affordable at 50 percent of area  
18 median income for on-site housing or 25 percent of the units as affordable at 50 percent of area median  
19 income for off-site housing.~~

20 ~~(ii) A 100% affordable housing project in which rents are controlled or regulated by any  
21 government unit, agency or authority, excepting those unsubsidized and/or unassisted units  
22 which are insured by the United States Department of Housing and Urban Development. The  
23 Mayor's Office of Housing must represent to the Planning Commission or Planning  
24 Department that the project meets this requirement.~~

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1            (AB) **Restrictions.** If a project sponsor takes advantage of this subsection, all of the  
2 rules and regulations of the programs or recorded documents guaranteeing the affordability of  
3 the units shall govern the units and the requirements of this Program shall not apply.

4            (BE) **Conditions.** In order to qualify for this provision, the project sponsor must record  
5 an NSR against the property that provides that, in the event of foreclosure or for any other  
6 reason, the project no longer qualifies as a project meeting the requirements of subsection  
7 ~~(4)(A)(i) or (ii)~~ the project will either:

8            (i) pay the Affordable Housing Fee plus interest from the date the project received its  
9 first construction document for the project if no affordable units were ever provided or, if  
10 affordable units were provided and occupied, then the Affordable Housing Fee with no interest  
11 is due on the date the units were no longer occupied by qualifying households; or

12            (ii) provide the required number of on-site affordable units required at time of original  
13 project approval and that those units shall be subject to all of the requirements of this  
14 Program.

15            (D) In the event that there is a foreclosure or other event triggering the requirements of  
16 subsection (BE) above, the project sponsor shall record a new NSR specifying the manner it  
17 which it complies with this Program, including but not limited to any specific units restricted as  
18 affordable under (BE)(ii). The new NSR shall provide that the units must comply with all of the  
19 requirements of this Program.

20  
21            Section 4: The San Francisco Planning Code is hereby amended by amending  
22 selected portions of Section 415.5, to read as follows:

23            **SEC. 415.5. AFFORDABLE HOUSING FEE.**

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

4 (a) **Payment of a Fee.** Payment of a fee to the Development Collection Unit at DBI for  
5 deposit into the Citywide Affordable Housing Fund for the purposes of that Fund.

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

8 (1) The number of units equivalent to the applicable off-site percentage of the number  
9 of units in the principal project. The applicable percentage shall be 20 percent or the  
10 percentage that applied to the project if the project is subject to the requirements of an earlier  
11 version of this Program due to the date it submitted its application or that percentage required in  
12 certain Area Plans. For the purposes of this Section, the City shall calculate the fee using the  
13 direct fractional result of the total number of units multiplied by the applicable percentage,  
14 rather than rounding up the resulting figure as required by Section 415.6 5(a).

15 (2) The affordability gap using data on the cost of construction of residential housing  
16 and the Maximum Purchase Price for the equivalent unit size. Until December 31, 2012, MOH shall  
17 use construction cost data from the "San Francisco Sensitivity Analysis Summary Report:  
18 Inclusionary Housing Program" prepared by Keyser Marston Associates, Inc. in August 2006  
19 for the Maximum Annual Rent or Maximum Purchase Price for the equivalent unit sizes. As of January  
20 1, 2012, MOH shall use construction cost data from the "San Francisco Inclusionary Housing  
21 Program Financial Analysis 2012" prepared by Seifel Consulting. The Department and MOH shall  
22 update the technical report from time to time as they deem appropriate in order to ensure that  
23 the affordability gap remains current.

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1           (3) ~~Commencing on January 1, 2012, no~~ No later than January 1 of each year, MOH shall  
 2 adjust the fee. No later than ~~November~~December 1 of each year, MOH shall provide the  
 3 Planning Department, DBI, and the Controller with information on the adjustment to the fee so  
 4 that it can be included in the Planning Department's and DBI's website notice of the fee  
 5 adjustments and the Controller's Annual Citywide Development Fee and Development Impact  
 6 Requirements Report described in Section 409(b). MOH is authorized to develop an  
 7 appropriate methodology for indexing the fee, based on adjustments in the costs of  
 8 constructing housing and the Maximum Purchase Price for the equivalent unit size ~~in the price of~~  
 9 ~~housing in San Francisco~~. The method of indexing shall be published in the Procedures Manual.

