



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary

PLANNING CODE TEXT AMENDMENTS INCLUSIONARY AFFORDABLE HOUSING PROGRAM

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Project Name: **Inclusionary Affordable Housing Program
Section 415 Amendments**
Case Number: **2017-001061PCA**

Initiated by: **Supervisors Kim and Peskin**, Introduced December 13, 2016
Version 2, Introduced February 28, 2017
Inclusionary Affordable Housing Fee and Requirements
[Board File No. 161351]

Initiated by: **Supervisors Safai, Breed, and Tang** Introduced February 28, 2017
Inclusionary Affordable Housing Fee and Dwelling Unit Mix Requirements
[Board File No. 170208]

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I. BACKGROUND

Inclusionary Housing Program

The Inclusionary Affordable Housing Program is one of the City's key tools for increasing the availability of affordable housing dedicated to low and moderate income San Franciscans, and has resulted in more than 4,600 units of permanently affordable housing since its adoption in 2002. **Inclusionary housing is distinguished from other affordable housing programs in that it provides new affordable units without the use of public subsidies.** For this reason, the program can address the growing needs of low, moderate, and middle income households that cannot be served by other common affordable housing funding sources, such as the federal Low Income Housing Tax Credit program.

Proposition C and the Controller's Economic Feasibility Study

In March 2016, the Board of Supervisors unanimously adopted a resolution¹ declaring that it shall be City policy to maximize the economically feasible percentage of inclusionary affordable housing in market rate housing development. In June, as housing prices rose drastically, San Francisco voters approved a Charter Amendment (Proposition C), which restored the City's ability to adjust affordable housing requirements for new development by ordinance.

The passage of the Proposition C then triggered the provisions of the so-called "trailing ordinance" [BF 160255, Ord. 76-16²], adopted by the Board of Supervisors in May 2016, which amended the Planning and Administrative Codes to 1) temporarily increase the Inclusionary Affordable Housing requirements, pending further action by the Board of Supervisors; 2) require an Economic Feasibility Study by the Office of the Controller; and 3) establish an Inclusionary Housing Technical Advisory Committee (TAC) to advise the Controller.

The TAC convened from July, 2016 to February, 2017 and Controller provided a set of preliminary recommendations³ to the Board of Supervisors on September 13, 2016 and issued a set of final recommendations on February 13, 2017⁴. The City's Chief Economist presented the Controller's recommendations to the Planning Commission on February 23, 2017.

¹ Establishing City Policy Maximizing a Feasible Inclusionary Affordable Housing Requirement [Board File No 160166, Reso. No. 79-16], approved March 11, 2016. Available at:

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

² The ordinance titled, "Inclusionary Affordable Housing Fee and Requirements; Preparation of Economic Feasibility Report; Establishing Inclusionary Housing Technical Advisory Committee," was considered by the Planning Commission on March 31, 2016. The Commission's recommendations are available here:

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

³ Office of the Controller. "Inclusionary Housing Working Group: Preliminary Report September 2016". September 13, 2016:

<http://sfcontroller.org/sites/default/files/Preliminary%20Report%20September%202016.pdf>

⁴ Office of the Controller. "Inclusionary Housing Working Group: Final Report," published February, 13 2017, with the consulting team of Blue Sky Consulting Group, Century Urban LLC, and Street Level

Pending Amendments to the Inclusionary Housing Program

On December 13, 2016, Supervisor Kim and Supervisor Peskin introduced “Inclusionary Affordable Housing Fee and Requirements” [BF 161351]. This ordinance was substituted on February 28, 2017 and within this report will be referred to as **“Proposal A: Supervisor Kim and Supervisor Peskin.”** Supervisor Safai, Supervisor Breed, and Supervisor Tang introduced “Inclusionary Affordable Housing Fee and Dwelling Unit Mix Requirements” [Board File No. 170208] on February 28, 2017. This report will refer to this ordinance as **“Proposal B: Supervisor Safai, Supervisor Breed, and Supervisor Tang”**.

The legislative sponsors for Proposal A describe that this Inclusionary ordinance is intended to be paired with the State Density Bonus Law; and that such a pairing is needed to maintain the economic feasibility of individual development projects and to maximize affordable housing production.

The legislative sponsors of Proposal B have described that individual development projects would remain economically feasible with or without a density bonus. However, to maximize affordable housing production in a manner compatible with local policy goals, their Inclusionary ordinance is paired with HOME-SF⁵, a proposal for a locally tailored implementation of the state density bonus law.

