

BOARD of SUPERVISORS



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FOR YOUR INFORMATION SEE THE ATTACHED LEGISLATION

DATE SENT: November 3, 2009

FILE #: 091252

DESCRIPTION: Affordable Housing Transfer Fee Restriction Alternative for inclusionary and Jobs Housing Linkage Programs

- FROM:
- Budget & Finance
 - City Operations & Neighborhood Services
 - City & School District Select
 - Government Audit & Oversight
 - Land Use & Economic Development
 - Rules
 - Public Safety

The meeting to hear this file will be held on: _____ URGENT

(response needed within one week) **OR:** No date set yet

Hearing or Legislation referred to:

- Building Inspection Commission *Charter Section D3.750-5*
- Ethics Commission *Campaign & Governmental Conduct Code Section 1.103*
- Historic Preservation Commission *Charter Section 4.135*
- Planning - Code Amendment *Planning Code Section 302(b) and 306(a) (90 days to respond)*
- Planning - Environmental review – 30 days to respond
- Planning - Environmental review (fees) *CEQA CA Public Resources Code § 21000 et seq – 10 days to respond*
- Planning - Interim Controls *Planning Code Section 306.7(c)*
- Retirement Board *Campaign & Governmental Code or Elections Code*
- Small Business Commission *M01-33*
- Youth Commission *Charter Section 3.720-2; Charter Section 4.124 (12 day to respond)*
- FYI - Building Inspection Commission

1 [Affordable Housing Transfer Fee Restriction Alternative for Inclusionary and Jobs Housing
2 Linkage Programs.]

3 **Ordinance amending the San Francisco Planning Code by amending Sections 313.4**
4 **and 315.5 and by adding Section 313.16 to add an alternative for compliance with the**
5 **Jobs Housing Linkage Program and the Residential Inclusionary Affordable Housing**
6 **Program by allowing a project sponsor to defer 33% of its obligation under either**
7 **Program in exchange for recording an Affordable Housing Transfer Fee Restriction on**
8 **the affected property providing that 1% of the value of the property be paid to the**
9 **Citywide Affordable Housing Fund at every future transfer of the Property.**

10 NOTE: Additions are *single-underline italics Times New Roman*;
11 deletions are *strike-through italics Times New Roman*.
12 Board amendment additions are double-underlined;
13 Board amendment deletions are ~~strikethrough-normal~~.

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

15 Section 1. Findings. The Board of Supervisors of the City and County of San
16 Francisco hereby finds and determines that:

17 (a) Under Planning Code Section 302, the Board of Supervisors finds that this
18 ordinance will serve the public necessity, convenience and welfare for the reasons set forth in
19 Planning Commission Resolution No. _____ recommending this legislation for approval,
20 and incorporates such reasons by this reference thereto. A copy of said resolution is on file
21 with the Clerk of the Board of Supervisors in File No. _____.

22 (b) Under Planning Code Section 101.1, the Board of Supervisors finds that this
23 ordinance is consistent with the Priority Policies of Planning Code Section 101.1(b) of the
24 Planning Code and with the General Plan as proposed to be amended in companion
25 legislation and hereby adopts the findings of the Planning Commission, as set forth in

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1 Planning Commission Resolution No. _____, and incorporates said findings by this
2 reference thereto.

3 (c) In accordance with the actions contemplated herein, the Board adopts as its
4 own the findings in Planning Commission Motion No. _____ concerning findings
5 under the California Environmental Quality Act (California Public Resources Code sections
6 21000 et seq.). A copy of said determination and Motion are on file with the Clerk of the
7 Board of Supervisors in File No. _____ and is incorporated herein by this
8 reference hereto.

9 (d) The current economic climate has dramatically slowed the development of new
10 commercial and residential projects in California, including in the City and County of San
11 Francisco. In the construction sector, working hours among the trades have declined
12 between 30% and 40% from a year ago. And the City's affordable housing crisis remains. In
13 order to balance the interest of the City in stimulating new commercial and residential
14 development and the jobs and tax revenues that such development creates with the City's
15 long-term interest in developing affordable housing options, the Board of Supervisors finds
16 that the Affordable Housing Transfer Fee Restriction presents an additional viable alternative
17 to the current alternatives permitted under the Jobs-Housing Linkage Program and the
18 Residential Inclusionary Affordable Housing Program which programs provide long-term
19 funding for affordable housing, while improving the economic conditions for individual
20 development projects.

