



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Planning Code Text Change

HEARING DATE: NOVEMBER 4, 2010

*Project Name:* **Amendments relating to Planning Code Section 415:  
Exempting Student Housing from the Inclusionary Housing  
Program**

*Case Number:* 2010.0839T [Board File No. 10-10195]

*Initiated by:* Supervisor Dufty, Introduced August 10, 2010

*Staff Contact:* Tara Sullivan, Legislative Affairs  
tara.sullivan@sfgov.org, 415-558-6257

*Reviewed by:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395

*90-day Deadline:* November 23, 2010

*Recommendation:* **Recommend Approval With Modifications**

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### PLANNING CODE AMENDMENT

The proposed Ordinance introduced by Supervisor Dufty would amend Sections 401 (Definitions) 415 (Inclusionary Affordable Housing Program) to do the following:

1. Add four definitions in Section 401 that outline and define a "Qualified Educational Institution", "Qualified Student", "Qualified Student Housing Project", and "Qualified Student Housing"; and
2. Amend Section 415.3 (Application) to exempt particular student housing projects from the Inclusionary Housing Program.

#### The Way It Is Now:

All projects that involve five or more new dwelling units must participate in the *Inclusionary Affordable Housing Program* contained in Section 415 of the Planning Code. Section 415 is currently being amended to comply with the *Palmer/Sixth Street Properties vs. City of Los Angeles* case, which held that the California Costa-Hawkins Rental Housing Act<sup>1</sup> preempts a Los Angeles requirement mandating, as a condition of development, that a portion of newly constructed dwelling units be rented at low-income rents.

Once the Inclusionary Housing Program is amended, all projects must pay an Affordable Housing Fee unless they qualify and choose an alternative – providing the units on-site or off-site.

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<sup>1</sup> California Civil Code Section 1954.50-1954.535.

The Inclusionary Housing Program does not contain any definitions of student housing or educational institutions. All projects that involve five or more units, regardless of type, must participate in the Program.

**The Way It Would Be:**

The proposed Ordinance would add four definitions to Section 401 related to student housing:

1. Qualified Educational Institution: shall mean an accredited post secondary Educational Institution which has Qualified Students.
2. Qualified Student: shall mean a student who receives or is eligible to receive need-based financial aid from Pell Grants, Perkins Loans, Stafford Subsidized Loans or other grants or loans made or guaranteed by the United States Government or a state or local government, or by an entity sponsored and regulated by such unit of government and is currently enrolled at a Qualified Educational Institute.
3. Qualified Student Housing Project: shall mean any housing project that contains housing for Qualified Students and which may also contain housing for persons who are enrolled students but not Qualified Students, created either through new construction or conversion of an existing building or space.
4. Qualified Student Housing: shall mean housing or group housing (measured either by units or beds) or accessory living space within a non-residential space, either owned by a Qualified Educational Institution or controlled by a Qualified Educational Institution through a long-term master lease for a period of at least 20 years in which at least thirty percent (30%) of such units or beds are occupied by Qualified Students. The Qualified Student Housing may be on the site of the Institution or at another location in the City and County of San Francisco.

In addition, Section 415.3 will be amended to exempt a Qualified Student Housing Project that meets the following criteria:

1. The building or conversion of a space does not result in the loss of existing rental housing;
2. An IMP is on file with the Planning Department which shall describe
  - a. Type and location of housing used by students;
  - b. Plans for the provision of qualified student housing;
  - c. The Institutions' need for student housing to support its program; and
  - d. Percentage of its students that receive some form on need-based assistance.
3. The Institution will submit an annual report to the Mayors Office of Housing and the Planning Department that contains:
  - a. Evidence of all ownership of or leasehold of properties that are used as student housing;
  - b. Number of qualified students who are occupying the units;

- c. Records of the Notice of Special Restrictions on each property exempting the Institution from the Inclusionary Housing Program.

## 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 with the modifications* of the proposed Ordinance and adopt the attached Draft Resolution to that effect. Specifically, the Department recommends the following modifications:

1. Create a definition for student housing in the Planning Code.
2. Recapture Inclusionary fees if a “qualified student housing” project later converts to another housing type.
3. Prohibit the conversion of existing residential units including dwelling units, Single Room Occupancy, and Residential Hotel Housing as regulated by Chapter 41 of the Administrative Code, as well as Large Tourist Hotels as regulated by Chapter 41F of the Administrative Code to student housing use;
4. Allow conversions of other uses to the new “student housing use” by Conditional Use authorization;
5. Remove the requirement that each development be occupied by students of a certain income and instead require qualified education institution to require that at least 30% of students meet the definition of “qualified students”; and

## BASIS FOR RECOMMENDATION

It is a long-stated goal of the City that persons of all affordability be able to live in San Francisco. To that end, the Inclusionary Housing Program requires developers to provide funding and/or units that will be dedicated to affordable housing.

Educational Institutions are a unique land use in that they have a transient population who may have a low income<sup>2</sup> that must be housed nearby the educational facilities. In a dense, built-up city such as San Francisco, it is difficult for large educational institutions to provide housing for their students.

As the Commission is aware there have been recent concerns about some facilities for higher education inappropriately converting existing uses (including existing housing) to student housing without the benefit of permit. By creating an incentive to encourage the production of student housing while protecting the City’s existing housing stock and other vulnerable uses, the

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<sup>2</sup> A majority of students receive some sort of financial aid – either directly from the institution itself, the Federal Government, or private loans that are guaranteed by the government.

City may be able to both 1) relieve the pressure student demand for housing on the existing housing stock and 2) and encourage the creation of new housing for students within the City.

Specifically, each of the proposed modifications is recommended for the following reasons:

1. **Create a definition for student housing in the Planning Code<sup>3</sup>.** This proposed change will enable the Department to monitor changes of use to the new student housing definition through “change of use” permits. In doing so, the City can track better track student housing projects that did not pay Inclusionary housing fees and could ensure that only the “student housing” use portion of the project would be exempted from Inclusionary fees. This new definition should be subject to the density limitations, parking controls, and all other requirements for group housings or dwellings, as appropriate, for the zoning district in which it is located. This new student housing use shall meet the applicable provisions of Section 304.5 of this Code concerning institutional master plans.
2. **Recapture Inclusionary fees if a “qualified student housing” project later converts to another housing type.** This modification will also allow us to collect fees if the project should transition from student housing to another housing use in the future. Without this mechanism in place, there would be the potential for a project to apply for the exemption from Inclusionary fees as a “qualified student housing” project and then to convert to market-rate housing after entitlement without paying Inclusionary housing fees.
3. **Prohibit the conversion of existing residential units including dwelling units, Single Room Occupancy, and Residential Hotel Housing as regulated by Chapter 41 of the Administrative Code, as well as Large Tourist Hotels as regulated by Chapter 41F of the Administrative Code to student housing use.** This proposed modification will ensure the protection of our existing housing stock and other vulnerable uses and, therefore, encourage production of new student housing.
4. **Allow the conversion of other uses to the new student housing use by Conditional Use authorization.** This proposed modification will enable the Commission to use discretion in approving the conversion of existing uses to student housing. Again, the City’s goal is the production of new student housing. There may be times when it is appropriate to convert existing uses to student housing but the preference would be the creation of new student housing.
5. **Remove the requirement that each development be occupied by students of a certain income and instead require qualified education institution to require that at least 30% of students meet the definition of “qualified students”.** The Department is concerned about implications of needing to verify the income levels for a parcel every year. This may involve students submitting income information. Instead, if the Commission agrees with the goal to facilitate the production of student housing, the Department recommends simply verifying

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<sup>3</sup> This new definition could be created within both “other housing” 209.2. for dormitories and in Section 209.1 under “dwelling units” for student apartments or it could be created as a stand-alone definition. The Department would like to discuss the implications of where this new definition is located with both the City Attorney and Supervisor Dufty prior to drafting the specific language.

that the student population of the qualified educational institution includes at least 30% “qualified students”.

In summary, the Department supports the proposed legislation with the few modifications listed above.

### **ENVIRONMENTAL REVIEW**

The proposal to amend the San Francisco Planning Code Section 415 would result in no physical impact on the environment. The proposed amendment is exempt from environmental review under Section 15060(c)(2) of the CEQA Guidelines.

