



NEW PLANNING CODE SUMMARY

Inclusionary Housing and Temporary Impact Fee Reductions

Amended Sections:	Planning Code Sections 403 and 415; Administrative Code Article XXIX
Case Number:	2023-005422PCA
Board File/Enactment #:	230769/187-23
Initiated by:	Supervisors Peskin, Safai
Effective Date:	October 14, 2023

The proposed Ordinance would amend the Planning Code to 1) reduce Inclusionary Housing Program requirements of the Planning Code, for projects exceeding a stated unit size that have been approved prior to November 1, 2023 and that receive a construction document within a specified period, 2) adopt a process for those projects to request a modification of conditions of approval related to development impact fees, subject to delegation by the Planning Commission, 3) reduce Article 4 development impact fees, including the Affordable Housing fees, for projects approved before November 1, 2026 that receive a construction document within 30 months of entitlement, and 4) modify the Inclusionary Housing Program Ordinance effective November 1, 2026 to reduce applicable fee and on-site or off-site unit requirements for projects that exceed a stated unit size. The proposed Ordinance would also amend Article XXIX of the Administrative Code to update the Inclusionary Housing Technical Advisory Committee member requirements.

The Way It Was:

Inclusionary Affordable Housing Program

The Inclusionary Affordable Housing Ordinance, Planning Code section 415 et seq., applies to new market-rate housing developments of 10 units or more. There are several ways a developer can comply with the ordinance: a developer can pay a fee to the City, which the City uses to construct affordable housing, or a developer can choose to comply with the ordinance by providing affordable units within the new development (on-site units) or on in a separate building (off-site units). The inclusionary requirement for a project is determined by four factors: 1) the tenure of the project, 2) the date that the Project Application (PRJ) is deemed complete, 3) the location of the project (zoning district), and 4) the project size, including both the number of units and the project height. On-site requirements range from 12% to 27% of the total number of units in the project; the off-site requirement ranges from 20% to 33% of the total number of units in the project. When a developer pays the fee, the City calculates the fee by multiplying the off-site inclusionary obligation (number of units) by the

“affordability gap” – the amount of subsidy the Mayor’s Office of Housing and Community Development needs to finance the construction of a unit of affordable housing.

The current citywide inclusionary requirements are as follows:

	Small projects (10-24 units) rental and ownership	Rental projects with 25+ units	Ownership projects with 25+ units
On-Site Rate	15%	22%	24%
Low Income Tier	15%	12% at 55% AMI	12% at 80% AMI
Moderate Income Tier	0%	5% at 80% AMI	6% at 105% AMI
Middle Income Tier	0%	5% at 110% AMI	6% at 130% AMI
Fee/Off-Site Rate	20%	30%	33%

The current Citywide inclusionary requirements were originally established in 2017 and include a legislatively set increase each year (currently .5% per year). Similarly, the amount of the fee per square foot is set each year based on the cost of constructing affordable housing. Requirements in specific geographic areas can vary, but generally are slightly higher than Citywide rates.¹ The higher of the citywide rate or the geographically specific inclusionary rate applies.

Approval Process

Inclusionary housing requirements become conditions on a project approval. If the Planning Commission approved a development, the Planning Commission must modify the conditions of approvals, although the Zoning Administrator has authority to allow changes to project plans or minor modifications to conditions. Most projects are required to obtain a building or site permit within 36 months from project approval; projects that fail to meet this deadline must request an extension from the Planning Commission. Projects that have not obtained a building or site permit within 30 months of project approval are subject to the inclusionary rates at the time a building permit is procured.

The State Density Bonus law, implemented in Planning Code section 206.6, allows projects that provide specified amounts of on-site affordable units to receive an increase in the number of total dwellings units, and concessions and incentives, and waivers of development standards. On-site units provided under the Inclusionary Housing Ordinance can be used to qualify for a density bonus under State Law. Under State Density Bonus law, projects can receive up to a 50% increase in density and between one and four concessions and incentives depending on the amount of affordable housing provided and the level of affordability. The City must waive any development standard that would preclude the construction of the project at the density allowed and with the concessions and incentives requested. The Planning Commission must adopt findings that a project is eligible for the requested density bonus, concessions and incentives, and waivers. Projects may request, as an incentive, that units at lower income tiers (e.g. 50% AMI) count towards the Inclusionary Program’s requirement to provide units at higher tiers (e.g. 80% AMI). Conditions of approval for a density bonus project will include

¹ Zoning Districts/Geographic Areas with unique inclusionary rates that would be reduced by this Ordinance include the North of Market Residential SUD, Mission Area Plan, SoMa NCT District, Divisadero NCT, and Urban Mixed-Use District. This Ordinance does not modify development agreement projects, which are usually subject to negotiated affordable housing requirements.

findings related to the amount of density bonus, eligibility for concessions, incentives and waivers, and the income tiers of the inclusionary units.