21 (e) By permitting developers of commercial and residential developments to
22 effectively defer 33% of their obligations under the Jobs-Housing Linkage Program and the
23 Residential Inclusionary Affordable Housing Program, the Affordable Housing Transfer Fee
24 option will reduce upfront project costs and cash flow in such a way that should improve the
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1 financial viability of many projects. By improving the financial viability of development on the
2 margin, individual projects will be easier to finance when the overall market improves and
3 construction lending is once again available. These changes will in turn shorten the period of
4 economic recovery within the City and spur job creation and tax revenues sooner than would
5 otherwise be the case under existing rules.

6 (f) The Affordable Housing Transfer Fee Restriction would also benefit the City by
7 creating a long-term funding source for affordable housing that would provide more steady
8 and consistent revenues over time and be less vulnerable to the swings in the real estate
9 development cycle than the current Jobs-Housing Linkage Program and the Residential
10 Inclusionary Affordable Housing Program in-lieu fees and affordable unit options.

11 (g) The Controller's Office has verified that the amount of the reduction in
12 obligations under Jobs-Housing Linkage Program and the Residential Inclusionary Affordable
13 Housing Program and the expected value of the Affordable Housing Transfer Fee are
14 substantially equivalent. The Controller's Office derived the 33% reduction in obligations
15 under the two ordinances by discounting a reasonably conservative estimate of average
16 citywide sales prices, property turnover rates and appreciation rates for the three major types
17 of land use subject to affordable housing fees and exactions in San Francisco: (1) for-sale
18 residential; (2) rental residential; and (3) commercial office. The Controller's analysis is
19 incorporated herein by reference and is on file with the Clerk of the Board of Supervisors in
20 Board File No. _____.

21 Section 2. The San Francisco Planning Code is hereby amended by amending
22 Sections 313.4 and 315.4, and adding Section 313.16, to read as follows:

23 **SEC. 313.4. IMPOSITION OF HOUSING REQUIREMENT.**

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1 (a) The Planning Department or the Planning Commission shall impose a condition on
2 the approval of application for a development project subject to this ordinance in order to
3 mitigate the impact on the availability of housing which will be caused by the employment
4 facilitated by that project. The condition shall require that the applicant pay or contribute land
5 suitable for housing to a housing developer to construct housing or pay an in-lieu fee to the
6 City Treasurer which shall thereafter be used exclusively for the development of housing
7 affordable to households of lower or moderate income.

8 (b) Prior to either the Department's or the Commission's approval of a building or site
9 permit for a development project subject to this ordinance, the Department shall issue a notice
10 complying with Planning Code Section 306.3 setting forth its initial determination of the net
11 addition of gross square feet of each type of space subject to this ordinance.

12 (c) Any person may appeal the initial determination by delivering an appeal in writing
13 to the Department within 15 days of such notice. If the initial determination is not appealed
14 within the time allotted, the initial determination shall become a final determination. If the initial
15 determination is appealed, the Commission shall schedule a public hearing prior to the
16 approval of the development project by the Department or the Commission to determine the
17 net addition of gross square feet of each type of space subject to this ordinance. The public
18 hearing may be scheduled separately or simultaneously with a hearing under Planning Code
19 Sections 139(g), 306.2, 309(h), 314.5, 315.3 or a Discretionary Review hearing under San
20 Francisco Municipal Code Part III, Section 26. The Commission shall make a final
21 determination of the net addition of gross square feet of each type of space subject to this
22 ordinance at the hearing.

23 (d) The final determination of the net addition of gross square feet of each type of
24 space subject to this ordinance shall be set forth in the conditions of approval of any building

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1 or site permit application approved by the Department or the Commission. The Planning
2 Department shall notify the Treasurer, DBI, and MOH of the final determination of the net
3 addition of gross square feet of each type of space subject to this ordinance within 30 days
4 following the date of the final determination.

5 (e) In the event that the Department or the Commission takes action affecting any
6 development project subject to this ordinance and such action is thereafter modified,
7 superseded, vacated, or reversed by the Board of Appeals, the Board of Supervisors, or by
8 court action, the permit application for such development project shall be remanded to the
9 Commission to determine whether the proposed project has been changed in a manner which
10 affects the calculation of the amount of housing required under this ordinance and, if so, the
11 Commission shall revise the housing requirement imposed on the permit application in
12 compliance with this ordinance within 60 days of such remand and notify the sponsor in
13 writing of such revision or that a revision is not required. If the net addition of gross square
14 feet of any type of space subject to this ordinance is revised, the Commission shall notify the
15 Treasurer, DBI and MOH of the nature and extent of the revision.

16 (f) The sponsor shall supply all information to the Department and the Commission
17 necessary to make a determination as to the applicability of this ordinance and the number of
18 gross square feet of each type of space subject to this ordinance.