10           . . .

11           (e) If a housing project is located in an Area Plan with an additional or specific  
 12 affordable housing requirements such as those set forth in section 416, ~~and~~ 417, and 419 or  
 13 elsewhere in this code, the more specific provisions shall apply in lieu of or in addition to those  
 14 provided in this Program, as applicable.

15           (f) **Use of Fees.** All monies contributed pursuant to this Section shall be deposited in  
 16 the special fund maintained by the Controller called the Citywide Affordable Housing Fund.  
 17 MOH shall use the funds in the following manner:

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

20           (a) increase the supply of housing affordable to qualifying households subject to the  
 21 conditions of this Section; and

22           (b) provide assistance to low and moderate income homebuyers; and

23           (c) pay the expenses of MOH in connection with monitoring and administering  
 24 compliance with the requirements of the Program. MOH is authorized to use funds in an

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1 amount not to exceed \$200,000 every 5 years to conduct follow-up studies under Section  
2 415.9(e) and to update the affordable housing fee amounts as described above in Section  
3 415.5(b). All other monitoring and administrative expenses shall be appropriated through the  
4 annual budget process or supplemental appropriation for MOH. The fund shall be  
5 administered and expended by MOH, which shall have the authority to prescribe rules and  
6 regulations governing the Fund which are consistent with this Section.

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

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

23 (B) **Use of Small Sites Funds.** The funds shall be used exclusively to acquire or  
24 rehabilitate "Small Sites" defined as properties consisting of less than 25 units. Units

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1 supported by monies from the fund shall be designated as housing affordable to qualifying  
2 households as defined in Section 415.1 for no less than 55 years. Properties supported by the  
3 Small Sites Funds must be either

4 (i) rental properties that will be maintained as rental properties;

5 (ii) vacant properties that were formerly rental properties as long as those properties  
6 have been vacant for a minimum of two years prior to the effective date of this legislation; or

7 (iii) properties that have been the subject of foreclosure; or

8 (iv) a Limited Equity Housing Cooperative as defined in Subdivision Code Sections  
9 1399.1 et seq. or a property owned or leased by a non-profit entity modeled as a Community  
10 Land Trust.

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

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

19 (E) **Intent.** In adopting this ordinance regarding Small Sites Funds, the Board of  
20 Supervisors does not intend to preclude MOH from expending other eligible sources of  
21 funding on Small Sites as described in this Section, or from allocating or expending more than  
22 \$15 million of other eligible funds on Small Sites.

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

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

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

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

11           (C) **Alternative #3: Combination.** Project sponsors may elect any combination of  
12 payment of the Affordable Housing Fee as provided in Section 415.5, construction of on-site  
13 units as provided in Section 415.6 or construction of off-site units as provided in Section  
14 415.7, provided that the project applicant constructs or pays the fee at the appropriate  
15 percentage or fee level required for that option.

16           (2) **Qualifications:** If a project sponsor wishes to comply with the Program through one  
17 of the Alternatives described in (1) rather than pay the Affordable Housing Fee, they must  
18 demonstrate that they qualify for the Alternative to the satisfaction of the Department and  
19 MOH. A project sponsor may qualify for an Alternative by the following methods:

20           (i) **Method #1 - Ownership Units.** All affordable units provided under this Program  
21 shall be sold as ownership units and will remain ownership units for the life of the project.  
22 Project sponsors must submit the 'Affidavit *of Compliance with the Inclusionary Affordable*  
23 *Housing Program to Establish Eligibility for an Alternative to Affordable Housing Fee*' to the  
24 Planning Department prior to project approval by the Department or the Commission; or