Advisors. Available at:

<http://sfcontroller.org/sites/default/files/Documents/Economic%20Analysis/Final%20Inclusionary%20Housing%20Report%20February%202017.pdf>

⁵ On March 13, 2017 the Land Use and Transportation Committee amended an ordinance previously reviewed by the Commission when it was titled “Affordable Housing Bonus Program” [Board File Number [161351v6](#)], renaming the Local Affordable Housing Bonus Program as the HOME-SF Program. The legislative sponsor, Supervisor Tang, announced changes to the program to afford protections for small businesses and change the levels of affordability to match a companion ordinance that would amend the Inclusionary Affordable Housing Program sponsored by Supervisors Safai, Breed & Tang.

Planning Commission Hearings and Additional Supporting Material

The Commission held an informational hearing on the proposed changes on March 16, 2017. The accompanying staff report for that informational hearing, dated March 9, 2017, provides a more detailed summary of the current inclusionary housing program; the findings and recommendations of the Controller's Study; the provisions of both proposed ordinances; and key policy considerations around proposed changes to each component of the program.

The **informational report is publicly available with the supporting materials for the March 9, 2017 Planning Commission hearing⁶**, when the item was originally calendared. That report included a comparison chart of the provisions of both proposed ordinances, as well as the current program. **This comparison chart is reproduced here as Exhibit A** for reference.

This report is intended to assist the Commission's action on the proposed ordinances. As such, less background is provided and the focus is on potential recommendations for each of the program areas for which changes have been proposed. For ease of reference, **a summary chart of the recommendations by topic is provided here as Exhibit B.**

⁶ <http://commissions.sfplanning.org/cpcpackets/2017-001061PCA-02.pdf>

II. IMPLEMENTATION CONSIDERATIONS

Either proposed ordinance would constitute the most sweeping set of structural and material changes to the City's Inclusionary Housing Program since the program's inception. Accordingly, Planning Department staff have reviewed each ordinance carefully and seek to raise key program implementation considerations before the Commission.

In addition to the major policy objectives discussed below, these considerations also guided staff's recommendations on the proposed changes to the inclusionary program. This section provides a brief summary of the key implementation considerations by topic. Most of these considerations will require the development of additional policies and procedures by the Planning Department after the adoption of final legislation.

Designation of Inclusionary Units

The Planning Department is responsible for legally designating the specific inclusionary affordable units within a project that elects the on-site alternative. This process is bound by multiple procedures and requirements in the Planning Code and the Procedures Manual published by MOHCD and approved by this Commission. The total of these requirements relate to the distribution of the units throughout the building and comparability of affordable and market rate units, among other factors.

The proposed ordinances would include inclusionary units at multiple income tiers, and at specific dwelling unit mixes, and would require the development of new procedures to clearly define how inclusionary units will be designated.

The Department has not yet developed these procedures, and the recommendations in this report do not reflect any particular approach to unit designation under either ordinance. The Department has, however, had experience in review of a project with multiple income tiers and is confident that staff will be able to broadly implement such requirements.

Rental to Condominium Conversions

Both ordinances would establish higher requirements for condominium projects than for rental projects. In the event that a project converts from rental to condominium after the project's entitlement, the Planning Department would be responsible for implementing any conversion procedures called for in Section 415. Staff's recommendation for a conversion fee is included in this report.

However, it should be noted that the Planning Department does not currently have procedures in place to monitor changes in project tenure following entitlement, and the range of options available to monitor such conversions is unknown at this time. Such procedures would need to be developed in coordination with the Department of Public Works, which is currently the primary agency responsible for tracking such conversions.

“Grandfathering” and Specific-Area Requirements

The proposed amendments to Section 415 would significantly impact the “grandfathering” provisions established by Proposition C; certain area-specific inclusionary requirements for pipeline and future projects; and modify requirements applicable to projects that are currently in the development pipeline in some cases. Accordingly, the Department offers specific recommendations regarding these issues in the relevant section of the report below.

Schedule of Annual Increases to Requirements

Both ordinances would establish a schedule of annual increases to the inclusionary requirements. Such provisions would require that the Planning Department publish new requirements annually for 10 or more years, and apply these requirements in a consistent and appropriate manner for projects whose entitlement process will span several years. Accordingly, the Department offers specific recommendations regarding this provision in the relevant section of the report below.

Affordable Housing Fee Application

The Planning Department is responsible for assessing the Affordable Housing Fee for projects that elect the fee option. The proposals would modify the way the fee is assessed, including a proposal to assess the fee on a per square foot basis, rather than the current method of assessing the fee on a per unit basis. The Department’s recommendation in the relevant section of this report reflects any implementation considerations related to such amendments.

