

1 [Planning, Administrative Codes - Dwelling Unit Density Exception in Residential Districts and
2 Rent Control of Bonus Dwelling Units]

3 **Ordinance amending the Planning Code to provide a density limit exception for Lots in**
4 **all RH (Residential, House) zoning districts to permit additional units (“Bonus Dwelling**
5 **Units”), up to four total dwelling units per lot exclusive of accessory dwelling units,**
6 **and to require that if such Bonus Dwelling Units are ever sold, the sales prices would**
7 **not exceed an amount determined to be affordable at 100% of area median income;**
8 **amending the Administrative Code to limit initial rental rates and rent increases for**
9 **Bonus Dwelling Units; affirming the Planning Department’s determination under the**
10 **California Environmental Quality Act; and making findings of consistency with the**
11 **General Plan, and the eight priority policies of Planning Code, Section 101.1, and**
12 **findings of public necessity, convenience, and welfare under Planning Code, Section**
13 **302.**

14 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
15 **Additions to Codes** are in *single-underline italics Times New Roman font*.
16 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
17 **Board amendment additions** are in double-underlined Arial font.
18 **Board amendment deletions** are in ~~strikethrough Arial font~~.
19 **Asterisks (* * * *)** indicate the omission of unchanged Code
20 subsections or parts of tables.

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

22 Section 1. CEQA and Land Use Findings.

23 (a) The Planning Department has determined that the actions contemplated in this
24 ordinance comply with the California Environmental Quality Act (California Public Resources
25 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of

1 Supervisors in File No. 211202 and is incorporated herein by reference. The Board affirms
2 this determination.

3 (b) On _____, the Planning Commission, in Resolution No. _____,
4 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
5 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
6 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
7 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

8 (c) Pursuant to Planning Code Section 302, this Board finds that these Planning Code
9 amendments will serve the public necessity, convenience, and welfare for the reasons set
10 forth in Planning Commission Resolution No. _____, and the Board adopts such
11 reasons as its own. A copy of said resolution is on file with the Clerk of the Board of
12 Supervisors in File No. _____ and is incorporated herein by reference.

13

14 Section 2. Background and Findings.

15 (a) According to the Planning Department's 2020 Housing Inventory, housing costs in
16 San Francisco have increased dramatically since the Great Recession of 2008-2009, with the
17 median sale price for a two-bedroom house more than tripling from 2011 to 2021, from
18 \$493,000 to \$1,580,000. This increase in housing costs includes 9% growth from 2019 to
19 2020 alone, even in the face of the COVID-19 pandemic.

20 (b) From 2011 to 2019, the median rental rate for a two-bedroom apartment similarly
21 increased, nearly doubling from \$2,570 to \$4,500 per month. Despite the COVID-19
22 pandemic and a temporarily dampened housing market, the median rental rate in 2020 was
23 \$3,570. The 2019 and 2020 median rental rates far exceed the \$2,664 rental rate of a two-
24 bedroom apartment priced to be affordable for a household at 100% of San Francisco's Area
25

1 Median Income (“AMI”) in 2021, according to the Mayor’s Office of Housing and Community
2 Development.

3 (c) According to the Planning Department’s 2020 Housing Inventory, while San
4 Francisco met 148% of its 2015-2022 Above Moderate (greater than 120% of AMI) housing
5 goal as of 2020, it met only 39% of its Low Income (less than 80% of AMI) and Very Low
6 Income (less than 50% of AMI) housing goals, and only 27% of its Moderate Income (80-
7 120% of AMI) housing goal, as of 2020.

8 (d) In the near future, San Francisco is likely to face steeper challenges to meet its
9 Moderate Income housing goal in light of an anticipated 250% increase in the Regional
10 Housing Needs Allocation for Moderate Income households in San Francisco in the upcoming
11 2023-2031 Housing Element cycle, according to the State of California’s revised population
12 growth projections.

13 (e) According to the Planning Department’s Housing Balance Report No. 12, many
14 Supervisorial Districts are experiencing a Negative Cumulative Housing Balance, meaning
15 that the number of units removed from protected status (for example, by means of Ellis Act
16 evictions, Owner Move-In evictions, or housing demolition) exceeds the number of new
17 affordable housing units added to that district in a given period. The following San Francisco
18 Supervisorial Districts, all of which have a large number of single-family homes, had Negative
19 Cumulative Housing Balances between 2011-2020: District 4 (-73.9%), District 1 (-46.8%),
20 District 11 (-18.8%), District 8 (-13.8%), and District 2 (-10.6%).

