

2/28/02

FILE NO. 00-1262 As Amended in Board ORDINANCE NO. 37-02

3/18/02

1 [Inclusionary Affordable Housing Program]

2
3 **Ordinance amending the San Francisco Planning Code to amend the variance**
4 **provisions of Section 305, to add sections 315 to 315.9 to establish requirements for all**
5 **residential developments of 10 units or more to provide inclusionary housing units,**
6 **and making findings.**

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

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

11 Section 1. The San Francisco Planning Code is hereby amended by amending Section 305
12 to read as follows:

13 Sec. 305: VARIANCES.

14 (a) General. The Zoning Administrator shall hear and make determinations
15 regarding applications for variances from the strict application of quantitative standards in this
16 Code. He shall have power to grant only such variances as may be in harmony with the
17 general purpose and intent of this Code and in accordance with the general and specific rules
18 contained herein, and he shall have power to grant such variances only to the extent
19 necessary to overcome such practical difficulty or unnecessary hardship as may be
20 established in accordance with the provisions of this Section. No variance shall be granted in
21 whole or in part which would have an effect substantially equivalent to a reclassification of
22 property; or which would permit any use, any height or bulk of a building or structure, or any
23 type or size or height of sign not expressly permitted by the provisions of this Code for the
24 district or districts in which the property in question is located; or which would grant a privilege
25 for which a conditional use procedure is provided by this Code; or which would change a

1 definition in this Code; or which would waive, reduce or adjust the inclusionary housing
2 requirements of Sections 315 through 315.9. The procedures for variances shall be as specified in
3 this Section and in Sections 306 through 306.5.

4 (b) Initiation. A variance action may be initiated by application of the owner,
5 or authorized agent for the owner, of the property for which the variance is sought.

6 (c) Determination. The Zoning Administrator shall hold a hearing on the
7 application, provided, however, that if the variance requested involves a deviation of less than
8 10 percent from the Code requirement, the Zoning Administrator may at his option either hold
9 or not hold such a hearing. No variance shall be granted in whole or in part unless there exist,
10 and the Zoning Administrator specifies in his findings as part of a written decision, facts
11 sufficient to establish:

12 (1) That there are exceptional or extraordinary circumstances applying to the
13 property involved or to the intended use of the property that do not apply generally to other
14 property or uses in the same class of district;

15 (2) That owing to such exceptional or extraordinary circumstances the literal
16 enforcement of specified provisions of this Code would result in practical difficulty or
17 unnecessary hardship not created by or attributable to the applicant or the owner of the
18 property;

19 (3) That such variance is necessary for the preservation and enjoyment of a
20 substantial property right of the subject property, possessed by other property in the same
21 class of district;

22 (4) That the granting of such variance will not be materially detrimental to the
23 public welfare or materially injurious to the property or improvements in the vicinity; and

24 (5) That the granting of such variance will be in harmony with the general
25 purpose and intent of this Code and will not adversely affect the Master Plan.

1 Upon issuing his written decision either granting or denying the variance in whole or in
2 part, the Zoning Administrator shall forthwith transmit a copy thereof to the applicant. The
3 action of the Zoning Administrator shall be final and shall become effective 10 days after the
4 date of his written decision except upon the filing of a valid appeal to the Board of Permit
5 Appeals as provided in Section 308.2.

6 (d) Conditions. When considering an application for a variance as provided herein with
7 respect to applications for development of "dwellings" as defined in Chapter 87 of the San
8 Francisco Administrative Code, the Zoning Administrator, or the Board of Appeals on appeal,
9 shall comply with that Chapter which requires, among other things, that the Zoning
10 Administrator and the Board of Appeals not base any decision regarding the development of
11 "dwellings" in which "protected class" members are likely to reside on information which may
12 be discriminatory to any member of a "protected class" (as all such terms are defined in
13 Chapter 87 of the San Francisco Administrative Code). In addition, in granting any variance
14 as provided herein, the Zoning Administrator, or the Board of Permit Appeals on appeal, shall
15 specify the character and extent thereof, and shall also prescribe such conditions as are
16 necessary to secure the objectives of this Code. Once any portion of the granted variance is
17 utilized, all such specifications and conditions pertaining to such authorization shall become
18 immediately operative. The violation of any specification or condition so imposed shall
19 constitute a violation of this Code and may constitute grounds for revocation of the variance.
20 Such conditions may include time limits for exercise of the granted variance; otherwise, any
21 exercise of such variance must commence within a reasonable time.

22 Section 2. The San Francisco Planning Code is hereby amended by adding Sections 315 to
23 315.9: Sections 315 to 315.9 to read as follows:

24 *Sec. 315: HOUSING REQUIREMENTS FOR RESIDENTIAL AND LIVE/WORK DEVELOPMENT*
25 *PROJECTS*

1 Sections 315.1- 315.9 set forth the requirements and procedures for the Residential
2 Inclusionary Affordable Housing Program ("Program"). The Department of City Planning and the
3 Mayor's Office of Housing shall periodically publish a Procedures Manual containing procedures for
4 monitoring and enforcement of the policies and procedures for implementation of this Program. The
5 Procedures Manual must be made available at the Zoning Counter of the Planning Department and on
6 the Planning Department's web site. The Procedures Manual shall not be amended, except for an
7 annual update of the affordability housing guidelines, which reflect updated income limits, prices, and
8 rents, without approval of the Planning Commission.

9 Section 315.1: DEFINITIONS

10 The following definitions shall govern interpretation of this ordinance:

11 (1) "Affordable housing project" shall mean a housing project containing units constructed
12 to satisfy the requirements of Sections 315.4 or 315.5.

13 (2) "Affordable to a household" shall mean a purchase price that a household can afford to
14 pay based on an annual payment for all housing costs, as defined in California Code of Regulations
15 ("CCR") title 25 Section 6920, as amended from time to time, of 33 percent of the combined household
16 annual net income, assuming a 10 percent down payment, and available financing, or a rent that does
17 not exceed 30 percent of a household's combined annual net income.

18 (3) "Affordable to qualifying households" shall mean:

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

22 (i) Only to households with an annual net income equal to or less than the qualifying limits
23 for a household of median income, adjusted for household size as set forth in CCR title 25 Section
24 6932, as amended from time to time;

25 (ii) On the initial sale, at or below the maximum purchase price; and

1 (iii) On subsequent sales, at or below the prices to be determined by the Director in the
2 Conditions of Approval or Notice of Special Restrictions according to the formula specified in the
3 Procedures Manual, as amended from time to time, such that the units remain affordable to qualifying
4 households.