19 (g) The sponsor of any development project subject to this ordinance shall have the
20 option of:

21 (1) Contributing a sum or land of value at least equivalent to the in-lieu fee according
22 to the formulas set forth in Section 313.6 to one or more housing developers who will use the
23 funds or land to construct housing units pursuant to Section 313.5 for each type of space
24 subject to this ordinance; or

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1 (2) Paying an in-lieu fee to the Treasurer according to the formula set forth in Section
2 313.6 for each type of space subject to this ordinance; or

3 (3) Combining the above options pursuant to Section 313.7 for each type of space
4 subject to this ordinance; or

5 (4) Paying 67% of the in lieu fee described in subsection(g)(2) above and further described
6 in Section 313.6, and agreeing to record an Affordable Housing Transfer Fee Restriction under Section
7 313.16 on the Property providing that 1% of the value of the Property be paid to the Citywide
8 Affordable Housing Fund at every future transfer of the Property, beginning with the first transfer of
9 the Property after issuance of the first certificate of occupancy.

10 **SEC. 313.16. AFFORDABLE HOUSING TRANSFER FEE RESTRICTION**

11 (a) Definitions. For purposes of implementing the Affordable Housing Transfer Fee
12 Restriction in the Jobs-Housing Linkage and Residential Inclusionary Affordable Housing Programs
13 only, the following definitions shall apply in addition to the definitions in Sections 313.1 and 315.1:

14 "Present Value" shall mean the current worth of the estimated stream of future transfer fee
15 revenues given four variables: (1) the average sales price per unit or square foot of the type of property
16 being transferred; (2) the average citywide turnover rate for the type of property being transferred; (3)
17 the average citywide appreciation rate for the type of property being transferred; and (4) a
18 commercially reasonable discount rate. Future cash flows derived from transfers are discounted at the
19 discount rate.

20 "Property" shall mean the entire property or any portion thereof, including any subdivided
21 portion or unit, subject to the Jobs Housing Linkage Program or Residential Inclusionary Affordable
22 Housing Program, except it shall not include any unit designated as an on- or off-site Below Market
23 Rate unit subject to Sections 315.4 and 315.5 or any unit otherwise subject to one of the City's Below
24 Market Rate programs and deed restricted as such for 50 years or more.

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1 "Transfer" shall mean a transfer, sale, conveyance, exchange or assignment by Owner of any
2 interest in the Property or any portion thereof, or of any ownership interest in the Owner, including but
3 not limited to a sale or transfer of any partnership or membership interest in the Owner entity and
4 renting or leasing the Property (or a portion thereof) for a term of 35 years or longer. Notwithstanding
5 the foregoing, none of the following transactions shall constitute a "Transfer":

6 (i) A transfer of an interest in Property to secure the performance of an obligation,
7 such as a mortgage or a lien, which interest will be reconveyed upon the completion of such
8 performance;

9 (ii) a transfer of Property resulting from a foreclosure by the beneficiary of the
10 mortgage on such Property with lien priority over all other mortgages secured against such Property,
11 or by an association (as defined in California Civil Code Section 1351(a)) or a transfer in lieu thereof;

12 (iii) a transfer of Property to a revocable inter vivos trust that is an exempt transfer
13 under California Revenue and Taxation Code Section 62(d);

14 (iv) any inter-spousal transfer (as defined in California Revenue and Taxation Code
15 Section 63) or transfer between parents and any of their children (as defined in California Revenue and
16 Taxation Code Section 63.1);

17 (v) Any transfer of Property to a public agency, entity or district;

18 (vi) Any transfer of Property to an association (defined in Section 1351(a) of the
19 California Civil Code) as common area (defined in Section 1351(b) of the California Civil Code);

20 (vii) The rental or lease of Property where the term of the lease is under 35 years;

21 (viii) Any transfer by an accommodation party as a part of a tax-deferred exchange
22 under the Internal Revenue Code, if the transaction involves more than one Transfer solely because the
23 Property is held for an interim period (not to exceed 180 days) by the accommodation party (such that
24 only one Transfer shall be deemed to have occurred hereunder);

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1 (ix) Any other transfer that does not constitute a change of ownership under the
2 California Revenue and Taxation Code or is otherwise exempt from reassessment for real property tax
3 purposes; and

4 (x) Any other transactions determined in writing by the Director of the Mayor's
5 Office of Housing to not constitute a "Transfer."

6 (b) Restriction. A project applicant who chooses this alternative must agree to record an
7 Affordable Housing Transfer Fee Restriction ("Restriction") against the Property that meets the
8 following:

9 (1) Amount and Payment of Fee. A 1% transfer fee shall be paid to the Treasurer for
10 deposit into the Citywide Affordable Housing Fund, established in Planning Code Section 313.12, at
11 the time of Transfer of any Property subject to the restriction. The fee may be paid by the buyer or
12 seller of the Property, subject to negotiation between those parties.

