

REVISED LEGISLATIVE DIGEST
(Amended in Committee, 5/16/2022)

[Planning, Administrative, Subdivision Codes; Zoning Map - Density Exception in Residential Districts]

Ordinance amending the Planning Code to rezone all Residential, One Family (RH-1) zoning districts, except for Residential, One Family, Detached (RH-1(D)) districts, to Residential, Two Family (RH-2) zoning districts; to rezone the RH-1(D) districts to a new class of residential district called Residential, Two Family, Detached (RH-2(D)) districts; and to provide a density limit exception to permit up to four dwelling units per lot, and up to six dwelling units per lot in Corner Lots, in all RH (Residential, House) zoning districts, subject to certain requirements, including among others the replacement of protected units; amending the Administrative Code to require new dwelling units constructed pursuant to the density limit exception to be subject to the rent increase limitations of the Rent Ordinance; amending the Subdivision Code to authorize a subdivider that is constructing new dwelling units pursuant to the density exception to submit an application for condominium conversion or a condominium map that includes the existing dwelling unit and the new dwelling units that constitute the project; affirming the Planning Department’s determination under the California Environmental Quality Act; and making findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

Existing Law

The Planning Code sets forth different zoning districts throughout the City, where different uses are permitted, conditionally permitted, or prohibited, and where various controls (such as height, bulk, setbacks, etc.) apply. Residential, House (RH) districts are “intended to recognize, protect, conserve and enhance areas characterized by dwellings in the form of houses, usually with one, two or three units with separate entrances, and limited scale in terms of building width and height. Such areas tend to have similarity of building styles and predominantly contain large units suitable for family occupancy, considerable open space, and limited nonresidential uses.” (Planning Code Section 209.1.) The RH districts consist of five separate classes of districts, depending on the number of units permitted in each:

- RH-1(D) Districts: One-Family (Detached Dwellings); RH-1 Districts: One-Family; and RH-1(S) Districts: One-Family with Minor Second Unit, which are generally characterized by single-family houses;
- RH-2 Districts: Two-Family, which generally consist of one-family and two-family houses;

- RH-3 Districts: Three-Family, in which structures with three units are common in addition to one-family and two-family houses.

Currently, San Francisco property owners wishing to convert tenancy-in-common (“TIC”) residential units into condominium units may not convert more than two TIC units due to the conclusion and expiration of the Expedited Condominium Conversion Program, Subdivision Code Sec. 1396.4 (“ECP”), in January 2020 and the suspension of the condominium conversion lottery until January 1, 2024. While the ECP was in effect, the program had authorized property owners to convert four to six TIC units into condominium units subject to compliance with certain requirements in the Subdivision Code.

Amendments to Current Law

This ordinance amends the Planning Code and the Zoning Map to rezone all existing RH-1 districts to RH-2 (Residential, Two Family) districts, except for RH-1(D) districts, which the ordinance rezones to a new class of district called RH-2(D) – Residential, Two Family (Detached). Further, the ordinance creates a density limit exception to permit up to four units per lot in all RH-2, RH-2(D) or RH-3 (Residential, Three Family) districts, and up to six units in Corner Lots, as defined under the Planning Code, for projects that are not seeking or receiving a density bonus. These units would be permitted in addition to any Accessory Dwelling Units permitted under the Code. The ordinance makes projects utilizing the density exception and that provide at least four dwelling units subject to a minimum Rear Yard requirement of the greater of 30% of lot depth or 15 feet; otherwise, it establishes that all other building standards applicable under the Planning Code continue to apply.

The ordinance requires that to receive the density exception, property owners must demonstrate that they have owned the lot for which they are seeking the density exception for a minimum of five years prior to the time of the submittal of their application. The ordinance allows property owners to apply the duration of ownership of Eligible Predecessors from whom they may have inherited the property towards that five-year ownership requirement. It defines Eligible Predecessors to include “blood, adoptive, or step family relationship[s],” specifically, grandparents, parents, siblings, children, grandchildren, the spouse or registered domestic partner of such relations, or the property owner’s spouse or registered domestic partner.

It also provides that in order to receive this density exception, projects must demonstrate to the satisfaction of the Environmental Review Officer that they do not cause a substantial adverse change in the significance of an historic resource as defined by the California Environmental Quality Act (CEQA). Further, the ordinance incorporates state law requirements that are applicable to these projects – specifically, the requirements of Section 66300(d) of the California Government Code that projects subject to the density exception including produce at least as many dwelling units as they would demolish; replace all protected units; and offer existing occupants of any protected units that are lower income

households relocation benefits and a right of first refusal for a comparable unit, as those terms are defined under that state law. The ordinance also requires that all new units developed under the density exception be subject to rent control, and regulated under the Rent Board. The ordinance requires applicants for the density exception to enter into a regulatory agreement with the City, agreeing that the extra density they are receiving constitutes adequate consideration to waive their rights under the Costa-Hawkins Rental Housing Act. (California Civil Code Sections 1954.50 et seq.) The ordinance also establishes minimum unit sizes for the new units, providing that at least one of the dwelling units resulting from the exception must have two or more bedrooms, or a square footage equal to no less than 1/3 of the floor area of the largest unit on the lot.

