

1 [Special Use District to allow an approved live/work project to convert to a residential
2 development.]

3 **Ordinance amending the San Francisco Planning Code by adding Section 249.23 to**
4 **create the Fourth and Freelon Streets Special Use District encompassing the property**
5 **zoned Service Light Industrial and bounded by Fourth Street, Freelon Street, Zoe Street**
6 **and Welsh Street and by adding Section 263.16 to create special height and bulk**
7 **exceptions for the Fourth and Freelon Streets Special Use District, which would allow**
8 **previously approved but unbuilt live/work units to convert to market-rate residential**
9 **units and additional market-rate residential units to be constructed with an allowable**
10 **increase in height from 50' to 85' and a dwelling unit density governed by the**
11 **permissible building envelope; provided that (i) the developer shall construct at the**
12 **developer's sole expense, on land owned or purchased by the developer in either the**
13 **South of Market Area or the North of Market Residential Special Use District, off-site**
14 **affordable rental housing with square footage equal to 15% of the total residential units**
15 **to be constructed offset by the cost of land acquisition, with a minimum of 56 units**
16 **constructed of no less than 400 square feet each, (ii) the units shall be rental units**
17 **affordable to low- and lower income households with income not exceeding 40% of San**
18 **Francisco's median income, which shall remain affordable for 55 years or for the life of**
19 **the building whichever is longer, and (iii) upon completion, the affordable housing**
20 **development shall be owned, managed and operated by a nonprofit housing**
21 **organization with reversion to the City if the nonprofit housing organization is**
22 **dissolved.**

23
24 Note: The entire Section is new.
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1 Be it ordained by the People of the City and County of San Francisco:

2 Section 1. The San Francisco Planning Code is hereby amended by adding

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4 Section 249.23, to read as follows:

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6 Section 1. Findings. The Board of Supervisors makes the following findings:

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8 1. The San Francisco Planning Department publishes an annual Housing Inventory
9 Report. This Report provides a 20-year overview of the City's housing production trends,
10 housing units approved for construction, and housing units completed. Between 1990 and
11 2000, a total of 12,460 units were completed and 1,540 units were demolished or lost by
12 alterations, merger of units, or both, resulting in a net gain of 11,173 units. More than 50% of
13 the new units constructed are located in the City's Downtown, Western Addition and South of
14 Market districts.

15 2. Of the housing units constructed between 1990 and 2000, 3,492 units were for
16 low- and very low-income households and families.

17 3. The vacancy rate in the year 2000 was 2.50% for rental units and 0.80% for sale
18 units.

19 4. The Association of Bay Area Governments ("ABAG") has determined that San
20 Francisco's share of the regional housing need for 1999 through June 2006 is 20,374 units, or
21 2,717 units per year. San Francisco would need a total production rate of 2,852 units a year
22 through June 2006 to achieve a 5% vacancy rate over the City's housing need. Of the 20,374
23 housing units required to meet the City's housing demand between 1999 and 2006, 7,270
24 units are needed for low- or very low-income households or families.

25 5. The City has a total of 20,779 publicly-assisted housing units, of which 6,096
units are operated by the San Francisco Housing Authority, 6,641 units are tenant-based

1 Section 8 units, and 8,042 units are in project-based Section 8 buildings. Only 3,957 units in
2 project-based Section 8 buildings are operated by nonprofit organizations. Availability of
3 tenant-based Section 8 units and for-profit project-based Section 8 buildings are in part
4 influenced by market dynamics.

5 6. The City's General Plan calls for an increase in the production of new housing
6 and for the development of mixed-income housing to achieve social and cultural diversity.
7 Objective 1 of the Residence Element states that it is the objective of the City "to provide new
8 housing, especially permanently affordable housing, in appropriate locations, which meets the
9 identified housing needs and takes into account the demand for affordable housing created by
10 employment growth." Objective 2 of the Residence Element states that the City should
11 "increase the supply of housing without overcrowding or adversely affecting the prevailing
12 character of existing neighborhoods."