5 (B) With respect to rental units in an affordable housing project, the average annual rent,
6 including the cost of utilities paid by the tenant according to HUD utility allowance established by the
7 San Francisco Housing Authority, shall not exceed the allowable average annual rent. Each unit shall
8 be rented:

9 (i) Only to households with an annual net income equal to or less than the qualifying limits
10 for a household of low income as defined in this Section;

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

12 (4) "Allowable average purchase price" shall mean a price for an affordable owned unit of
13 the size indicated below that is affordable to a household of median income as defined in this Section,
14 adjusted for the household size indicated below as set forth in CCR title 25, section 6932, as amended
15 from time to time, as of the date of the close of escrow:

<u>Number of Bedrooms (or, for live/work units</u> <u>square foot equivalency)</u>	<u>Number of Persons in Household</u>
<u>0 (Less than 600 square feet)</u>	<u>1</u>
<u>1 (601 to 850 square feet)</u>	<u>2</u>
<u>2 (851 to 1100 square feet)</u>	<u>3</u>
<u>3 (1101 to 1300 square feet)</u>	<u>4</u>
<u>4 (More than 1300 square feet)</u>	<u>5</u>

23 (5) "Allowable average annual rent" shall mean annual rent for an affordable rental unit of
24 the size indicated below that is 18 percent of the annual net income of a household of median income as
25

1 defined in this Section, adjusted for the household size indicated below as set forth in CCR title 25,
 2 section 6932, as amended from time to time:

<u>Number of Bedrooms (or, for live/work units square foot equivalency)</u>	<u>Number of Persons in Household</u>
<u>0 (Less than 600 square feet)</u>	<u>1</u>
<u>1 (601 to 850 square feet)</u>	<u>2</u>
<u>2 (851 to 1100 square feet)</u>	<u>3</u>
<u>3 (1101 to 1300 square feet)</u>	<u>4</u>
<u>4 (More than 1300 square feet)</u>	<u>5</u>

10 (6) "Annual net income" shall mean net income as defined in CCR title 25 Section 6916, as
 11 amended from time to time.

12 (7) "Average annual rent" shall mean the total annual rent for the calendar year charged
 13 by a housing project for all affordable rental units in the project of an equal number of bedrooms
 14 divided by the total number of affordable units in the project with that number of bedrooms.

15 (8) "Average purchase price" shall mean the purchase price for all affordable owned units
 16 in an affordable housing project of an equal number of bedrooms divided by the total number of
 17 affordable units in the project with that number of bedrooms.

18 (9) "Community apartment" shall be as defined in San Francisco Subdivision Code Section
 19 1308(b).

20 (9a) "Conditional Use" for purposes of this Ordinance means a conditional use authorization
 21 which, pursuant to the Planning Code, is required for the residential component of a project.

22 (10) "Conditions of Approval" shall be a set of written conditions imposed by the Planning
 23 Commission or another permit-issuing City agency or appellate body to which a project applicant

1 agrees to adhere and fulfill when it receives a conditional use or planned unit development permit for
2 the construction of a principal project or other housing project subject to this Program.

3 (11) "Condominium" shall be as defined in California Civil Code Section 783.

4 (12) "Director" shall mean the Director of City Planning or his or her designee, including
5 other City agencies or departments.

6 (13) "First certificate of occupancy" shall mean either a temporary certificate of occupancy
7 or a Certificate of Final Completion and Occupancy as defined in San Francisco Building Code
8 Section 109, whichever is issued first.

9 (14) "High need area" will mean an area identified by the Mayor's Office of Housing, or its
10 successor, as having a large percentage of low income households.

11 (15) "Household" shall mean any person or persons who reside or intend to reside in the
12 same housing unit.

13 (16) "Household of low income" shall mean a household whose combined annual gross
14 income for all members does not exceed sixty (60) percent of the median income for the San Francisco
15 Metropolitan Statistical Area, as calculated by the United States Department of Housing and Urban
16 Development (HUD) and adjusted for household size.

17 (17) "Household of median income" shall mean a household whose combined annual gross
18 income for all members does not exceed one hundred (100) percent of the median income for the San
19 Francisco Metropolitan Statistical Area, as calculated by the United States Department of Housing and
20 Urban Development (HUD) and adjusted for household size.

21 (18) "Housing project" shall mean any development which has residential units as defined in
22 the Planning Code, including but not limited to dwellings, group housing, assisted living developments,
23 and other forms of development which are intended to provide long-term housing to individuals and
24 households. "Housing project" for purposes of this Program shall also include the development of
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1 live/work units as defined by Planning Code Section 102.13. Housing project for purposes of this
2 Program shall mean all phases or elements of a multi-phase or multiple lot residential development.

3 (19) "Housing unit" or "unit" shall mean a dwelling unit as defined in San Francisco
4 Housing Code Section 401.

5 (20) "Live/work unit" shall be as defined in San Francisco Planning Code Section 102.13.

6 (21) "Live/work project" shall mean a housing project containing more than one live/work
7 unit.

8 (22) "Long term housing" shall mean housing intended for occupancy by a person or persons
9 for 32 consecutive days or longer.

10 (23) "Market rate housing" shall mean housing constructed in the principal project that is
11 not subject to sales or rental restrictions.

12 (24) "Maximum annual rent" shall mean the maximum rent that a housing developer may
13 charge any tenant occupying an affordable unit for the calendar year. The maximum annual rent for an
14 affordable housing unit of the size indicated below shall be no more than 30 percent of the annual net
15 income for a household of low income as defined in this Section, as adjusted for the household size
16 indicated below as set forth in CCR title 25 Section 6932, as amended from time to time, as of the first
17 date of the tenancy:

<u>Number of Bedrooms (or, for live/work units</u> <u>square foot equivalency)</u>	<u>Number of Persons in Household</u>
<u>0 (Less than 600 square feet)</u>	<u>1</u>
<u>1 (601 to 850 square feet)</u>	<u>2</u>
<u>2 (851 to 1100 square feet)</u>	<u>3</u>
<u>3 (1101 to 1300 square feet)</u>	<u>4</u>
<u>4 (More than 1300 square feet)</u>	<u>5</u>

1 (25) "Maximum purchase price" shall mean the maximum purchase price for an affordable
 2 owned unit of the size indicated below that is affordable to a household of median income, adjusted for
 3 the household size indicated below as set forth in CCR title 25 Section 6932, as amended from time to
 4 time, as of the date of the close of escrow, assuming an annual payment for all housing costs of 33
 5 percent of the combined household annual net income, a 10 percent down payment, and available
 6 financing:

<u>Number of Bedrooms (or, for live/work units square foot equivalency)</u>	<u>Number of Persons in Household</u>
<u>0 (Less than 600 square feet)</u>	<u>1</u>
<u>1 (601 to 850 square feet)</u>	<u>2</u>
<u>2 (851 to 1100 square feet)</u>	<u>3</u>
<u>3 (1101 to 1300 square feet)</u>	<u>4</u>
<u>4 (More than 1300 square feet)</u>	<u>5</u>

14 (26) "Notice of Special Restrictions" shall mean a document recorded with the San Francisco
 15 Recorder's Office for any unit subject to this Program detailing the sale and resale or rental
 16 restrictions and any restrictions on purchaser or tenant income levels included as a Condition of
 17 Approval of the principal project relating to the unit.

18 (27) "Off-site unit" shall mean a unit affordable to qualifying households constructed
 19 pursuant to this Ordinance on a site other than the site of the principal project.

20 (28) "On-site unit" shall mean a unit affordable to qualifying households constructed
 21 pursuant to this Ordinance on the site of the principal project.

22 (29) "Ordinance" shall mean Planning Code Sections 315.1 through 315.9.

1 (30) "Owned unit" shall mean a unit affordable to qualifying households which is a
2 condominium, stock cooperative, community apartment, or detached single-family home. The owner or
3 owners of an owned unit must occupy the unit as their primary residence.

4 (31) "Owner" shall mean the record owner of the fee or a vendee in possession.

5 (32) "Principal project" shall mean a housing development on which a requirement to
6 provide affordable housing units is imposed.

7 (33) "Procedures Manual" shall mean the City and County of San Francisco Affordable
8 Housing Monitoring Procedures Manual issued by the San Francisco Department of City Planning, as
9 amended.

10 (34) "Program" shall mean the Residential Inclusionary Affordable Housing Program.