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1           (ii) **Method #2 - Government Financial Contribution.** Submit to the Department a  
 2 contract demonstrating that the project's on- or off-site units are not subject to the Costa  
 3 Hawkins Rental Housing Act, California Civil Code Section 1954.50 because, under Section  
 4 1954.52(b), it has entered into an agreement with a public entity in consideration for a direct  
 5 financial contribution or any other form of assistance specified in California Government Code  
 6 Sections 65915 et seq. and it submits an Affidavit of such to the Department. All such  
 7 contracts entered into with the City and County of San Francisco must be reviewed and  
 8 approved by the Mayor's Office Housing and the City Attorney's Office. All contracts that  
 9 involve 100% affordable housing projects in the residential portion may be executed by the  
 10 Mayor or the Director of the Mayor's Office of Housing. Any contract that involves less than  
 11 100% affordable housing in the residential portion, may be executed by either the Mayor, the  
 12 Director of the Mayor's Office of Housing or, after review and comment by the Mayor's Office  
 13 of Housing, the Planning Director; ~~or.~~ A Development Agreement under California Government  
 14 Code Section 65864 et seq. and Chapter 56 of the San Francisco Administrative Code entered into  
 15 between a project sponsor and the City and County of San Francisco may, but does not necessarily,  
 16 qualify as such a contract.

17           ~~(iii) Method #3 – Development Agreement. A project sponsor may apply to enter into a~~  
 18 ~~Development Agreement with the City and County of San Francisco under California Government~~  
 19 ~~Code Section 65864 et seq. and Chapter 56 of the San Francisco Administrative Code, permitting the~~  
 20 ~~project to be eligible for on-site units as an alternative to payment of the Affordable Housing Fee to~~  
 21 ~~satisfy the requirements of the Program and obligating the project sponsor to provide the affordable~~  
 22 ~~units on-site.~~

23           (3) The Planning Commission or the Department may not require a project sponsor to  
 24 select a specific Alternative. If a project sponsor elects to meet the Program requirements

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1 through one of the Alternatives described in (1), they must choose it and demonstrate that  
 2 they qualify prior to any project approvals from the Planning Commission or Department. The  
 3 Alternative will be a condition of project approval and recorded against the property in an  
 4 NSR. Notwithstanding the foregoing, if a project sponsor qualifies for an Alternative described  
 5 in (1) and elects to construct the affordable units on- or off-site, they must submit the 'Affidavit  
 6 *of Compliance With The Inclusionary Housing Program*' ~~to Establish Eligibility for an Alternative to~~  
 7 ~~*Affordable Housing Fee*~~' based on the fact that the units will be sold as ownership units. A ~~The~~  
 8 project sponsor who has elected to construct affordable ownership units on- or off-site may  
 9 only elect to pay the Affordable Housing Fee up to the issuance of the first construction  
 10 document if the project sponsor submits a new Affidavit establishing that the units will not be  
 11 sold as ownership units. If a project sponsor fails to choose an Alternative before project  
 12 approval by the Planning Commission or Planning Department or if a project becomes  
 13 ineligible for an Alternative, the provisions of Section 415.5 shall apply.

14 (4) If at any time, the project sponsor eliminates the on-site or off-site affordable  
 15 ownership-only units, then the project sponsor must immediately inform the Department and  
 16 MOH and pay the applicable Affordable Housing Fee plus interest and any applicable  
 17 penalties provided for under this Code. If a project sponsor requests a modification to its  
 18 conditions of approval for the sole purpose of complying with this Section, the Planning  
 19 Commission shall be limited to considering issues related to Section 415 et seq. in  
 20 considering the request for modification.

21  
 22 Section 5: The San Francisco Planning Code is hereby amended by amending  
 23 selected portions of Section 415.6, to read as follows:

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

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1           If a project sponsor is eligible and selects to provide on-site units pursuant to Section  
2 415.5(g), the development project shall meet the following requirements:

3           . . .

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

22           . . .

23           **(e)** Individual affordable units constructed under Section ~~415.6~~ 415.5 as part of an on-  
24 site project shall not have received development subsidies from any Federal, State or local

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1 program established for the purpose of providing affordable housing, and shall not be counted  
2 to satisfy any affordable housing requirement. Other units in the same on-site project may  
3 have received such subsidies. In addition, subsidies may be used, only with the express written  
4 permission by MOH, to deepen the affordability of an affordable unit beyond the level of  
5 affordability required by this Program.

