

1 [Zoning – Mission District Housing and PDR Replacement Program.]

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3 **Ordinance amending the Planning Code to add Section 319.5 adopt specified**
4 **affordable housing requirements in the UMU zone within the Mission Plan Area, in**
5 **RTO-Mission, and in the Valencia Street, 24th and Mission Streets, and the Mission**
6 **Street NCTs, including in-lieu affordable housing fees; adding Section 231.1 to**
7 **establish a PDR replacement program, including an in-lieu PDR Replacement fee, in**
8 **these same zones; and adopting environmental findings and findings of consistency**
9 **with the General Plan and the Priority Policies of Planning Code Section 101.1(b).**

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

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

14 Section 1. Findings.

15 (a) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this
16 ordinance will serve the public necessity, convenience, and welfare for the reasons set forth in
17 Planning Commission Resolution No. _____, and incorporates those reasons herein
18 by reference. A copy of said Planning Commission Resolution is on file with the Clerk of the
19 Board of Supervisors in File No. _____.

20 (b) The Board of Supervisors finds that this ordinance is, on balance, consistent with
21 the General Plan and the Priority Policies of Planning Code Section 101.1(b) for the reasons
22 set forth in Planning Commission Resolution No. _____, and incorporates those
23 reasons herein by reference.

24 (c) In accordance with the actions contemplated herein, this Board adopted Resolution
25 No. _____, concerning findings pursuant to the California Environmental Quality Act

1 (California Public Resources Code sections 21000 et seq.). A copy of said Resolution is on
2 file with the Clerk of the Board of Supervisors in File No. _____ and is incorporated by
3 reference herein.

4 Section 2. The San Francisco Planning Code is hereby amended by adding Section
5 319.5, to read as follows:

6 SEC. 319.5. HOUSING REQUIREMENTS FOR THE UMU DISTRICT IN THE MISSION
7 PLAN AREA, THE RTO-MISSION DISTRICT, AND THE VALENCIA STREET, 24TH AND MISSION
8 STREETS, AND MISSION STREET NCTS.

9 (a) The following affordable housing provisions shall apply to all UMU-zoned property in the
10 Mission District Plan Area, the RTO-Mission, and the Valencia Street and 24th/Mission Streets NCTS.
11 The UMU-zoned property subject to these provisions is only that in Mission District Plan Area, as
12 more specifically defined in the General Plan amendments for the Eastern Neighborhoods, a copy of
13 which is on file with the Clerk of the Board of Supervisors in File No. 081152 and available at the
14 offices of the Planning Department.

15 (1) Any project containing 5 or more dwelling units shall be subject to the Tier C
16 affordable housing requirements of Sections 319 et seq. subject to the following modifications:

17 (A) No Middle Income or Land Dedication alternatives are available.

18 (B) Should such housing be rented the "allowable average annual rent", as defined in
19 Section 315.1 shall be no greater than 50% of median income for the City and County of San
20 Francisco.

21 (C) If a project subject to Subsection (1) above does not provide on-site inclusionary
22 housing, it shall be subject to a conditional use authorization pursuant to Section 303.

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1 (b) Mission Street NCT. The following affordable housing provisions shall apply to the
2 Mission Street NCT.

3 (1) Projects in this District are subject to the same requirements as Subsection (a)
4 above subject to the following modifications:

5 (A) The Land Dedication alternative provided for in Section 319.4 is available for any project
6 with a height of 55 feet or greater. In addition, the Land Dedication alternative may be satisfied
7 through the dedication to the City of air space parcels above or adjacent to the project, upon the
8 approval of the Mayor's Office of Housing or a successor entity, and provided the requirements of
9 Section 319.4(b)(2)(A)-(I) are otherwise satisfied.

10 Section 3. The San Francisco Planning Code is hereby amended by adding Section
11 231.1, to read as follows:

12 SEC. 231.1. DEMOLITION OF INDUSTRIAL BUILDINGS IN HE UMU DISTRICT IN THE
13 MISSION PLAN AREA, THE RTO-MISSION DISTRICT, AND THE VALENCIA STREET, 24TH AND
14 MISSION STREETS, AND MISSION STREET NCTS; REPLACEMENT REQUIREMENTS.