### **PUBLIC COMMENT**

As of the date of this report, the Planning Department has received no letters in support or opposition of the proposal from the public.

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

- Exhibit A:        Draft Planning Commission Resolution
- Exhibit B:        Draft Board of Supervisors Ordinance (BOS File No. 10-1095)



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Draft Resolution

HEARING DATE: NOVEMBER 4, 2010

*Project Name:* **Amendments relating to Planning Code Section 415:  
Exempting Student Housing from the Inclusionary Housing  
Program**

*Case Number:* 2010.0839T [Board File No. 10-10195]

*Initiated by:* Supervisor Dufty, Introduced August 10, 2010

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**RECOMMENDING THAT THE BOARD OF SUPERVISORS APPROVE WITH MODIFICATIONS THE PROPOSED ORDINANCE THAT WOULD AMEND SAN FRANCISCO PLANNING CODE SECTIONS 401 AND 415.3 TO EXEMPT CERTAIN QUALIFIED STUDENT HOUSING PROJECTS FROM THE INCLUSIONARY AFFORDABLE HOUSING PROGRAM; AND MAKING FINDINGS IN CLUSIND ENVIRONMENTAL FINDINGS.**

### PREAMBLE

Whereas, on August 10, 2010, Supervisor Dufty introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 10-1095 to do the following:

1. Add four definitions in Section 401 that outline and define a "Qualified Educational Institution", "Qualified Student", "Qualified Student Housing Project", and "Qualified Student Housing"; and
2. Amend Section 415.3 (Application) to exempt particular student housing projects from the Inclusionary Housing Program.

Whereas, on November 4, 2010 the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance;

Whereas, the proposed zoning changes have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 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 on behalf of the applicant, 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 approval of the proposed Ordinance with modifications and adopts the attached Draft Resolution to that effect. Specifically, the Department recommends the following modifications:

1. Create a definition for student housing in the Planning Code.
2. Recapture Inclusionary fees if a “qualified student housing” project later converts to another housing type.
3. Prohibit the conversion of existing residential units including dwelling units, Single Room Occupancy, and Residential Hotel Housing as regulated by Chapter 41 of the Administrative Code, as well as Large Tourist Hotels as regulated by Chapter 41F of the Administrative Code to student housing use;
4. Allow conversions of other uses to the new “student housing use” by Conditional Use authorization; and
5. Remove the requirement that each development be occupied by students of a certain income and instead require qualified education institution to require that at least 30% of students meet the definition of “qualified students”.

## 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. San Francisco’s Inclusionary Affordable Housing Policy was first adopted by the Planning Commission in 1992, and in 2002 the City formally adopted this policy as a part of the Planning Code (Section 415, formerly Section 315).
2. All projects that involve five or more new dwelling units must participate in the *Inclusionary Affordable Housing Program* contained in Section 415 of the Planning Code. Section 415 is currently being amended to comply with the *Palmer/Sixth Street Properties vs. City of Los Angeles* case, which held that the California Costa-Hawkins Rental Housing Act<sup>1</sup> preempts a Los Angeles requirement mandating, as a condition of development, that a portion of newly constructed dwelling units be rented at low-income rents

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<sup>1</sup> California Civil Code Section 1954.50-1954.535.

3. Once the Inclusionary Housing Program is amended, all projects must pay an Affordable Housing Fee unless they qualify and choose an alternative – providing the units on-site or off-site.
4. It is a long-stated goal of the City that persons of all affordability be able to live in San Francisco. To that end, the Inclusionary Housing Program requires developers to provide funding and/or units that will be dedicated to affordable housing.
5. Educational Institutions are a unique land use in that they have a transient population that must be housed nearby the educational facilities.
6. The Residential Nexus Analysis for the City and County of San Francisco (Keyser Marston Associates April 2007) examined the impact of the consumption of condominium buyers and how the goods and services these households purchase could create a need for housing for lower income households, to arrive at the demand for affordable housing generated by the residents of new units. The income of those condominium buyers was estimated based upon the income required to purchase or rent a unit in a prototypical new low-rise wood frame building. The analysis did not specifically examine the consumption of students. While it would be difficult to estimate the consumption of students, given the variety in their economic situations and incomes, one could reasonably assume that they would, on average, have a lower impact on demand for affordable housing.
7. Student housing would create a demand for affordable housing, although likely lower than the demand created by typical market rate housing because students typically have less disposable income. However, the lack of student housing creates pressure on existing housing stock, resulting in a negative impact on existing affordable housing. Therefore, there are public motives to make a policy decision to address that housing pressure, given that this pressure is likely a larger impact than the direct demand they generate.
8. The Commission understands the unique situation that large Educational Institutions have in San Francisco and supports the concept of allowing an exemption from the Inclusionary Housing Program to create an incentive for the production of new student housing.
9. By creating an incentive to encourage the production of student housing while protecting the City's existing housing stock and other vulnerable uses, the City may be able to both 1) relieve the pressure student demand for housing on the existing housing stock and 2) and encourage the creation of new housing for students within the City.
10. However, the Commission believes that the certain potential loopholes in the legislation should be closed.



11. Therefore, the Commission supports the proposed legislation with the modifications listed above and recommends approval with modifications of the proposed Ordinance.
12. **General Plan Compliance.** The proposed Ordinance is, on balance, consistent with the following Objectives and Policies of the General Plan:

**I. HOUSING ELEMENT INTRODUCTION**

THE OBJECTIVES AND POLICIES DETAILED BELOW ADDRESS THE STATE'S, THE REGION'S AND THE CITY'S GOALS OF ACHIEVING DECENT, SUITABLE, AND AFFORDABLE HOUSING FOR CURRENT AND FUTURE SAN FRANCISCANS. INCREASING THE CITY'S HOUSING STOCK, PROTECTING AND CONSERVING EXISTING UNITS, AND ENCOURAGING HOUSING CHOICE ARE OBJECTIVES PREDICATED ON AFFORDABILITY..

**OBJECTIVE 5**

INCREASE THE EFFECTIVENESS AND EFFICIENCY OF THE CITY'S AFFORDABLE HOUSING PRODUCTION SYSTEM.

**POLICY 5.1**

Prioritize affordable housing projects in the planning review and approval processes, and work with the development community to devise methods of streamlining housing projects.

**POLICY 5.2**

Support efforts of for-profit and non-profit organizations and other community-based groups and expand their capacity to produce and manage permanently affordable housing.

**POLICY 5.3**

Create greater public awareness about the quality and character of affordable housing projects and generate community-wide support for new affordable housing.

**POLICY 5.4**

Coordinate governmental activities related to affordable housing.

*The proposed Ordinances amends the Inclusionary Housing Program to allow for certain large-scale educational institutions to be exempt from the Program. As these institutions provide housing for a large number of students who receive government subsidies, the Commission finds that the balance between providing educational intuitions vs. the payment of the Affordable Housing Fee is met and that there will be little impact to the Inclusionary Housing Program by exempting these institutions.*

1. 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 not impact existing neighborhood-serving retail uses or opportunities for employment in or ownership of such businesses.*
- 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 impact to neighborhood character.*
- C) The City's supply of affordable housing will be preserved and enhanced:  
*The proposed Ordinance would create an incentive to encourage the production of student housing while protecting the City's existing housing stock and other vulnerable uses, the City may be able to both 1) relieve the pressure student demand for housing on the existing housing stock and 2) and encourage the creation of new housing for students within the City.*
- 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 would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.*
- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.  
*Preparedness against injury and loss of life in an earthquake is unaffected by the proposed Ordinance.*
- G) That landmark and historic buildings will be preserved:  
*Landmarks and historic buildings would be unaffected by the proposed amendments.*
- H) Parks and open space and their access to sunlight and vistas will be protected from development:  
*The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed amendments.*

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on November 4, 2010.

