

1 [Amending Planning Code – SOMA Community Stabilization Fund.]

2
3 **Ordinance amending the San Francisco Planning Code to clarify certain provisions**
4 **relating to the South of Market (SOMA) Stabilization Fund by amending Section 318.2**
5 **and 318.7 to clarify that the Mayor's Office of Community Investment, the successor to**
6 **the Mayor's Office of Community Development, will manage and expend the Fund; and**
7 **amending Section 318.3 to clarify that the SOMA Stabilization fee is due before**
8 **issuance of the final certificate of occupancy or within a time certain after the issuance**
9 **of a first certificate of occupancy, whichever is sooner; and making certain findings**
10 **including findings under the California Environmental Quality Act.**

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

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

15 Section 1. Findings.

16 (a) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this
17 ordinance will serve the public necessity, convenience, and welfare for the reasons set forth in
18 Planning Commission Resolution No. 17920, and incorporates such reasons
19 herein by reference. A copy of said Planning Commission Resolution is on file with the Clerk
20 of the Board of Supervisors in File No. 090477.

21 (b) The Board of Supervisors finds that this ordinance is in conformity with the
22 General Plan, amended in the companion legislation, and the Priority Policies of Planning
23 Code Section 101.1 for the reasons set forth in Planning Commission Resolution No.
24 17920, and hereby incorporates those reasons by reference.

1 (c) The Planning Department has determined that the actions contemplated in this
2 ordinance are in compliance with the California Environmental Quality Act (California Public
3 Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the
4 Board of Supervisors in File No. 090477 and is incorporated herein by
5 reference.

6 Section 2. The San Francisco Planning Code is hereby amended by amending
7 Sections 318.2, 318.3, and 318.7 to read as follows:

8 **SEC. 318.2. DEFINITIONS.**

9 The following definitions shall govern this ordinance.

10 (a) "Child-care facility" shall mean a child day-care facility as defined in California
11 Health and Safety Code Section 1596.750.

12 (b) "DBI" shall mean the Department of Building Inspection.

13 (c) "DPW" shall mean the Department of Public Works.

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

17 (e) "Infrastructure" shall mean street paving, crosswalks, signs, medians, bulbouts,
18 sidewalks, trees, parks and open space, day care centers, libraries, and community centers.

19 (f) "Infrastructure fee" shall mean a monetary contribution based upon the cost to
20 provide infrastructure under this program.

21 (g) "Low income" shall mean, for purposes of this ordinance, up to 80% of median,
22 family income for the San Francisco PMSA, as calculated and adjusted by the United States
23 Department of Housing and Urban Development (HUD) on an annual basis, except that as
24 applied to housing-related purposes such as the construction of affordable housing and the
25 provision of rental subsidies with funds from the SOMA Stabilization Fund established in

1 Section 318,7. it shall mean up to 60% of median family income for the San Francisco PMSA,
2 as calculated and adjusted by the United States Department of Housing and Urban
3 Development (HUD) on an annual basis.

4 (h) ~~"MOCD" shall mean the Mayor's Office of Community Development.~~ "MOCI" shall mean
5 the Mayor's Office of Community Investment, or its successor.

6 (i) "MOH" shall mean the Mayor's Office of Housing.

7 (j) "Net addition of occupiable square feet of residential use" shall mean occupied
8 floor area, as defined in Section 102.10 of this Code, including bathrooms provided as part of
9 dwelling units, to be occupied by or primarily serving, residential use excluding common areas
10 such as hallways, fitness centers and lobbies, less the occupied floor area in any structure
11 demolished or rehabilitated as part of the proposed residential development project which
12 occupied floor area was used primarily and continuously for residential use and was not
13 accessory to any use other than residential use for at least five years prior to Planning
14 Department approval of the residential development project subject to this Section, or for the
15 life of the structure demolished or rehabilitated, whichever is shorter.

16 (k) "Program" shall mean the Downtown Residential Community Improvements
17 Neighborhood Program.

18 (l) "Program Area" shall mean those districts identified as Downtown Residential
19 (DTR) Districts in the Planning Code and on the Zoning Maps.