The ordinance amends the Subdivision Code to authorize a subdivider of a one unit building that has obtained a permit to build one or more new dwelling units under the exception, resulting in two or more dwelling units, to submit an application for condominium conversion or a condominium map that includes the existing dwelling unit as well as the new dwelling units created under the density exception. Applicants must meet certain requirements specified in the ordinance.

The ordinance provides incentives for property owners who sign an affidavit stating their intent to reside on their properties for three years after the issuance of the Certificate of Final Completion and Occupancy (“CFCO”) for the new dwelling units. It establishes that permit fees for pre-application Historic Resource Assessments shall be waived for these property owners and it also limits the condominium conversion authorization described above to these owners only.

The ordinance authorizes the Planning Department, the Rent Board, and the Department of Public Works to adopt regulations to implement it, and the City Attorney’s Office to remove all remaining references to RH-1 districts from the Municipal Code. The ordinance requires the Planning Department to prepare a report summarizing all applicable design standards in residential districts in the City, and submit such report to the Board for its consideration within six months from the effective date of the ordinance.

Background Information

The ordinance contains ample findings setting forth the need to promote housing development in San Francisco. It states that the City faces a severe crisis of housing affordability and availability, characterized by dramatic increases in rent and home sale prices over recent years and historic underproduction of new housing units across income levels, particularly in the City’s western neighborhoods and RH zoning districts. It further explains that adopting policies that promote construction of small multifamily buildings in low density areas to support “missing middle” housing opportunities was one of the recommendations of the City’s COVID-19 Economic Recovery Task Force.

This ordinance is a substitute for the ordinance that was introduced on July 27, 2021. The ordinance includes new findings that are necessary to allow the Board to expedite its consideration and approval of the ordinance with respect to the California Environmental Quality Act (“CEQA”), as authorized under Senate Bill 10 (Wiener), which took effect on January 1, 2022 (“SB 10”). Under SB 10, an ordinance that increases the allowed zoning up to 10 units per parcel in a “transit-rich area” or an “urban infill site” (which includes all of San Francisco) would not constitute a “project” under CEQA. Such ordinances would be exempt from CEQA review. However, this exemption applies only to the ordinance, as individual housing projects proposed within a zone subject to an SB 10 ordinance still require review under CEQA.

The substitute ordinance contains other changes compared to the July 27, 2021 ordinance, such as the rezoning of RH-1 districts to RH-2, the requirements regarding historic resources under CEQA, and authorizing certain property owners who utilize the density exception to apply for condominium conversion or condominium maps that include existing residential units as well as new units created pursuant to the density exception.

This updated Legislative Digest includes amendments that were adopted at a hearing of the Land Use and Transportation Committee of the Board of Supervisors, on March 7, 2022. These amendments include:

- Rezoning all RH-1(D) districts to a new RH-2(D) class of districts, and corresponding amendments to Table 209.1;
- Requiring that all new units created under the density exception authorized under new Section 207(c)(8) be subject to rent control, and that the applicants for the exception enter into regulatory agreements with the City for purposes of memorializing the applicability of rent control;
- New findings in support of the rent control requirement;
- Clarification that only the subdivider of a one unit building that has obtained a permit to build new dwelling units utilizing the density exception shall be eligible to convert the existing unit to a condominium and/or include the existing unit in a condominium map application; and
- The requirement that the Planning Department prepare a report summarizing all applicable design standards in residential districts in the City within six months.

This updated Legislative Digest also includes descriptions of amendments that were adopted at a hearing of the Land Use and Transportation Committee on April 11, 2022. These amendments include:

- The waiver of the Historic Resource Assessment fees for owners who sign an affidavit of intent to reside on their properties, for three years after issuance of the CFOC;
- An amendment to authorize condominium conversions only for that same group of property owners;

- New requirements regarding minimum unit sizes for the new units; and
- New findings related to these amendments.

At the Land Use and Transportation Committee hearing held on April 25, 2022, the committee duplicated Board of Supervisors File No. 210866 and amended it with amendments offered by Supervisor Dean Preston. This updated Legislative Digest reflects those amendments, now in Board of Supervisors File No. 220446. These amendments include:

- The requirement that to receive the density exception property owners must demonstrate that they have owned the lot for which they are seeking the density exception for a minimum of five years prior to the time of the submittal of their application; and
- New findings related to this amendment.

This Updated Legislative Digest reflects amendments that were made at the Land Use and Transportation Committee on May 9, 2022. These amendments included:

- A provision that property owners may apply the duration of ownership of the entities or persons from whom they inherited their properties towards the five-year ownership requirement established by the ordinance; and
- New findings related to this amendment.

This Updated Legislative Digest reflects amendments that were made at the Land Use and Transportation Committee on May 15, 2022. These amendments included:

- An amendment narrowing down the set of persons or entities from whom the property owner may have inherited the property and whose duration of property the owner may count towards the ordinance five-year ownership requirement, from “persons or entities,” generally, to designated “blood, adoptive or step family relationships,” as set forth in the definition of “Eligible Predecessor.”
- Amendments to the findings related to the inheritance provision, to conform those findings to the updated inheritance provision related to Eligible Predecessors.

n:\legana\as2022\2200012\01602290.docx