III. REQUIRED COMMISSION ACTION

The proposed Ordinances are before the Commission so that it may 1) make recommendations to the Board of Supervisors as required by Planning Code Section 302; 2) affirm the Planning Department's determinations under the California Environmental Quality Act; 3) make findings of consistency of the proposed ordinances [Board Files 161351v2; 170208] and the associated HOME-SF Program [Board File Number 150969v6], with the General Plan; and 4) make findings regarding the eight priority policies of Planning Code Section 101.1.

These items may be acted upon or may be continued, at the discretion of the Commission.

IV. RECOMMENDATIONS

The Department recommends making findings in support of the proposed Ordinances and associated actions as described in the attached draft resolution (Exhibit C). This section focuses on potential Commission recommendations based on staff analysis of the City's affordable housing need, our existing housing programs, the findings of the Controller's Study, comments from the Commission and the public, consultation with MOHCD, and considerations of program implementation. A summary of these recommendations is provided as Exhibit B.

These recommendations build on the key policy issues and considerations described in detail in the informational report dated March 9, 2017. These considerations are briefly reintroduced below as needed. For detailed reference, the informational report is available online with the materials for the March 9, 2017 Planning Commission hearing⁷ and the comparison chart of proposed amendments from that report is included here as Exhibit A, for reference.

A. APPLICATION

No changes are proposed to the general application of Section 415 requirements. The program would continue to apply only to projects of 10 or more units. Projects of 25 or more units would continue to have higher requirements than smaller projects, which would remain subject to the requirements in place prior to the passage of Proposition C.⁸

- **Recommendation:** Requirements should continue to be applied differently for Smaller and Larger Projects, as currently defined in both Ordinances. **No amendments are needed.**

⁷ <http://commissions.sfplanning.org/cpcpackets/2017-001061PCA-02.pdf>

⁸ As of January 1, 2016 Section 415 required that projects of 10 or more units provide 12% of units on-site, or pay a fee or provide off-site units equivalent of 20% of the project total.

B. INCLUSIONARY REQUIREMENTS

Rental and Ownership Requirements

Both proposals would set higher requirements for ownership projects than for rental projects, as recommended by the Controller's Study.

- **Recommendation:** Set higher requirements for ownership projects than for rental projects. Both Ordinances would establish this structure. **No amendments are needed.**

In addition, Proposal A would establish additional **conversion provisions** for projects that are entitled as a rental project, but convert to an ownership project at a subsequent time. Staff concurs with both concepts and recommends the following:

- **Recommendation:** Final legislation should **include a condominium conversion provision** to specify that **projects** converting to ownership projects must pay a **conversion fee** equivalent to the difference between the fee requirement for ownership projects in effect at the time of the conversion and the requirement the project satisfied at the time of entitlement. **Include provisions of Proposal A, with modifications.**

Requirement for the On-Site Alternative

Both proposals would amend the on-site requirement for larger projects. Proposal A would exceed the maximum economically feasible requirement recommended by the Controller. Proposal B would set the rate at the maximum of this range.

- **Recommendation:** Establish a requirement that is within the range of "maximum economically feasible" requirements recommended in the Controller's Study. **Include provisions of Proposal B without modification.** Specifically, this would establish an on-site rate of 18% or 20% for rental or ownership projects, respectively.

Requirement for the Affordable Housing Fee or Off-Site Alternative

Both proposals set the requirement for payment of the Affordable Housing Fee or off-site alternative for larger projects at the equivalent of the corresponding on-site requirement, with the exception that Proposal A's ownership fee rate would be slightly less costly to a project than the on-site alternative.

- **Recommendation:** Establish a requirement that is within the range of "maximum economically feasible" fee or off-site alternative requirements recommended in the Controller's Study. **Include provisions of Proposal B without modification.** Specifically, this would establish a fee or off-site rate of 23% or 28% for rental or ownership projects, respectively.

C. SCHEDULE OF ANNUAL INCREASES TO REQUIREMENTS

Both proposals would establish a schedule of annual increases to the percentage requirements, though under different conditions. This addition to the Inclusionary Program was recommended in the Controller's Study on the premise that phasing in an increase in the inclusionary requirement over time at a predictable rate would allow the land market to absorb the increase and remain economically viable for development; while securing higher levels of affordable housing production over time.