13 7. To achieve the aforementioned objectives, Policy 2 of Objective 2 "encourage[s]
14 higher residential density in areas adjacent to downtown, in underutilized commercial and
15 industrial areas proposed for conversion to housing, and in neighborhood commercial districts
16 where higher density will not have harmful effects, especially if the higher density provides a
17 significant number of units that are permanently affordable to lower income households."
18 Policy 3 of Objective 2 allows "flexibility in the number and size of units within permitted
19 volumes of larger multi-unit structures, and especially if the flexibility results in creation of a
20 significant number of dwelling units that are permanently affordable to lower income
21 households."

22 8. The 2000 Consolidated Plan for July 1, 2000 – June 30, 2005 issued by the
23 Mayor's Office of Community Development and the Mayor's Office of Housing establishes that
24 extreme housing pressures face San Francisco, particularly in regard to low- and lower-
25 income residents.

1 9. Many elements constrain housing production in San Francisco. This is
2 especially true of affordable housing. San Francisco is approximately 49 square miles, is
3 largely built out, and its geographical location at the northern end of a peninsula inherently
4 prevents substantial new development. There is no available adjacent land to be annexed, as
5 the cities located on San Francisco's southern border are also dense urban areas. Thus, new
6 construction of housing is limited to areas of the City not previously designated as residential
7 areas, infill sites, or areas with increased density. New market-rate housing absorbs a
8 significant amount of the remaining supply of land and other resources available for
9 development and thus limits the land available for affordable housing.

10 10. In order to ensure that the City's limited land supply is used efficiently to meet
11 the needs of housing, commerce and industry, the City has adopted a policy of balancing the
12 preservation of land used for industry against the need for additional housing, especially
13 market-rate housing developments that will produce housing units affordable to low- and
14 lower-income households.

15 11. The City's industrial or mixed-use zoning districts contain large parcels of land.
16 Inclusion of market-rate housing in these districts that is linked to the production of affordable
17 housing units furthers the policies and objectives of the City's General Plan and is desirable.

18 12. Given the limited availability of land in the City, an increase in dwelling unit
19 density is necessary to meet the housing needs of the City's low-income and lower-income
20 families and households. With appropriate controls and in appropriate locations, higher
21 density and height for residential or residential/mixed-use development which will produce
22 affordable housing units may be achieved without affecting the livability of a neighborhood,
23 especially when they are located near public transit.

24 13. The Board of Supervisors has determined that live/work development is no
25 longer a desirable use. The Board has prohibited live/work projects permanently. Therefore,

1 allowing the conversion of an already approved but as yet unbuilt live/work project to
2 residential units would allow a more desirable use to be constructed.

3 14. Allowing an exception to the height limit on condition that the developer build off-
4 site affordable housing will increase both the City's total housing supply and its affordable
5 housing supply, and would be in the interest of the public health, safety and welfare.

6 15. To ensure that the affordable housing development will be permanently
7 affordable, it is desirable that such housing be managed and operated by a nonprofit housing
8 organization.

9 16. The Planning Department has undertaken community planning efforts in the
10 South of Market Area. Since February 2002, the Department has conducted four community
11 workshops inviting community input into establishing priorities and goals for future land use in
12 the South of Market Area. Approximately 100 individuals attended the fourth community
13 workshop, at which the Department presented three future land use alternatives. The
14 proposed Special Use District would be located in the area considered to be rezoned
15 residential and mixed-use development in the first two alternatives while the third alternative
16 would preserve the site for production, distribution and repair uses.

17 Those who attended the November 19, 2002 workshop were divided into nine study
18 groups. At the end of the meeting, seven of the study groups indicated their preference for
19 rezoning the Fourth Street Corridor for residential use. Additionally, residents in the area
20 indicated to their District Supervisor that they do not wish to impose interim controls for the
21 South of Market Study Area and that they do not object to reasonable developments. The
22 proposed Special Use District is, therefore, consistent with and will not adversely affect the
23 ongoing community planning effort.