21 (f) As set forth in Board of Supervisors Resolution No. 069-22, on file in File No.
22 211207, the Board of Supervisors has expressed its commitment to support low- and
23 moderate-income homeowners as an essential component of addressing the housing
24 affordability and housing stability crisis, and the Board of Supervisors has urged the Planning
25 Department and other City agencies to create a Housing Development Incentive Program for

1 Homeowners (“Program”) that supports San Francisco residents to build new housing, which
2 would include technical assistance (e.g., for predevelopment, construction, and long-term
3 property management) and financial assistance (e.g., grants, no- or low- interest loans), and
4 streamlined permitting through pre-approved plans, with the goal to increase the number of
5 housing units developed by homeowners and local small property owners. The Program
6 would target low- and moderate- income homeowners in RH (Residential, House) Districts
7 and in Sensitive Communities, as defined by the UC Berkeley Urban Displacement Project,
8 and the Program would include financial incentives for homeowners who rent or sell the new
9 units to low- and moderate-income households at an affordable level.

10 (g) This ordinance allows the development of up to four units throughout the City (as
11 shown on the Zoning Maps ZN 01 through ZN 14) at the heights currently specified in the
12 City’s Zoning Maps (Height Maps HT 01 through HT 14). All parcels affected by this
13 ordinance are considered urban infill sites under California Government Code Section
14 65913.5(e)(3). This Board therefore declares that this ordinance is adopted pursuant to
15 California Government Code Section 65913.5.

16 (h) This Board acknowledges that new housing developments approved under this
17 ordinance would be subject to the requirements of California Government Code Section
18 66300(d), such as the obligation to replace all existing or demolished protected units and
19 protections for existing occupants, including, for lower income occupants of protected units,
20 relocation benefits and a right of first refusal for a comparable unit available in the new
21 housing development at an affordable rent or cost, as provided by state law.

22 (i) This Board finds that this ordinance is consistent with San Francisco’s obligation to
23 affirmatively further fair housing pursuant to California Government Code Section 8899.50, by
24 increasing residential density in a manner that meaningfully addresses significant disparities
25 in housing needs and access to opportunity and historically exclusionary density limits,

1 namely, by providing a density exception for projects that comply with the requirements of
2 Section 66300(d) of the California Government Code and enter into regulatory agreements
3 with the City acknowledging, in consideration for the density exception, that any Bonus
4 Dwelling Unit sold shall be sold at sales prices affordable to families at 100% of San
5 Francisco AMI; and if any Bonus Dwelling Unit is rented that the initial rents shall be rates
6 affordable to families at 100% of San Francisco AMI and that subsequent rents shall be
7 subject to local rent control, notwithstanding the Costa-Hawkins Rental Housing Act
8 (California Civil Code Sections 1954.50 et seq.).
9

10 Section 3. Articles 1, 2, and 4 of the Planning Code are hereby amended by revising
11 Sections 102 (with a new definition placed in alphabetical sequence), 207, and 209.1, and
12 adding Section 436, to read as follows:
13

14 **SEC. 102. DEFINITIONS.**

15 * * * *

16 *Dwelling Unit, Bonus.* A Bonus Dwelling Unit is any Dwelling Unit that is not an Accessory
17 *Dwelling Unit and which is permitted to be constructed in an RH District, contingent upon compliance*
18 *with Section 207(c)(8), in excess of the number of units otherwise permitted by right in the applicable*
19 *RH District as set forth in Table 209.1. For example, a property owner with a lot in an RH-1 District is*
20 *permitted to construct one unit per lot, according to Table 209.1. If the property owner elects to*
21 *comply with Section 207(c)(8) and is thereby authorized to construct four units, the three units*
22 *authorized under Section 207(c)(8) in excess of the one unit permitted under the RH-1 column of Table*
23 *209.1 shall be deemed Bonus Dwelling Units. Each Bonus Dwelling Unit shall have a minimum of two*
24 *bedrooms and shall be subject to the requirements of Planning Code Section 436 and Administrative*
25 *Code Section 37.3(h). In addition, each Bonus Dwelling Unit shall be subject to a regulatory*

1 agreement as set forth in Section 207(c)(8)(B) (“Regulatory Agreement”).