6 (f) Notwithstanding the provisions of Section 415.6(e) above, a project may use California Debt  
7 Limit Allocation Committee (CDLAC) tax-exempt bond financing and 4% tax credits under the Tax  
8 Credit Allocation Committee (TCAC) to help fund its obligations under this ordinance as long as the  
9 project provides 20 percent of the units as affordable to households at 50 percent of Area Median  
10 Income for on-site housing. The income table to be used for such projects when the units are priced at  
11 50 percent of Area Median Income is the income table used by MOH for the Inclusionary Affordable  
12 Housing Program, not that used by TCAC or CDLAC. Except as provided in this subsection, all units  
13 provided under this Section must meet all of the requirements of this ordinance and the Procedures  
14 Manual for on-site housing.

15 (gf) **Benefits:** If the project sponsor is eligible for and elects to satisfy the affordable  
16 housing requirements through the production of on-site affordable housing in this Section  
17 415.6, the project sponsor shall be eligible to receive a refund for only that portion of the  
18 housing project which is affordable for the following fees: a Conditional Use Authorization or  
19 other fee required by Section 352 of this Code, if applicable; an environmental review fee  
20 required by Administrative Code Section 31.46B, if applicable; a building permit fee required  
21 by the Building Code and by Section 355 of this Code for the portion of the housing project  
22 that is affordable. The project sponsor shall pay the building fee for the portion of the project  
23 that is market-rate.

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1           The Controller shall refund fees from any appropriated funds to the project sponsor on  
2 application by the project sponsor. The application must include a copy of the Certificate of  
3 Occupancy for all units affordable to a qualifying household required by the Inclusionary  
4 Housing Program. It is the policy of the Board of Supervisors to appropriate money for this  
5 purpose from the General Fund.

6  
7           Section 6: The San Francisco Planning Code is hereby amended by amending  
8 selected portions of Section 415.7, to read as follows:

9           **SEC. 415.7. OFF-SITE AFFORDABLE HOUSING ALTERNATIVE.**

10           If the project sponsor is eligible and selects pursuant to Section 415.5(f) to provide off-  
11 site units to satisfy the requirements of Section 415.1 et seq., the project sponsor shall notify the  
12 Planning Department and MOH of its intent as early as possible. The Planning Department and MOH  
13 shall provide an evaluation of the project's compliance with this Section prior to approval by the  
14 Planning Commission or Planning Department. The development project shall meet the following  
15 requirements:

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

17           (1) (A) For any housing development of any height that is located in an area with a  
18 specific affordable housing requirement, set forth in Sections 416, 417, 419, or elsewhere in  
19 this Code, the more specific off-site housing requirement shall apply.

20           (B) Buildings of 120 feet and under in height or buildings of over 120 feet in height that  
21 do not meet the criteria in Subsection (C) below: Except as provided in Subsection (A), the  
22 Department shall require for housing projects described in Section 415.3(a)(1), (2), (3), and  
23 (4) 20 percent so that a project applicant must construct .20 times the total number of units  
24

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1 produced in the principal project. If the total number of units is not a whole number, the project  
2 applicant shall round up to the nearest whole number for any portion of .5 or above.

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

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1           **(b) Timing of Construction:** The project sponsor shall insure that the off-site units are  
 2 constructed, completed, ready for occupancy, and marketed no later than the market rate  
 3 units in the principal project. In no case shall the Principal Project receive its first certificate of  
 4 occupancy until the off-site project has received its first certificate of occupancy.

