

**REVISED LEGISLATIVE DIGEST**

(Substituted, 4/18/2017)

[Planning Code – Inclusionary Affordable Housing Fee and Requirements]

**Ordinance amending the Planning Code to revise the amount of the Inclusionary Affordable Housing Fee and the On-Site and Off-Site Affordable Housing Alternatives and other Inclusionary Housing requirements; adding reporting requirements for density bonus projects; affirming the Planning Department’s determination under the California Environmental Quality Act; making findings under Planning Code, Section 302; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

Existing Law

The City generally requires private developers of new market-rate housing to provide affordable housing (“Inclusionary Housing”) by paying a fee to the City. A developer could also opt to provide Inclusionary Housing on- or off-site. The City’s Inclusionary Affordable Housing Fee and other requirements are set forth in Planning Code Sections 415 et seq. and provide 3 methods of complying with the requirements.

1. Affordable Housing Fee: The development project pays a fee equivalent to the applicable off-site percentage of the number of units in the principal project:

- For development projects consisting of 10 – 24 dwelling units, the percentage is 20%.
- For development projects consisting of 25 dwelling units or more, the percentage is 33%.

2. If a developer opts to provide affordable housing on-site, the on-site Affordable Housing would be provided as follows:

- For housing development projects consisting of 10 – 24 dwelling units, the number of affordable units constructed on-site would generally be 12% of all units constructed on the project site. The units must be affordable to low-income households.
- For housing development projects consisting of 25 dwelling units or more, the number of affordable units constructed on-site would generally be 25% of all units constructed on the project site, with a minimum of 15% of the units affordable to low-income households and 10% of the units affordable to low- or middle- income households.

3. If a developer opts to provide affordable housing off-site, the off-site Affordable Housing would be provided as follows:

- For housing development projects consisting of 10-24 dwelling units, the number of affordable units constructed off-site would be 20% of the number of units in the principal project.
- For housing development projects consisting of 25 dwelling units or more, the number of affordable units constructed off-site would be 33% of the number of units in the principal project, with 20% of the units affordable to low-income households and 13% of the units affordable to low- or middle-income households.

If there is a higher Inclusionary Housing requirement in specific zoning districts, the higher requirement would apply. There are specific Inclusionary Housing requirements for the UMU and SOMA Youth & Families Zoning Districts. The Planning Code also contains a number of “grandfathering” provisions, which set the Inclusionary Housing requirements at lower percentages for a limited period of time, depending on when a complete environmental evaluation application was submitted.

The Planning Code directs the Mayor’s Office of Housing and Community Development (“MOHCD”) to set the amount of the fee to be paid by the project sponsor to calculate the “affordability gap” using data on the cost of construction of providing the residential housing and the Maximum Purchase Price for the equivalent unit size.

Section 401 defines a low-income household as one whose income does not exceed 55% of Area Median Income for purposes of renting an affordable unit, and 80% of Area Median Income for purposes of purchasing an affordable unit. “Moderate income” and “middle income” households shall mean households whose total household income does not exceed 100% of Area Median Income for purposes of renting an affordable unit, and 120% of Area Median Income for purposes of purchasing an affordable unit.

The Planning Code also requires an applicant seeking a density bonus under State law to provide analysis to support any requested concessions and incentives under the State law.

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

#### Amendments to Current Law

The Proposed Legislation would change the inclusionary affordable housing requirement for 3 kinds of inclusionary affordable housing in the following ways.

1. Inclusionary Affordable Housing Fee: The Amendments would set the Inclusionary Affordable Housing Fee for projects consisting of 25 dwelling units or more to 33% for an ownership housing project and 30% for a rental housing project.

The Amendments would direct MOHCD to calculate the Inclusionary Affordable Housing Fee by using data on the City's cost of construction of providing the residential housing for 3 different building types and 2 types of tenure, ownership and rental, rather than a single fee calculation uniformly applied to all types of projects. The 3 building types would be based on the height of the building: (A) up to 55 feet; (B) above 55 feet up to 85 feet; and (C) above 85 feet. MOHCD must calculate the affordability gap within 6 months of the effective date of the Amendments and update the Fee annually to ensure that the Fee amount remains current and reflects the City's current costs for the different building types and tenures.

2. On-Site Inclusionary Affordable Housing Units: A project sponsor may elect to provide on-site affordable housing in lieu of paying the Inclusionary Fee.

For housing projects consisting of 10 – 24 units, the number of affordable units constructed on-site shall be 12% of all units constructed on the project site. The required on-site affordable housing would increase by 0.75% annually for housing projects consisting of 10 – 24 units, beginning on January 1, 2018. The on-site affordable Owned Units shall be affordable to households earning 80% to 100% of Area Median Income, with an average affordable sales price set at 90% of Area Median Income or less. Affordable Rental Units shall be affordable to households earning 40% to 80% of Area Median Income, with an average affordable rent set at 60% of Area Median Income or less.

For ownership housing projects consisting of 25 or more units, the number of affordable units constructed on-site shall be 27% of all units constructed on the project site, with a minimum of 15% of the units affordable to low-or lower-income households and 12% of the units affordable to moderate/middle-income households.