Staff recommends that final legislation include a schedule of annual increases that is consistent with the Controller's recommendation, with modifications:

- **Recommendation:** Final legislation should **establish an explicit maximum requirement** at which the schedule of increases would terminate, and that rate should be below the maximum requirement supported by the Nexus Study. **Include provisions of Proposal B without modification.**
- **Recommendation:** Final legislation should **establish that requirement rates be increased by 1.0 percentage point every two years.** This is equivalent to the Controller's recommendation of an increase of 0.5 percentage points per year, but would provide for a more effective and transparent implementation of the program by more closely matching the pace of the entitlement process and minimizing ambiguity in the rounding of requirement percentages. **Include provisions of Proposal B, with modifications.**

- **Recommendation:** The schedule of **increases should commence no fewer than 24 months following the effective date of final legislation** if the rate is set to increase biannually, or no fewer than 12 months following the effective date if the rate is set to increase annually. Under either ordinance, **final legislation should be amended accordingly.**

Determination and “Sunset” of Requirement

Both proposed ordinances include a “sunset” provision to specify the duration that a project’s inclusionary requirement would be effective during the entitlement process. Proposal A does not specify at what point the requirement would be determined, but would establish that the requirement be reset if the project has not procured a first construction document within 2 years of entitlement. Proposal B would determine the requirement amount at the time of a project’s Environmental Evaluation Application (EEA) and establish that the requirement be reset if the project has not received a first construction document within 3 years of entitlement. Both proposals would reset the requirement to the requirement applicable at the time, and not count time elapsed during potential litigation or appeal of the project.

- **Recommendation:** Final legislation should **establish a “sunset” provision that is consistent with current practices** for the determination of inclusionary requirements and Planning Department procedures. **Include provisions of Proposal B without modification.**

D. AFFORDABLE HOUSING FEE

Both proposals would modify the way the Affordable Housing Fee is applied to projects that elect to pay the fee, as well as the method used to calculate the dollar amount of the fee. The Controller's Study called for no specific changes to the application of or methodology for the fee, but did recommend that the fee amount should be maintained at a level that reflects the cost to construct affordable units.

Application of Fee

The Affordable Housing Fee is currently assessed on a per unit basis, with the fee amount increasing with the type of unit, ranging from studio to 4-bedroom units. This method of assessing the fee does not account for the actual size of units or the total area of the project.

- **Recommendation:** Final legislation should **apply the fee on a per gross square foot basis** so that the fee is assessed proportionally to the total area of the project. **Include provisions of Proposal B without modification.**

Calculation of Fee

The dollar amount of the fee is currently calculated based on the cost of construction of residential housing and the maximum purchase price for BMR ownership units. MOHCD is required to update the fee amount annually.

- **Recommendation:** Final legislation should direct MOHCD to calculate the fee to **match the actual cost to the City to construct below market rate units**. This cost should reflect the construction costs of units that are typically in MOHCD's below market rate pipeline, and should not vary based on the building type of the subject project. **Include provisions of Proposal B without modification.**

E. INCOME LEVELS

Currently, inclusionary units are designated as affordable at two discrete income tiers – units serving “low-income” or “moderate-income” households, as defined in Section 415. Both proposals would modify the income levels that inclusionary units are designated to serve. Specifically, both proposals would broaden the affordability requirements to serve households at a range of income levels within a defined range, or at specific tiers.

Either proposal would constitute a significant structural change in the way units are designated. Planning Department staff, in consultation with MOHCD, considered the City’s affordable housing need and existing housing programs to arrive at the following recommendations:

- **Recommendation:** Final legislation should **establish affordability requirements that clearly apply to the maximum rent or maximum sale price of the inclusionary unit**, and not to the income level of the household placed in that unit. This distinction is critical to ensure that MOHCD retains flexibility to both serve households that may earn significantly below the target level, and allow for households that make slightly more than the target level to remain eligible, as set forth in the MOHCD Procedures Manual, which will come before this Commission for review. Under either ordinance, **final legislation should be amended accordingly.**
- **Recommendation:** Final legislation should **designate inclusionary units at three discrete affordability levels for larger projects** to better serve households with incomes between the current low and moderate income tiers. This method would provide for a more even distribution of inclusionary units across eligible low and moderate income households, and minimize the coverage gap for household between the existing income tiers. **Include provisions of Proposal B, with modifications.**
- **Recommendation:** Final legislation should **designate inclusionary units at a single affordability level for smaller projects**. This recommendation reflects the scale of these smaller projects, which would in many cases provide fewer than three total inclusionary units. This requirement should be set to match the middle tier established for larger projects, as described below. **Include provisions of Proposal B, with modifications.**

In addition to the structural changes to how inclusionary units are designated, both proposals would also broaden the affordability levels served by the program to serve moderate and middle income households that are not currently served by any existing housing programs, and also are generally not served by market rate housing.

