

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

Ordinance amending the Planning Code to provide a density limit exception for Lots in RH (Residential, House) zoning districts, to permit up to four dwelling units per lot, exclusive of accessory dwelling units and subject to maximum rental rates and sales prices determined to be affordable at 100% of area median income; amending the Administrative Code to limit initial rental rates and rental rate increases for specified units; 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.

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

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

Section 1. CEQA and Land Use Findings.

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. ____ and is incorporated herein by reference. The Board affirms this determination.

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

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

11
12 Section 2. Background and Findings.

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

18 (b) From 2011 to 2019, the median rental rate for a two-bedroom apartment similarly
19 increased, nearly doubling from \$2,570 to \$4,500 per month. Despite the COVID-19 pandemic
20 and a temporarily dampened housing market, the median rental rate in 2020 was \$3,570. The
21 2019 and 2020 median rental rate far exceed the \$2,664 rental rate of a two-bedroom
22 apartment priced to be affordable for a household at 100% of San Francisco's Area Median
23 Income ("AMI") in 2021, according to the Mayor's Office of Housing and Community
24 Development.

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

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

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

19 (f) As set forth in Board of Supervisors Resolution No. _____, on file in File No.
20 211207, the Board of Supervisors has expressed its commitment to support low- and
21 moderate-income homeowners as an essential component of addressing the housing
22 affordability and housing stability crisis, and the Board of Supervisors has urged the Planning
23 Department and other City agencies to create a Housing Development Incentive Program for
24 Homeowners ("Program") that supports San Francisco residents to build new housing, which
25 would include technical assistance (e.g., for predevelopment, construction, and long-term

property management) and financial assistance (e.g., grants, no- or low- interest loans), and streamlined permitting through pre-approved plans, with the goal to increase the number of housing units developed by homeowners and local small property owners. The Program would target low- and moderate- income homeowners in RH (Residential, House) Districts and in Sensitive Communities, as defined by the UC Berkeley Urban Displacement Project, and the Program would include financial incentives for homeowners who rent or sell the new units to low- and moderate-income households at an affordable level.

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

SEC. 102. DEFINITIONS.

* * * *

Dwelling Unit, Bonus. *A Bonus Dwelling Unit is any Dwelling Unit that is not an Accessory Dwelling Unit and which is permitted to be constructed in an RH District, contingent upon compliance with Section 207(c)(8), in excess of the number of units otherwise permitted by right in the applicable RH District as set forth in Table 209.1. For example, a property owner with a lot in an RH-1 District is permitted to construct one unit per lot, according to Table 209.1. If the property owner elects to comply with Section 207(c)(8) and is thereby authorized to construct four units, the three units authorized under Section 207(c)(8) in excess of the one unit permitted under the RH-1 column of Table 209.1 shall be deemed Bonus Dwelling Units. Each Bonus Dwelling Unit shall have a minimum of two bedrooms and shall be subject to the requirements of Planning Code Section 436 and Administrative Code Section 37.3(h). In addition, the property owner shall enter into a regulatory agreement with the City, as a condition of approval of the Bonus Density Units authorized under Section 207(c)(8) (“Regulatory Agreement”). The Regulatory Agreement shall contain the following: (a) a statement*

1 that the Bonus Density Units are not subject to the Costa Hawkins Rental Housing Act (California Civil
2 Code Section 1954.50) because, under Section 1954.52(b), the property owner has entered into this
3 agreement with the City in consideration for a waiver of residential density up to four dwelling units or
4 other direct financial contribution or other form of assistance specified in California Government Code
5 Sections 65915 et seq.; (b) a description of the waiver of residential density or other direct financial
6 contribution or form of assistance provided to the property owner; and (c) a description of the
7 remedies for breach of the agreement and other provisions to ensure implementation and compliance
8 with the agreement. The property owner and the Planning Director (or the Director's designee), on
9 behalf of the City, will execute the Regulatory Agreement, which shall be reviewed and approved by the
10 City Attorney's Office. The Regulatory Agreement shall be executed prior to the City's issuance of the
11 First Construction Document for the project, as defined in Section 107A.13.1 of the San Francisco
12 Building Code. Following execution of the Regulatory Agreement by all parties and approval by the
13 City Attorney, the Regulatory Agreement or a memorandum thereof shall be recorded to the title
14 records in the Office of the Assessor-Recorder for the real property containing the Bonus Dwelling
15 Unit and shall be binding on all future owners and successors in interest.

16 * * * *

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

18 * * * *

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

21 * * * *

22 **(8) Residential Density in RH Districts.** For projects located in RH Districts that are not
23 seeking or receiving a density bonus under Planning Code Sections 206.5 or 206.6, or California
24 Government Code Sections 65915 et seq., and have executed an agreement to comply with the
25 requirements of Planning Code Section 436 and Administrative Code Section 37.3(h), residential

density limits shall be waived for up to four dwelling units, not inclusive of any Accessory Dwelling Units as permitted under this Section 207. Projects using the density exception of this subsection (c)(8) shall be subject to the Height and Bulk Limits, Rear Yard, and Side Yard standards applicable to the RH-3 zoning district as set forth in Section 209.1.