15 (a) Prior to the issuance of a building permit or site permit, whichever first occurs, for a
16 building located in any UMU-zoned property in the Mission District Plan Area, the RTO-Mission, or
17 the Valencia Street, 24th/Mission Streets, and Mission Street NCTs that will demolish, replace, or
18 convert PDR space with a use that does not qualify as PDR, the Sponsor shall provide one-for-one
19 replacement of the PDR space to be demolished, replaced, or converted. The UMU-zoned property
20 subject to these provisions is only that in Mission District Plan Area, as more specifically defined in the
21 General Plan amendments for the Eastern Neighborhoods, a copy of which is on file with the Clerk of
22 the Board of Supervisors in File No. 081152 and available at the offices of the Planning Department.
23 For purposes of this Section, PDR shall be any use that is included in Planning Code Sections 220 or
24 222 through 227.

1 (b) Prior to the issuance of a building permit or site permit, whichever first occurs, for a
2 building located in the aforementioned zones, the Sponsor shall be required to provide up to one-for-
3 one replacement of only the ground floor PDR space exclusive of surface parking area, and excluding
4 the ground floor area of the new building used for building service, required off-street parking, and
5 building circulation, including but not limited to lobby area, stairs, elevator, that the Sponsor will
6 demolish, replace, or convert PDR space with a use that does not qualify as PDR.

7 (c) The one-for-one replacement of the required PDR space to be demolished, replaced, or
8 converted, by one of the following methods:

9 (1) Construct or cause to be constructed a comparable PDR space to be made available to
10 offset each square foot of PDR to be demolished, replaced, or converted; or

11 (2) Cause to be brought back into the PDR market comparable PDR space from any building
12 which was not subject to the provisions of this Section; or

13 (3) Pay to the City and County of San Francisco \$125.00 per square foot for projects which
14 would require demolition, replacement, or conversion of PDR space; or

15 (4) Pay to the City and County of San Francisco an amount equal to 80 percent of the cost of
16 construction of equivalent PDR space to that being demolished, replaced, or converted plus site
17 acquisition cost. All such payments shall go into the PDR Replacement Fee Fund. The Department of
18 Real Estate shall determine this amount based upon two independent appraisals that the Sponsor must
19 obtain.

20 (d) For purposes of this Section, the PDR space proposed for demolition, replacement, or
21 conversion applies to both vacant and occupied PDR space.

22 (e) Any replacement of PDR within the Eastern Neighborhood Area Plans to offset the
23 demolition, replacement, or conversion of PDR under Subsection (a)(1) or (2) shall continue to be
24 subject to the provisions of this Section.

1 (f) Payment of Fees under Subsection (c)(3) or (4). Prior to the Department of Building
2 Inspection's issuance the first temporary certificate of occupancy or certificate of occupancy,
3 whichever first occurs, the Sponsor shall submit payment to the Treasurer for the full amount specified
4 in Subsections (c)(3) or (4) for the building for which the site or building permit was sought. The
5 Sponsor shall obtain from the Treasurer a certificate of payment and, in turn, present this certificate to
6 the Department of Building Inspection as a prerequisite to obtaining a temporary certificate of
7 occupancy or a certificate of occupancy, whichever first occurs. If the Sponsor intends to seek a waiver
8 or reduction as set forth in Subsection (g), payment of the fee to the Treasurer shall be accompanied by
9 a letter protesting the fee and stating the intent to file for a waiver, reduction, or other such adjustment
10 with the Board of Supervisors. Failure to submit such a letter of protest shall constitute a waiver of the
11 right to an appeal the fee to the Board of Supervisors.

12 (g) Fee Waiver.

13 (1) Any Sponsor who has paid the fees pursuant to Section 231.1(c)(3) or (4) may appeal to the
14 Board of Supervisors for a waiver, reduction, or other such adjustment of the fee requirements based
15 upon the absence of any reasonable relationship or nexus between the impact of development and the
16 amount of the fee charged.