Staff compared existing and proposed affordability requirements to current data on the City’s affordable housing need and existing housing programs to recommend an appropriate range of affordability levels to be served by the Inclusionary Program. Note that, again, the requirements set forth in the Planning Code should stipulate the maximum rent or sale price of inclusionary units, while MOHCD will continue to exercise discretion in placing eligible households in the most appropriate affordable unit, as availability and individual household incomes allow.

- **Recommendation:** Final legislation should **target inclusionary units to serve the gap in coverage** between low-income households who can access other existing housing programs, and moderate and middle-income households earning less than the level needed to access market rate units. **Include provisions of Proposal B, with modifications**, as follows:

Smaller Projects (10 – 24 units)			
	Tier 1	Tier 2	Tier 3
Rental Projects	N/A	80% of AMI	N/A
Owner Projects	N/A	110% of AMI	N/A

Larger Projects (25 or more units)			
	Tier 1	Tier 2	Tier 3
Rental Projects	55% of AMI	80% of AMI	110% of AMI
Owner Projects	90% of AMI	110% of AMI	140% of AMI

For **rental projects**, these recommended affordability levels are intended to provide that:

- units at the low end of the range (Tier 1) supplement the supply of units affordable to low-income households currently served by other housing programs; and
- units at the high end of the range (Tier 3) would serve households earning above the level served by other housing programs, but below the level served by the market.

For **ownership projects**, these recommended affordability levels are intended to provide that:

- units at the low end of the range (Tier 1) serve households at the lowest income level possible, while still recognizing the significant financial burden (i.e. down payment, mortgage payments, HOA fees, etc.) required of homebuyer; and
- units at the high end of the range (Tier 3) would serve households earning above the level served by other housing programs, but not higher than the level for which data supports a clear affordability need and well below the level served by the market.

For both rental and ownership projects, the middle tier (Tier 2) would provide a mid-point for households earning above the low-income level, but below the middle-income level; accordingly, this tier is set closer to the lower tier to serve as a “stepping stone” for households with growing incomes, or households who earn slightly above the low-income level and are not served by other affordable housing programs or market rate units.⁹

⁹ Market rate rents and sale prices vary widely depending on location and building type. In developing the above recommendations, staff looked at a range of market rate rents and sale prices for recently built developments. For example, average market rents for one-bedroom units were observed to range from \$3,100 - \$4,200 per month, which would be affordable to the equivalent of a two-person household earning roughly 150% to 200% of AMI, respectively. These levels significantly exceed the income level of the moderate income households that would be served under the higher tier of the above recommendation. Similar analysis was conducted for two-bedroom units as well as for market rate condominium units, which were assumed to range from \$650,000 - \$1,100,000 for new one-bedroom units, depending on location, which would be affordable to the equivalent of roughly 200% to 350% AMI.

F. DENSITY BONUS PROVISIONS

The Controller's Study concluded that the use of the State Density Bonus Law would impact the outcomes of the Inclusionary Program, if eligible project sponsors who elect the on-site alternative also choose to seek and receive a State Bonus. The Controller's Study further concluded that it would not be reasonable to assume that all projects will utilize the State Bonus, or that if those projects would necessarily receive the maximum bonus allowed. Accordingly, the **Controller's recommendation was to set the inclusionary requirements at the economically feasible level not assuming use of the State Bonus**, and that projects that do receive a State Bonus should pay the Affordable Housing Fee on bonus units.

Proposal A's Inclusionary Ordinance is paired with the State Density Bonus Law. As the sponsoring Supervisors have described, this proposal achieves feasibility by partnering with the State Density Bonus Law. This means that development would not be feasible, according to the Controller's Study, unless the maximum density bonus is provided as allowed under state law (35%). This proposal encourages use of the state bonus law, which requires the City to grant project sponsors a wide range of concessions and waivers from local massing, height, bulk and other development controls, generally at the discretion of the sponsor.