11 (35) "Project applicant" shall mean an applicant for a building permit or a site permit or an
12 applicant for a conditional use permit or planned unit development permit, seeking approval from the
13 Planning Commission or Planning Department for construction of a housing project subject to this
14 Section, such applicant's successors and assigns.

15 (36) "Rent" or "rental" shall mean the total charges for rent, utilities, and related housing
16 services to each household occupying an affordable unit.

17 (37) "Rental unit" shall mean a unit affordable to qualifying households which is not a
18 condominium, stock cooperative, or community apartment.

19 (38) "Section 6932" shall mean Section 6932 of Title 25 of the California Code of
20 Regulations as such section applies to the County of San Francisco.

21 Section 315.2: FINDINGS

22 The Board of Supervisors hereby finds and declares as follows:

23 A. Affordable housing is a paramount statewide concern. In 1980, the Legislature declared
24 in Government Code Section 65580:

25 (a) The availability of housing is of vital statewide importance, and the early attainment of

1 decent housing and a suitable living environment for every California family is a priority of the highest
2 order.

3 (b) The early attainment of this goal requires the cooperative participation of government and
4 the private sector in an effort to expand housing opportunities and accommodate the housing needs of
5 Californians of all economic levels.

6 (c) The provision of housing affordable to low-and moderate- income households requires the
7 cooperation of all levels of government.

8 (d) Local and state governments have a responsibility to use the powers vested in them to
9 facilitate the improvement and development of housing to make adequate provision for the housing
10 needs of all economic segments of the community

11 The Legislature further stated in Government Code Section 65581 that:

12 It is the intent of the Legislature in enacting this article:

13 (a) To assure that counties and cities recognize their responsibilities in contributing to the
14 attainment of the state housing goal.

15 (b) To assure that counties and cities will prepare and implement housing elements which . . .
16 will move toward attainment of the state housing goal.

17 (c) To recognize that each locality is best capable of determining what efforts are required by it
18 to contribute to the attainment of the state housing goal. . . .

19 The California Legislature requires each local government agency to develop a comprehensive,
20 long-term general plan establishing policies for future development. As specified in the Government
21 Code (at Sections 65300, 65302(c), and 65583(c)), the plan must: (1) "encourage the development of
22 a variety of types of housing for all income levels, including multifamily rental housing;" (2) "[a]ssist
23 in the development of adequate housing to meet the needs of low- and moderate-income households;"
24 and (3) "conserve and improve the condition of the existing affordable housing stock, which may
25 include addressing ways to mitigate the loss of dwelling units demolished by public or private action."

1 B. San Francisco faces a continuing shortage of affordable housing for very low and low-
2 income residents. The San Francisco Planning Department reported that for the past ten years, 3,199
3 units of low and very low-income housing were built in SF out of a total need of 15,103 units for the
4 same period. According to the state Department of Housing and Community Development, there will
5 be a regional need for 230,743 new housing units in the nine Bay Area counties from 1999-2006. Of
6 that amount, at least 58 percent, or 133,164 units, are needed for moderate, low and very low-income
7 households. The Association of Bay Area Governments (ABAG) is responsible for dividing the total
8 regional need numbers among its member governments which includes both counties and cities. ABAG
9 estimates that San Francisco's low and very low-income housing production need through 2006 is
10 7,370 units out of a total new housing need of 20,372 units. Within the past ten years, less than 25% of
11 the previously projected housing need was produced in San Francisco. The new ABAG housing goals
12 will require that San Francisco produce more than twice the amount of low and very low-income
13 housing within half the time.

14 C. In response to the above mandate from the California Legislature and the projections of
15 housing needs for San Francisco, San Francisco has instituted several strategies for producing new
16 affordable housing units. The General Plan Residential Element recognizes the need to increase the
17 amount of land available and improve building resources for permanently affordable housing through
18 the inclusion of affordable units in larger market-rate housing projects. Further, the City, as
19 established in the General Plan, seeks to encourage the distribution of affordable housing throughout
20 all neighborhoods and, thereby, offer diverse housing choices and promote economic and social
21 integration. The General Plan calls for an increase in the production of new affordable housing and
22 for the development of mixed income housing to achieve social and cultural diversity. As one strategy
23 to achieve these goals, the General Plan states that "[i]nclusion of affordable housing should be
24 required as a condition of approval of housing projects containing 10 or more units which seek
25 Planning Commission approval as conditional uses or planned unit developments." This legislation

1 further the goals of the State Legislature and the General Plan. For housing projects to which this
2 legislation applies, it is intended to replace the Planning Commission Guidelines for Application of San
3 Francisco's Inclusionary Affordable Housing Policy. For housing projects to which this legislation
4 does not apply because of the application date, it is intended that the Planning Commission Guidelines
5 in effect at the time of project approval, where applicable, will apply.

6 D. The 2000 Consolidated Plan for July 1, 2000 – June 30, 2005, issued by the Mayor's
7 Office of Community Development and the Mayor's Office of Housing establishes that extreme housing
8 pressures face San Francisco, particularly in regard to low- and moderate-income residents. Many
9 elements constrain housing production in the City. This is especially true of affordable housing. San
10 Francisco is largely built out, and its geographical location at the northern end of a peninsula
11 inherently prevents substantial new development. There is no available adjacent land to be annexed, as
12 the cities located on San Francisco's southern border are also dense urban areas. Thus new
13 construction of housing is limited to areas of the City not previously designated as residential areas,
14 infill sites, or to areas with increased density. New market-rate housing absorbs a significant amount
15 of the remaining supply of land and other resources available for development and thus limits the
16 supply of affordable housing.

17 There is a great need for affordable rental and owner-occupied housing in the City. The
18 vacancy rate for residential rental property has dropped significantly since 1989-90 when the
19 Residence Element 1992 Annual Evaluation Report reported a 4.2 percent citywide vacancy rate (for
20 1989), and the U.S. Census showed a 6.9 percent vacancy rate (as of 1990). Data from the San
21 Francisco rental market from RealFacts for 2000 indicates a vacancy rate of 1.9 percent. Rents on
22 newly occupied residential units have risen dramatically. Housing cost burden is one of the major
23 standards for determining whether a locality is experiencing inadequate housing conditions; the
24 Consolidated Plan defines a household expending 30 percent or more of its gross income for housing
25 costs as experiencing a cost burden. According to the 1990 Census, 38.1 percent of San Franciscans

1 experienced a cost burden in 1990 and, according to more recent data from the American Housing
2 Survey, this level had risen to 45 percent in 1993.

3 The San Francisco residential real estate market is one of the most expensive in the United
4 States. A February 1999 report from the National Association of Realtors found that San Francisco
5 had the highest median price of existing homes in the United States. In the 1980's average home prices
6 in San Francisco rose nearly three times as fast as the overall cost of living in San Francisco according
7 to data from the Bay Area Council and 1990 Census. An analysis of sales data from a three-month
8 period in 1999 gathered by American Real Estate Solutions showed that of 1,420 full, confirmed, and
9 verified sales, the median sales price was \$390,000. This study, among others, demonstrates that the
10 majority of market-rate homes for sale in San Francisco are priced out of the reach of low and
11 moderate income households.

12 These factors contribute to a heavy demand for affordable housing in the City that the private
13 market cannot meet. Each year the number of market rate units that are affordable to low income
14 households is reduced by rising market rate rents and sales prices. The number of households
15 benefiting from rental assistance programs is far below the need established by the 1990 Census.
16 Because the shortage of affordable housing in the City can be expected to continue for many years, it is
17 necessary to maintain the affordability of the housing units constructed by housing developers under
18 this Program. The Residential Element of the General Plan (Objective 9, Policy 2) recognizes this
19 need and provides that affordable units should be required to remain affordable for at least 50 years
20 and, where possible, for longer.