Hearing Date: November 4, 2010

CASE NO. 2010.0839T  
Section 415: Exemption of Student Housing

Linda Avery  
Commission Secretary

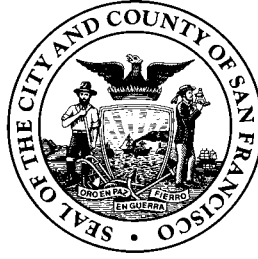
AYES:

NAYS:

ABSENT:

ADOPTED: November 4, 2010

BOARD of SUPERVISORS



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August 30, 2010

Linda Avery  
Planning Commission  
1660 Mission Street, 5<sup>th</sup> Floor  
San Francisco, CA 94103

Dear Commissioners:

On August 10, 2010, Supervisor Dufty introduced the following proposed legislation:

**File No. 101095**

Ordinance amending the Residential Inclusionary Affordable Housing Program, Planning Code Sections 415 et seq. to exempt certain Qualified Student Housing Projects, as defined, if the project meets certain requirements; and making findings including environmental findings.

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

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script that reads "Alisa Somera".

By: Alisa Somera, Committee Clerk  
Land Use & Economic Development Committee

Attachment

c: John Rahaim, Director of Planning  
AnMarie Rodgers, Legislative Affairs  
Tara Sullivan, Legislative Affairs  
Brett Bollinger, Major Environmental Analysis  
Kate Stacy, Deputy City Attorney

1 [Planning Code - Affordable Housing Program Exemption for Qualified Student Housing]

2

3 **Ordinance amending the Residential Inclusionary Affordable Housing Program,**  
4 **Planning Code Sections 415 et seq. to exempt certain Qualified Student Housing**  
5 **Projects, as defined, if the project meets certain requirements; and making findings**  
6 **including environmental findings.**

7 NOTE: Additions are *single-underline italics Times New Roman*;  
8 deletions are ~~*strike-through italics Times New Roman*~~.  
9 Board amendment additions are double-underlined;  
Board amendment deletions are ~~strikethrough normal~~.

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

11 Section 1. Findings. The Board of Supervisors hereby finds and declares as follows:

12 (a) The Planning Department has determined that the actions contemplated in this  
13 Ordinance are in compliance with the California Environmental Quality Act (California Public  
14 Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the  
15 Board of Supervisors in File No. \_\_\_\_\_ and is incorporated herein by  
16 reference.

17 (b) On \_\_\_\_\_, 2009, the Planning Commission, in Resolution  
18 No. \_\_\_\_\_ approved and recommended for adoption by the Board this legislation  
19 and adopted findings that it is consistent, on balance, with the City's General Plan and eight  
20 priority policies of Planning Code Section 101.1. The Board adopts these findings as its own.  
21 A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No.  
22 \_\_\_\_\_, and is incorporated by reference herein.

23 (c) Pursuant to Planning Code Section 302, this Board of Supervisors finds  
24 that this legislation will serve the public necessity, convenience, and welfare for the reasons  
25

1 set forth in Planning Commission Resolution No. \_\_\_\_\_, and incorporates such  
2 reasons by reference herein.

3 Section 2. The San Francisco Planning Code is hereby amended by amending Section  
4 401 and 415.3, to read as follows:

5 **SEC. 401. DEFINITIONS.**

6 (a) In addition to the specific definitions set forth elsewhere in this Article, the  
7 following definitions shall govern interpretation of this Article:

8 (1) "Affordable housing project." A housing project containing units constructed to  
9 satisfy the requirements of Sections 413.5, 413.8, 415.4, or 4.5.5 of this Article, or receiving  
10 funds from the Citywide Affordable Housing Fund.

11 (2) "Affordable to a household." A purchase price that a household can afford to pay  
12 based on an annual payment for all housing costs of 33 percent of the combined household  
13 annual net income, a 10 percent down payment, and available financing, or a rent that a  
14 household can afford to pay based on an annual payment for all housing costs of 30 percent  
15 of the combined annual net income.

16 (3) "Affordable to qualifying households":

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

20 (i) Only to households with an annual net income equal to or less than that of a  
21 household of moderate income; and

22 (ii) At or below the maximum purchase price.

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

25

1 (i) Only to households with an annual net income equal to or less than that of a  
2 household of lower income;

3 (ii) At or less than the maximum annual rent.

4 (4) "Allowable average purchase price":

5 (A) For all affordable one-bedroom units in a housing project, a price affordable to a  
6 two-person household of median income as set forth in Title 25 of the California Code of  
7 Regulations Section 6932 ("Section 6932") on January 1st of that year;

8 (B) For all affordable two-bedroom units in a housing project, a price affordable to a  
9 three-person household of median income as set forth in Section 6932 on January 1st of that  
10 year;

11 (C) For all affordable three-bedroom units in a housing project, a price affordable to  
12 a four-person household of median income as set forth in Section 6932 on January 1st of that  
13 year;

14 (D) For all affordable four-bedroom units in a housing project, a price affordable to a  
15 five-person household of median income as set forth in Section 6932 on January 1st of that  
16 year.

17 (1) "Affordable to qualifying middle income households":

18 (A) With respect to owned units, the average purchase price on the initial sale of all  
19 qualifying middle income units shall not exceed the allowable average purchase price deemed  
20 acceptable for households with an annual gross income equal to or less than the qualifying  
21 limits for a household of middle income, adjusted for household size. This purchase price shall  
22 be based on household spending of 35% of income for housing, and shall only apply to initial  
23 sale, and not for the life of the unit.

24 (B) With respect to rental units, the average annual rent--including the cost of  
25 utilities paid by the tenant according to the HUD utility allowance established by the San

1 Francisco Housing Authority -- for qualifying middle income units shall not exceed the  
2 allowable average purchase price deemed acceptable for households with an annual gross  
3 income equal to or less than the qualifying limits for a household of middle income, adjusted  
4 for household size. This price restriction shall exist for the life of the unit.

5 (5) "Allowable average annual rent":

6 (A) For all affordable one-bedroom units in a housing project, 18 percent of the  
7 median income for a household of two persons as set forth in Section 6932 on January 1st of  
8 that year;

9 (B) For all affordable two-bedroom units in a housing project, 18 percent of the  
10 median income for a household of three persons as set forth in Section 6932 on January 1st  
11 of that year;

12 (C) For all affordable three-bedroom units in a housing project, 18 percent of the  
13 median income for a household of four persons as set forth in Section 6932 on January 1st of  
14 that year;

15 (D) For all affordable four-bedroom units in a housing project, 18 percent of the  
16 median income for a household of five persons as set forth in Section 6932 on January 1st of  
17 that year.

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

22 (7) "Annual net income." Net income as defined in Title 25 of the California Code of  
23 Regulations Section 6916.



1 (8) "Average annual rent." The total annual rent for the calendar year charged by a  
2 housing project for all affordable rental units in the project of an equal number of bedrooms  
3 divided by the total number of affordable units in the project with that number of bedrooms.

4 (9) "Average purchase price." The purchase price for all affordable owned units in  
5 an affordable housing project of an equal number of bedrooms divided by the total number of  
6 affordable units in the project with that number of bedrooms.

7 (10) "Balboa Park Community Improvements Fund." The fund into which all fee  
8 revenue the City collects from the Balboa Park Impact Fee is deposited.

9 (11) "Balboa Park Community Improvements Program." The program intended to  
10 implement the community improvements identified in the Balboa Park Area Plan, as  
11 articulated in the Balboa Park Community Improvements Program Document on file with the  
12 Clerk of the Board.

13 (12) "Balboa Park Impact Fee." The fee collected by the City to mitigate impacts of  
14 new development in the Balboa Park Program Area, as described in the findings in Section  
15 422.1.

16 (13) "Balboa Park Program Area." The Balboa Park Plan Area in Figure 1 of the  
17 Balboa Park Station Area Plan of the San Francisco General Plan.

18 (14) "Base service standard." The relationship between revenue service hours  
19 offered by the Municipal Railway and the number of automobile and transit trips estimated to  
20 be generated by certain non-residential uses, expressed as a ratio where the numerator  
21 equals the average daily revenue service hours offered by MUNI and the denominator equals  
22 the daily automobile and transit trips generated by non-residential land uses as estimated by  
23 the TIDF Study or updated under Section 411.5 of this Article.

24 (15) "Base service standard fee rate." The TIDF that would allow the City to recover  
25 the estimated costs incurred by the Municipal Railway to meet the demand for public transit

1 resulting from new development in the economic activity categories for which the fee is  
2 charged, after deducting government grants, fare revenue, and costs for non-vehicle  
3 maintenance and general administration.