Proposal B's Inclusionary Ordinance is paired with HOME-SF. Here, the sponsoring Supervisors have described that the project sponsors seeking increased density would be encouraged to use a local program (HOME-SF) that tailors the density bonus to San Francisco's local context and policy goals. The HOME-SF program would frame the bonus by providing specified options for how local massing, height, bulk and other development controls may be modified; and provide for a higher percentage of inclusionary affordable units for projects using the HOME-SF program; and also encourage greater production of family-friendly units and include small business protections. The pairing of these two proposals has been crafted in a way that intends to make projects feasible with or without the use of a density bonus.

- **Recommendation:** Final legislation should encourage the use of density bonuses to maximize the production of affordable housing. At the same time, because a density bonus may not be desired in every situation, **the inclusionary requirements established in Section 415 should be economically feasible regardless of whether a density bonus is exercised. Include provisions of Proposal B without modification.**
- **Recommendation:** The final Inclusionary ordinance should be paired with a local density bonus ordinance, such as the proposed HOME-SF Program, that provides increased density and other concessions similar to the State Density Bonus Law in a manner that is tailored to the San Francisco's contextual and policy needs. **Include provisions of Proposal B without modification.**

Additional Administrative Requirements for Density Bonus

Proposal A does not incorporate the Controller's recommendations, but would enact three additional administrative requirements for the Planning Department related to the use of the State Bonus. Staff recommends the following action on these proposed requirements:

- **Recommendation:** Final legislation should **direct the Planning Department to require "reasonable documentation" from project sponsors seeking a State Bonus** to establish eligibility for a requested density bonus, incentives of concession, and waivers or reductions of development standards, as provided for under state law. **Include provisions of Proposal A without modification.**
- **Recommendation:** Final legislation should **require the Planning Department to prepare an annual report on the use of the Density Bonus** to the Planning Commission beginning in January 2018 that details the number of projects seeking a bonus and the concessions, waivers, and level of bonus provided. **Include provisions of Proposal A without modification.**
- **Recommendation:** Final legislation should **not include a requirement to provide information about the value of the density bonus, concessions, and waivers sought** by a project. This proposal would be difficult and costly to implement, in particular because the Department may not be able to compel project sponsors to provide the type of financial information required to perform such analysis. **Do not include this provision of Proposal A.**

Affordable Housing Fee for Bonus Units

The Controller's Study sought to provide guidance as to how the Inclusionary Program should account for the use of the State Density Bonus, recognizing that the use of the program would vary widely based on specific project conditions while the Inclusionary Program establishes requirements that apply to eligible projects on a citywide basis.

The Controller recommended that projects that receive a State Bonus be required to pay the Affordable Housing Fee on any additional units authorized under the State Bonus, similar to how the City impose other impact fees for infrastructure and other City services.

- **Recommendation:** Final legislation should **require that projects pay the Affordable Housing Fee** on any additional units authorized by the State Bonus program. **Include provisions of Proposal B without modification.**

G. UNIT MIX REQUIREMENTS

Both proposals would establish new dwelling unit mix requirements, an area not addressed in the current Inclusionary Program. **Proposal A** would require that **on-site inclusionary units** contain a minimum of 40% of units as 2-bedroom units, and an additional minimum of 20% of on-site inclusionary units as 3-bedroom units or larger. **Proposal B** would require that all residential projects not already subject to the existing unit mix requirement in Plan Areas¹⁰ be subject to a new requirement that 25% of **total units** be provided as 2-bedroom units or larger, or that 10% of total units be provided as 3-bedroom units or larger.

¹⁰ In the RTO, RCD, NCT, DTR, and Eastern Neighborhoods Mixed Use districts, the current requirement is for 40% of total project units to be provided as 2-bedroom units or larger, or for 30% of total project units to be provided as 3-bedroom units or larger.

- **Recommendation:** Dwelling unit mix requirements should **apply to total project units, not only to on-site inclusionary units** to allow for inclusionary units to be provided comparable to market rate units, as required in Section 415 and under both Ordinances. Under either ordinance, **final legislation should be amended accordingly.**

Both proposals are intended to increase the supply of housing units that serve the needs of family households, particularly households with children. The Controller's Study did not examine this issue specifically. However, the economic analysis underlying the Study's feasibility conclusions did reflect development prototypes that fulfilled the Plan Area unit mix requirement by including 35% of units at 2-bedroom units, and 5% of units as 3-bedroom units, for a total of 40% of total project units.