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

These 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. The RH Districts are composed of five separate classes of districts, as follows:

* * * *

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

Zoning Category	§ References	RH-1(D)	RH-1	RH-1(S)	RH-2	RH-3
BUILDING STANDARDS						
Massing and Setbacks						
Height and Bulk Limits (10)	§§ 102, 105, 106, 250-252, 253, 260, 261, 261.1,270, 271. See also Height and Bulk District Maps.	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.		No portion of a Dwelling may be taller than 40 feet. Structures with uses other than Dwellings may be		Varies, but generally 40 feet. Height sculpting on Alleys per § 261.1.

			constructed to the prescribed height limit. Per § 261 the height limit may be decreased based on the slope of the lot.			
* * * *						
Rear Yard (10)	§§ 130, 134	30% of lot depth, but in no case less than 15 feet.	45% of lot depth or average of adjacent neighbors. If averaged, no less than 25% or 15 feet, whichever is greater.			
Side Yard (10)	§§ 130, 133	Required for lots 28 feet and wider. Width of side setback depends on width of lot.	Not Required			
* * * *						
RESIDENTIAL STANDARDS AND USES						
* * * *						
Residential Uses						
Residential Density, Dwelling Units (6)(11)	§§ 102, 207	One unit per lot.	P up to one unit per lot. C up to one unit per 3,000 square feet of lot area,	P up to two units per lot, if the second unit is 600 sq. ft. or less. C up to one	P up to two units per lot. C up to one unit per 1,500 square feet of lot area.	P up to three units per lot. C up to one unit per 1,000 square feet of lot area.

			with no more than three units per lot.	unit per 3,000 square feet of lot area, with no more than three units per lot.		
* * * *						

* * * *

(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. For any building containing a Bonus Dwelling Unit, each Bonus Dwelling Unit shall be offered for sale with a 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 Francisco as published annually by MOHCD and derived in part from income limits and area median income published by the United States Department of Housing and Urban Development for the County of San Francisco ("AMI"). The maximum sales price would be determined using an affordable sales price methodology established and approved by MOHCD. MOHCD may adjust the AMI and maximum sales price based on a household size appropriate for the Bonus Dwelling Unit and number of bedrooms. The owner of the Bonus Dwelling Unit shall obtain MOHCD's approval of the maximum sales price prior to any marketing or sale of a Bonus Dwelling Unit. These requirements and limitations shall be memorialized in a notice or declaration of special restrictions that is recorded to the title records in the Office of the Assessor-

Recorder for the real property containing the Bonus Dwelling Unit. The requirements and limitations in this Section 436 shall apply for the time during which the building remains in existence in or upon the subject property in its present state or as modified, except such requirements and limitations shall not apply to a dwelling or a unit that does not constitute a Bonus Dwelling Unit.

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

SEC. 37.2. DEFINITIONS.

* * * *

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

* * * *

The term "rental units" shall not include:

* * * *

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

1 For any building containing a Bonus Dwelling Unit, each Bonus Dwelling Unit shall be offered
2 for rent at the rate determined by the Mayor's Office of Housing and Community Development
3 ("MOHCD") for rent for households earning 100% of Area Median Income ("AMI"), as set forth in
4 the table titled "Maximum Monthly Rent By Unit Type," as filed with MOHCD annually for the
5 Inclusionary Housing Program and available for viewing on the MOHCD website, and as
6 memorialized in a notice or declaration of special restrictions that is recorded to the title records in the
7 Office of the Assessor-Recorder for the real property containing the Bonus Dwelling Unit. The
8 requirements and limitations in this subsection 37.3(h) shall apply for the time during which the
9 building remains in existence in or upon the subject property in its present state or as modified, except
10 such requirements and limitations shall not apply to a dwelling or a unit that does not constitute a
11 Bonus Dwelling Unit.

12 (1) Rental Rates at Commencement of Tenancy. At or prior to the commencement of
13 any tenancy in a Bonus Dwelling Unit, the owner of the Bonus Dwelling Unit shall offer the Bonus
14 Dwelling Unit for rent at the rate set forth by MOHCD for rent by households earning 100% of AMI, as
15 set forth in the table titled "Maximum Monthly Rent By Unit Type," as filed with MOHCD annually,
16 and as memorialized in a notice or declaration of special restrictions that is recorded to the title
17 records in the Office of the Assessor-Recorder for the real property containing the Bonus Dwelling
18 Unit.

19 (2) Rent Increases. The owner of a Bonus Dwelling Unit may impose rent increases
20 upon a tenant in occupancy only as provided in Administrative Code subsections 37.3(a) and 37.3(d).

21
22 Section 5. Effective Date. This ordinance shall become effective 30 days after
23 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
24 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
25 of Supervisors overrides the Mayor's veto of the ordinance.

1 Section 6. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
5 additions, and Board amendment deletions in accordance with the “Note” that appears under
6 the official title of the ordinance.

7
8 APPROVED AS TO FORM:
9 DAVID CHIU, City Attorney

10 By: /s/ Christopher T. Tom
11 CHRISTOPHER TOM
12 Deputy City Attorney

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