24 17. At the public hearing before the Finance Committee on the proposed Special
25 Use District, representatives of nonprofit housing and n nonprofit social service agencies

1 testified to the dire need for affordable housing in the South of Market Area. Many gainfully
2 employed individuals currently residing in residential hotel rooms testified that they were
3 unable to find affordable studio units that would provide them a quality living environment.
4 Testimony before the Finance Committee also showed that many qualified individuals and
5 households residing in residential hotel rooms in the South of Market and Tenderloin Areas
6 who applied for the affordable units constructed under the City's inclusionary housing policy
7 were not selected because no preference was given to area residents. The proposed Special
8 Use District will allow the City to target one of the areas with the highest need for affordable
9 housing.

10 18. On November 26, 2002, the Planning Commission conducted an informational
11 hearing on the proposed Special Use District legislation. At the Commission hearing, the
12 Planning Director informed the Commissioners that the proposed Special Use District, which
13 would propose rezoning of the Special Use District and its surrounding areas for housing and
14 mixed-use development, is consistent with the direction of the community planning effort for
15 the South of Market Area. The Planning Commissioners expressed their support for the
16 proposed Special Use District because of its affordable housing component.

17 19. The use of a percentage area in lieu of a percentage of unit type equivalency
18 would allow the nonprofit agency that would own and manage the affordable housing building
19 to tailor the building to meet the specific needs of the area by providing smaller units and
20 increasing the total number of affordable units. The rental income accruing to the nonprofit
21 agency will allow it the option of providing some or all of the units at levels affordable to
22 individuals with income below 40% of the City's median income, thereby further increasing the
23 affordability of the affordable residential building. The income provided to the nonprofit
24 agency would also allow the agency to provide a social services component to at-risk
25 residents or to use the income to provide additional affordable housing units.

1 20. With budget deficits facing the City, State and Federal governments, less public
2 funds will be available for affordable housing and social service programs. The affordable
3 units produced by the proposed Special Use District will not require any public funds subsidy
4 and will eliminate the lengthy application and selection process associated with affordable
5 housing financed in whole or in part by public funding and will deliver affordable units for
6 occupancy in a short period of time.

7 21. The nonprofit agency that has been designated as the future owner of the
8 affordable housing building constructed under the proposed Special Use District legislation is
9 the Tenderloin Housing Clinic, which agency proposed the innovative affordable housing
10 concept.

11 22. The proposed Special Use District targets an approved live/work project with no
12 affordable housing component and is not applicable to other projects.

13 23. Based on the Final Environmental Impact Report (dated September 7, 2000)
14 and the Addendum (published November 7, 2002), which are in Board of Supervisors File No.
15 _____ and incorporated herein by reference, the Board finds that there is no
16 need to prepare a subsequent environmental impact report under California Environmental
17 Quality Act Guidelines Title 14 CCR Section 15162 for the actions contemplated herein.

18 24. The proposed Special Use District is consistent with Planning Code Section
19 101.1(b) in that:

20 A. Except for the small parcel at the intersection of Freelon and Zoe Streets that is
21 occupied by an automotive use, the proposed Special Use District site is vacant and will not
22 displace any neighborhood-serving uses and thus is consistent with the provisions of Section
23 101.1(b)(1).

24 B. The environmental analysis shows that the proposed Special Use District, which
25 contains no residential units, will have no significant effect on the land use or visual effects of

1 the area. Therefore, both the existing housing and neighborhood character will be preserved,
2 consistent with the provisions of Section 101.1(b)(2).

3 C. The proposed Special Use District will add up to 330 market-rate residential
4 units to the City's housing stock and 56 units or more of affordable housing units in either the
5 South of Market Area, where in the past five years mainly market-rate live/work units were
6 constructed, or in the North of Market Residential Special Use District Area. The proposed
7 project is consistent with and will promote the provisions of Section 101.1(b)(3).

8 D. The proposed Special Use District authorizing a residential/retail mixed-use
9 development will not contribute to commuter traffic, will not impede MUNI services or
10 overburden the City streets, and is located in the Third Street Transit Corridor and within three
11 blocks of other MUNI lines and the Caltrans Station. The proposed project will provide one
12 off-street parking space for each residential unit and will not aggravate existing on-street
13 parking problems. The proposed project is consistent with the provisions of Section
14 101.1(b)(4).