- **Recommendation:** Final legislation **should not set unit mix requirements that would exceed the 40% total large unit requirement** already in place in Plan Areas, and assumed in the Controller's feasibility conclusions. This is a recommendation for a parameter to guide final legislation. **Proposal A does not meet this parameter. Proposal B meets this parameter.**
- **Recommendation:** Dwelling mix requirements should be set in a manner that would **yield a mix of both 2-bedroom and 3-bedroom units**; this may be best achieved by setting a minimum requirement for 3-bedroom units within the large unit requirement. This is a recommendation for a parameter to guide final legislation. **Proposal A meets this parameter. Proposal B does not meet this parameter.**

In addition, Planning Department staff has conducted preliminary analysis on the demographic composition of family households in San Francisco and of the unit mix in the City's existing housing stock and recent development pipeline. While this research is not complete, the preliminary findings suggest:

- 10% of San Francisco households are **families with 2 or more children**, who may be more likely to need a 3-bedroom or larger unit.
- 14% of San Francisco households are **families with 4 or more people**, including families with children *and* families without children, who may be more likely to need a 3-bedroom or larger unit.

Finally, it should also be noted that there may be affordability trade-offs to dwelling unit mix requirements. Larger units will be, at least in the first several years of building occupancy, less affordable to households with fewer than two income earners. The City does not have the ability to require that larger units be made available for family households; data suggest that the majority of larger units are currently not occupied by family households. The Department's recommendations largely focus on maximizing affordability. These recommendations have an unknown impact on affordability and are therefore only provided as "parameters" for final legislation that seek to balance the goals of maximizing affordability with the goal of providing units with more bedrooms.

H. "GRANDFATHERING" PROVISIONS

Following the passage of Proposition C in June 2016, Section 415 was amended to establish incremental on-site, off-site, and fee requirement percentages for projects that entered the development pipeline between January 2013 and January 2016 (as defined by the acceptance date of the project's Environmental Evaluation Application or EEA). Projects that entered the pipeline prior to January 2013 are subject to the inclusionary rates in effect prior to the passage of Proposition C¹¹, while those that entered the pipeline after January 12, 2016 will be subject to the final requirements to be established by the proposed Ordinances.

Incremental Increases for Pipeline Projects

Smaller Projects (10 – 24 units) were unaffected by the passage of Proposition C and remain subject to the on-site and off-site or fee requirements in place prior to Proposition C.

- **Recommendation:** Smaller Projects should remain subject to "grandfathered" on-site and fee or off-site requirements. Both Ordinances would maintain this structure. **No amendments are needed.**

¹¹ As of January 1, 2016 Section 415 required that projects of 10 or more units provide 12% of units on-site as low income units, or pay a fee or provide off-site units equivalent of 20% of the project total.

Larger Projects (25 or more units) that entered the pipeline between 2013 and 2016 are subject to the incremental increases established by Proposition C. However, in some cases these rates exceed the maximum economically feasible rate identified by the Controller's Study and should be retained or amended as follows:

- **Recommendation:** Larger Projects (25 or more units) choosing the **on-site alternative** should remain subject to the incremental percentage requirements established by Proposition C. **Include provisions of Proposal B without modification.**
- **Recommendation:** The incremental increases established for Larger Projects choosing the **fee or off-site alternatives**, however, exceed the maximum feasible rate; these requirements should be amended to match the permanent requirements established in the final legislation, which should not exceed the feasible rate. **Include provisions of Proposal B without modification.**

Area-Specific Inclusionary Requirements

Additional incremental increases were also established for Larger Projects that entered the development pipeline between 2013 and 2016 in the Eastern Neighborhoods Urban Mixed Use (UMU) districts. Projects in these districts are subject to the specific inclusionary requirements established in Section 419 of the Planning Code to reflect the zoning modifications implemented through the Eastern Neighborhoods Area Plan. In some cases, these incremental increases exceed the maximum feasible rate.

- **Recommendation:** The incremental increases established by Proposition C for Larger Projects that entered the pipeline before 2016 and are located in UMU districts should be removed, leaving the area-specific requirements of Section 419 in place for these projects. **Include provisions of Proposal B without modification.**

Additionally, final legislation should make clear that for projects in UMU districts that enter the pipeline after January 12, 2016 whether area-specific or citywide inclusionary requirements apply.

- **Recommendation:** Final legislation should explicitly establish that projects in UMU districts that entered the pipeline after January 12, 2016 **should be subject to the higher of the on-site, fee, or off-site requirements** set forth in Section 419 or the citywide requirements in Section 415, as established by final legislation. Under either ordinance, **final legislation should be amended accordingly.**

Additional Provisions

The “grandfathering” provisions of Proposition C only addressed the requirement rates and did not specify when other features of the inclusionary program would be applicable (e.g. income level targets) to projects in the entitlement process. Given the additional changes to the inclusionary program proposed in both ordinances, staff recommends as follows:

- **Recommendation:** Final legislation should **establish that all other Section 415 provisions will apply to pipeline projects**, regardless of the acceptance date of the project’s EEA; projects that were fully entitled prior to the effective date of final legislation would be subject to the inclusionary requirements in effect at the time of entitlement. Under either ordinance, **final legislation should be amended accordingly.**

A comparison table of current and recommended “grandfathering” and UMU districts requirements is provided as Exhibit D.