17 (2) Any such appeal shall be made in writing and filed with the Clerk of the Board of
18 Supervisors no later than 15 days after the date the Sponsor paid the Treasurer the fee as required in
19 this Section. The appeal shall set forth in detail the factual and legal basis for the claim of waiver,
20 reduction, or adjustment and shall be accompanied with a copy of the letter of fee protest submitted to
21 the Treasurer. The Board of Supervisors shall consider the appeal at the hearing within 60 days after
22 the filing of the appeal. If the Board is unable to or otherwise fails to render a decision within 120
23 days of the filing of an appeal, the Sponsor's request shall be deemed approved. The appellant shall
24 bear the burden of presenting substantial evidence to support the appeal, including comparable

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1 technical information to support appellant's position. The Board shall adopt findings specifying the
2 basis of its decision. Such decision shall be final. If the Board grants a waiver, reduction, or other
3 adjustment, any subsequent change in use within the project shall invalidate the waiver, reduction, or
4 other such adjustment of the fee. After the Board grants a waiver, reduction, or other such adjustment
5 and adopts its findings, the Clerk of the Board shall promptly transmit the Board's decision to the
6 Treasurer, and the Treasurer shall take the appropriate steps to refund the fees or take other such
7 action as the Board has specified.

8 (h) PDR Replacement Fund.

9 (1) The Controller shall establish and maintain a fund entitled the "PDR Replacement Fund".
10 All monies collected by the Treasurer pursuant to Section 231.1 shall be deposited in this Fund.

11 (2) The funds in the PDR Replacement Fund are subject to the budgetary and fiscal
12 provisions of the Charter. These funds shall be solely to (i) create new PDR space anywhere in the
13 City to replace the PDR lost as a result of the demolition, replacement, or conversion of PDR subject to
14 this Ordinance; (ii) to reimburse costs incurred by City agencies, departments, and commissions in
15 processing and allocating the fees; and (iii) to defend the PDR Replacement Program against legal
16 challenge, including the legal costs and attorney's fees incurred in the defense.

17 (3) The Controller shall allocate monies from the Fund based on appropriation through the
18 legislative process delineated in the San Francisco Charter. During the appropriation process, the
19 Board of Supervisors shall determine the relative impact on PDR loss from development and shall
20 make findings that the expenditures are consistent with mitigating the impacts from the development.

21 (4) The Controller's Office shall file an annual report with the Board of Supervisors beginning
22 one year after the effective date of this Ordinance, such report shall comprehensively account for the
23 amount of money collected and expended from the Fund.

1 Section 4. This Section is uncodified. This legislation is companion legislation to the
2 Eastern Neighborhoods Planning Code and Zoning Map amendments (the "Eastern
3 Neighborhoods Amendments"), copies of which are in Clerk of the Board of Supervisors File
4 Nos. 081153 and 081154 and are incorporated herein by reference. This Ordinance relies on
5 Planning Code Sections and Zoning Map changes contained in the Eastern Neighborhoods
6 Amendments. Consequently, the Board of Supervisors would not adopt this legislation
7 without adoption of the Eastern Neighborhoods Amendments. Therefore, this Ordinance will
8 not be effective unless and until the Eastern Neighborhoods Amendments are effective.
9 Further, the zoning provisions set forth in this Ordinance shall prevail over any contrary
10 provisions in the Eastern Neighborhoods Amendments.

11 Section 5. This Section is uncodified. Neighborhood Preference in Allocation of
12 Affordable Housing. The Board urges the Mayor's Office of Housing, in consultation with the
13 Planning Department, to prepare a written report analyzing the maximum extent to which the
14 allocation of affordable housing can include a preference for the residents of the Mission
15 District Plan Area taking into account the diversity of such residents and the their need and
16 ability to purchase such housing. The Mayor's Office of Housing shall submit the report to the
17 Board of Supervisors within 6 months of the effective date of this Ordinance. The report also
18 shall include recommendations for legislation or programmatic changes to the procedures for
19 affordable housing allocation based on the findings of the report.

20 Section 6. This Section is uncodified. Severability. If any provision of this Ordinance
21 or its application to any housing project or to the subject Special Use District areas, is held
22 invalid, the remainder of this Ordinance, or the application of such provision to other housing
23 projects or to the subject Special Use District areas, shall not be affected thereby.

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

By: _____
John D. Malamut
Deputy City Attorney