15 E. The proposed Special Use District will not displace industrial or service sector
16 uses and is consistent with the provisions of Section 101.1(b)(5).

17 F. Any residential/retail mixed-use building and the affordable residential building
18 that would be constructed pursuant to the proposed Special Use District will meet current fire
19 safety and seismic standards and therefore will promote the provisions of Section 101.1(b)(6).

20 G. There are no architecturally or historically significant or City-designated
21 landmark buildings on or adjacent to the proposed Special Use District. The proposed
22 Special Use District is not located in an historic or conservation district. Therefore, the
23 proposed Special Use District is consistent with the provisions of Section 101.1(b)(7).

24 H. The shadow analysis performed as part of the environmental review for the
25 proposed Special Use District shows that a building constructed to the maximum height

1 allowed by this ordinance will not cast any new shadow on any park or recreational facilities
2 subject to the provisions of Planning Code Section 295 (Proposition K Shadow Ordinance).
3 Therefore, the proposed Special Use District is consistent with the provisions of Section
4 101.1(b)(8).

5 Section 2. The San Francisco Planning Code is hereby amended by adding Section
6 249.23, to read as follows:

7 SEC. 249.23. FOURTH AND FREELON STREETS SPECIAL USE DISTRICT. There shall be
8 a special use district known as the Fourth Street, Freelon Street, Zoe Street and Welsh Street, as
9 designated on Sectional Map No. 1SU of the Zoning Map of the City and County of San Francisco. The
10 following controls shall apply within this Special Use District.

11 (a) Conversion of Previously Approved But Not Yet Constructed Live/Work Units to Market-
12 Rate Housing. The developer of previously approved but not yet constructed live/work units may
13 convert the units to market-rate residential units and construct additional new market-rate residential
14 units on the site provided that (i) the developer, at his, her or its sole expense, constructs affordable
15 housing off-site with square footage equal to 15% of the total residential units proposed to be
16 constructed-offsetting the developer's site acquisition costs against the costs of construction, and (ii)
17 the affordable housing is constructed on land owned or purchased by the developer and is located in
18 the South of Market Area or the North of Market Residential Special Use District,, (iii) the off-site
19 affordable housing building, after offsetting the land acquisition costs, shall contain a minimum of 56
20 units of no less than 400 square feet each, (iv) the off-site affordable units shall be rental units, (v) the
21 initial marketing plan for the off-site affordable rental units shall be certified by the Mayor's Office of
22 Housing with top priority given to current Single Room Occupancy tenants with low- and very-low
23 income, (vi) the affordable rental units shall remain affordable for 55 years or the life of the building,
24 whichever is longer, (vii) upon completion, the-off-site affordable residential building and associated
25 land shall be owned, managed and operated by a nonprofit housing organization, and (viii) the deed to

1 the off-site affordable housing building and the associated land shall revert to the City if the nonprofit
2 housing organization is dissolved. The nonprofit housing organization shall be responsible for
3 securing all required City approvals and permits for the affordable housing project.

4 For purposes of this section, “affordable” shall be defined as affordable to low- and lower-
5 income households with income not exceeding 40% of San Francisco’s median income. The developer
6 shall pay to the San Francisco School District School Fees for the new market rate units less the
7 amount of school fees already paid, to the District for the previously-approved live/work units.

8 (b) Principal Permitted Uses. The principal permitted uses in this Special Use District shall
9 be a residential and retail mixed-use development. Office use is not allowed, except for office use
10 accessory to a permitted retail use. Live/work is not permitted in this Special Use District. The
11 construction of market-rate residential units is permitted only if the provisions of subsection (a) above
12 are met.

13 (c) Dwelling Unit Density. The dwelling unit density shall be governed by the allowable
14 building envelope..