4 (16) "Board" or "Board of Supervisors." The Board of Supervisors of the City and  
5 County of San Francisco.

6 (17) "Child-care facility." A child-care facility as defined in California Health and  
7 Safety Code Section 1596.750.

8 (18) "Child-care provider." A provider as defined in California Health and Safety Code  
9 Section 1596.791.

10 (19) "City" or "San Francisco." The City and County of San Francisco.

11 (20) "Commercial Space Subject to the Market and Octavia Community  
12 Infrastructure Impact Fee." For each net addition of occupiable square feet within the Program  
13 Area which results in an additional commercial unit or any increased commercial capacity that  
14 is beyond 20 percent of the non-residential capacity at the time that requirements originally  
15 became effective.

16 (21) "Commercial development project." Any new construction, addition, extension,  
17 conversion or enlargement, or combination thereof, of an existing structure which includes any  
18 occupied floor area of commercial use; provided, however, that for projects that solely  
19 comprise an addition to an existing structure which would add occupied floor area in an  
20 amount less than 20 percent of the occupied floor area of the existing structure, the provisions  
21 of this Article shall only apply to the new occupied square footage.

22 (22) "Commercial use." Any structure or portion thereof intended for occupancy by  
23 retail or office uses that qualify as an accessory use, as defined and regulated in Sections 204  
24 through 204.5 of this Code.

1 (23) "Commission" or "Planning Commission." The San Francisco Planning  
2 Commission.

3 (24) "Community apartment." As defined in San Francisco Subdivision Code Section  
4 1308(b).

5 (25) "Community facilities." All uses as defined under Section 209.4(a) and 209.3(d)  
6 of this Code.

7 (26) "Condition of approval" or "Conditions of approval." A condition or set of written  
8 conditions imposed by the Planning Commission or another permit-approving or issuing City  
9 agency or appellate body to which a project applicant agrees to adhere and fulfill when it  
10 receives approval for the construction of a development project subject to this Article .

11 (27) "Condominium." As defined in California Civil Code Section 783.

12 (28) "Cultural/Institution/Education (CIE)." An economic activity category subject to  
13 the TIDF that includes, but is not limited to, schools, as defined in Sections 209.3(g), (h), and  
14 (i) and 217(f)-(i) of this Code; child care facilities; museums and zoos; and community facilities  
15 , as defined in Sections 209.4 and 221(a)-(c) of this Code.

16 (29) "DBI." The San Francisco Department of Building Inspection.

17 (30) "Dedicated." Legally transferred to the City and County of San Francisco,  
18 including all relevant legal documentation, at no cost to the City.

19 (31) "Dedicated site." The portion of site proposed to be legally transferred at no cost  
20 to the City and County of San Francisco under the requirements of this section.

21 (32) "Department" or "Planning Department." The San Francisco Planning  
22 Department or the Planning Department's designee, including the Mayor's Office of Housing  
23 and other City agencies or departments.

24

25

1 (33) "Designated affordable housing zones." For the purposes of implementing the  
2 Eastern Neighborhoods Public Benefits Fund, shall mean the Mission NCT defined in Section  
3 736 and the Mixed Use Residential District defined in Section 841.

4 (34) "Development fee." Either a development impact fee or an in-lieu fee. It shall not  
5 include a fee for service or any time and material charges charged for reviewing or processing  
6 permit applications.

7 (35) "Development Fee Collection Unit" or "Unit." The Development Fee Collection  
8 Unit at DBI.

9 (36) "Development impact fee." A fee imposed on a development project as a  
10 condition of approval to mitigate the impacts of increased demand for public services, facilities  
11 or housing caused by the development project that may or may not be an impact fee  
12 governed by the California Mitigation Fee Act (California Government Code Section 66000 et  
13 seq.).

14 (37) "Development impact requirement." A requirement to provide physical  
15 improvements, facilities or below market rate housing units imposed on a development project  
16 as a condition of approval to mitigate the impacts of increased demand for public services,  
17 facilities or housing caused by the development project that may or may not be governed by  
18 the California Mitigation Fee Act (California Government Code Section 66000 et seq.).

19 (38) "Development project." A project that is subject to a development impact or in-  
20 lieu fee or development impact requirement.

21 (39) "Development under the TIDF." Any new construction, or addition to or  
22 conversion of an existing structure under a building or site permit issued on or after  
23 September 4, 2004, that results in 3,000 gross square feet or more of a covered use. In the  
24 case of mixed use development that includes residential development, the term "new  
25 development" shall refer to only the non-residential portion of such development. "Existing

1 structure" shall include a structure for which a sponsor already paid a fee under the prior TIDF  
2 ordinance, as well as a structure for which no TIDF was paid.

3 (40) "Director." The Director of Planning or his or her designee.

4 (41) "DPW." The Department of Public Works.

5 (42) "Eastern Neighborhoods Infrastructure Impact Fee." The fee collected by the  
6 City to mitigate impacts of new development in the Eastern Neighborhoods Program Area, as  
7 described in the Findings in Section 423.1

8 (43) "Eastern Neighborhoods Public Benefits Fund." The fund into which all fee  
9 revenue collected by the City from the Eastern Neighborhoods Impact Fee is deposited.

10 (44) "Eastern Neighborhoods Public Benefits Program." The program intended to  
11 implement the community improvements identified in the four Area Plans affiliated with the  
12 Eastern Neighborhoods (Central Waterfront, East SoMa, Mission, and Showplace  
13 Square/Potrero Hill), as articulated in the Eastern Neighborhoods Public Benefits Program  
14 Document, on file with the Clerk of the Board in File No. 081155.)

15 (45) "Eastern Neighborhoods Program Area." The Eastern Neighborhoods Plan Area  
16 in Map 1 (Land Use Plan) of the Eastern Neighborhoods Area Plan of the San Francisco  
17 General Plan.

18 (46) "Economic activity category." Under the TIDF, one of the following six categories  
19 of non-residential uses: Cultural/Institution/Education (CIE), Management, Information and  
20 Professional Services (MIPS), Medical and Health Services, Production/Distribution/Repair  
21 (PDR), Retail/Entertainment, and Visitor Services.

22 (47) "Entertainment development project." Any new construction, addition, extension,  
23 conversion, or enlargement, or combination thereof, of an existing structure which includes  
24 any gross square feet of entertainment use.

1           (48) "Entertainment use." Space within a structure or portion thereof intended or  
2 primarily suitable for the operation of a nighttime entertainment use as defined in Section  
3 102.17 of this Code, a movie theater use as defined in Sections 790.64 and 890.64 of this  
4 Code, an adult theater use as defined in Sections 790.36 and 890.36 of this Code, any other  
5 entertainment use as defined in Sections 790.38 and 890.37 of this Code, and,  
6 notwithstanding Section 790.38 of this Code, an amusement game arcade (mechanical  
7 amusement devices) use as defined in Sections 790.4 and 890.4 of this Code. Under this  
8 Article, "entertainment use" shall include all office and other uses accessory to the  
9 entertainment use, but excluding retail uses and office uses not accessory to the  
10 entertainment use.

11           (49) "First certificate of occupancy." Either a temporary certificate of occupancy or a  
12 Certificate of Final Completion and Occupancy as defined in San Francisco Building Code  
13 Section 109A, whichever is issued first.

14           (50) "First construction document." As defined in Section 107A.13.1 of the San  
15 Francisco Building Code.

16           (51) "Gross floor area." The total area of each floor within the building's exterior  
17 walls, as defined in Section 102.9(b)(12) of this Code.

18           (52) "Gross square feet of use." With respect to the TIDF, the total square feet of  
19 gross floor area in a building and/or space within or adjacent to a structure devoted to all uses  
20 covered by the TIDF, including any common areas exclusively serving such uses and not  
21 serving residential uses. Where a structure contains more than one use, areas common to  
22 two or more uses, such as lobbies, stairs, elevators, restrooms, and other ancillary spaces  
23 included in gross floor area that are not exclusively assigned to one uses shall be apportioned  
24 among the two or more uses in accordance with the relative amounts of gross floor area,  
25 excluding such space, in the structure or on any floor thereof directly assignable to each use.

1 (53) "Gross square footage." The meaning set forth in Section 102.9 of this Code.

