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March 30th, 2016

San Francisco Planning Commission
Rodney Fong, President
1650 Mission Street, Suite 400
San Francisco, CA
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Dear Planning Commissioners,

Thank you for the opportunity to comment on the Inclusionary Affordable “trailing legislation” introduced by Supervisor Kim and Supervisor Peskin. SPUR believes that any changes to the City’s inclusionary housing requirements should not only maximize the amount of affordable housing created, but also ensure that market rate housing remains feasible to construct. We support many aspects of the legislation before you – particularly the requirement for the Controller to prepare an economic feasibility report and the creation of a Technical Advisory Committee to provide input into that analysis. We believe both of these provisions are critical to ensuring the success of San Francisco’s inclusionary program.

We also support a gradual phase in of the affordable housing increases for projects in the pipeline **provided they are uniformly applied across all pipeline projects regardless of where they are located or their height**. The Planning Department staff recommendations support these principles as well. Projects that have obtained their first final entitlement approval should also be protected.

As you know, the Board of Supervisors adopted a Policy Resolution “Establishing City Policy Maximizing a Feasible Inclusionary Affordable Housing Requirement and Adding Exceptions” that was to serve as the “term sheet” for this legislation. The Policy Resolution states that it is the intention of the Board of Supervisors to adopt legislation that includes “a ‘grandfathering’ clause to consider feasibility and fairness for projects in the pipeline” and “that such grandfathering clause shall be constructed so as to allow continued economic feasibility for projects already in the pipeline.” In order to conform with the spirit of this Policy Resolution we recommend that you request the Board of Supervisors to make the following changes to the trailing legislation:

1. **Ensure that pipeline projects in the UMU, Mission NC-T and SoMA Youth and Family Zone have the same pipeline protections as projects in all other areas.** SPUR believes it is inappropriate to single-out projects in the pipeline based on where they are located. Simply because a district includes higher affordability requirement does not mean they should be “carved-out” from protections granted other similarly situated projects. Instead, SPUR supports imposing a similar increase in affordability

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percentages for projects in those districts. This ensures a uniform increase across all pipeline projects, which is fair and reasonable.

As currently proposed, the trailing legislation revisits the 2009 Eastern Neighborhoods rezoning by effectively mandating retention of PDR uses in the UMU district and disproportionately increasing affordability in districts above that envisioned in the underlying rezoning. Such changes, we believe should occur in the normal legislative process and not as part of the trailing legislation.

Lastly, it should be noted that this provision in the trailing legislation affects a large portion of the pipeline. City staff have estimated that roughly 2,600 units would be impacted if this provision is not changed.

We strongly support Planning staff's recommendation to remove the specific "carve-outs" for these areas in the legislation.

2. **Eliminate the exclusion of pipeline protections for projects at or over 120 feet.** As with the carve-outs from pipeline protections for projects in certain districts, SPUR believes it is inappropriate to single-out projects in the pipeline based on height. Under the current proposal, pipeline projects 120 feet and above do not receive any in-lieu or off-site grandfathering, doubling their obligation. There are many midrise projects in the pipeline at 120 feet and 130 feet for which the new fee would be infeasible. As you know, taller projects are more likely to be for-sale projects. For most for-sale projects, the Homeowners Association dues are too high to effectively incorporate the inclusionary units on site, meaning that these projects often chose the in-lieu or off-site option for meeting their inclusionary requirement. Eliminating grandfathering for the in-lieu/off-site option will jeopardize these projects.

   It is also important to note that in certain plan areas, additional fees are already imposed. Projects located in the Market and Octavia Plan area are already subject to an additional affordable housing fee under Planning Code section 416 of $9.17/gsf. Increasing the off-site or in lieu fee to 33% on top of the $9.17/gsf fee for projects in the pipeline will render them infeasible.

   We strongly support Planning staff's recommendation to remove the specific exclusion for projects at or over 120 feet from the pipeline protections.

3. **Pipeline projects should have a reasonable amount of time to complete the project.** We strongly support staff's recommendation that projects in the pipeline must receive their building permit within 36 months of entitlement to maintain pipeline projections. This recommendation is fair and reasonable.

4. **Projects that have already received their entitlements by the effective date of the Charter Amendment should be protected from further changes in the rules.** The Charter Amendment included language to protect projects that had received their final first discretionary development entitlement approval. This language was not

included in the version of the legislation currently under consideration. We recommend reinserting this language into the ordinance. Specifically,

Section 415.3(c)(iii) should include a new provision as follows:
"…(iii) has procured a final first discretionary development entitlement approval prior to June 7, 2016."