13 (2) Timing of payment. The Affordable Housing Transfer Fee shall be paid by the buyer or
14 seller of the Property to the City at the first Transfer of the Property after issuance of the first
15 certificate of occupancy by the Department of Building Inspection, and at the time of any and all
16 subsequent Transfers. If there is no Transfer of the Property within ten years of the date of the
17 issuance of the first certificate of occupancy for such Property, Owner shall pay a fee to the City equal
18 to 1% of the current assessed value of the Property at the 10-year anniversary of the issuance of the
19 first certificate of occupancy for such Property. Payment of this fee shall not affect the obligation to
20 pay the fee for a Transfer of the Property under the Affordable Housing Transfer Fee Restriction upon
21 any subsequent Transfer.

22 (3) Timing and Form of Recordation. The Affordable Housing Transfer Fee Restriction
23 shall be recorded against the Property in a Notice of Special Restrictions prior to the issuance of first
24 site or building permit. In addition, upon any subdivision of Property subject to the Affordable

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1 Housing Transfer Fee Restriction, the City, acting through the Mayor's Office of Housing, is
2 authorized, but not required, to record a separate Notice of Special Restrictions against each
3 subdivided unit of Property specifically documenting the fact that the Restriction applies to such
4 Property and all Transfers of such Property. In addition, the Mayor's Office of Housing shall develop
5 any additional documents that may be necessary to secure the payment of the Affordable Housing
6 Transfer Fee, which documents may be recorded against the Property and shall be approved as to form
7 by the City Attorney's Office.

8 (4) Prepayment. Every document recorded against the Property pertaining to the
9 Affordable Housing Transfer Fee Restriction shall give the Owner of the Property the option to prepay
10 the Present Value of the Restriction to the City at any time. The Mayor's Office of Housing shall, upon
11 request of the owner, calculate the Present Value of the Restriction and such calculation shall be
12 verified by the Controller. Upon payment of the Present Value to the Treasurer for deposit in the
13 Citywide Affordable Housing Fund, the City shall record a document that rescinds the Affordable
14 Housing Transfer Fee Restriction and the Owner and any future Owners of the Property shall have no
15 further obligation to the City under this Section.

16 (5) Remedies. In order to enforce the terms of the Affordable Housing Transfer Fee
17 Restriction, the City may impose a lien against the Property in the amount of any unpaid Transfer Fee
18 under the process described in Sections 313.9 and 315.6(e), may seek administrative or other penalties
19 as authorized under the Planning Code, and may seek any other remedy available at law.

20 **SEC. 315.4. ON-SITE HOUSING REQUIREMENT AND BENEFITS.**

21 Except as provided in Section 315.4(e), all housing projects subject to this Program
22 through the application of Section 315.3 shall be required to construct on-site units subject to
23 the following requirements:

24 (a) Number of Units:

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1 (1)

2 (A) For any housing development of any height that is located in an area with a specific
3 inclusionary housing requirement, the more specific inclusionary housing requirement shall
4 apply. In addition, the following provisions shall apply only to the following Area Plans as
5 provided below:

6 (i) Market and Octavia Area Plan: The requirements of Sections 315 through 315.9
7 shall apply in the Plan Area subject to the following:

8 An additional affordable housing requirement shall apply in the Market and Octavia
9 Plan Area as follows:

10 Definitions. The definitions in Section 326.2 and 318.2 shall apply.

11 Amount of fee: All projects that have not received Planning Department or Commission
12 approval as of the effective date of this legislation and that are subject to the Residential
13 Inclusionary Affordable Housing Program shall pay an additional affordable housing fee per
14 square foot of Residential Space Subject to the Community Improvements Impact Fee as
15 follows; \$8.00 in the Van Ness Market Special Use District; \$4.00 in the NCT District; and
16 \$0.00 in the RTO District. A project applicant shall not pay a fee for any square foot of space
17 designated as a below market rate unit under this inclusionary affordable housing program or
18 any other unit that is designated as an affordable housing unit under a Federal, State, or local
19 restriction in a manner that maintains affordability for a term no less than 50 years.