2 (54) "Hotel development project." Any new construction, addition, extension,  
3 conversion, or enlargement, or combination thereof, of an existing structure which includes  
4 any gross square feet of hotel use.

5 (55) "Hotel" or "Hotel use." Space within a structure or portion thereof intended or  
6 primarily suitable for rooms, or suites of two or more rooms, each of which may or may not  
7 feature a bathroom and cooking facility or kitchenette and is designed to be occupied by a  
8 visitor or visitors to the City who pays for accommodations on a daily or weekly basis but who  
9 do not remain for more than 31 consecutive days. Under this Article "hotel use" shall include  
10 all office and other uses accessory to the renting of guest rooms, but excluding retail uses and  
11 office uses not accessory to the hotel use.

12 (56) "Household." Any person or persons who reside or intend to reside in the same  
13 housing unit.

14 (57) "Household of lower income." A household composed of one or more persons  
15 with a combined annual net income for all adult members which does not exceed the  
16 qualifying limit for a lower-income family of a size equivalent to the number of persons  
17 residing in such household, as set forth for the County of San Francisco in Title 25 of the  
18 California Code of Regulations Section 6932.

19 (58) "Household of median income." A household composed of one or more persons  
20 with a combined annual net income for all adult members which does not exceed the  
21 qualifying limit for a median-income family of a size equivalent to the number of persons  
22 residing in such household, as set forth for the County of San Francisco in Title 25 of the  
23 California Code of Regulations Section 6932.

24 (59) "Household of moderate income." A household composed of one or more  
25 persons with a combined annual net income for all adult members which does not exceed the

1 qualifying limit for a moderate-income family of a size equivalent to the number of persons  
2 residing in such household, as set forth for the County of San Francisco in Title 25 of the  
3 California Code of Regulations Section 6932.

4 (60) "Housing developer." Any business entity building housing units which receives a  
5 payment from a sponsor for use in the construction of the housing units. A housing developer  
6 may be (a) the same business entity as the sponsor, (b) an entity in which the sponsor is a  
7 partner, joint venturor, or stockholder, or (c) an entity in which the sponsor has no control or  
8 ownership.

9 (61) "Housing project." Any development which has residential units as defined in the  
10 Planning Code, including but not limited to dwellings, group housing, independent living units,  
11 and other forms of development which are intended to provide long-term housing to  
12 individuals and households. "Housing project" shall not include that portion of a development  
13 that qualifies as an Institutional Use under the Planning Code. "Housing project" for purposes  
14 of this Program shall also include the development of live/work units as defined by Section  
15 102.13 of this Code. Housing project for purposes of this Program shall mean all phases or  
16 elements of a multi-phase or multiple lot residential development.

17 (62) "Housing unit" or "unit." A dwelling unit as defined in San Francisco Housing  
18 Code Section 401.

19 (63) "Improvements Fund." The fund into which all revenues collected by the City for  
20 each Program Area's impact fees are deposited.

21 (64) "In-Kind Agreement." An agreement acceptable in form and substance to the  
22 City Attorney and the Director of Planning between a project sponsor and the Planning  
23 Commission, subject to approval by the Planning Commission in its sole discretion, to provide  
24 a specific set of community improvements at a specific phase of construction in lieu of  
25 contribution to the relevant Improvements Fund. The In-Kind Agreement shall also mandate a



1 covenant of the project sponsor to reimburse all City agencies for their administrative and staff  
2 costs in negotiating, drafting, and monitoring compliance with the In-Kind Agreement. The City  
3 shall also require the project sponsor to provide a letter of credit or other instrument  
4 acceptable in form and substance to the City Attorney and the Planning Department to secure  
5 the City's right to receive payment as described in the preceding sentence.

6 (65) "Infrastructure." Open space and recreational facilities; public realms  
7 improvements such as pedestrian improvements and streetscape improvements; public transit  
8 facilities; and community facilities such as libraries, child care facilities, and community  
9 centers.

10 (66) "In lieu fee." A fee paid by a project sponsor in lieu of complying with a  
11 requirement of this Code and that is not a development impact fee governed by the Mitigation  
12 Fee Act.

13 (67) "Interim Guidelines" shall mean the Office Housing Production Program Interim  
14 Guidelines adopted by the City Planning Commission on January 26, 1982, as amended.

15 (68) "Licensed Child-care facility." A child-care facility which has been issued a valid  
16 license by the California Department of Social Services pursuant to California Health and  
17 Safety Code Sections 1596.80-1596.875, 1596.95-1597.09, or 1597.30-1597.61.

18 (69) "Live/work project." A housing project containing more than one live/work unit.

19 (70) "Live/work unit" shall be as defined in Section 102.13 of this Code.

20 (71) "Long term housing." Housing intended for occupancy by a person or persons  
21 for 32 consecutive days or longer.

22 (72) "Low income." For purposes of this Article, up to 80% of median family income  
23 for the San Francisco PMSA, as calculated and adjusted by the United States Department of  
24 Housing and Urban Development (HUD) on an annual basis, except that as applied to  
25 housing-related purposes such as the construction of affordable housing and the provision of

1 rental subsidies with funds from the SOMA Stabilization Fund established in Section 418.7, it  
2 shall mean up to 60% of median family income for the San Francisco PMSA, as calculated  
3 and adjusted by HUD on an annual basis.

4 (73) "Management, Information and Professional Services (MIPS). An economic  
5 activity category under the TIDF that includes, but is not limited to, office use; medical offices  
6 and clinics, as defined in Section 890.114 of this Code; business services, as defined in  
7 Section 890.111 of this Code; Integrated PDR, as defined in Section 890.49 of this Code, and  
8 Small Enterprise Workspaces, as defined in Section 227(t) of this Code.

9 (74) "Market and Octavia Community Improvements Fund" The fund into which all  
10 fee revenue collected by the City from the Market and Octavia Community Improvements Fee  
11 is deposited.

12 (75) "Market and Octavia Community Improvements Impact Fee." The fee collected  
13 by the City to mitigate impacts of new development in the Market and Octavia Program Area,  
14 as described in the findings in Section 421.1.

15 (76) "Market and Octavia Community Improvements Program." The program  
16 intended to implement the community improvements identified in the Market and Octavia Area  
17 Plan, as articulated in the Market and Octavia Community Improvements Program Document  
18 on file with the Clerk of the Board in File No. 071157.)

19 (77) "Market and Octavia Program Area." The Market and Octavia Plan Area in Map  
20 1 (Land Use Plan) of the Market and Octavia Area Plan of the San Francisco General Plan,  
21 which includes those districts zoned RTO, NCT, or any neighborhood specific NCT, a few  
22 parcels zoned RH-1 or RH-2, and those parcels within the Van Ness and Market Downtown  
23 Residential Special Use District (VMDRSUD).

24 (78) "Market rate housing." Housing constructed in the principal project that is not  
25 subject to sales or rental restrictions.

1 (79) "Maximum annual rent." The maximum rent that a housing developer may  
2 charge any tenant occupying an affordable unit for the calendar year. The maximum annual  
3 rent shall be 30 percent of the annual income for a lower-income household as set forth in  
4 Section 6932 on January 1st of each year for the following household sizes:

- 5 (A) For all one-bedroom units, for a household of two persons;
- 6 (B) For all two-bedroom units, for a household of three persons;
- 7 (C) For all three-bedroom units, for a household of four persons;
- 8 (D) For all four-bedroom units, for a household of five persons.

9 (19) "Maximum purchase price." The maximum purchase price that a household of  
10 moderate income can afford to pay for an owned unit based on an annual payment for all  
11 housing costs of 33 percent of the combined household annual net income, a 10 percent  
12 down payment, and available financing, for the following household sizes:

- 13 (A) For all one-bedroom units, for a household of two persons;
- 14 (B) For all two-bedroom units, for a household of three persons;
- 15 (C) For all three-bedroom units, for a household of four persons;
- 16 (D) For all four-bedroom units, for a household of five persons.

17 (80) "Medical and Health Services." An economic activity category under the TIDF  
18 that includes, but is not limited to, those non-residential uses defined in Sections 209.3(a) and  
19 217(a) of this Code; animal services, as defined in Section 224(a) and (b) of this Code; and  
20 social and charitable services, as defined in Sections 209.3(d) and 217(d) of this Code.