21 In 1994 the California Coalition for Rural Housing Project issued a study entitled "Creating
22 Affordable Communities: Inclusionary Housing Programs in California." The study found that at least
23 64 jurisdictions in California had inclusionary housing programs and that, overall, the inclusionary
24 requirements were generating large numbers of affordable units. Sixty-six percent of the inclusionary
25 programs studied were mandatory programs and the mandatory programs were proven to be more

1 effective by a number of measures than the voluntary programs. While there was a wide range in the
2 percentage-requirements for inclusionary housing, a 10% requirement is the most common, occurring
3 in 39% of the jurisdictions studied, followed by a 15% requirement that was the second-most common.

4 E. Development of new market-rate housing makes it possible for new residents to move to
5 the City. These new residents place demands on services provided by both public and private sectors.
6 Some of the public and private sector employees needed to meet the needs of the new residents earn
7 incomes only adequate to pay for affordable housing. Because affordable housing is in short supply
8 within the City, such employees may be forced to live in less than adequate housing within the City, pay
9 a disproportionate share of their incomes to live in adequate housing within the City, or commute ever-
10 increasing distances to their jobs from housing located outside the City. These circumstances harm the
11 City's ability to attain goals articulated in the City's General Plan and place strains on the City's ability
12 to accept and service new market-rate housing development.

13 F. The development of affordable housing on the same site as market-rate housing
14 increases social and economic integration vis-à-vis housing in the City and has corresponding social
15 and economic benefits to the City. Inclusionary housing provides a healthy job and housing balance.
16 Inclusionary housing provides more affordable housing close to employment centers which in turn may
17 have a positive economic impact by reducing such costs as commuting and labor costs. However, there
18 may also be trade-offs where constructing affordable units at a different site than the site of the
19 principle project may produce a greater number of affordable units without additional costs to the
20 project applicant. If a project applicant may produce a significantly greater number of affordable units
21 off-site then it is in the best interest of the City to permit the development of affordable units at a
22 different location than that of the principle project.

23 G. Provided project applicants can take these requirements into consideration when
24 negotiating to purchase land for a housing project, the requirements of this Section are generally
25 financially feasible for project applicants to meet, particularly because of the benefits being offered by

1 the City to housing projects that comply with this Section. Some of the requirements of this Section are
2 being phased in over a period of one year, so that project applicants will have adequate notice of these
3 requirements and can take them into consideration when negotiating to purchase land for a project.
4 This Section provides a means by which a project applicant may seek a reduction or waiver of the
5 requirements of this Section if the project applicant can show that imposition of these requirements
6 would create an unlawful financial burden.

7 H. Conditional Use and Planned Unit Development Permits permit the development of
8 certain uses not permitted as of right in specific districts or greater density of permitted residential
9 uses. As the General Plan recognizes, through the conditional use and planned unit development
10 process, applicants for housing projects generally receive material economic benefits. Such applicants
11 are generally permitted to build in excess of the generally applicable black letter requirements of the
12 Planning Code for housing projects resulting in increased density, bulk, or lot coverage or a reduction
13 in parking or other requirements or an approval of a more intensive use over that permitted without the
14 conditional use permit or planned unit development permit. Through the conditional use and planned
15 unit development process, building standards can be relaxed in order to promote lower cost home
16 construction. An additional portion of San Francisco's affordable housing needs can be supplied (with
17 no public subsidies or financing) by private sector housing developers developing additional
18 inclusionary affordable units in their large market-rate projects in exchange for the density and other
19 bonuses conferred by conditional use or planned unit development approvals, provided it is financially
20 attractive for private sector housing developers to seek such conditional use and/or planned unit
21 development approvals.

22 I. The Residential Element of the General Plan (Objective 7, Policy 1) provides that as
23 land not previously used for residential space is developed for residential use, such development should
24 also provide for a minimum of 10% permanently affordable units for all residential development
25 containing more than 10 units. Live/work as defined in the Planning Code recognizes that "residential

1 living space" is an integral part of a live/work unit. A substantial portion of new housing development
2 in San Francisco has been live/work units in Mixed Use Districts South of Market and in industrially
3 zoned areas of San Francisco where residential development has not traditionally been permitted as of
4 right. Live/work development projects are subject to less stringent development standards than other
5 types of housing projects in certain Mixed Use Districts and industrially zoned areas. Live/work
6 developments are conferred an equivalent benefit as projects going through the conditional use or
7 planned unit development permit process by virtue of the fact that (1) live/work developments are not
8 required to get a conditional use permit for housing development in some Mixed Use Districts and in
9 all industrially zoned districts where other residential uses are required to get a conditional use permit;
10 (2) live/work developments receive a five foot height bonus above prevailing height limits for specific
11 neighborhoods; (3) live/work units are permitted to cover 100% of a lot rather than the stricter lot
12 coverage requirements that apply to other residential development, typically requiring rear yards equal
13 to 15 feet in length or 25% of the lot, whichever is greater. Given these benefits conferred by statute
14 which allow live/work developments to exceed the limitations on other housing development in the City,
15 the Board of Supervisors finds that, for purposes of this Program, live/work developments are
16 conferred a private benefit equal to or in excess of housing projects which require a conditional use or
17 planned unit development permit. The relaxed building standards applied to live/work projects
18 promote the ability to include lower cost home production in live/work projects. A live/work unit meets
19 the definition of California Civil Code Section 1940(c) as a "dwelling unit" because it "is used as a
20 home, residence or sleeping place by one person who maintains a household or by two or more persons
21 who maintain a common household." Live/work units shall not be considered "commercial real
22 property" for purposes of Civil Code Section 1954.25 et seq.

23 J. The City wants to balance the burden on private property owners with the demonstrated
24 need for affordable housing in the City. For the reasons stated above, the Board of Supervisors thus
25 intends to apply an inclusionary housing requirement to all residential projects of 10 units or more. In

1 order to balance the burden on property owners, the Board intends to limit the application of an
2 inclusionary housing requirement to 10% for housing projects that do not receive any of the benefits
3 described above through the conditional use or planned unit development process, or in live/work
4 projects. A slightly higher percentage will be applied to projects which generally receive benefits
5 through the conditional use or planned unit development process, or in live/work projects.

6 K. The findings of Planning Code Section 313.2 for the Jobs-Housing Linkage Program,
7 Planning Code Sections 313 et seq., relating to the shortage of affordable housing, the low vacancy
8 rate of housing affordable to persons of lower and moderate income, and the decrease in construction
9 of affordable housing in the City are hereby readopted.

10 Section 315.3: APPLICATION

11 (a) This Ordinance shall apply to

12 (1) all applications for a building permit or a site permit filed with the Department of
13 Building Inspection or the Planning Department on or after June 18, 2001 for housing projects which:

14 (A) consist of ten or more units; and

15 (B) do not require Planning Commission approval as a conditional use or planned unit
16 development; and

17 (C) have a project site which was optioned or acquired or an environmental evaluation
18 application that was filed after June 18, 2001.

19 (2) all applications for a conditional use or planned unit development permit filed with the
20 Planning Department on or after June 18, 2001 for housing projects which:

21 (A) consist of ten or more units; and

22 (B) require Planning Commission approval as a conditional use or planned unit
23 development.