20 Timing of payment: The fee shall be paid before the City issues a first certificate of
21 occupancy for the project.

22 Use of Fee: The additional affordable housing requirement specified in this Section for
23 the Market and Octavia Plan Area shall be paid into the Citywide Affordable Housing Fund,
24 but the funds shall be separately accounted for. MOH shall expend the funds according to the

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1 following priorities: First, to increase the supply of housing affordable to qualifying households
2 in the Market and Octavia Plan Area; second, to increase the supply of housing affordable to
3 qualifying households within 1 mile of the boundaries of the Plan Area; third, to increase the
4 supply of housing affordable to qualifying households in the City and County of San
5 Francisco. The funds may also be used for monitoring and administrative expenses subject to
6 the process described in Section 315.6(e).

7 Other fee provisions: This additional affordable housing fee shall be subject to the
8 following provisions of Sections 326 et seq.; the inflation adjustment provisions of Section
9 326.3(d); the waiver and reduction provisions of Section 326.3(h); the lien proceedings in
10 Section 326.4; and the refund provisions of Section 326.5. This additional affordable housing
11 fee may not be met through the in-kind provision of community improvements or Community
12 Facilities (Mello Roos) financing options of Sections 326.3(e) and (f).

13 Findings: The Board of Supervisors hereby finds that the additional affordable housing
14 requirements of this Section are supported by the Nexus Study performed by Keyser Marston
15 and Associates referenced in Section 315.2(12) and found in Board File No. 081152. The
16 Board of Supervisors has reviewed the study and staff analysis and report of the study and,
17 on that basis finds that the study supports the current inclusionary housing requirements
18 combined with the additional affordable housing fee. Specifically, the Board finds that the
19 study: identifies the purpose of the additional fee to mitigate impacts on the demand for
20 affordable housing in the City; identifies the use to which the additional fee is to be put as
21 being to increase the City's affordable housing supply; and establishes a reasonable
22 relationship between the use of the additional fee for affordable housing and the need for
23 affordable housing and the construction of new market rate housing. Moreover, the Board
24 finds that the current inclusionary requirements combined with the additional fee are less than

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1 the cost of mitigation and do not include the costs of remedying any existing deficiencies. The
2 Board also finds that the study establishes that the current inclusionary requirements and
3 additional fee do not duplicate other City requirements or fees.

4 Furthermore, the Board finds that generally an account has been established, funds
5 appropriated, and a construction schedule adopted for affordable housing projects funded
6 through the Inclusionary Housing program and the additional fee or that the in lieu fees and
7 the additional fee will reimburse the City for expenditures on affordable housing that have
8 already been made.

9 Furthermore, the Board finds that a major Market and Octavia Area Plan objective is to
10 direct new market rate housing development to the area. That new market rate development
11 will greatly out number both the number of units and potential new sites within the plan area
12 for permanently affordable housing opportunities. The City and County of San Francisco has
13 adopted a policy in its General Plan to meet the affordable housing needs of its general
14 population and to require new housing development to produce sufficient affordable housing
15 opportunities for all income groups, both of which will not be met by the projected housing
16 development in the plan area. In addition, the "Draft Residential Nexus Analysis City and
17 County of San Francisco" of December 2006 indicates that market rate housing itself
18 generates additional lower income affordable housing needs for the workforce needed to
19 serve the residents of the new market rate housing proposed for the plan area. In order to
20 meet the demand created for affordable housing by the specific policies of the Plan and to be
21 consistent with the policy of the City and County of San Francisco it is found that an additional
22 affordable housing fee need be included on all market rate housing development in the Plan
23 Area with priority for its use being given to the Plan area.

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1 (ii) Eastern Neighborhoods Project Area: The requirements of Sections 315 through
2 315.9 and 319 shall apply in the Eastern Neighborhoods Plan Area subject to the following
3 and subject to any stated exceptions elsewhere in this Code, including the specific provisions
4 in Section 319:

5 Definitions:

6 "Gross square footage" shall have the meaning set forth in Section 102.9.

7 "Development Application" shall have the meaning set forth in Section 175.6.

8 "Eastern Neighborhood Controls" shall have the meaning set forth in Section 175.6.

9 Application. The option described in this subsection (ii) shall only be provided to development
10 projects that are subject to the Eastern Neighborhood Controls as defined in Section 175.6
11 (e), and consist of 20 units or less or less than 25,000 gross square feet.

12 Amount of Fee. All projects subject to this subsection may choose to pay a square foot
13 in lieu fee instead of the in lieu fee provided for in Section 315.6 as follows. If this option is
14 selected, the project applicant shall pay \$40.00 per gross square foot of net new residential
15 development. The calculation of gross square feet shall not include nonresidential uses,
16 including any retail, commercial, or PDR uses, and all other space used only for storage and
17 services necessary to the operation or maintenance of the building itself.