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

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

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1 new housing and so long as they are consistent with the "Quality Standards for Off-Site  
2 Affordable Housing Units" found in the Procedures Manual. Where applicable, parking shall  
3 be offered to the affordable units subject to the terms and conditions of the Department's  
4 policy on unbundled parking for affordable housing units as specified in the Procedures  
5 Manual and amended from time to time. If the residential units in the principal project are  
6 live/work units which do not contain bedrooms or are other types of units which do not contain  
7 bedrooms separated from the living space, the off-site units shall be comparable in size  
8 according to the following equivalency calculation between live/work and units with bedrooms:

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

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1           (e) **Marketing the Units:** MOH shall be responsible for overseeing and monitoring the  
2 marketing of affordable units under this Section. In general, the marketing requirements and  
3 procedures shall be contained in the Procedures Manual as amended from time to time and  
4 shall apply to the affordable units in the project. MOH may develop occupancy standards for  
5 units of different bedroom sizes in the Procedures Manual in order to promote an efficient  
6 allocation of affordable units. MOH may require in the Procedures Manual that prospective  
7 purchasers complete homebuyer education training or fulfill other requirements. MOH shall  
8 develop a list of minimum qualifications for marketing firms that market affordable units under  
9 Section 415.1 et seq., referred to the Procedures Manual as Below Market Rate (BMR units).  
10 No project sponsor marketing units under the Program shall be able to market BMR units  
11 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 in the project.

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

19           (2) **Preferences:** MOH shall create a lottery system that gives preference first to  
20 Residential Certificate of Preference Holders under the San Francisco Redevelopment  
21 Agency's Property Owner and Occupant Preference Program, as reprinted September 11,  
22 2008 and effective October 1, 2008 and on file with the Clerk of the Board in File No. 080521,  
23 who meet the qualifications of the Program, and second to people who live or work in San  
24 Francisco who meet the qualifications of the Program. MOH shall propose policies and

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1 procedures for implementing these preferences to the Planning Commission for inclusion in  
2 the Procedures Manual. Otherwise, it is the policy of the Board of Supervisors to treat all  
3 households equally in allocating affordable units under this Program.

4 (f) Individual affordable units constructed as part of a larger off-site project under  
5 Section 415.7 shall not receive development subsidies from any Federal, State or local  
6 program established for the purpose of providing affordable housing, and shall not be counted  
7 to satisfy any affordable housing requirement for the off-site development. Other units in the  
8 same off-site project may receive such subsidies. In addition, subsidies may be used, only with  
9 the express written permission by MOH, to deepen the affordability of an affordable unit beyond  
10 the level of affordability required by this Program.

11 (g) Notwithstanding the provisions of Section 415.7(f) above, a project may use California Debt  
12 Limit Allocation Committee (CDLAC) tax-exempt bond financing and 4% credits under the Tax Credit  
13 Allocation Committee (TCAC) to help fund its obligations under this ordinance as long as the project  
14 provides 25 percent of the units as affordable at 50 percent of area median income for off-site housing.  
15 The income table to be used for such projects when the units are priced at 50 percent of area median  
16 income is the income table used by MOH for the Inclusionary Housing Program, not that used by  
17 TCAC or CDLAC. Except as provided in this subsection, all units provided under this Section must  
18 meet all of the requirements of this ordinance and the Procedures Manual for off-site housing.

19  
20 Section 7: The San Francisco Planning Code is hereby amended by amending  
21 selected portions of Section 415.8, to read as follows:

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

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

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

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

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

8 (4) The income levels specified in the Notice of Special Restrictions and/or conditions  
9 of approval for the project shall be the required income percentages for the life of the project.

10 Notwithstanding the foregoing, if approved by MOH and as provided in the Procedures Manual, an  
11 exception to the required income percentage may be made in the following cases:

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

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

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

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

21 (E) the qualifying income level for new ownership units may be set at 10% above the income  
22 level stated in the Notice of Special Restrictions or conditions of approval.