20 (m) "Residential development project" shall mean any new construction, addition,
21 extension, conversion or enlargement, or combination thereof, of an existing structure which
22 includes any occupied floor area of residential use; provided, however, that for projects that
23 solely comprise an addition to an existing structure which would add occupied floor area in an
24 amount less than 20 percent of the occupied floor area of the existing structure, the provisions
25 of this Section shall only apply to the new occupied square footage.

1 (n) "Residential use" shall mean any structure or portion thereof intended for
2 occupancy by uses as defined in Section 890.88 of this Code and shall not include any use
3 which qualifies as an accessory use as defined and regulated in Sections 204 through 204.5.

4 (o) "SOMA" shall mean the area bounded by Market Street to the north, Embarcadero
5 to the east, King Street to the south and South Van Ness and Division to the west.

6 (p) "Sponsor" shall mean an applicant seeking approval for construction of a
7 residential development project subject to this Section and such applicant's successors and
8 assigns.

9 (q) "Waiver Agreement" means an agreement acceptable in form and substance to the
10 Planning Department and the City Attorney, under which the City agrees to waive all or a
11 portion of the Community Improvements Impact Fee, conditioned upon the project sponsor's
12 covenant to make a good faith effort to secure the formation of a Community Facilities (Mello-
13 Roos) District, if such a district has not already been successfully formed, and to take all steps
14 necessary to support the construction of a portion of the improvements described in Sections
15 318.6 (the "CFD Improvements") using the proceeds of one or more series of special tax
16 bonds or moneys otherwise made available by such a district ("CFD Funds"). Such agreement
17 shall include a specific description of the CFD Improvements and a specific date for the
18 commencement of such improvements. Such agreement shall also provide that the project
19 sponsor shall pay the full amount of the waived Community Improvements Impact Fee in the
20 event that CFD Funds are not received in amounts necessary to commence construction of
21 the CFD Improvements on the stated commencement date. The City also shall require the
22 project sponsor to provide a letter of credit or other instrument to secure the City's right to
23 receive payment as described in the preceding sentence.

24 **SEC. 318.3. APPLICATION.**

1 (a) Program Area. The Downtown Residential Community Improvements
2 Neighborhood Program is hereby established and shall be implemented through district-
3 specific community improvements funds which apply in the following downtown residential
4 areas:

5 (i) Properties identified as "Residential Mixed-Use" in Map 3 (Land Use Plan) of the
6 Rincon Hill Area Plan of the San Francisco General Plan.

7 (b) The sponsor shall pay to the Treasurer a Community Improvements Impact Fees
8 of the following amounts for each net addition of occupiable square feet of residential use.

9 (i) Prior to the issuance by DBI of the first site or building permit for a residential
10 development project within the Program Area, an \$11.00 Community Improvement Impact
11 Fee in the Rincon Hill downtown residential area, as described in (a)(i) above, for the Rincon
12 Hill Community Improvements Fund.

13 (ii) Prior to the issuance by the Director of DBI a final certificate of occupancy or within
14 12 months of the issuance by DBI of the first certificate of occupancy for a residential development
15 project within the Program Area, whichever is sooner, a \$13.75 SOMA Community Stabilization
16 Fee in the Rincon Hill downtown residential area, as described in (a)(1) above for the SOMA
17 Community Stabilization Fund or provide to the City an irrevocable letter of credit in a form
18 approved in advance by the City Attorney to secure the payment of the \$13.75 Community
19 Stabilization Fee within six months from the date of issuance by the Director of DBI of a final
20 certificate of occupancy or within 18 months of the issuance by DBI of the certificate of occupancy,
21 whichever is sooner, for the Rincon Hill Mitigation Fund and prior to the issuance by DBI of the
22 first site or building permit for a residential development project within the Program Area, a
23 \$.25 SOMA Community Stabilization Fee in the Rincon Hill downtown residential area. as
24 described in (a)(1) above for the SOMA Community Stabilization Fund.