24 (3) all applications for a building permit or a site permit filed with the Planning
25 Department or the Building Department on or after June 18, 2001 for housing projects which:

1 (A) consist of ten or more units; and

2 (B) consist of live/work units as defined by Planning Code Section 102.13.

3 (4) housing projects which require Planning Commission approval of replacement housing
4 destroyed by earthquake, fire or natural disaster only where the destroyed housing included units
5 restricted under the Residential Inclusionary Housing Program or the City's predecessor inclusionary
6 housing policy, condominium conversion requirements, or other affordable housing program.

7 (b) This Ordinance shall not apply to:

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

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

14 (3) that portion of a housing project located on property under the jurisdiction of the San
15 Francisco Redevelopment Agency or the Port of San Francisco where the application of this Ordinance
16 is prohibited by California or local law;

17 (4) that portion of a housing project for which a project applicant can demonstrate that an
18 impact fee under the Jobs-Housing Linkage Program, commencing with Planning Code Section 313,
19 has been paid.

20 (c) Waiver or Reduction:

21 (1) A project applicant of any project subject to the requirements in this Program may
22 appeal to the Board of Supervisors for a reduction, adjustment, or waiver of the requirements based
23 upon the absence of any reasonable relationship or nexus between the impact of development and
24 either the amount of the fee charged or the inclusionary requirement.

1 (2) A project applicant subject to the requirements of this Program who has received an
2 approved building permit, conditional use permit or similar discretionary approval and who submits a
3 new or revised building permit, conditional use permit or similar discretionary approval for the same
4 property may appeal for a reduction, adjustment or waiver of the requirements with respect to the
5 number of lots or square footage of construction previously approved.

6 (3) Any such appeal shall be made in writing and filed with the Clerk of the Board no later
7 than 15 days after the date the Planning Department sends notice to the project applicant of the
8 number of affordable units required as provided in Section 315.4(a) and 315.5(a). The appeal shall set
9 forth in detail the factual and legal basis for the claim of waiver, reduction, or adjustment. The Board
10 of Supervisors shall consider the appeal at the hearing within 60 days after the filing of the appeal.
11 The appellant shall bear the burden of presenting substantial evidence to support the appeal including
12 comparable technical information to support appellant's position. The decision of the Board shall be
13 by a simple majority vote and shall be final. If a reduction, adjustment, or waiver is granted, any
14 change in use within the project shall invalidate the waiver, adjustment, or reduction of the fee or
15 inclusionary requirement.

16 (d) Except for projects listed in subsection "b" of this Section 315.3, the Planning Commission's
17 Guidelines for Application of San Francisco's Inclusionary Affordable Housing Policy shall apply,
18 where applicable, to housing projects not otherwise covered by this Ordinance because of the
19 application dates set forth in Section 315.3(a),(b, and (c).

20 Section 315.4: ON-SITE HOUSING REQUIREMENT AND BENEFITS

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

24 (a) Number of Units:
25

1 (1) The Planning Department shall require for housing projects covered by Section
 2 315.3(a)(1), as a condition of Planning Department approval of a project's building permit, that 10%
 3 of all units constructed on the project site shall be affordable to qualifying households so that the
 4 following number of units affordable to qualifying households shall be required:

<u>Number of Units</u> <u>in Principal Project</u>	<u>Required Number of Affordable</u> <u>Units</u>
<u>0 – 9</u>	<u>0</u>
<u>10 – 14</u>	<u>1</u>
<u>15 – 24</u>	<u>2</u>
<u>25 – 34</u>	<u>3</u>
<u>35 – 44</u>	<u>4</u>
<u>45 +</u>	<u>1 additional unit for each</u> <u>additional 10 dwelling units</u>

15 Notwithstanding any other provision of this section, any inclusionary affordable requirement imposed
 16 on housing projects covered by Section 315.3(a)(1) in connection with an application filed with the
 17 Department of Building Inspection from the effective date of this legislation and 180 days thereafter
 18 shall be 5% as follows:

<u>Number of Units</u> <u>in Principal Project</u>	<u>Required Number of Affordable</u> <u>Units</u>
<u>0 – 9</u>	<u>0</u>
<u>10 – 29</u>	<u>1</u>
<u>30 – 49</u>	<u>2</u>

<u>50 - 69</u>	<u>3</u>
<u>70 - 89</u>	<u>4</u>
<u>90 +</u>	<u>1 additional unit for each additional 20 dwelling units</u>

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

(2) The Planning Department or the Planning Commission shall require for housing projects covered by Section 315.3(a)(2), (3) and (4), as a Condition of Approval of a conditional use or planned unit development permit or as a condition of Planning Department approval of a live/work project that 12% of all units constructed on the project site shall be affordable to qualifying households so that the following number of units affordable to qualifying households shall be required:

<u>Number of Units in Principal Project</u>	<u>Required Number of Affordable Units</u>
<u>0 -9</u>	<u>0</u>
<u>10 -12</u>	<u>1</u>
<u>13 - 20</u>	<u>2</u>
<u>21 - 29</u>	<u>3</u>
<u>30 - 37</u>	<u>4</u>
<u>38 +</u>	<u>1 additional unit for each additional 7 dwelling units</u>

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

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

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

13 (c) Type of Housing: The type of affordable housing needed in San Francisco is
14 documented in the City's Consolidated Plan and the Residence Element of the General Plan. In
15 general, affordable units constructed under this Section 315.4 shall be comparable in number of
16 bedrooms, exterior appearance and overall quality of construction to market rate units in the principal
17 project. The Notice of Special Restrictions or Conditions of Approval shall include a specific number
18 of units at specified unit sizes for affordable units. The square footage of affordable units and interior
19 features in affordable units do not need to be same as or equivalent to those in market rate units in the
20 principal project, so long as they are of good quality and are consistent with then-current standards for
21 new housing.

22 (d) Marketing the Units: The Notice of Special Restrictions or Conditions of Approval shall
23 specify that the marketing requirements and procedures contained in the Procedures Manual, as
24 amended from time to time, shall apply to the affordable units in the project.

1 (e) Alternatives: At the project applicant's election, the project applicant may satisfy the
2 requirement of Section 315.4 by:

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

5 (2) paying an in lieu fee to the Mayor's Office of Housing pursuant to the requirements of
6 315.6.

7 (3) any combination of construction of on-site units as provided in Section 315.4, off-site
8 units as provided in Section 315.5, or payment of an in lieu fee as provided in Section 315.6, provided
9 that the project applicant constructs or pays the fee at the appropriate percentage or fee level required
10 for that option.

11 (f) Benefits: If the project applicant elects to satisfy the inclusionary housing requirements
12 through the production of on-site inclusionary housing in this Section 315.4, the project applicant shall,
13 at his or her option, be eligible to receive a refund of the following fees: a conditional use or other fee
14 required by Planning Code Section 352, if applicable; an environmental review fee required by
15 Administrative Code Section 31.46B, if applicable; a building permit fee required by the Building Code
16 and by Planning Code Section 355 for the portion of the housing project that is affordable. The project
17 applicant shall pay the building fee for the portion of the project that is market-rate.