18 Timing of Payment. The project applicant shall pay the fee prior to issuance by DBI of
19 the first site or building permit for the project. At the project applicant's option, it may choose
20 to pay only 50% of the fee prior to issuance by DBI of the first site or building permit and, prior
21 to issuance of the first site or building permit, the City shall impose a lien on the property for
22 the remaining 50% of the fee through the procedures set forth in Section 315.6(f) except that
23 no interest will accrue for the first twelve months from the issuance of the first site or building
24 permit for the project. The project applicant shall pay the remaining 50% of the fee prior to

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1 issuance by DBI of a first certificate of occupancy. When 100% of the fee is paid, including
2 interest if applicable, the City shall remove the lien.

3 Use of Fee. The fee shall be paid into the Citywide Affordable Housing Fund, but the
4 funds shall be separately accounted for. MOH shall expend the funds according to the
5 following priorities: First, to increase the supply of housing affordable to qualifying households
6 in the Eastern Neighborhoods Project Areas; second, to increase the supply of housing
7 affordable to qualifying households within 1 mile of the boundaries of the Eastern
8 Neighborhoods Project Areas; third, to increase the supply of housing affordable to qualifying
9 households in the City and County of San Francisco. The funds may also be used for
10 monitoring and administrative expenses subject to the process described in Section 315.6(e).

11 Findings. The Board of Supervisors hereby finds that the fee provisions of this Section
12 are equivalent to or less than the fees for developments of over 20 units previously adopted
13 by the Board in Ordinance No. 051685 and 060529 and are also supported by the Nexus
14 Study performed by Keyser Marston and Associates referenced in Section 315.2(12) and
15 found in Board File No. 081152. The Board of Supervisors has reviewed the study and staff
16 analysis prepared by the Mayor's Office of Housing dated July 24, 2008 in Board File No.
17 081152 and on that basis finds that the study supports the current proposed changes to the
18 inclusionary housing requirements for projects of 20 units or less in the Eastern Neighborhood
19 Area Plan. Specifically, the Board finds that the study and staff memo: identifies the purpose
20 of the additional fee to mitigate impacts on the demand for affordable housing in the City;
21 identifies the use to which the additional fee is to be put as being to increase the City's
22 affordable housing supply; and establishes a reasonable relationship between the use of the
23 additional fee for affordable housing and the need for affordable housing and the construction
24 of new market rate housing. Moreover, the Board finds that the new inclusionary requirements

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1 are less than the cost of mitigation and do not include the costs of remedying any existing
2 deficiencies. The Board also finds that the study establishes that the inclusionary
3 requirements do not duplicate other City requirements or fees.

4 Furthermore, the Board finds that generally an account has been established, funds
5 appropriated, and a construction schedule adopted for affordable housing projects funded
6 through the Inclusionary Housing program and the in lieu fees will reimburse the City for
7 expenditures on affordable housing that have already been made.

8 Furthermore, the Board finds that small scale development faces a number of
9 challenges in the current development climate, including limited access to credit and often, a
10 higher land cost per unit for the small sites on which they develop. Because of these and
11 other variations from larger-scale development, they operate under a somewhat unique
12 development model which cannot be fully encapsulated within the constraints of the Eastern
13 Neighborhoods Financial Analysis, prepared to assess the financial feasibility of increasing
14 housing requirements and impact fees in the Plan Areas. To address these challenges, the
15 Board finds that a number of slight modifications to the affordable housing requirements of the
16 Eastern Neighborhoods, to apply to small projects (defined as 20 units or fewer, or less than
17 25,000 gross square feet) are appropriate.

18 (B) Buildings 120 feet in height and under or buildings of over 120 feet in height that
19 do not meet the criteria in subsection (C) below: Except as provided in Subsection (C) below,
20 the Planning Department shall require for housing projects covered by Section 315.3(a)(1), as
21 a condition of Planning Department approval of a project's building permit, and by Section
22 315.3(a)(2), (3) and (4), as a Condition of Approval of a conditional use or planned unit
23 development permit or as a condition of Planning Department approval of a live/work project,
24 that 15 percent of all units constructed on the project site shall be affordable to qualifying

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1 households so that a project applicant must construct .15 times the total number of units
2 produced in the principal project beginning with the construction of the fifth unit. If the total
3 number of units is not a whole number, the project applicant shall round up to the nearest
4 whole number for any portion of .5 or above.

5 The Planning Department shall provide written notice by mail to the project applicant of
6 the number of affordable units which shall be required within 30 days of approval by the
7 Planning Department or Planning Commission.