1 (c) Upon payment of the Community Improvements Impact Fees in full to the
2 Treasurer or upon the execution of a Waiver Agreement and upon request of the sponsor, the
3 Treasurer shall issue a certification that the fee has been paid or a Waiver Agreement
4 executed. The sponsor shall present such certification to the Planning Department, DBI and
5 MOH prior to the issuance by DBI of the first site or building permit for the residential
6 development project. DBI shall not issue the site or building permit without the Treasurer's
7 certification. A failure of the Treasurer, DBI, or the Planning Department to give any notice
8 under this Section shall not relieve a sponsor from compliance with this Section. Where DBI
9 inadvertently issues a site or building permit without payment of the fee, DBI shall not issue
10 any certificate of occupancy for the project without notification from the Treasurer that the fees
11 required by this Section have been paid. The procedure set forth in this Subsection is not
12 intended to preclude enforcement of the provisions of this Section under any other section of
13 this Code, or other authority under the laws of the State of California.

14 (d) The Community Improvements Impact Fee shall be revised effective January 1st
15 of the year following the effective date of this ordinance and on January 1st each year
16 thereafter by the percentage increase or decrease in the construction cost of providing these
17 improvements.

18 (e) Option for In-Kind Provision of Community Improvements. The Planning
19 Commission shall reduce the Community Improvements Impact Fee described in (b) above
20 for specific residential development proposals in cases where a project sponsor has entered
21 into an agreement with the City to provide in-kind improvements in the form of streetscaping,
22 sidewalk widening, neighborhood open space, community center, and other improvements
23 that result in new public infrastructure and facilities described in Section 318.6 below. For the
24 purposes of calculating the total value of in-kind community improvements, the project
25 sponsor shall provide the Planning Department with a cost estimate for the proposed in-kind

1 community improvements from two independent contractors. Based on these estimates, the
2 Director of Planning shall determine their appropriate value and the Planning Commission
3 shall reduce the Community Improvements Impact Fee assessed to that project
4 proportionally.

5 (f) Option for Provision of Community Improvements via a Community Facilities
6 (Mello-Roos) District. The Planning Commission shall waive the Community Improvements
7 Impact Fee described in (b) above, either in whole or in part, for specific residential
8 development proposals in cases where one or more project sponsors have entered into a
9 Waiver Agreement with the City. Such waiver shall not exceed the value of the improvements
10 to be provided under the Waiver Agreement. For purposes of calculating the total value of
11 such improvements, the project sponsor shall provide the Planning Department with a cost
12 estimate for the proposed in-kind community improvements from two independent contractors.
13 Based on these estimates, the Director of Planning shall determine their appropriate value.

14 (g) Waiver or Reduction:

15 (1) A project applicant of any project subject to the requirements in this Section may
16 appeal to the Board of Supervisors for a reduction, adjustment, or waiver of the requirements
17 based upon the absence of any reasonable relationship or nexus between the impact of
18 development and the amount of the fee charged.

19 (2) A project applicant subject to the requirements of this Section who has received an
20 approved building permit, conditional use permit or similar discretionary approval and who
21 submits a new or revised building permit, conditional use permit or similar discretionary
22 approval for the same property may appeal for a reduction, adjustment or waiver of the
23 requirements with respect to the square footage of construction previously approved.

24 (3) Any such appeal shall be made in writing and filed with the Clerk of the Board no
25 later than 15 days after the date the sponsor is required to pay to the Treasurer the fee as

1 required in Section 318.3(b). The appeal shall set forth in detail the factual and legal basis for
2 the claim of waiver, reduction, or adjustment. The Board of Supervisors shall consider the
3 appeal at the hearing within 60 days after the filing of the appeal. The appellant shall bear the
4 burden of presenting substantial evidence to support the appeal, including comparable
5 technical information to support appellant's position. The decision of the Board shall be by a
6 simple majority vote and shall be final. If a reduction, adjustment, or waiver is granted, any
7 change in use within the project shall invalidate the waiver, adjustment, or reduction of the
8 fee. If the Board grants a reduction, adjustment or waiver, the Clerk of the Board shall
9 promptly transmit the nature and extent of the reduction, adjustment or waiver to the
10 Treasurer.

11 (4) In the event that the Board of Supervisors grants a waiver or reduction under this
12 Section, it shall be the policy of the Board of Supervisors that it shall adjust the percentage of
13 inclusionary housing in lieu fees in Planning Code Section 827(b)(5)(C) such that a greater
14 percentage of the in lieu fees will be spent in SOMA with the result that the waiver or
15 reduction under this Section shall not reduce the overall funding to the SOMA community.