V. ENVIRONMENTAL REVIEW

On March 1, 2017 the Environmental Review Officer determined that the legislation filed by Supervisors Kim and Peskin [Board File No. 161351] is not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it does not result in a physical change in the environment.

On March 7, 2017 the Environmental Review Officer determined that the legislation filed by Supervisors Safai, Breed, and Tang [Board File No. 170208] is not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it does not result in a physical change in the environment.

VI. PUBLIC COMMENT

As of the date of publication the Planning Department has received written public comment on the proposed amendments, as well as extensive public comment provided at the Planning Commission informational hearings on February 23 and March 16, 2017.

The bulk of the concerns raised in these hearings were focused on the income levels to be served by the program, the inclusionary requirement percentages, and the impact of the State Density Bonus Law on the program.

Most speakers addressed the income levels at which inclusionary units should be designated, and many urged that the program should primarily serve the needs of low-income households as provided for by other existing affordable housing programs, and that the expansion of the inclusionary program to serve low- and moderate-income households above this level be limited to the levels established by Proposition C. Many speakers also highlighted the growing need for housing affordable to moderate-income households who have traditionally been served by market rate units, but who have also struggled to find affordable housing in recent years. Many also shared their personal experience being unable to find adequate housing in San Francisco either because they could not afford market rate rents, were unable to access the limited supply of affordable units, or because they earned too much to qualify for available affordable units, but not enough to access market rate units.

Regarding the inclusionary requirement percentages, speakers generally advocated for a higher inclusionary rate than that in place prior to Proposition C, but differed on how the conclusions

and recommendations of the Controller's Study and legal limits supported by the City's Nexus Study should be applied to the inclusionary program. Many speakers expressed that the rate should be as high as economically possible, while many others felt that the rates should be set higher than the maximum rates recommended in the Controller's Study.

In particular, many commenters focused on the impact of the State Density Bonus Law on the inclusionary program. Generally, those who felt the Bonus Law would result in most San Francisco developments receiving significant density bonuses supported higher inclusionary rates, while others cautioned that the requirements should avoid imposing too high a requirement and thus become ultimately ineffective.

Written comment was also received during and subsequently to recent hearings, and is attached as Exhibit E. At the February 23 hearing several speakers presented data on household income levels. In addition, a letter was presented from the Council of Community Housing Organizations which posed a series of important questions for consideration by Commissioners, which generally match the topic areas addressed in the accompanying staff report to the hearing. Most notably, the letter advised that the availability of the State Density Bonus Law should support higher inclusionary rates than those recommended in the Controller's Study; that requirements should increase over time at the higher end of the range discussed by the Controller's Technical Advisory Committee; that moderate-income households should be served by the inclusionary program, but not at the expense of low-income households; that the program should be structured to discourage projects to "fee out"; and that the more two- and three-bedroom units should be provided to meet the needs of family households.

At the March 16 hearing a document titled "Statement of Principles on Inclusionary Housing" was presented on behalf of about two-dozen listed organizations. The statement focused on concerns that the inclusionary program should continue to prioritize housing for low-income households at the income levels historically served by the program, and served by other existing housing programs. While recognizing the struggle of middle income households to find affordable housing, the statement urged that the inclusionary program not be expanded to serve these households beyond the levels established in Proposition C.

In addition, the Planning Department received a letter addressed to the Mayor and Board of Supervisors dated April 10 from Yimby Action. The letter expressed opposition to both proposed ordinances based on concerns related to the methodology of the Controller's Economic Feasibility Study and Nexus Study, and proposed that modifications to the inclusionary program be postponed until these analyses can be revised.

VII. EXHIBITS

Exhibit A – Comparison Table of Proposed Amendments to Section 415 (from informational report from March 9, 2017 hearing)

Exhibit B – Comparison Table of Draft Recommendations for Amendments to Section 415

Exhibit C – Draft Planning Commission Resolution

Exhibit D – Comparison Table of current and recommended “Grandfathering” and UMU requirements

Exhibit E – Written public comment received to date