21 (81) "Middle Income Household." A household whose combined annual gross  
22 income for all members is between 120 percent and 150 percent of the local median income  
23 for the City and County of San Francisco, as calculated by the Mayor's Office of Housing  
24 using data from the United States Department of Housing and Urban Development (HUD) and  
25 adjusted for household size or, if data from HUD is unavailable, as calculated by the Mayor's

1 Office of Housing using other publicly available and credible data and adjusted for household  
2 size.

3 (82) "MOCD." The Mayor's Office of Community Development.

4 (83) "MOH." The Mayor's Office of Housing.

5 (84) "MTA." The Municipal Transportation Agency.

6 (85) "MTA Director." The Director of MTA or his or her designee.

7 (86) "Municipal Railway; MUNI." The public transit system owned by the City and  
8 under the jurisdiction of the MTA.

9 (87) "Net addition." The total amount of gross floor area defined in Planning Code  
10 Section 102.9 to be occupied by a development project, less the gross floor area existing in  
11 any structure demolished or retained as part of the proposed development project that had  
12 been occupied by, or primarily serving, any residential, non-residential, or PDR use for five  
13 years prior to the Planning Commission or Planning Department approval of a development  
14 project subject to this Article, or for the life of the structure demolished or retained, whichever  
15 is shorter.

16 (88) "Net addition of occupiable square feet of commercial use." Occupied floor area,  
17 as defined in Section 102.10 of this Code, to be occupied by or primarily serving, non-  
18 residential use excluding common areas such as hallways, maintenance facilities and lobbies,  
19 less the occupied floor area in any structure demolished or rehabilitated as part of the  
20 proposed commercial development project which occupied floor area was used primarily and  
21 continuously for commercial use and was not accessory to any use other than residential use  
22 for at least five years prior to Planning Department approval of a residential development  
23 project subject to this Article, or for the life of the structure demolished or rehabilitated,  
24 whichever is shorter.

25

1           (89) Net addition of gross square feet of entertainment space." Gross floor area as  
2 defined in Section 102.9 of this Code to be occupied by, or primarily serving, entertainment  
3 use, less the gross floor area in any structure demolished or rehabilitated as part of the  
4 proposed entertainment development project that was used primarily and continuously for  
5 entertainment, hotel, office, research and development, or retail use and was not accessory to  
6 any use other than entertainment, hotel, office, research and development, or retail use, for  
7 five years prior to Commission approval of an entertainment development project subject to  
8 this Article, or for the life of the structure demolished or rehabilitated, whichever is shorter, so  
9 long as such space was subject to Section 413.1 et seq. of this Article or the Interim  
10 Guidelines.

11           (90) "Net addition of gross square feet of hotel space." Gross floor area as defined in  
12 Section 102.9 of this Code to be occupied by, or primarily serving, hotel use, less the gross  
13 floor area in any structure demolished or rehabilitated as part of the proposed hotel  
14 development project space used primarily and continuously for office or hotel use and not  
15 accessory to any use other than office or hotel use for five years prior to Commission approval  
16 of a hotel development project subject to this Article, or for the life of the structure demolished  
17 or rehabilitated, whichever is shorter.

18           (91) "Net addition of gross square feet of non-residential space." Gross floor area as  
19 defined in Section 102.9 of this Code to be occupied by, or primarily serving, any non-  
20 residential use, less the gross floor area in any structure demolished or rehabilitated as part of  
21 the proposed development project space used primarily and continuously for the same non-  
22 residential use within the same economic activity category. This space shall be accessory to  
23 any use other than that same non-residential use for five years prior to Commission approval  
24 of a development project subject to this Article, or for the life of the structure demolished or  
25 rehabilitated, whichever is shorter.

1 (92) "Net addition of gross square feet of residential space." Gross floor area as  
2 defined in Section 102.9 of this Code to be occupied by, or primarily serving, residential use,  
3 less the gross floor area in any structure demolished or rehabilitated as part of the proposed  
4 residential development project space used primarily and continuously for residential use and  
5 not accessory to any use other than residential use for five years prior to Planning  
6 Commission approval of a development project, subject to this Article, or for the life of the  
7 structure demolished or rehabilitated, whichever is shorter.

8 (93) "Net addition of gross square feet of office space." Gross floor area as defined in  
9 Planning Code Section 102.9 to be occupied by, or primarily serving, office use, less the gross  
10 floor area in any structure demolished or rehabilitated as part of the proposed office  
11 development project space used primarily and continuously for office or hotel use and not  
12 accessory to any use other than office or hotel use for five years prior to Planning  
13 Commission approval of an office development project subject to this Article, or for the life of  
14 the structure demolished or rehabilitated, whichever is shorter.

15 (94) Net addition of gross square feet of research and development space." Gross  
16 floor area as defined in Section 102.9 of this Code to be occupied by, or primarily serving,  
17 research and development use, less the gross floor area in any structure demolished or  
18 rehabilitated as part of the proposed research and development project that was used  
19 primarily and continuously for entertainment, hotel, office, research and development, or retail  
20 use and was not accessory to any use other than entertainment, hotel, office, research and  
21 development, or retail use, for five years prior to Commission approval of a research and  
22 development project subject to this Article, or for the life of the structure demolished or  
23 rehabilitated, whichever is shorter.

24 (95) "Net addition of gross square feet of retail space." Gross floor area as defined in  
25 Section 102.9 of this Code to be occupied by, or primarily serving, retail use, less the gross

1 floor area in any structure demolished or rehabilitated as part of the proposed retail  
2 development project that was used primarily and continuously for entertainment, hotel, office,  
3 research and development, or retail use and was not accessory to any use other than  
4 entertainment, hotel, office, research and development, or retail use, for five years prior to  
5 Planning Commission approval of a retail development project subject to this Article, or for the  
6 life of the structure demolished or rehabilitated, whichever is shorter.

7 (96) "New development." Under the TIDF, any new construction, or addition to or  
8 conversion of an existing structure under a building or site permit issued on or after  
9 September 4, 2004 that results in 3,000 gross square feet or more of a use covered by the  
10 TIDF. In the case of mixed use development that includes residential development, the term  
11 "new development" shall refer to only the non-residential portion of such development.  
12 "Existing structure" shall include a structure for which a sponsor already paid a fee under the  
13 prior TIDF ordinance, as well as a structure for which no TIDF was paid.

14 (97) "Nonprofit child-care provider." A child-care provider that is an organization  
15 organized and operated for nonprofit purposes within the provisions of California Revenue  
16 and Taxation Code Sections 23701--23710, inclusive, as demonstrated by a written  
17 determination from the California Franchise Tax Board exempting the organization from taxes  
18 under Revenue and Taxation Code Section 23701.

19 (98) "Nonprofit organization." An organization organized and operated for nonprofit  
20 purposes within the provisions of California Revenue and Taxation Code Sections 23701--  
21 23710, inclusive, as demonstrated by a written determination from the California Franchise  
22 Tax Board exempting the organization from taxes under Revenue and Taxation Code Section  
23 23701.

24 (99) "Non-Residential development project." Any new construction, addition,  
25 extension, conversion or enlargement, or combination thereof, of an existing structure that

1 includes any occupied floor area of a non-residential use; provided, however, that for projects  
2 that solely comprise an addition to an existing structure that would add occupied floor area in  
3 an amount less than 20 percent of the occupied floor area of the existing structure, the  
4 provisions of this Article shall only apply to the new occupied square footage.

5 (100) "Non-Residential space subject to the Balboa Park Impact Fee." Each net  
6 addition of gross square feet within the Project Area that contributes to a 20 percent increase  
7 in commercial capacity of an existing structure.

8 (101) "Non-residential Space Subject to the Eastern Neighborhoods Infrastructure  
9 Impact Fee. Each net addition of net square feet within the Eastern Neighborhoods Project  
10 Area which contributes to a 20 percent increase in non-residential capacity of an existing  
11 structure.

12 (102) Non-residential use." Any structure or portion thereof intended for occupancy by  
13 retail, office, commercial, or other non-residential uses defined in Section 209.3, 209.8, 217,  
14 218, 219 of this Code, and 221; except that residential components of uses defined in Section  
15 209.3(a)-(c) and (g)-(i) shall be defined as a "residential use" for purposes of this Article. For  
16 the purposes of this Article, non-residential use shall not include PDR and publicly owned and  
17 operated community facilities.