2 * * * *

3 **SEC. 207. DWELLING UNIT DENSITY LIMITS.**

4 * * * *

5 **(c) Exceptions to Dwelling Unit Density Limits.** An exception to the calculations
6 under this Section 207 shall be made in the following circumstances:

7 * * * *

8 **(8) Residential Density in RH Districts.**

9 **(A) Density Exception.** *Following the execution of a Regulatory Agreement as*
10 *set forth in subsection (c)(8)(B), projects located in RH Districts that are not seeking or receiving a*
11 *density bonus under Planning Code Sections 206.5 or 206.6, or California Government Code Sections*
12 *65915 et seq., shall receive an exception from residential density limits authorizing up to four dwelling*
13 *units per lot, not inclusive of any Accessory Dwelling Units as permitted under this Section 207.*
14 *Projects using the density exception of this subsection (c)(8) shall be subject to the Height and Bulk*
15 *Limits, Rear Yard, and Side Yard standards applicable to the RH-3 zoning district as set forth in*
16 *Section 209.1.*

17 **(B) Applicability of Rent Ordinance; Regulatory Agreements.** *Each Bonus*
18 *Dwelling Unit shall be subject to an agreement that has been approved as to form by the City*
19 *Attorney’s Office (“Regulatory Agreement”) and contains, at minimum: (i) a statement that the new*
20 *units created pursuant to the density exception are not subject to the Costa-Hawkins Rental Housing*
21 *Act (California Civil Code Sections 1954.50 et seq.) or corresponding portions of Chapter 37 of the*
22 *Administrative Code, because, under California Civil Code Section 1954.52(b), the property owner has*
23 *entered into this agreement with the City in consideration for an exception from residential density*
24 *limits authorizing up to four dwelling units per lot, or other direct financial contribution or other form*
25

1 of assistance specified in California Government Code Sections 65915 et seq.; (ii) a description of the
 2 exception of residential density or other direct financial contribution or form of assistance provided to
 3 the property owner; (iii) a statement of the limitations on sales prices, rental rates, and rental rate
 4 increases applicable to Bonus Dwelling Units; and (iv) a description of the remedies for breach of the
 5 agreement and other provisions to ensure implementation and compliance with the agreement. The
 6 property owner and the Planning Director (or the Planning Director’s designee), on behalf of the City,
 7 shall execute the Regulatory Agreement. Prior to the City’s issuance of the First Construction
 8 Document for the project, as defined in Section 107A.13.1 of the San Francisco Building Code, the
 9 executed Regulatory Agreement or a memorandum thereof shall be recorded to the title records in the
 10 Office of the Assessor-Recorder against the property and shall be binding on all future owners and
 11 successors in interest.

12 * * * *

13 **SEC. 209.1. RH (RESIDENTIAL, HOUSE) DISTRICTS.**

14 These Districts are intended to recognize, protect, conserve, and enhance areas
 15 characterized by dwellings in the form of houses, usually with one, two, or three units with
 16 separate entrances, and limited scale in terms of building width and height. Such areas tend
 17 to have similarity of building styles and predominantly contain large units suitable for family
 18 occupancy, considerable open space, and limited nonresidential uses. The RH Districts are
 19 composed of five separate classes of districts, as follows:

20 * * * *

21 **Table 209.1**
 22 **ZONING CONTROL TABLE FOR RH DISTRICTS**

| Zoning Category | § References | RH-1(D) | RH-1 | RH-1(S) | RH-2 | RH-3 |
|--------------------|--------------|---------|------|---------|------|------|
| BUILDING STANDARDS | | | | | | |

1 **Massing and Setbacks**

| | | | | |
|---|---|--|---|---|
| <p>2 3 4 5 6 7 8 9 10 11 12 13 14</p> <p>Height and Bulk Limits <u>(10)</u></p> | <p>§§ 102, 105, 106, 250-252, 253, 260, 261, 261.1, 270, 271. See also Height and Bulk District Maps.</p> | <p>No portion of a Dwelling may be taller than 35 feet. Structures with uses other than Dwellings may be constructed to the prescribed height limit, which is generally 40 feet. Per § 261 the height limit may be decreased or increased based on the slope of the lot.</p> | <p>No portion of a Dwelling may be taller than 40 feet. Structures with uses other than Dwellings may be constructed to the prescribed height limit. Per § 261 the height limit may be decreased based on the slope of the lot.</p> | <p>Varies, but generally 40 feet. Height sculpting on Alleys per § 261.1.</p> |
|---|---|--|---|---|