23 (5) The Commission or the Department shall require all housing projects subject to  
24 Section 415.1 et seq. to record a Notice of Special Restrictions with the Recorder of the City

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1 and County of San Francisco. The Notice of Special Restrictions must incorporate the  
2 affordability restrictions. All projects described in Section 415.3(a)(1) and 415.3(a)(3) must  
3 incorporate all of the requirements of this Section 415.8 into the Notice for Special  
4 Restrictions, including any provisions required to be in the conditions of approval for housing  
5 projects described in Section 415.3(a)(2). These Section 415.3(a)(2) projects which are  
6 housing projects which go through the conditional use or planned unit development process  
7 shall have conditions of approval. The conditions of approval shall specify that project  
8 applicants shall adhere to the marketing, monitoring, and enforcement procedures outlined in  
9 the Procedures Manual, as amended from time to time, in effect at the time of project  
10 approval. The Commission shall file the Procedures Manual in the case file for each project  
11 requiring inclusionary housing pursuant to this Program. The Procedures Manual will be  
12 referenced in the Notice of Special Restrictions for each project.

13 (b) For any units permitted to be ownership units under the Program, the Mayor's  
14 Office of Housing shall:

15 (1) establish and implement a process for reselling an affordable unit in the Procedures  
16 Manual;

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

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

21 (4) provide that, in order to retain all units restricted as affordable under this Program  
22 within the City's affordable housing stock, the specific procedures for passing an affordable  
23 unit through inheritance are contained in the Procedures Manual. All transfers through  
24 inheritance must be reviewed and approved by MOH and, in all cases, the heir must

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1 acknowledge and agree to the provisions of the Program. The following households may  
 2 inherit the ability to occupy a unit restricted under this Program: (1) a spouse or registered  
 3 domestic partner, regardless of income; or (2) a child of the owner if the child is a qualifying  
 4 household for the unit. If the heir qualifies under one of these categories, the heir must occupy  
 5 the unit or the heir must market and sell the unit at the restricted price through a public lottery  
 6 process and retain the proceeds from the sale. If the heir does not qualify to occupy the unit,  
 7 the heir must market and sell the unit at the restricted price to a qualified buyer through a  
 8 public lottery process. The heir would retain the proceeds of such sale.

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

21 (6) For ownership units approved pursuant to Sections 415.6 or 415.7, the Notice of  
 22 Special Restrictions or conditions of approval will include provisions restricting resale prices  
 23 and purchaser income levels according to the formula specified in the Procedures Manual, as  
 24 amended from time to time. In the case that subordination of the Affordability Conditions

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1 contained in a recorded Notice of Special Restrictions may be necessary to ensure the Project  
 2 Applicant's receipt of adequate construction and/or permanent financing for the project, or to  
 3 enable first time home buyers to qualify for mortgages, the project applicant may follow the  
 4 procedures for subordination of affordability restrictions as described in the principal project's  
 5 conditions of approval or in the Procedures Manual. A release following foreclosure or other  
 6 transfer in lieu of foreclosure may be authorized if required as a condition to financing  
 7 pursuant to the procedures set forth in the Procedures Manual.

8 (7) Purchasers of affordable units shall secure the obligations contained in the Notice  
 9 of Special Restrictions or conditions of approval by executing and delivering to the City a  
 10 promissory note secured by a deed of trust encumbering the applicable affordable unit as  
 11 described in the Procedures Manual or by an alternative means if so provided for in the  
 12 Procedures Manual, as amended from time to time.

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

21 (1) Waiver of Re-Sale Requirements and Maximum Qualifying Income Level for New Buyers of  
 22 Resale BMR Units. The Board recognizes that the risk to low and moderate income  
 23 homeowners during times of economic downturn can increase the risk of default and  
 24 foreclosure of units restricted under this Program. The Board directs MOH to study ways to