18 (103) "Notice of Special Restrictions." A document recorded with the San Francisco  
19 Recorder's Office for any unit subject to this Program detailing the sale and resale or rental  
20 restrictions and any restrictions on purchaser or tenant income levels included as a Condition  
21 of Approval of the principal project relating to the unit.

22 (104) "Office development project." Any new construction, addition, extension,  
23 conversion or enlargement, or combination thereof, of an existing structure which includes any  
24 gross floor area of office use  
25



1 (105) "Office use." Space within a structure or portion thereof intended or primarily  
2 suitable for occupancy by persons or entities which perform, provide for their own benefit, or  
3 provide to others at that location services including, but not limited to, the following:  
4 Professional; banking; insurance; management; consulting; technical; sales; and design; and  
5 the non-accessory office functions of manufacturing and warehousing businesses; all uses  
6 encompassed within the definition of "office" in Section 219 of this Code; multimedia,  
7 software, development, web design, electronic commerce, and information technology; all  
8 uses encompassed within the definition of "administrative services" in Section 890.106 of this  
9 Code; and all "professional services" as proscribed in Section 890.108 of this Code excepting  
10 only those uses which are limited to the Chinatown Mixed Use District.

11 (106) "Off-site unit." A unit affordable to qualifying households constructed pursuant to  
12 this Ordinance on a site other than the site of the principal project.

13 (107) "On-site unit." A unit affordable to qualifying households constructed pursuant to  
14 this Article on the site of the principal project.

15 (108) "Owned unit." A unit affordable to qualifying households which is a  
16 condominium, stock cooperative, community apartment, or detached single-family home. The  
17 owner or owners of an owned unit must occupy the unit as their primary residence.

18 (109) "Owner." The record owner of the fee or a vendee in possession.

19 (110) "PDR use." Those uses contained in Sections 220, 222, 223, 224, 225, and 226  
20 of this Code.

21 (111) "Principal project." A housing development on which a requirement to provide  
22 affordable housing units is imposed.

23 (112) "Principal site." The total site proposed for development, including the portion of  
24 site proposed to be legally transferred to the City and County of San Francisco.

25

1 (113) "Procedures Manual." The City and County of San Francisco Affordable Housing  
2 Monitoring Procedures Manual issued by the San Francisco Department of City Planning, as  
3 amended.

4 (113A) "Qualified Educational Institution" shall mean an accredited post secondary  
5 Educational Institution which has Qualified Students.

6 (113B) "Qualified Student" shall mean a student who receives or is eligible to receive need-  
7 based financial aid from Pell Grants, Perkins Loans, Stafford Subsidized Loans or other grants or  
8 loans made or guaranteed by the United States Government or a state or local government, or by an  
9 entity sponsored and regulated by such unit of government and is currently enrolled at a Qualified  
10 Educational Institute.

11 (113C) "Qualified Student Housing Project" shall mean any housing project that contains  
12 housing for Qualified Students and which may also contain housing for persons who are enrolled  
13 students but not Qualified Students, created either through new construction or conversion of an  
14 existing building or space.

15 (113D) "Qualified Student Housing" shall mean housing or group housing (measured either by  
16 units or beds) or accessory living space within a non-residential space, either owned by a Qualified  
17 Educational Institution or controlled by a Qualified Educational Institution through a long-term master  
18 lease for a period of at least 20 years in which at least thirty percent (30%) of such units or beds are  
19 occupied by Qualified Students. The Qualified Student Housing may be on the site of the Institution or  
20 at another location in the City and County of San Francisco.

21 (114) "Rent" or "rental." The total charges for rent, utilities, and related housing  
22 services to each household occupying an affordable unit.

23 (115) "Rental unit." A unit affordable to qualifying households which is not a  
24 condominium, stock cooperative, or community apartment.

1 (116) "Replacement." The total amount of gross floor area, as defined in Section 102.9  
2 of this Code, to be demolished and reconstructed by a development project, provided that the  
3 space demolished had been occupied by, or primarily serving, any residential, non-residential,  
4 or PDR use for five years prior to Planning Commission or Planning Department approval of  
5 the development project subject to this Article or for the life of the structure demolished or  
6 retained, whichever is shorter.

7 (117) "Research and Development ("R&D") project." Any new construction, addition,  
8 extension, conversion, or enlargement, or combination thereof, of an existing structure which  
9 includes any gross square feet of R&D use.

10 (118) "Research and development use." Space within any structure or portion thereof  
11 intended or primarily suitable for basic and applied research or systematic use of research  
12 knowledge for the production of materials, devices, systems, information or methods,  
13 including design, development and improvement of products and processing, including  
14 biotechnology, which involves the integration of natural and engineering sciences and  
15 advanced biological techniques using organisms, cells, and parts thereof for products and  
16 services, excluding laboratories which are defined as light manufacturing uses consistent with  
17 Section 226 of this Code.

18 (119) "Residential Space Subject to the Balboa Park Impact Fee." Each net addition of  
19 gross square feet within the Balboa Park Project Area which results in a net new residential  
20 unit.

21 (120) "Residential Space Subject to the Eastern Neighborhoods Infrastructure Impact  
22 Fee." Each net addition of net square feet within the Eastern Neighborhoods Project Area  
23 which results in a net new residential unit.

24 (121) "Residential Space Subject to the Market and Octavia Community Infrastructure  
25 Impact Fee." Each net addition of occupiable square feet within the Market and Octavia

1 Program Area which results in an additional residential unit or contributes to a 20 percent  
2 increase of residential space from the time that this ordinance is adopted within the Market  
3 and Octavia Community Improvements Fund.

4 (122) "Residential use." Any structure or portion thereof intended for occupancy by  
5 uses defined in Sections 209.1, 790.88, and 890.88 of this Code, as relevant for the subject  
6 zoning district, or containing group housing as defined in Section 209.2(a)-(c) of this Code and  
7 any residential components of institutional uses as defined in Section 209.3(a)-(c) and (g-i) of  
8 this Code.

9 (123) "Retail development project." Any new construction, addition, extension,  
10 conversion, or enlargement, or combination thereof, of an existing structure which includes  
11 any gross square feet of retail use.

12 (124) "Retail/entertainment." An economic activity category under the TIDF that  
13 includes, but is not limited to, a retail use; an entertainment use; massage establishments, as  
14 defined in Section 218.1 of this Code; laundering, and cleaning and pressing, as defined in  
15 Section 220 of this Code.

16 (125) "Retail use." Space within any structure or portion thereof intended or primarily  
17 suitable for occupancy by persons or entities which supply commodities to customers on the  
18 premises including, but not limited to, stores, shops, restaurants, bars, eating and drinking  
19 businesses, and the uses defined in Sections 218 and 220 through 225 of this Code, and also  
20 including all space accessory to such retail use.

21 (126) "Revenue services hours." The number of hours that the Municipal Railway  
22 provides service to the public with its entire fleet of buses, light rail (including streetcars), and  
23 cable cars.

1 (127) "Rincon Hill Community Improvements Fund." The fund into which all fee  
2 revenue collected by the City from the Rincon Hill Community Infrastructure Impact Fee is  
3 deposited.

4 (128) "Rincon Hill Community Infrastructure Impact Fee." The fee collected by the City  
5 to mitigate impacts of new development in the Rincon Hill Program Area, as described in the  
6 findings in Section 418.1.

7 (129) "Rincon Hill Program Area." Those districts identified as the Rincon Hill  
8 Downtown Residential (RH DTR) Districts in the Planning Code and on the Zoning Maps.

9 (130) "Section 6932." Section 6932 of Title 25 of the California Code of Regulations as  
10 such section applies to the County of San Francisco.

11 (75) "SOMA." The area bounded by Market Street to the north, Embarcadero to the  
12 east, King Street to the south, and South Van Ness and Division to the west.

13 (131) "SOMA Community Stabilization Fee." The fee collected by the City to mitigate  
14 impacts on the residents and businesses of SOMA of new development in the Rincon Hill  
15 Program Area, as described in the findings in Section 418.1.