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

23 Section 315.5: COMPLIANCE THROUGH OFF-SITE HOUSING DEVELOPMENT
24
25

1 If the project applicant elects, pursuant to Section 315.4(e), that the project applicant will build off-site
 2 units to satisfy the requirements of this Program, the project applicant shall meet the following
 3 requirements:

4 (a) Number of Units: The number of units constructed off-site shall be an additional 5% of
 5 the number of units constructed in the principal project so that the following number of units affordable
 6 to qualifying households shall be required:

7 For projects described in 315.3(a)(1), 15% as follows:

<u>Number of Units in Principal Project</u>	<u>Required Number of Affordable Units</u>
<u>0 - 9</u>	<u>0</u>
<u>10 - 16</u>	<u>2</u>
<u>17 - 23</u>	<u>3</u>
<u>24 - 29</u>	<u>4</u>
<u>30 - 36</u>	<u>5</u>
<u>37 - 43</u>	<u>6</u>
<u>44 +</u>	<u>1 additional unit for each additional 6 dwelling units</u>

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

23 For projects described in 315.3(a)(2),(3), and (4), 17% as follows:

<u>Number of Units</u>	<u>Required Number of Affordable</u>
------------------------	--------------------------------------

<i><u>in Principal Project</u></i>	<i><u>Units</u></i>
<i><u>0 - 9</u></i>	<i><u>0</u></i>
<i><u>10 - 14</u></i>	<i><u>2</u></i>
<i><u>15 - 20</u></i>	<i><u>3</u></i>
<i><u>21 - 26</u></i>	<i><u>4</u></i>
<i><u>27 - 32</u></i>	<i><u>5</u></i>
<i><u>33+</u></i>	<i><u>1 additional unit for each additional 5 dwelling units</u></i>

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

(b) Timing of Construction: The project applicant shall insure that the off-site units are constructed, completed, and ready for occupancy no later than the market rate units in the principal project.

(c) Location of off-site housing: The project applicant must insure that off-site units are located in either (i) close proximity to the principal project, or (ii) a high need area or a project type identified as a high priority in the Residence Element of the General Plan or the Consolidated Plan published by the Mayor's Office of Housing and the Mayor's Office of Community Development or their successors.

(d) Type of Housing: The type of affordable housing needed in San Francisco is documented in the City's Consolidated Plan and the Residence Element of the General Plan. In general, affordable units constructed under this Section 315.5 shall be comparable in number of bedrooms, exterior appearance and overall quality of construction to market rate units in the principal

1 project. The Notice of Special Restrictions or Conditions of Approval shall include a specific number
 2 of units at specified unit sizes for affordable units. The square footage of affordable units and interior
 3 features in affordable units need not be the same as or equivalent to those in market rate units in the
 4 principal project, so long as they are of good quality and are consistent with then-current standards for
 5 new housing. If the residential units in the principal project are live/work units which do not contain
 6 bedrooms or are other types of units which do not contain bedrooms separated from the living space,
 7 the off site units shall be comparable in size according to the following equivalency calculation
 8 between live/work and units with bedrooms:

<u>Less than 600 Square Feet</u>	<u>Studio Unit</u>
<u>601 to 850 Square Feet</u>	<u>One bedroom unit</u>
<u>851 to 1100 Square Feet</u>	<u>Two bedroom unit</u>
<u>1101 to 1300 Square Feet</u>	<u>Three bedroom unit</u>
<u>More than 1300 Square Feet</u>	<u>Four bedroom unit</u>

9
 10
 11
 12
 13
 14 (e-5) Marketing the Units: Notice of Special Restrictions or Conditions of Approval shall
 15 specify that the marketing requirements and procedures contained in the Procedures Manual, as
 16 amended from time to time, shall apply to the marketing of off-site units.

17 (f) Affordable units constructed under Section 315.5 shall not have received
 18 development subsidies from any federal, state or local program established for the purpose of
 19 providing affordable housing, and should not be counted to satisfy the affordable housing
 20 requirement in the off-site development.

21 Section 315.6: COMPLIANCE THROUGH IN LIEU FEE

22 If the project applicant elects, pursuant to Section 315.4(e) 2 that the project applicant will pay an in-
 23 lieu fee to satisfy the requirements of this Program, the project applicant shall meet the following
 24 requirements:

1 (a) By paying an in lieu fee to the Controller for use by the Mayor's Office of Housing for
2 the purpose of constructing at an alternate site the type of housing required by Section 315.5 within the
3 City and County of San Francisco.

4 (b) The amount of the fee which may be paid by the project applicant subject to this
5 ordinance in lieu of developing and providing housing required by Section 315.4 shall be determined
6 by Mayor's Office of Housing utilizing the following factors:

7 (1) The number of units required by Section 315.5 if the project applicant were to elect to
8 meet the requirements of this section by off-site housing development.

9 (2) The affordability gap as identified in the "Jobs Housing Nexus Analysis" prepared by
10 Keyser Marston Associates, Inc. in June 1997 for the Maximum Annual Rent or Maximum Purchase
11 Price for the equivalent unit sizes.

12 (3) Annual adjustments to the affordability gap based upon the percentage increase or
13 decrease in the Average Area Purchase Price Safe Harbor Limitations for New Single Family
14 Residences for the San Francisco Primary Metropolitan Statistical ("PMSA") established by the
15 Internal Revenue Service ("IRS") since January 1st of the previous year; provided, however that in the
16 event that said percentage increase exceeds 20 percent, the in-lieu fee shall be increased by 20 percent,
17 and the difference between the percentage increase in the Average Area Purchase Price and 20 percent
18 shall be carried over and added to the in-lieu fee adjustment for the following calendar year. In the
19 event that the IRS does not adjust the above figure within 14 months, the Mayor's Office of Housing
20 shall authorize and certify a study for adjusting the last published IRS figure to be effective until IRS
21 revises the figure.

22 (c) Prior to the issuance by the Director of Building Inspection of the first site or building
23 permit for the project applicant, the project applicant must notify the Director of Planning and the
24 Director of the Mayor's Office of Housing in writing that it has paid in full the sum required to the
25 Controller. If the project applicant fails by the applicable date to demonstrate to the Director of

1 Planning that the project applicant has paid the applicable sum in full to the Controller, the Director of
2 Building Inspection shall deny any and all site or building permits or certificates of occupancy for the
3 development project until the Director of Planning notifies the Director of Building Inspection and the
4 Director of the Mayor's Office of Housing that such payment has been made.

5 (d) Upon payment of the fee in full to the Controller and upon request of the project
6 applicant, the Controller shall issue a certification that the fee has been paid. The project applicant
7 shall present such certification to the Director of Planning and the Director of the Mayor's Office of
8 Housing prior to the issuance by the Director of Building Inspection of the first site or building permit
9 or certificate of occupancy for any development subject to this Section. If the Director of Planning
10 notices the Director of Building Inspection and the Director of the Mayor's Office of Housing that the
11 sponsor has complied with this Section, or fails to respond within five business days, a site or building
12 permit or certificate of occupancy shall not be disapproved pursuant to this Section. Any failure of the
13 Director of Building Inspection or the Director of Planning to give any notice under this Section shall
14 not relieve a project applicant from compliance with this Section. Where the Director of Building
15 Inspection issues any site of building permit or certificate of occupancy for the development project in
16 error, or where a sponsor fails for any reason to pay the in-lieu fee to the Controller in compliance
17 with this Section prior to the Director of Building Inspection's issuance of the first site or building
18 permit or certificate of occupancy for the development project, the Director of Planning shall
19 immediately initiate lien proceedings against the development project under Section 315.6(f) to recover
20 the fee, and the Director of Building Inspection shall revoke any permit or certificate issued in error
21 and refuse any site or building permit or certificate of occupancy until the project applicant has
22 complied with this Section.