15 * * * *

| | | | |
|--|--------------------|--|---|
| <p>16 17 18</p> <p>Rear Yard <u>(10)</u></p> | <p>§§ 130, 134</p> | <p>30% of lot depth, but in no case less than 15 feet.</p> | <p>45% of lot depth or average of adjacent neighbors. If averaged, no less than 25% or 15 feet, whichever is greater.</p> |
|--|--------------------|--|---|

| | | | |
|---|--------------------|--|---------------------|
| <p>19 20 21 22 23 24</p> <p>Side Yard <u>(10)</u></p> | <p>§§ 130, 133</p> | <p>Required for lots 28 feet and wider. Width of side setback depends on width of lot.</p> | <p>Not Required</p> |
|---|--------------------|--|---------------------|

25 * * * *

1 RESIDENTIAL STANDARDS AND USES

2 * * * *

3 Residential Uses

| | | | | | | |
|--|-----------------------------|-----------------------------------|--|---|---|---|
| <p>4 Residential 5 Density, 6 Dwelling Units 7 (6)(11)</p> | <p>8 §§ <u>102, 207</u></p> | <p>9 One unit 10 per lot.</p> | <p>11 P up to 12 one unit 13 per lot. C 14 up to one 15 unit per 16 3,000 17 square 18 feet of lot 19 area, 20 with no 21 more 22 than 23 three 24 units per 25 lot.</p> | <p>P up to two units per lot, if the second unit is 600 sq. ft. or less. C up to one unit per 3,000 square feet of lot area, with no more than three units per lot.</p> | <p>P up to two units per lot. C up to one unit per 1,500 square feet of lot area.</p> | <p>P up to three units per lot. C up to one unit per 1,000 square feet of lot area.</p> |
|--|-----------------------------|-----------------------------------|--|---|---|---|

* * * *

* * * *

(10) Lots that include two or more Bonus Dwelling Units in the RH-1(D), RH-1, RH-1(S), and RH-2 zoning districts shall be subject to the Height and Bulk Limits, Rear Yard, and Side Yard standards applicable in the RH-3 zoning district.

(11) P for up to four dwelling units pursuant to Section 207(c)(8).

SEC. 436. SALES OF BONUS DWELLING UNITS.

Any Bonus Dwelling Unit that is offered for sale shall be offered at a sales price that does not exceed the maximum sales price determined by the Mayor's Office of Housing and Community Development ("MOHCD") to be affordable for a buyer at 100% of the median income for San

1 Francisco as published annually by MOHCD and derived in part from income limits and area median
2 income published by the United States Department of Housing and Urban Development for the County
3 of San Francisco (“AMI”). The maximum sales price shall be determined using an affordable sales
4 price methodology established and approved by MOHCD. MOHCD may adjust the AMI and maximum
5 sales price based on a household size appropriate for the Bonus Dwelling Unit and number of
6 bedrooms. The owner of the Bonus Dwelling Unit shall obtain MOHCD’s approval of the maximum
7 sales price prior to any marketing or sale of a Bonus Dwelling Unit. The requirements and limitations
8 in this Section 436 shall apply to any Bonus Dwelling Unit while the building containing such a Bonus
9 Dwelling Unit remains in existence in or upon the subject property, notwithstanding any modifications
10 to such a building. These requirements and limitations shall be memorialized in a notice or declaration
11 of special restrictions that is recorded to the title records in the Office of the Assessor-Recorder for the
12 real property containing the Bonus Dwelling Unit.

13

14 Section 4. Chapter 37 of the Administrative Code is hereby amended by revising
15 Sections 37.2 and 37.3, to read as follows:

16 **SEC. 37.2. DEFINITIONS.**

17 * * * *

18 (r) **Rental Units.** All residential dwelling units in the City and County of San Francisco
19 together with the land and appurtenant buildings thereto, and all housing services, privileges,
20 furnishings, and facilities supplied in connection with the use or occupancy thereof, including
21 garage and parking facilities.

22 * * * *

23 The term “rental units” shall not include:

24 * * * *

25

1 (4) Except as provided in subsections (A)-(~~DE~~), dwelling units whose rents are
2 controlled or regulated by any government unit, agency, or authority, excepting those
3 unsubsidized and/or unassisted units which are insured by the United States Department of
4 Housing and Urban Development; provided, however, that units in unreinforced masonry
5 buildings which have undergone seismic strengthening in accordance with Building Code
6 Chapters 16B and 16C shall remain subject to the Rent Ordinances to the extent that the
7 ordinance is not in conflict with the seismic strengthening bond program or with the program's
8 loan agreements or with any regulations promulgated thereunder;

9 * * * *

10 (E) The term "rental units" shall include Bonus Dwelling Units constructed
11 pursuant to Section 207(c)(8) of the Planning Code.