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1 reduce such risks in the below market rate unit context and, if it deems appropriate, to make  
 2 recommendations to the Planning Commission to amend the Procedures Manual to allow  
 3 MOH discretion, in certain limited circumstances, to waive requirements for owners of  
 4 affordable units who have used good faith efforts to secure a contract with a qualified buyer but are  
 5 unable to resell their unit in a timely manner. Such amendments to the Procedures Manual  
 6 may include, but are not limited to, authorizing MOH to make one or more allowances for  
 7 owners of affordable units unable to resell such as: (1) a one-time waiver of the first-time  
 8 homebuyer rule for the purchasing household; (2) a one-time waiver of qualifying household  
 9 size requirements for the purchasing household; (3) and a one-time waiver of owner  
 10 occupancy rules to allow a temporary rental; ~~and~~ (4) a one-time modification of the asset test  
 11 for the new buyer household and (5) allowing MOH discretion to increase the qualifying income  
 12 level for the unit by up to 20% above the maximum income limit currently allowed by the Use  
 13 Restrictions for the Unit but at no time higher than 120% of AMI. MOH and the Commission shall  
 14 set forth criteria for granting such allowances such as establishing a minimum time that the  
 15 units must have been advertised by MOH without selling; ~~or~~ establishing criteria related to  
 16 unusual economic or personal circumstances of the owner; providing a maximum percentage for  
 17 the increase above the maximum income limit currently allowed; providing that the increase may only  
 18 be granted on a one-time basis; and requiring the owner to clearly establish that the BMR unit is being  
 19 resold at the original purchase price plus the current repricing mechanism under the Program which  
 20 calculates the percentage change in AMI from the time of purchase to resale plus the commission and  
 21 any eligible capital improvements or special assessments.

22 (2) Waiver of Maximum Qualifying Income Level For New Buyers of Initial Sale BMR Units:

23 The Board of Supervisors recognizes that the current Program provides that the income of a new buyer  
 24 of a below market rate household cannot exceed the maximum income stated in the Planning Approval

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

17 (c) For any units permitted to be rental units under the Program, the MOH shall  
 18 establish:

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

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

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

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

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

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

10  
11 Section 8: The San Francisco Planning Code is hereby amended by amending  
12 selected portions of Section 415.9, to read as follows:

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

14 . . .

15 ~~(f) MOH shall evaluate its monitoring system for affordable units created under this Section and~~  
16 ~~shall compare its system with that of the San Francisco Redevelopment Agency with the goal of~~  
17 ~~establishing, to the extent feasible, a single monitoring system for all inclusionary affordable housing~~  
18 ~~units located in the City and County of San Francisco. MOH shall make any changes to its monitoring~~  
19 ~~system necessary to bring its monitoring system into conformity with the system of the Redevelopment~~  
20 ~~Agency, or, if necessary, MOH shall make recommendations to the Board of Supervisors to amend~~  
21 ~~Section 415.1 et seq. in order to implement improvements to the monitoring system. If it is necessary to~~  
22 ~~amend the Procedures Manual to change its monitoring system to comply with this Section, MOH may~~  
23 ~~make any changes necessary to the Procedures Manual to comply with this Section 415.9(f). For~~  
24 ~~purposes of this Section 415.9(f) only and on a one-time basis, MOH may amend the Procedures~~

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1 ~~Manual without obtaining approval from the Commission. If MOH determines that some or all of the~~  
 2 ~~aspects of its system are more effective than the Redevelopment Agency's system, it shall inform the~~  
 3 ~~Board of Supervisors and recommend that the Board urge the Redevelopment Agency to conform its~~  
 4 ~~procedures to the City's.~~

5 (g) **Annual or Bi-annual Monitoring:**

6 (1) MOH shall monitor and require occupancy certification for affordable ownership and  
 7 rental units on an annual or bi-annual basis, as outlined in the Procedures Manual.

8 (2) MOH may require the owner of an affordable rental unit, the owner's designated  
 9 representative, or the tenant in an affordable unit to verify the income levels of the tenant on  
 10 an annual or bi-annual basis, as outlined in the Procedures Manual.

11 (3) MOH may charge the owner of affordable units an annual monitoring fee as authorized  
 12 under Administrative Code Section 8.43.

13

14 Section 9. Effective Date. This ordinance shall become effective 30 days from the  
 15 date of passage.

16

17 Section 10. This section is uncodified. In enacting this Ordinance, the Board intends  
 18 to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,  
 19 punctuation, charts, diagrams, or any other constituent part of the Planning Code that are  
 20 explicitly shown in this legislation as additions, deletions, Board amendment additions, and  
 21 Board amendment deletions in accordance with the "Note" that appears under the official title  
 22 of the legislation.

23

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

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By: \_\_\_\_\_  
Susan Cleveland-Knowles  
Deputy City Attorney

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