16 (132) "SOMA Community Stabilization Fund." The fund into which all fee revenue  
17 collected by the City from the SOMA Community Stabilization Fee is deposited.

18 (133) "Sponsor" or "project sponsor." An applicant seeking approval for construction of  
19 a development project subject to this Article, such applicant's successor and assigns, and/or  
20 any entity which controls or is under common control with such applicant.

21 (134) "Stock cooperative." As defined in California Business and Professions Code  
22 Section 11003.2.

23 (135) "Student housing." A building where 100 percent of the residential uses are  
24 affiliated with and operated by an accredited post-secondary educational institution. Typically,  
25 student housing is for rent, not for sale. This housing shall provide lodging or both meals and

1 lodging, by prearrangement for one week or more at a time. This definition only applies in the  
2 Eastern Neighborhoods Mixed Use Districts.

3 (136) "TIDF Study." The study commissioned by the San Francisco Planning  
4 Department and performed by Nelson/Nygaard Associates entitled "Transit Impact  
5 Development Fee Analysis – Final Report," dated May 2001, including all the Technical  
6 Memoranda supporting the Final Report and the Nelson/Nygaard update materials contained  
7 in Board of Supervisors File No. 040141.

8 (137) "Total developable site area." That part of the site that can be feasibly  
9 developed as residential development, excluding land already substantially developed, parks,  
10 required open spaces, streets, alleys, walkways or other public infrastructure.

11 (138) "Transit Impact Development Fee; TIDF." The development fee that is the  
12 subject of Section 411.1 et seq. of this Article.

13 (139) "Treasurer." The Treasurer for the City and County of San Francisco.

14 (140) "Trip generation rate." The total number of automobile and Municipal Railway  
15 trips generated for each 1,000 square feet of development in a particular economic activity  
16 category as established in the TIDF Study, or pursuant to the five-year review process  
17 established in Section 411.5 of this Article.

18 (141) "Use." The purpose for which land or a structure, or both, are legally designed,  
19 constructed, arranged, or intended, or for which they are legally occupied or maintained, let or  
20 leased.

21 (142) "Visitacion Valley." The area bounded by Carter Street and McLaren Park to the  
22 west, Mansell Street to the north, Route 101 between Mansell Street and Bayshore Boulevard  
23 to the northeast, Bayview Park to the north, Candlestick Park and Candlestick Point  
24 Recreation Area to the east, the San Francisco Bay to the southeast, and the San Francisco  
25 County line to the south.

1 (143) "Visitor services." An economic activity category under the TIDF that includes,  
2 but is not limited to, hotel use; motel use, as defined in Section 216(c) and (d); and time-share  
3 projects, as defined in Section 11003.5(a) of the California Business and Professions Code.

4 (144) "Waiver Agreement." An agreement acceptable in form and substance to the  
5 City Attorney and the Planning Department under which the City agrees to waive all or a  
6 portion of the Community Improvements Impact Fee.

7 SEC. 415.3. APPLICATION.

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

12 (1) Does not require Commission approval as a conditional use or planned unit  
13 development;

14 (2) Requires Commission approval as a conditional use or planned unit  
15 development;

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

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

21 (b) Section 415.1 et seq. shall apply to all housing projects that have not received a  
22 first site or building permit on or before the effective date of Section 415.1 et seq. with the  
23 following exceptions. Until these application dates take effect as described below, the  
24 provisions of Section 415.1 et seq. as it exists on July 18, 2006 shall govern.  
25

1 (1) The amendments to the off-site requirements in Section 415.6(c) and (d) relating  
2 to location and type of off-site housing, and Section 415.4(c) relating to when a developer  
3 shall declare whether it will choose an alternative to the on-site requirement shall apply only to  
4 projects that receive their Commission or Department approval on or after the effective date of  
5 Section 415.1 et seq.

6 (2) The amendments to the percentage-requirements of Section 415.1 et seq. that  
7 govern the number of affordable units a housing project is required to provide in Section  
8 415.5(a) and 415.6(a) apply only to housing projects that submit their first application,  
9 including an environmental evaluation application or any other Planning Department or  
10 Building Department application, on or after July 18, 2006. Notwithstanding the foregoing, the  
11 amendments to the percentage-requirements of Section 415.1 et seq. also apply to any  
12 project that has not received its final Commission or Department approvals before July 18,  
13 2006 for housing projects that receive a Zoning Map amendment or Planning Code text  
14 amendment related to their project approvals that (A) results in a net increase in the number  
15 of permissible residential units, or (B) results in a material increase in the net permissible  
16 residential square footage. For purposes of subsection B above a material increase shall  
17 mean an increase of 5 percent or more, or an increase in 10,000 square feet or more,  
18 whichever is less.

19 (3) The amendments in Section 415.1 to the way median income is calculated apply  
20 to any housing project that has not received a first site or building permit by the effective date  
21 of Section 415.1 et seq..

22 (4) Section 415.1 et seq. shall apply to all housing projects of 5 to 9 units that filed  
23 their first application, including an environmental evaluation application or any other Planning  
24 Department application on or after July 18, 2006.

25 (c) Section 415.1 et seq. shall not apply to:



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

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

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

11 (4) A Qualified Student Housing Project that meets all of the following criteria:

12 (A) The building or space conversion does not result in loss of existing rental housing;

13 (B) An institutional master plan (IMP) pursuant to Section 304.5 is on file with the Planning  
14 Department prior to the issuance of any building permit or alteration permit in connection with the  
15 creation of the Qualified Student Housing Project, and, in addition to the requirements of Section  
16 304.5, such IMP shall describe: (i) to the extent such information is available, the type and location of  
17 housing used by its students; (ii) any plans for the provision of Qualified Student Housing; and (iii) the  
18 Educational Institution's need for student housing to support its program; and (iv) the percentage of its  
19 students, on an average annual basis, that receive some form of need-based assistance as described in  
20 (113B).

21 (C) The Qualified Educational Institution shall agree to submit annual documentation to the  
22 Mayor's Office of Housing (MOH) and the Planning Department, on or before December 31 of each  
23 year, that addresses the following:

24 (i) Evidence that the Qualified Educational Institution continues to own or otherwise  
25 control the Qualified Student Housing Project under a master lease, including a certificate from the

1 owner of the real property and the Qualified Educational Institution attaching a true and complete  
2 copy of the master lease (financial information may be redacted) and certifying that the lease has not  
3 otherwise been amended or terminated; and

4 (ii) Evidence, on an average annualized basis, of the percentage of Qualified Students in  
5 good standing enrolled in the Qualified Educational Institution who are occupying the units or beds or  
6 accessory living space in the Qualified Student Housing

7 (iii) The Qualified Educational Institution records a Notice of Special Restrictions (NSR)  
8 against fee title to the real property on which the Qualified Student Housing is located that states the  
9 following:

10 -- the Student Housing Project becomes subject to the Inclusionary Housing Ordinance  
11 requirements applicable to Housing Projects other than Qualified Housing Projects if, within one year  
12 of a notice of violation issued by the Planning Department, the Student Housing Project fails to meet  
13 the requirements for a Qualified Student Housing Project;

14 --the Qualified Educational Institution is required to report annually as required in subsection  
15 (C) above;

16 -- the City may commence legal action against the owner and/or Qualified Educational  
17 Institution to enforce the NSR and the terms of Article IV of the Planning Code and Planning Code  
18 Section 415 et seq. if the it determines that the project no longer meets the requirements for a Qualified  
19 Student Housing Project; and

20 -- the Qualified Student Housing Project may be inspected by any City employee to determine  
21 its status as a Qualified Student Housing Project and its compliance with this Section at any time upon  
22 at least 24 hours' prior notice to the owner of the real property or to the master lessee.

23 (d) For projects that have received a first site or building permit prior to the effective  
24 date of Section 415.1 et seq., the requirements in effect prior to the effective date of Section  
25 415.1 et seq. shall apply.

1 Section 2. Operative Date. This provisions of Section 415.3(c)(4) shall apply to  
2 exempt any project meeting its criteria approved by the Planning Commission or Department  
3 on or after the effective date of this Ordinance.

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

6 By: \_\_\_\_\_  
7 ATTORNEY'S NAME  
8 Deputy City Attorney  
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