8 (C) Buildings of over 120 feet in height. Except as provided in subsection (A) above,
9 the requirements of this Subsection shall apply to any project that is over 120 feet in height
10 and does not require a Zoning Map amendment or Planning Code text amendment related to
11 its project approvals which (i) results in a net increase in the number of permissible residential
12 units, or (ii) results in a material increase in the net permissible residential square footage as
13 defined in Section 315.3(b)(2) or has not received or will not receive a zoning map
14 amendment or Planning Code text amendment as part of an Area Plan adopted after January
15 1, 2006 which (i) results in a net increase in the number of permissible residential units, or (ii)
16 results in a material increase in the net permissible residential square footage as defined in
17 Section 315.3(b)(2). The Planning Department shall require for housing projects covered by
18 this Subsection and Section 315.3(a)(1), as a condition of Planning Department approval of a
19 project's building permit, or by this Subsection and by Section 315.3(a)(2), (3) and (4), as a
20 Condition of Approval of a conditional use or planned unit development permit or as a
21 condition of Planning Department approval of a live/work project, that 12 percent of all units
22 constructed on the project site shall be affordable to qualifying households so that a project
23 applicant must construct .12 times the total number of units produced in the principal project
24 beginning with the construction of the fifth unit. If the total number of units is not a whole

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1 number, the project applicant shall round up to the nearest whole number for any portion of .5
2 or above. Consistent with the conclusions of the Mayor's Office of Housing study authorized in
3 Section 315.8(e), the Mayor's Office of Housing shall recommend and the Board of
4 Supervisors shall consider whether the requirements of this Subsection for buildings of over
5 120 feet in height shall continue or expire after approximately five years.

6 The Planning Department shall provide written notice by mail to the project applicant of
7 the number of affordable units which shall be required within 30 days of approval by the
8 Planning Department or Planning Commission. This notice shall also be sent to project
9 applicants who elect to pay an in-lieu fee.

10 (2) If the principal project has resulted in demolition, conversion, or removal of
11 affordable housing units renting or selling to households at income levels and/or for a rental
12 rate or sales price below corresponding income thresholds for units affordable to qualifying
13 households, the Planning Commission shall require that the project applicant replace the
14 number of affordable units removed with units of a comparable number of bedrooms or
15 provide that 15 percent of all units constructed as part of the new project shall be affordable to
16 qualifying households, whichever is greater.

17 (b) Timing of Construction: On-site inclusionary housing required by this Section
18 315.4 must be constructed, completed, and ready for occupancy no later than the market rate
19 units in the principal project.

20 (c) Type of Housing: The type of affordable housing needed in San Francisco is
21 documented in the City's Consolidated Plan and the Residence Element of the General Plan.
22 In general, affordable units constructed under this Section 315.4 shall be comparable in
23 number of bedrooms, exterior appearance and overall quality of construction to market rate
24 units in the principal project. The Notice of Special Restrictions or Conditions of Approval shall

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1 include a specific number of units at specified unit sizes for affordable units. The square
2 footage of affordable units and interior features in affordable units do not need to be same as
3 or equivalent to those in market rate units in the principal project, so long as they are of good
4 quality and are consistent with then-current standards for new housing. Where applicable,
5 parking shall be offered to the affordable units subject to the terms and conditions of the
6 Department's policy on unbundled parking for affordable housing units as specified in the
7 Procedures Manual and amended from time to time. Unless provided otherwise by the
8 Mayor's Office of Housing in writing, if the units in the market rate portion of the development
9 are ownership units, then the affordable units shall be ownership units and if the market rate
10 units are rental units, then the affordable units shall be rental units.

11 (d) Marketing the Units: The Mayor's Office of Housing shall be responsible for
12 overseeing and monitoring the marketing of affordable units under this Section. In general, the
13 marketing requirements and procedures shall be contained in the Procedures Manual as
14 amended from time to time and shall apply to the affordable units in the project. The Mayor's
15 Office of Housing may develop occupancy standards for units of different bedroom sizes in
16 the Procedures Manual in order to promote an efficient allocation of affordable units. The
17 Mayor's Office of Housing may require in the Procedures Manual that prospective purchasers
18 complete homebuyer education training or fulfill other requirements. The Mayor's Office of
19 Housing shall develop a list of minimum qualifications for marketing firms that market
20 affordable units under this ordinance, referred to the Procedures Manual as Below Market
21 Rate (BMR units). Within 3 months from the effective date of this legislation, the Mayor's
22 Office of Housing shall recommend to the Planning Commission that these minimum
23 qualifications be published in the Procedures Manual such that, upon approval of the
24 qualifications by the Planning Commission, no developer marketing units under the

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1 Inclusionary Housing Program shall be able to market BMR units except through a firm
2 meeting all of the minimum qualifications. For purposes of this ordinance, any developer that
3 has not yet submitted a marketing plan to the Mayor's Office of Housing by the date of
4 Planning Commission approval of the qualifications shall be required to comply with this
5 section. The Notice of Special Restrictions or Conditions of Approval shall specify that the
6 marketing requirements and procedures contained in the Procedures Manual as amended
7 from time to time, shall apply to the affordable units in the project.