12
13 **SEC. 37.3. RENT LIMITATIONS.**

14 (a) Rent Increase Limitations for Tenants in Occupancy. Landlords may impose rent
15 increases upon tenants in occupancy only as provided below and as provided by subsections
16 37.3(d), ~~and~~ 37.3(g), and 37.3(h):

17 * * * *

18 (d) **Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50- et seq.).**

19 Consistent with the Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50- et seq.)
20 and regardless of whether otherwise provided under Chapter 37:

21 (1) **Property Owner Rights to Establish Initial and All Subsequent Rental**
22 **Rates for Separately Alienable Parcels.**

23 (A) An owner ~~of~~ residential real property may establish the initial and
24 all subsequent rental rates for a dwelling or a unit which is alienable separate from the title to
25 any other dwelling unit or is a subdivided interest in a subdivision as specified in subdivision

1 (b), (d), or (f) of Section 11004.5 of the California Business and Professions Code. The
2 owner's right to establish subsequent rental rates under this paragraph shall not apply to a
3 dwelling or unit where the preceding tenancy has been terminated by the owner by notice
4 pursuant to California Civil Code Section 1946 or has been terminated upon a change in the
5 terms of the tenancy noticed pursuant to California Civil Code Section 827; in such instances,
6 the rent increase limitation provisions of Chapter 37 shall continue to apply for the duration of
7 the new tenancy in that dwelling or unit.

8 * * * *

9 (D) An owner’s right to establish subsequent rental rates under subsection
10 37.3(d)(1) shall not apply to a Bonus Dwelling Unit that is created pursuant to the density exception set
11 forth in Section 207(c)(8) of the Planning Code.

12 * * * *

13 (g) **New Construction and Substantial Rehabilitation.**

14 (1) An owner of a residential dwelling or unit which is newly constructed and
15 first received a certificate of occupancy after the effective date of Ordinance No. 276-79 (June
16 13, 1979), or which the Rent Board has certified has undergone a substantial rehabilitation,
17 may establish the initial and all subsequent rental rates for that dwelling or unit, except:

- 18 (A) where rent restrictions apply to the dwelling or unit under
19 Sections 37.3(d) or 37.3(f);
- 20 (B) where the dwelling or unit is a replacement unit under
21 Section 37.9A(b);
- 22 (C) as provided for certain categories of Accessory Dwelling Units under
23 Section 37.2(r)(4)(D); ~~and~~
- 24 (D) as provided in a development agreement entered into by the City
25 under Administrative Code Chapter 56-; and

1 (E) as provided for Bonus Dwelling Units under Section 37.3(h).

2 **(h) Limitations on Rental Rates and Rental Rate Increases of Bonus Dwelling Units.**

3 (1) Each Bonus Dwelling Unit created pursuant to the density exception set forth in
4 Section 207(c)(8) of the Planning Code shall be offered at an initial base rent determined by the
5 Mayor’s Office of Housing and Community Development (“MOHCD”) to be affordable for households
6 earning 100% of Area Median Income (“AMI”), as set forth in the table titled “Maximum Monthly
7 Rent By Unit Type,” as filed with MOHCD annually for the Inclusionary Housing Program and
8 available for viewing on the MOHCD website.

9 (2) After the establishment of the initial base rent, the owner of a Bonus Dwelling Unit
10 may impose rent increases upon a tenant in occupancy only as provided in Section 37.3(a).

11
12 Section 5. Regulations. The Planning Department and/or the Rent Board shall have
13 authority to adopt regulations to implement this ordinance.

14
15 Section 6. No Conflict with Federal or State Law. Nothing in this ordinance shall be
16 interpreted or applied so as to create any requirement, power, or duty in conflict with any
17 federal or state law.

18
19 Section 7. Effective Date. This ordinance shall become effective 30 days after
20 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
21 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
22 of Supervisors overrides the Mayor’s veto of the ordinance.

23
24 Section 8. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
25 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,

1 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
2 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
3 additions, and Board amendment deletions in accordance with the “Note” that appears under
4 the official title of the ordinance.

5

6 APPROVED AS TO FORM:
7 DAVID CHIU, City Attorney

8 By: /s/ Christopher Tom
9 CHRISTOPHER TOM
Deputy City Attorney

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