16 **SEC. 318.7. SOMA COMMUNITY STABILIZATION FUND.**

17 (a) There is hereby established a separate fund set aside for a special purpose
18 entitled the SOMA Community Stabilization Fund ("Fund"). All monies collected by the
19 Treasurer pursuant to Section 319.3(b)(ii) shall be deposited in a special fund maintained by
20 the Controller. The receipts in the Fund are hereby appropriated in accordance with law to be
21 used solely to address the effects of destabilization on residents and businesses in SOMA
22 subject to the conditions of this Section.

23 (b) (1) All monies deposited in the Fund shall be used to address the impacts of
24 destabilization on residents and businesses in SOMA including assistance for: affordable
25 housing and community asset building, small business rental assistance, development of new

1 affordable homes for rental units for low income households, rental subsidies for low income
2 households, down payment assistance for home ownership for low income households,
3 eviction prevention, employment development and capacity building for SOMA residents, job
4 growth and job placement, small business assistance, leadership development, community
5 cohesion, civic participation, and community based programs and economic development.

6 (2) Monies from the Fund may be appropriated by MOCED MOCI without additional
7 approval by the Board of Supervisors to the Planning Commission or other City department or
8 office to commission economic analyses for the purpose of revising the fee, to complete a
9 nexus study to demonstrate the relationship between residential development and the need
10 for stabilization assistance if this is deemed necessary, provided these expenses do not
11 exceed a total of \$100,000. The receipts in the Fund may be used to pay the expenses of
12 MOCED MOCI in connection with administering the Fund and monitoring the use of the Funds.
13 Before expending funds on administration, MOCED MOCI must obtain the approval of the
14 Board of Supervisors by Resolution.

15 (3) Receipts in the Fund shall also be used to reimburse the Planning Department for
16 conducting a study as follows. Within 60 days of the effective date of this ordinance the City
17 Planning Department shall commence a study on the impact, in nature and amount, of market
18 rate housing development on the production of permanently affordable housing and
19 recommend the range of possible fees to be paid by market rate housing developers to
20 mitigate such impact should one be found. The Department shall make timely progress
21 reports on the conduct of this study and shall submit the completed report along with
22 recommendations for legislation to the Land Use Committee of the Board of Supervisors. This
23 study is meant to accomplish the same purposes as the study authorized by the Board of
24 Supervisors in Planning Code Section 315.8(e) and thus supersedes Section 315.8(e).

1 (c) The Controller's Office shall file an annual report with the Board of Supervisors
2 beginning one year after the effective date of this ordinance, which report shall set forth the
3 amount of money collected in the Fund. The Fund shall be administered and expended by
4 ~~MOCD~~ MOCI, but all expenditures shall first be approved by the Board of Supervisors through
5 the legislative process. In approving expenditures from the Fund, ~~MOCD~~ MOCI and the Board
6 of Supervisors shall accept any comments from the Community Advisory Committee, the
7 public, and any relevant city departments or offices. Before approving any expenditures, the
8 Board of Supervisors shall determine the relative impact from the development in the Rincon
9 Hill Plan Area on the areas described in 318.7(b) and shall insure that the expenditures are
10 consistent with mitigating the impacts from the development.

11 (d) There shall be a SOMA Community Stabilization Fund Community Advisory
12 Committee to advise ~~MOCD~~ MOCI and the Board of Supervisors on the administration of the
13 Fund.

14 (1) The Community Advisory Committee shall be composed of seven members
15 appointed as follows:

16 (A) One member representing low-income families who lives with his or her family in
17 SOMA, appointed by the Board of Supervisors.

18 (B) One member who has expertise in employment development and/or represents
19 labor, appointed by the Board of Supervisors.

20 (C) One member who is a senior or disabled resident of SOMA, appointed by the
21 Board of Supervisors.

22 (D) One member with affordable housing expertise and familiarity with the SOMA
23 neighborhood, appointed by the Board of Supervisors

24 (E) One member who represents a community based organization in SOMA,
25 appointed by the Board of Supervisors.