23 (e) All monies contributed pursuant to this section shall be deposited in the special fund
24 maintained by the Controller called the Citywide Affordable Housing Fund. The receipts in the Fund
25 are hereby appropriated in accordance with law to be used solely to (1) increase the supply of housing

1 affordable to qualifying households ~~subjection~~ subject to the conditions of this Section, and (2) pay
2 the expenses of the Mayor's Office of Housing in connection with monitoring and
3 administering compliance with the requirements of the Program. Monitoring and
4 administrative expenses shall be appropriated through the annual budget process or
5 supplemental appropriation for the Mayor's Office of Housing. The fund shall be administered
6 and expended by the Director of the Mayor's Office of Housing, who shall have the authority to
7 prescribe rules and regulations governing the Fund which are consistent with this Section.

8 (f) Lien Proceedings

9 (1) A project applicant's failure to comply with the requirements of this Section shall
10 constitute cause for the City to record a lien against the development project in the sum of the in-lieu
11 fee required under this ordinance, as adjusted under this Section.

12 (2) The Director of Planning shall initiate proceedings to impose the lien in accordance
13 with the procedures set forth in Chapter 10, Article XX, of the San Francisco Administrative Code, and
14 shall send all notices required by that Article to the owner of the property as well as the sponsor. The
15 Director shall also prepare a preliminary report notifying the sponsor of a hearing to confirm such
16 report by the Board of Supervisors at least 10 days before the date of the hearing. The report to the
17 sponsor shall contain the sponsor's name, a description of the sponsor's development project, a
18 description of the parcels of real property to be encumbered as set forth in the Assessor's Map Books
19 for the current year, a description of the alleged violation of this ordinance, and shall fix a time, date,
20 and place for hearing. The Director of Planning shall cause this report to be mailed to each owner of
21 record of the parcels of real property subject to lien. Except for the release of lien recording fee
22 authorize by Administrative Code Section 10.237, all sums collected by the Tax Collector pursuant to
23 this ordinance shall be held in trust by the Treasurer and deposited in the Citywide Affordable Housing
24 Fund established in Section 313.12.

1 (3) Any notice required to be given to a sponsor or owner shall be sufficiently given or
2 served upon the sponsor or owner for all purposes hereunder if personally served upon the sponsor or
3 owner or if deposited, postage prepaid, in a post office letterbox addressed in the name of the sponsor
4 or owner at the official address of the sponsor or owner maintained by the Tax Collector for the
5 mailing of tax bills or, if no such address is available, to the sponsor at the address of the development
6 project.

7 (g) In the event a building permit expires prior to completion of the work on and
8 commencement of occupancy of a housing project so that it will be necessary to obtain a new permit to
9 carry out any development, the obligation to comply with this Program shall be cancelled, and any in-
10 lieu fee previously paid to the Controller shall be refunded. If and when the sponsor applies for a new
11 permit, the procedures set forth in this ordinance regarding construction of housing or payment of the
12 in-lieu fee shall be followed.

13 Section 315.7. DURATION AND MONITORING OF AFFORDABILITY

14 (a) All units constructed pursuant to Sections 315.4 and 315.5 must remain affordable to
15 qualifying households for the life of the project, to be defined as 50 years from the date of issuance of
16 the first certificate of temporary occupancy. The income levels specified in the Notice of Special
17 Restrictions and/or Conditions of Approval for the project shall be required income percentages for the
18 50-year life of the project.

19 (b) The Planning Commission or the Planning Department shall require all housing
20 projects subject to this ordinance to record a Notice of Special Restrictions with the Recorder of the
21 City and County of San Francisco. The Notice of Special Restrictions must incorporate the
22 affordability restrictions. All projects described in Section 315.3(a)(1) and 315.3(a)(3) must
23 incorporate all of the requirements of this Section 315.7 into the Notice for Special Restrictions,
24 including any provisions required to be in the Conditions of Approval for housing projects described in
25 Section 315.3(a)(2). These Section 315.3(a)(2) projects which are housing projects which go through

1 the conditional use or planned unit development process shall have Conditions of Approval. The
2 Conditions of Approval shall specify that project applicants shall adhere to the marketing, monitoring,
3 and enforcement procedures outlined in the Procedures Manual, as amended from time to time, in
4 effect at the time of project approval. The Planning Commission shall file the Procedures Manual in
5 the case file for each project requiring inclusionary housing pursuant to this Program. The Procedures
6 Manual will be referenced in the Notice of Special Restrictions for each project.

7 (c) Any affordable rental units permitted by the Planning Commission to be converted to
8 ownership units must satisfy the requirements of the Procedures Manual, as amended from time to time,
9 including that the units shall be sold at restricted sales prices to households meeting the income
10 qualifications specified in the Notice of Special Restrictions or Conditions of Approval, with a right of
11 first refusal for the occupant(s) of such units at the time of conversion.

12 (d) For ownership units, the Notice of Special Restrictions or Conditions of Approval will
13 include provisions restricting resale prices and purchaser income levels according to the formula
14 specified in the Procedures Manual, as amended from time to time. In the case that subordination of
15 the Affordability Conditions contained in a recorded Notice of Special Restrictions may be necessary to
16 ensure the Project Applicant's receipt of adequate construction and/or permanent financing for the
17 project, or to enable first time homebuyers to qualify for mortgages, the project applicant may follow
18 the procedures for subordination of affordability restrictions as described in the principal project's
19 Conditions of Approval and in the Procedures Manual. A release following foreclosure or other
20 transfer in lieu of foreclosure may be authorized if required as a condition to financing pursuant to the
21 procedures set forth in the Procedures Manual.

22 Purchasers of affordable units shall secure the obligations contained in the Notice of Special
23 Restrictions or Conditions of Approval by executing and delivering to the City a promissory note
24 secured by a deed of trust encumbering the applicable affordable unit as described in the Procedures
25

1 Manual, or by an alternative means if so provided for in the Procedures Manual, as amended from time
2 to time.

3 Section 315.8: ENFORCEMENT PROVISIONS AND MONITORING OF PROGRAM

4 (a) A first certificate of occupancy shall not be issued by the Director of the Department of
5 Building Inspection to any unit in the principal project until all of the on-site or off-site housing
6 development requirements of Sections 315.4 or 315.5, if applicable, and Section 315.7 are met. A first
7 site permit for the principal project shall not be issued by the Director of the Department of Building
8 Inspection until the requirements of Sections 315.4(e) and 315.6 regarding payment of the in lieu fee, if
9 applicable, have been met.

10 (b) If the Planning Commission or Planning Department determines that a project applicant
11 has failed to comply with Sections 315.4 or 315.5; and the recording or reporting requirements of
12 Section 315.7 as detailed in the Procedures Manual, or has violated the Conditions of Approval or
13 terms of the Notice of Special Restrictions, the Planning Commission or Planning Department may,
14 until the violation is cured, (a) revoke the certificate of occupancy for the principal project or required
15 affordable units, (b) impose a penalty on the project pursuant to Section 176(c) of this Code and/or (c)
16 the Zoning Administrator may enforce the provisions of this Program through any means provided for
17 in Section 176 of this Code.

18 (c) The Planning Commission or Planning Department shall notify the Mayor's Office of
19 Housing of any housing project subject to this Program, including the name of the project applicant
20 and the number and location of the affordable units, within 30 days of the Planning Commission's or
21 the Planning Department's approval of a building, site, conditional use, planned unit development, or
22 live/work permit application. The Mayor's Office of Housing shall provide all project applicants with
23 information concerning the City's first time home-buyer assistance programs and any other related
24 programs the Mayor's Office of Housing shall deem relevant to this Program.