Development Impact Fees

San Francisco assesses development impact fees on residential and non-residential projects for various public purposes, including fees for transit, parks, public infrastructure, and art. Development impact fees are set forth in Article 4 of the Planning Code.

Inclusionary Housing Technical Advisory Committee

Planning Code section 415.10 requires the Controller, in consultation with the Inclusionary Housing Technical Advisory Committee (TAC), to conduct a feasibility study of San Francisco's inclusionary housing requirements every three years. The TAC, established in Administrative Code Section 5.29, is a policy body created to advise the Controller and the Board about the Inclusionary Ordinance. Members of the TAC are appointed by the Board or the Mayor, and serve for a limited term; members are appointed in anticipation of the three-year economic feasibility analysis, and their term ends three months after the study is finalized.

The Way It Is Now:

The Ordinance results in the following changes to the Planning Code and Administrative Code:

Reduction in Inclusionary Requirements for Previously Approved Projects (Pipeline Projects). The Ordinance creates Planning Code Section 415A which establishes a temporary reduction of the Inclusionary Affordable Housing Program requirements for Pipeline Projects with 25 units or more.

1. Pipeline Projects are those that are subject to the Inclusionary Affordable Housing Ordinance, Planning Code Section 415.1 et seq., and Finally Approved prior to November 1, 2023, but have not been issued a First Construction Document. Final Approval is defined as 1) the date that a project's first Development Application is approved; or 2) if a project only requires a building permit, the date the first site or building permit is issued; or 3) if the first Development Application or first site or building permit is appealed, then the date the appeal of that approval or issuance is finally decided by the relevant City Board or Commission. "Finally Approved" or "Final Approval" does not include any modification of the approval under Section 415A.5.
2. Affordable Housing Fee and Off-Site Alternative rates for Pipeline Projects that are subject to the Citywide rates are reduced to 16.4%, or to 54.5% of the applicable fee rate for Rental Housing Projects set forth in a Special Use District, Area Plan, or other section of the Code, whichever is higher. Off-site units would be required at three tiers: 9.4% at low income, 4% at moderate income, and 3% at middle income.
3. On-Site Alternative rates for Pipeline Projects are reduced to 12% or to 54.5% of the applicable fee rate for Rental Housing Projects set forth in a Special Use District, Area Plan, or other section of the Code, whichever is higher. On-site units subject to the Citywide rate would be required at three tiers: 8% at low income, 2% at moderate income, and 2% at middle income.
4. The Planning Commission may delegate their authority to the Planning Department to administratively modify certain conditions of approval and to extend the deadlines included in the validity, expiration and renewal, and diligent pursuit conditions ("performance period") for Pipeline Projects. If the Commission delegates authority to the Department, the Department could modify the on-site, off-site, or fee rate, could extend the performance period, and to make any findings related to eligibility for State Density Bonus incentives and concessions or waivers. A Planning Commission hearing and approval would be required for significant modifications, which include 1) changes to the number of units by 20% or more, 2) changes to the Gross Floor Area of the project by 10% or more, or 3) changes from dwelling units to group housing rooms.
5. Pipeline Projects must seek a modification to their inclusionary requirements prior to November 1, 2026. Projects with modified affordable housing requirements under Section 415A must obtain a First Construction Document no later than May 1, 2029, or will be subject to the applicable rate in effect at that time.

Temporary Reduction in Inclusionary Requirements for New Projects ("Interim Rate Projects"). The Ordinance creates Planning Code Section 415B, which establishes reduced Inclusionary Affordable Housing Program requirements for projects with 25 units or more which are finally approved after November 1, 2023,

and prior to November 1, 2026 (“interim rate projects”).