15 (d) Rear Yard. The rear yard requirement shall be 15% of the lot depth. However, the
16 Zoning Administrator may administratively modify the location of the required rear yard, provided that
17 a comparable amount of open space is provided elsewhere in this Special Use District or within the
18 development where it is more accessible to the residents of the development.

19 (e) Usable Open Space. The usable open space shall be 36 square feet per unit for private
20 usable open space, or 48 square feet per unit for common usable open space.

21 (f) Sunlight Exposure Requirements. The requirements of Section 135(g)(2) and Section
22 140 of this Code shall not apply to this Special Use District.

23 (g) Off-Street Parking. One off-street parking space shall be provided for each dwelling
24 unit. The off-street parking space shall meet the standards set forth in Section 154 of this Code.

25

1 (h) Height and Bulk Restrictions. The base height and bulk applicable to this Special Use
2 District is 50-X. An exception to the height requirement up to a maximum of 85 feet may be approved
3 pursuant to subsection (j) of this Section.

4 (i) Setbacks. No front, side, or rear setback shall be required in this Special Use District.

5 (j) Project Approval. The Planning Commission shall conduct a duly noticed public
6 hearing on the application for an alteration to the previously approved live/work project. No
7 conditional use authorization is required for a project in this Special Use District meeting the
8 requirements set forth in subsection (a) of this Section. The Planning Commission may grant an
9 exception to the 50' height limit up to 85 feet and may approve the project, provided that the
10 Commission finds that (i) the height of the building or structure does not exceed 85 feet (ii) the project
11 complies with the provisions of subsection (a) of this Section, (iii) the proposed project meets the
12 additional criteria set forth in Section 303(c) of this Code, and (iv) the project sponsor has provided
13 evidence that a mechanism will be in place to assure completion of the off-site affordable housing. The
14 creation of this Special Use District shall not limit the discretion vested in the Planning Commission in
15 its review of the project.

16 (k) Issuance of Certificate of Occupancy. No Certificate of Occupancy for a market-rate
17 housing development in this Special Use District constructed in compliance with the provisions of
18 subsection (a) above shall be issued until such time as construction of the off-site affordable housing
19 development has been completed; provided, however, that a certificate of occupancy may be issued if
20 the failure to complete the off-site affordable housing development is through no fault of the developer
21 and is solely as a result of fire, earthquake or other natural disaster or legal challenge to the affordable
22 housing building and, the developer provides evidence satisfactory to the Zoning Administrator and
23 acceptable to the nonprofit housing organization that such off-site affordable units will be constructed
24 on land owned or purchased by the developer within eighteen months after the fire, earthquake or other
25 natural disaster or after resolution of the legal challenge.

1 (l) Notice. Upon receipt of an alteration permit application for a residential development
 2 meeting the requirements of subsection (a) of this Section, the Planning Department shall provide
 3 notice of the development to property owners and occupants within a 300 foot radius of this Special
 4 Use District.

5 Section 3. The San Francisco Planning Code is hereby amended by adding Section
 6 263.16, to read as follows:

7 SEC. 263.16. SPECIAL HEIGHT AND BULK EXCEPTIONS: FOURTH AND FREELON
 8 STREETS SPECIAL USE DISTRICT.

9 (a) In order to provide additional housing opportunities for low- and lower-income
 10 households, in the Fourth and Freelon Streets Special Use District established pursuant to Section
 11 249.23 of this Code and within the boundaries of the 50/85-X height and bulk district as designated on
 12 Sectional Map 1H of the Zoning Map of the City and County of San Francisco, an exception to the 50
 13 foot base height limit up to 85 feet may be approved by the Planning Commission in accordance with
 14 subsection (j) of Section 249.23 of this Code.

15 Section 4. SEVERABILITY.

16 If any part or provision of this ordinance, or the application thereof to any person or
 17 circumstance, is held invalid, the remainder of this ordinance, including the application of such
 18 part or provision to other persons or circumstances, shall not be affected thereby and shall
 19 continue in full force and effect. To this end, provisions of this ordinance are severable.

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

22 By _____
 23 JUDITH A. BOYAJIAN
 24 Deputy City Attorney

25