1 (d) The Planning Commission shall, as part of the annual Housing Inventory, report to the
2 Board of Supervisors on the results of this Program including, but not limited to, a report on the
3 following items:

4 (1) The number of, location of, and project applicant for housing projects which came
5 before the Planning Commission for a conditional use or planned unit development permit, and the
6 number of, location of, and project applicant for housing projects which were subject to the
7 requirements of this Ordinance;

8 (2) The number of, location of, and project applicant for housing projects which applied for
9 a waiver, adjustment, or reduction from the requirements of this Ordinance pursuant to Section
10 315.3(c), and the number of, location of, and project applicant for housing projects which were granted
11 such a waiver, adjustment, or reduction and, if a reduction, to what percentage;

12 (3) The number of, location of, and project applicant for every housing project to which this
13 Ordinance applied and the number of market rate units and the number of affordable on- and off-site
14 units provided, including the location of all of the affordable units; and

15 (e) A study is authorized to be undertaken under the direction of the Mayor's Office of
16 Housing immediately and to be updated every 5 years thereafter to determine the relationship in nature
17 and amount between the production of market-rate residential housing and the availability and demand
18 for affordable housing in San Francisco. The Mayor's Office of Housing shall make recommendations
19 to the Board of Supervisors and the Planning Commission regarding any legislative changes to
20 requirements pertaining to housing development, including developments requiring conditional use
21 permits and planned unit development permits and live/work projects. The Mayor's Office of
22 Housing shall also study the relationship in nature and amount between the production of
23 various types of market rate residential development including stick frame, steel frame and
24 concrete construction and the availability and demand for affordable housing in San Francisco
25 and look at the relationship between the cost of construction of market-rate housing and the

1 availability and demand for affordable housing. The Mayor's Office of Housing shall also
2 study the cost of developing market-rate housing and the market price for sale and rental of
3 such housing. Based on this data, the Mayor's Office of Housing shall determine the median
4 and average profit margins for developers of for-profit housing. The Mayor's Office shall also
5 make a determination whether levels of affordability can be increased pursuant to Finding J,
6 enumerated in Section 315.2.

7 Section 315.9: PARTIAL INVALIDITY AND SEVERABILITY

8 If any provision of this Ordinance, or its application to any housing project or to any
9 geographical area of the City, is held invalid, the remainder of this Ordinance, or the application of
10 such provision to other housing projects or to any other geographical areas of the City, shall not be
11 affected thereby.

12 Section 3.2. Priority Policy and General Plan Findings

13 That this Inclusionary Affordable Housing Program advances and is consistent with the priority
14 policies of the Planning Code Section 101.1 in that it conserves existing housing and neighborhood
15 character; preserves and enhances the City's supply of affordable housing; and maintains a diverse
16 economic base. In addition, this Program has no adverse impact on neighborhood-serving retail uses;
17 City services or neighborhood parking; earthquake preparedness, landmarks and historic buildings, or
18 parks and open space. This Program is consistent with the General Plan.

19 Section 4 Formula to Determine Equivalent Number of Dedicated Section 8 and HOPWA
20 Units.

21 The Mayor's Office of Housing, in consultation with the San Francisco Housing Authority and
22 the San Francisco Redevelopment Agency, is directed to develop a formula to determine the
23 equivalent number of dedicated Section 8, HOPWA, or a local government program
24 equivalent that a project applicant would be required to provide. The Mayor's Office of
25

1 Housing shall provide such formula within four months of the effective date of the Ordinance
2 and the Board shall consider this formula by Ordinance.

3 Section 5: Formula to Determine Cost of Various On-site and Off-site Alternatives

4 The Board of Supervisors intends that this Ordinance shall be applied as evenly as possible to
5 all project applicants. It is the Board's intention that a project applicant, if he or she chooses
6 an alternative to on-site construction, shall bear an equivalent burden as if the project
7 applicant constructed on-site units. The Mayor's Office of Housing ("MOH"), in cooperation
8 with other agencies if appropriate, is requested to study the issue of whether the off-site
9 alternative represents an equivalent cost to a project applicant as the on-site alternative.
10 MOH is directed to report on the average per unit on-site costs of construction for various
11 forms of market-rate residential development including, but not limited to, steel frame
12 construction, concrete construction and stick frame construction. MOH is also directed to
13 report on the rental rates of market rate housing. With this information and any other
14 information deemed by MOH to be relevant, MOH shall develop a proposed formula for a
15 supplementary in lieu fee to be imposed in addition to the off-site requirement such that total
16 contributions from the project applicant equal what the cost of constructing affordable units
17 on-site. MOH is directed to report on this formula to the Board of Supervisors within six
18 months of the effective date of this legislation.

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

21
22
23 By:


24 SUSAN S. CLEVELAND
Deputy City Attorney



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 001262

Date Passed: August 2, 2001

Ordinance amending the San Francisco Planning Code to amend the variance provisions of Section 305, to add Sections 315 to 315.9 to establish requirements for all residential developments of 10 units or more to provide inclusionary housing units, and making findings.

March 11, 2002 Board of Supervisors — CONTINUED

Ayes: 7 - Daly, Gonzalez, Hall, Leno, Newsom, Sandoval, Yee

Absent: 4 - Ammiano, Maxwell, McGoldrick, Peskin

March 18, 2002 Board of Supervisors — AMENDED

Ayes: 10 - Ammiano, Daly, Gonzalez, Leno, Maxwell, McGoldrick, Newsom, Peskin, Sandoval, Yee

Noes: 1 - Hall

March 18, 2002 Board of Supervisors — AMENDED

Ayes: 9 - Ammiano, Daly, Gonzalez, Leno, Maxwell, McGoldrick, Peskin, Sandoval, Yee

Noes: 2 - Hall, Newsom

March 18, 2002 Board of Supervisors — AMENDED

Ayes: 10 - Ammiano, Daly, Gonzalez, Leno, Maxwell, McGoldrick, Newsom, Peskin, Sandoval, Yee

Noes: 1 - Hall

March 18, 2002 Board of Supervisors — PASSED ON FIRST READING AS AMENDED

Ayes: 10 - Ammiano, Daly, Gonzalez, Leno, Maxwell, McGoldrick, Newsom, Peskin, Sandoval, Yee

Noes: 1 - Hall

March 25, 2002 Board of Supervisors — FINALLY PASSED

Ayes: 10 - Ammiano, Daly, Gonzalez, Leno, Maxwell, McGoldrick, Newsom, Peskin, Sandoval, Yee

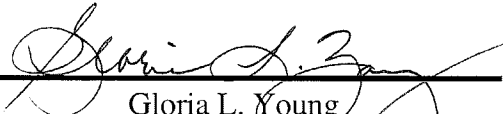
Noes: 1 - Hall

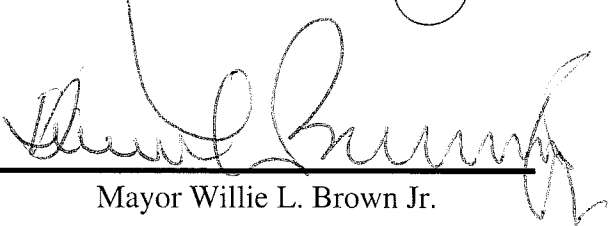
File No. 001262

I hereby certify that the foregoing Ordinance was **FINALLY PASSED** on **March 25, 2002** by the Board of Supervisors of the City and County of San Francisco.

APR 05 2002

Date Approved


Gloria L. Young
Clerk of the Board


Mayor Willie L. Brown Jr.