- Owned Units for low- and lower-income households shall be affordable to a range of households from 80% to 100% of Area Median Income, with an average affordable sales price set at 90% of Area Median Income or less. Owned Units for middle/moderate income households shall be affordable to a range of households from 100% to 140% of Area Median Income, with an average affordable sales price set at 120% of Area Median Income or less; provided that a middle/moderate income unit shall have a maximum sales price set at 100% of Area Median Income for a single income household. MOHCD may reduce the average Area Median Income upon request by the project sponsor.

For any Rental Housing Project consisting of 25 or more Rental Units, the number of affordable units constructed on-site shall generally be 24% of all units constructed on the

project site, with a minimum of 15% of the units affordable to low- or lower-income households and 9% of the units affordable to moderate/middle-income households.

- Rental Units for low- and lower-income households shall be affordable to a range of households earning from 40% to 80% of Area Median Income, with an average affordable rent set at 60% of Area Median Income or less. Rental Units for middle/moderate income households shall be affordable to a range of households earning from 80% to 120% of Area Median Income, with an average affordable rent set at 100% of Area Median Income or less; provided that a middle/moderate income unit shall have a maximum rent set at 100% of Area Median Income for a single income household. MOHCD may reduce the average Area Median Income upon request by the project sponsor. MOHCD shall set forth in the Procedures Manual the administration of rental units within this range.

### 3. Off-Site Inclusionary Affordable Housing.

- For any housing development project consisting of 25 or more Owned Units, the number of affordable units constructed off-site shall be 33% of all units constructed on the project site, with a minimum of 18% of the units affordable to low-or lower-income households and 15% of the units affordable to moderate/middle-income households. Owned Units for low- and lower-income households shall be affordable to a range of households from 80% to 100% of Area Median Income, with an average affordable sales price set at 90% of Area Median Income or less. Owned Units for middle/moderate income households shall be affordable to a range of households from 100% to 140% of Area Median Income, with an average affordable sales price set at 120% of Area Median Income or less; provided that a middle/moderate income unit shall have a maximum sales price set at 100% of Area Median Income for a single income household. MOHCD may reduce the average Area Median Income upon request by the project sponsor.
- For any Rental Housing Project consisting of 25 or more Rental Units, the number of affordable units constructed off-site shall generally be 30% of all units constructed on the project site, with a minimum of 15% of the units affordable to low- or lower-income households and 15% of the units affordable to moderate/middle-income households. Rental Units for low- and lower-income households shall be affordable to a range of households earning from 40% to 80% of Area Median Income, with an average affordable rent set at 60% of Area Median Income or less. Rental Units for middle/moderate income households shall be affordable to a range of households earning from 80% to 120% of Area Median Income, with an average affordable rent set at 100% of Area Median Income or less; provided that a middle/moderate income unit shall have a maximum rent set at 100% of Area Median Income for a single income household. MOHCD may reduce the average Area Median Income upon request by

the project sponsor. MOHCD shall set forth in the Procedures Manual the administration of rental units within this range.

A minimum of 40% of the on-site and off-site affordable units shall consist of two bedroom units and a minimum of 20% of the on-site and off-site affordable units shall consist of three bedrooms or larger. Units shall have minimum floor areas that conform to the standards developed by the California Tax Credit Allocation Committee (CTCAC) for affordable units. The total residential floor area devoted to the affordable units shall not be less than the applicable percentage applied to the total residential floor area of the principal project, provided that a 10% variation in floor area is permitted.

For all projects consisting of 25 or more dwelling units, in the event a rental housing project or unit becomes ownership housing, the owner would reimburse the cost of the fee deduction to the City, or provide additional on-site or off-site affordable units, so that the project would comply with the current inclusionary housing requirements for ownership housing.

For all projects, if a project sponsor does not procure a building permit within 2 years of project approval, the project sponsor must comply with the inclusionary housing requirements at the time of building permit procurement.

For all projects, the Amendments would change the definition of low-income households to include households whose total household income is 40% to 80% of Area Median Income for purposes of renting an affordable unit, or 80% to 100% of Area Median Income for purposes of purchasing an affordable unit, and "moderate income" and "middle income" households shall mean households whose total household income is 80% to 120% of Area Median Income for purposes of renting an affordable unit, or 100% to 140% of Area Median Income for purposes of purchasing an affordable unit.

An applicant seeking a density bonus under the provisions of State Law must provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, and waivers or reductions of development standards, consistent with State law. The Planning Department would provide information about the value of the density bonus, concessions and incentives for each density bonus project and include it in the Department's case report or decision on the application. Beginning in January 2018, the Planning Department shall prepare an annual report to the Planning Commission about the number of density bonus projects, density bonus units and the kinds of density bonuses, concessions and incentives provided to each density bonus project, which should be presented at the same time as the Housing Balance Report.

The Planning Department, in consultation with the Controller, must undertake a study of areas where an Area Plan, Special Use District, or other re-zoning has been adopted after January 1, 2015, to determine whether a higher on-site inclusionary affordable housing requirement is feasible on sites that have received a 20% or greater increase in developable residential

FILE NO. 161351

gross floor area or a 35% or greater increase in residential density over prior zoning, and shall submit such information to the Planning Commission and Board of Supervisors.

Background Information

The City published the Residential Affordable Housing Nexus Analysis in November 2016.

The Controller completed the Feasibility Analysis required by Planning Code Section 415.10 in February 2017.

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