1 (F) One member who provides direct services to SOMA families, appointed by the
2 Board of Supervisors.

3 (G) One member who has small business expertise and a familiarity with the SOMA
4 neighborhood, appointed by the Board of Supervisors.

5 (2) The Community Advisory Committee shall comply with all applicable public
6 records and meetings laws and shall be subject to the Conflict of Interest provisions of the
7 City's Charter and Administrative Code. The initial meeting of the Advisory Committee shall be
8 called within 30 days from the day the Board of Supervisors completes its initial appointments.
9 MOCED MOCI shall provide administrative support to the Committee. The Committee shall
10 develop annual recommendations to MOCED MOCI on the Expenditure Plan.

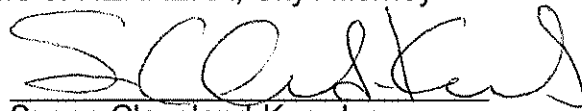
11 (3) The members of the Community Advisory Committee shall be appointed for a term
12 of two years; provided, however, that the members first appointed shall by lot at the first
13 meeting, classify their terms so that three shall serve for a term of one year and four shall
14 serve for a term of two years. At the initial meeting of the Committee and yearly thereafter, the
15 Committee members shall select such officer or officers as deemed necessary by the
16 Committee. The Committee shall promulgate such rules or regulations as are necessary for
17 the conduct of its business under this Section. In the event a vacancy occurs, a successor
18 shall be appointed to fill the vacancy consistent with the process and requirements to appoint
19 the previous appointee. When a vacancy occurs for a reason other than the expiration of a
20 term of office, the appointee to fill such vacancy shall hold office for the unexpired term of his
21 or her predecessor. Any appointee who misses four meetings within a twelve-month period,
22 without the approval of the Committee, shall be deemed to have resigned from the
23 Committee.
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25

1 (e) Within 90 days of the effective date of this ordinance, the Director of ~~MOC~~ MOCI
2 shall propose rules, regulations and a schedule for administrative support governing the Fund
3 to the Board of Supervisors for its approval.

4 Section 3. Application. It is the intent of the Board of Supervisors that this legislation
5 would apply to clarify the provisions applicable to any project that had not received a first site
6 or building permit prior to August 19, 2005.

7
8 APPROVED AS TO FORM:
9 DENNIS J. HERRERA, City Attorney

10 By:



11 Susan Cleveland-Knowles
12 Deputy City Attorney
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City and County of San Francisco

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

Tails Ordinance

File Number: 090477

Date Passed:

Ordinance amending Section 318.2 and 318.7 of the San Francisco Planning Code to clarify certain provisions relating to the South of Market (SOMA) Stabilization Fund to clarify that the Mayor's Office of Community Investment, the successor to the Mayor's Office of Community Development, will manage and expend the Fund; and amending Section 318.3 to clarify that the SOMA Stabilization fee is due before issuance of the final certificate of occupancy or within a time certain after the issuance of a first certificate of occupancy, whichever is sooner; and making certain findings including findings under the California Environmental Quality Act.

October 6, 2009 Board of Supervisors — PASSED, ON FIRST READING

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell, Mirkarimi

October 20, 2009 Board of Supervisors — CONTINUED ON FINAL PASSAGE

Ayes: 10 - Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell, Mirkarimi

Excused: 1 - Alioto-Pier

October 27, 2009 Board of Supervisors — FINALLY PASSED

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell, Mirkarimi

File No. 090477

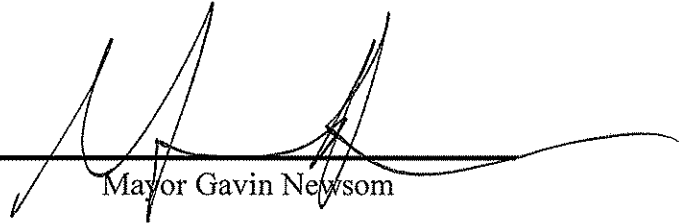
I hereby certify that the foregoing Ordinance
was **FINALLY PASSED** on October 27, 2009
by the Board of Supervisors of the City and
County of San Francisco.



Angela Calvillo
Clerk of the Board

11/6/09

Date Approved



Mayor Gavin Newsom