5. The currently proposed grandfathering cut-off date of January 12, 2016 should be extended to the effective date of the Charter Amendment. We support extending grandfathering provisions to projects that have submitted their first Environmental Application prior to June 7th, 2016. These projects are far enough along in the process that the financial structure of the project is predicated on the inclusionary requirements that are currently in place.

6. The small sites rent controlled housing acquisition program should be developed further to ensure that it is a feasible alternative to on-site construction.
This program was a key element of the Policy Resolution that serves as the term sheet for this legislation, and ought to be fully incorporated. We have attached draft language describing this program. We do not agree that the program should be limited to buildings that are "not currently or primarily in residential use." There are many existing rent controlled residential buildings that would benefit from being purchased and deeded to a non-profit entity to ensure long term affordability.

Thank you for the opportunity to comment on this legislation. Should you have any questions, please do not hesitate to contact me at 415-577-1411.

Sincerely,

Sarah Karlinsky
Senior Policy Advisor

Attachment A: Draft Language to Amend Section 415.7A to include a Small Site Housing Alternative

Section 4. The Planning Code is hereby amended by adding Section 415.7A, to read as follows:

SEC. 415.7A. SMALL SITE HOUSING ALTERNATIVE.

The purpose of the Small Site Housing Alternative is to allow a project sponsor to acquire existing rent-controlled housing units and dedicate those units to a nonprofit housing organization or land trust, in order to protect such units from demolition, displacement or conversion to ownership units. If the project sponsor is eligible and selects pursuant to Section 415.3(b)(1)(F) the Small Site Housing Alternative, the project sponsor shall notify the Planning Department of its intent as early as possible. The Planning Department shall provide an evaluation of the project's compliance with this Section prior to approval by the Planning Commission or Planning Department. The development project shall meet the following requirements:

(a) Number of Units. The project sponsor may elect to acquire and dedicate the number of Small Site Units that is equivalent to up to 50% of the number of affordable on-site units required by Section 415.3(b)(1)(A),(B),(C) or (E). The number of on-site units required by Section 415.3(b)(1)(A),(B),(C) or (E) shall be reduced on a unit for unit basis by each such Small Site Unit acquired by the project sponsor and dedicated to a nonprofit housing organization or land trust under the Small Site Housing Alternative. If the total number of units is not a whole number, the project sponsor shall round up to the nearest whole number for any portion of .5 or above. The Small Site Units must:

(1) Meet or exceed the weighted average of unit type by bedroom count of the Principal Project; or

(2) Provide at minimum the same total number of bedrooms as would have been provided in a bedroom mix proportional to the Principal Project.

(b) Qualified Small Site Units. "Small Site Units" are those units located in a "Small Site Building", which is a residential building that contains 25 or fewer dwelling units, is subject to the requirements of the Residential Rent Stabilization and Arbitration Ordinance (Chapters 37 of the Administrative Code) or any successor ordinance designated by the City, has completed all seismic retrofit improvements required by the Mandatory Seismic Retrofit Program for Wood-Frame Buildings (Chapter 34B of the Building Code), is not subject to a mortgage, deed of trust, or other financial instrument that is non-assignable, provides recourse to the owner, or has more than 50% loan-to-value ratio (as determined by reputable financial institution), has good and marketable title, and has received a property condition assessment by

a reputable third party confirming that the building is free of major defects including but not limited to termite damage, environmental contamination, building envelope defects, structural defects, heating, ventilating, and air conditioning defects, electrical and plumbing defects, and fire/life safety system defects

(c) Timing of Acquisition and Dedication. The Principal Project shall not receive its First Certificate of Occupancy until the Small Site Units have been acquired by the project sponsor and dedicated to a nonprofit housing organization or land trust. Alternately, the Principal Project may receive its First Certificate of Occupancy prior to dedication of the Small Site Building pursuant to Section 415.7A(d), provided that the project sponsor records a Notice of Special Restrictions on the Principal Project that restricts the sales or rental prices to the maximum amounts permitted under Section 415.6(d) to the number of on-site dwelling units required by Section 415.3(b)(1)(A),(B),(C) or (E) if the Principal Project did not participate in the Small Site Housing Alternative. Upon dedication of the Small Site Units, the Zoning Administrator shall amend the Notice of Special Restrictions to release the number of units within the Principal Project from the sale and rental price controls of Section 415.6(d) equivalent to the number of dedicated Small Site Units.

(d) Dedication of Small Site Units. Small Site Units shall have been dedicated to a nonprofit housing organization or land trust upon the conveyance of fee simple title to the Small Site Building containing such Small Site Units by the project sponsor to the nonprofit housing organization or land trust.