1. Affordable Housing Fee and Off-Site Alternative rates for interim rate projects that are subject to Citywide rates are reduced to 20.5%, or to 68% of the applicable fee rate for Rental Housing Projects set forth in a Special Use District, Area Plan, or other section of the Code, whichever is higher. Off-site units provided at Citywide rates would be required at three tiers: 11.5% at low income, 5% at moderate income, and 4% at middle income.
2. On-Site Alternative rates for interim rate projects subject to the Citywide rates are reduced to 15%, or at 68% of the applicable fee rate for Rental Housing Projects set forth in a Special Use District, Area Plan, or other section of the Code, whichever is higher. On-site units provided at Citywide rates would be required at three tiers: 10% at low income, 2.5% at moderate income, and 2.5% at middle income.
3. Interim rate projects must obtain their First Construction Document within 30 months of Final Approval, or would be subject to the inclusionary rate in effect at the time the First Construction Document is issued.

No Annual Increase to Inclusionary Rate (other than indexing). Between November 1, 2023, and November 1, 2026, the inclusionary per-square-foot fees would not automatically increase pursuant to the set schedule, and any increase in the inclusionary housing fee based on affordability gap would be capped at 2%.

Reduction in Other Development Impact Fees for Previously Approved and New Projects. The Ordinance amends Planning Code Section 403 to reduce development impact fees for any project that is subject to the Inclusionary Ordinance and was approved on or before November 1, 2026. Except for Inclusionary Affordable Housing Program obligations set forth in Planning Code Sections 415, 419, or 428, all development impact fees in Article 4 would be discounted by 33%. To remain eligible for the discount, projects must obtain their First Construction Document within 30 months of final approval, except that Pipeline Projects must obtain the First Construction Document by May 1, 2029. If a project does not meet the deadline to obtain a First Construction Document, then the project will be required to pay 100% of the required fees without a discount.

Inclusionary Housing Technical Advisory Committee. The ordinance would also update the findings in Planning Code Section 415.10 related to the Controller’s report to the Board of Supervisors on the Inclusionary program’s requirements, and amend the Administrative Code creating the Inclusionary Housing Technical Advisory Committee, to allow members of the committee, which serve at the pleasure of the appointing member, to serve for an unlimited term. The ordinance would require the TAC to convene again, no later than January 1, 2026.

Future Inclusionary Housing Rates. The Ordinance makes amendments to Planning Code Section 415 which would become effective on November 2, 2026, unless further amendments are adopted prior to that date:

1. Sets Citywide Affordable Housing Fee at 24.5% for Rental Housing Projects with 25 units or more, and at 27% for Ownership Housing Projects with 25 units or more. The affordable housing fee for projects with 10-24 units would remain unchanged at 20%.
2. Sets the Citywide on-site rate at 18% (10% at low income, 4% at moderate income, and 4% at middle income) for Rental Housing Projects with 25 units or more, and at 20% (10% at low income, 5% at moderate income, and 5% at middle income) for Ownership Housing Projects with 25 units or more. The on-site rate

for projects with 10-24 units would remain unchanged at 15% with all units at low income.

- a. On-site rates for projects with more than 25 units will increase by 0.5% annually beginning on January 1, 2028. The first two years of increases will be allocated to the lowest income tier. Annual increases on or after January 1, 2030 will be split between the moderate and middle income tiers.
3. Sets the Citywide off-site rate at 24.5% (12.5% at low income, 6% at moderate income, and 6% at middle income) for Rental Housing Projects with 25 units or more, and at 27% (12% at low income, 7.5% at moderate income, and 7.5% at middle income) for Ownership Housing Projects with 25 units or more. The off-site rate would remain unchanged at 20% for project with 10-24 units with all units at low income.
4. Lowers rates for grandfathered projects, carve-out areas, UMU (Section 419) and Divisadero NCT (Section 428) at a discount ranging approximately 15-18%.² Specific rates for these projects are identified in the chart included as Exhibit D.
5. Outdated references are removed, including those that reference the most recent TAC process, and that urge project sponsors to provide 25% on-site affordable units if using the State Density Bonus Law.

Link to Signed Legislation:

<https://sfgov.legistar.com/View.ashx?M=F&ID=12298733&GUID=8756A0B2-E496-4E90-9535-77FA6B162AAD>

² Calculated as $X/22 \times 18$ where X is the current rate.