8 (1) Lottery: At the initial offering of affordable units in a housing project, the Mayor's
9 Office of Housing must require the use of a public lottery approved by the Mayor's Office of
10 Housing to select purchasers or tenants. The Mayor's Office of Housing shall also hold a
11 general public lottery and maintain and utilize a list generated from this lottery or utilize a list
12 generated from a recent lottery at another similar housing project to fill spaces in units that
13 become available for re-sale or occupancy in any housing project subject to this ordinance
14 after the initial offering. The list shall be updated from time to time but in no event less than
15 annually to ensure that it remains current.

16 (2) Preferences: The Mayor's Office of Housing shall create a lottery system that
17 gives preference to people who live or work in San Francisco. MOH shall propose policies and
18 procedures for implementing this preference to the Planning Commission for inclusion in the
19 Procedures Manual. Otherwise, it is the policy of the Board of Supervisors to treat all
20 households equally in allocating affordable units under this Program.

21 (e) Alternatives: The project sponsor may elect to satisfy the requirements of Section
22 315.4 by one of the alternatives specified in this Section. The project sponsor has the choice
23 between the alternatives and the Planning Commission may not require a specific alternative.
24 The project sponsor must elect ~~an~~ alternatives 1-4 below before it receives project approvals

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1 from the Planning Commission or Planning Department and that alternative will be a condition
2 of project approval, and may elect alternative 5 at any time prior to issuance of first site or building
3 permit. Notwithstanding the foregoing, if a project sponsor elects an alternative other than the
4 on-site alternative, the project sponsor still has the option to choose the on-site alternative up
5 to the issuance of the first site or building permit. If a project sponsor fails to elect an
6 alternative before project approval by the Planning Commission or Planning Department, the
7 provisions of Section 315.4 shall apply. The alternatives are as follows:

8 (1) Constructing units affordable to qualifying households at an alternative site within
9 the City and County of San Francisco pursuant to the requirements of Section 315.5.

10 (2) Paying an in lieu fee to the Mayor's Office of Housing pursuant to the requirements
11 of Section 315.6.

12 (3) Any combination of construction of on-site units as provided in Section 315.4, off-
13 site units as provided in Section 315.5, or payment of an in lieu fee as provided in Section
14 315.6, provided that the project applicant constructs or pays the fee at the appropriate
15 percentage or fee level required for that option.

16 (4) Using California Debt Limit Allocation Committee (CDLAC) tax-exempt bonds
17 under the requirements of Section 315.5(g).

18 (5) Doing both of the following in (A) and (B):

19 (A) Constructing 67% of the on-site or off-site units required by Sections 315.4 and 315.5
20 respectively or paying 67% of the in lieu fee described in subsection (2) above and further described in
21 Section 315.6, and

22 (B) Agreeing to record an Affordable Housing Transfer Fee Restriction under Section
23 313.16 on the Property providing that 1% of the value of the Property be paid to the Citywide

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1 Affordable Housing Fund at every future transfer of the Property, beginning with the first transfer of
2 the Property after issuance of the first certificate of occupancy

3 (C) This alternative is not available to a project applicant that chooses an alternative
4 involving land dedication.

5 (f) Benefits: If the project applicant elects to satisfy the inclusionary housing
6 requirements through the production of on-site inclusionary housing in this Section 315.4, the
7 project applicant who filed an application on or after June 18, 2001 shall at his or her option,
8 be eligible to receive a refund for only that portion of the housing project which is affordable
9 for the following fees: a conditional use or other fee required by Planning Code Section 352, if
10 applicable; an environmental review fee required by Administrative Code Section 31.46B, if
11 applicable; a building permit fee required by the Building Code and by Planning Code Section
12 355 for the portion of the housing project that is affordable. The project applicant shall pay the
13 building fee for the portion of the project that is market-rate.

14 The Controller shall refund fees from any appropriated funds to the project applicant on
15 application by the project applicant. The application must include a copy of the certificate of
16 occupancy for all units affordable to a qualifying household required by the Inclusionary
17 Affordable Housing Program. It is the policy of the Board of Supervisors to appropriate money
18 for this purpose from the General Fund.

19
20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22 By: 
23 Susan Cleveland-Knowles
24 Deputy City Attorney

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