

1 [Special Use District with Special Height and Bulk Exceptions to allow an approved live/work
2 project to convert to a residential 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, off-site**
13 **affordable housing with square footage equal to 15% of the total residential units to be**
14 **constructed offset by the cost of land acquisition, (ii) the units shall be affordable to**
15 **low- and moderate income households with income not exceeding 60% of San**
16 **Francisco's median income and (iii) upon completion, the affordable housing**
17 **development shall be owned, managed and operated by a nonprofit housing**
18 **organization.**

19 Note: The entire Section is new.

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

21 Section 1. The San Francisco Planning Code is hereby amended by adding Section 249.23,
22 to read as follows:

23 Section 1. Findings. The Board of Supervisors makes the following findings:
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25

1 1. The San Francisco Planning Department publishes an annual Housing Inventory
2 Report. This Report provides a 20-year overview of the City's housing production trends,
3 housing units approved for construction, and housing units completed. Between 1990 and
4 2000, a total of 12,460 units were completed and 1,540 units were demolished or lost by
5 alterations, merger of units, or both, resulting in a net gain of 11,173 units. More than 50% of
6 the new units constructed are located in the City's Downtown, Western Addition and South of
7 Market districts.

8 2. Of the housing units constructed between 1990 and 2000, 3,492 units were for
9 low- and very low-income households and families, and only 293 were for moderate- income
10 households and families.

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

13 4. The Association of Bay Area Governments ("ABAG") has determined that San
14 Francisco's share of the regional housing need for 1999 through June 2006 is 20,374 units, or
15 2,717 units per year. San Francisco would need a total production rate of 2,852 units a year
16 through June 2006 to achieve a 5% vacancy rate over the City's housing need. Of the 20,374
17 housing units required to meet the City's housing demand between 1999 and 2006, 7,270
18 units are needed for low- or very low-income households or families, and 5,639 units are
19 needed for moderate-income households or families.

20 5. The City has a total of 20,779 publicly-assisted housing units, of which 6,096
21 units are operated by the San Francisco Housing Authority, 6,641 units are tenant-based
22 Section 8 units, and 8,042 units are in project-based Section 8 buildings. Only 3,957 units in
23 project-based Section 8 buildings are operated by nonprofit organizations. Availability of
24 tenant-based Section 8 units and for-profit project-based Section 8 buildings are in part
25 influenced by market dynamics.

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

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

18 8. The 2000 Consolidated Plan for July 1, 2000 – June 30, 2005 issued by the
19 Mayor’s Office of Community Development and the Mayor’s Office of Housing establishes that
20 extreme housing pressures face San Francisco, particularly in regard to low- and moderate-
21 income residents.

22 9. Many elements constrain housing production in San Francisco. This is
23 especially true of affordable housing. San Francisco is approximately 49 square miles, is
24 largely built out, and its geographical location at the northern end of a peninsula inherently
25 prevents substantial new development. There is no available adjacent land to be annexed, as

1 the cities located on San Francisco's southern border are also dense urban areas. Thus, new
2 construction of housing is limited to areas of the City not previously designated as residential
3 areas, infill sites, or areas with increased density. New market-rate housing absorbs a
4 significant amount of the remaining supply of land and other resources available for
5 development and thus limits the land available for affordable housing.

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

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

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

20 13. The Board of Supervisors has determined that live/work development is no
21 longer a desirable use. The Board has prohibited live/work projects on an interim basis and is
22 proposing to ban such use permanently. Therefore, allowing the conversion of an already
23 approved but as yet unbuilt live/work project to residential units would allow a more desirable
24 use to be constructed.

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

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

7 Section 2. The San Francisco Planning Code is hereby amended by adding Section
8 249.23, to read as follows:

9 **SEC. 249.23. FOURTH AND FREELON STREETS SPECIAL USE DISTRICT.**

10 There shall be a special use district known as the Fourth and Freelon Streets Special Use
11 District, encompassing the property zoned Service Light Industrial bounded by Fourth Street, Freelon
12 Street, Zoe Street and Welsh Street, as designated on Sectional Map No. ISU of the Zoning Map of the
13 City and County of San Francisco. The following controls shall apply within this Special Use District.

14 **(a) Conversion of Previously Approved But Not Yet Constructed Live/Work Units to**
15 **Market-Rate Housing.** The developer of previously approved but not yet constructed live/work units
16 may convert the units to market-rate residential units and construct additional new market-rate
17 residential units on the site provided that (i) the developer, at his, her or its sole expense, constructs
18 affordable housing off-site with square footage equal to 15% of the total residential units proposed to
19 be constructed offset by the developer's site acquisition costs, and (ii) the affordable housing is
20 constructed on land owned or purchased by the developer, and (iii) upon completion, the project shall
21 be owned, managed and operated by a nonprofit housing organization. The nonprofit housing
22 organization shall be responsible for securing all required City approvals and permits for the
23 affordable housing project.

24 For purposes of this section, "affordable" shall be defined as affordable to low- and moderate-
25 income households with income not exceeding 60% of San Francisco's median income. The live/work

1 units converted shall not be subject to the City's affordability requirements; however, in addition to
2 paying to the Unified School District School Fees for the new market-rate units, the developer shall
3 also be required to pay to the District the difference between the School Fees assessed for the
4 previously-approved live/work units and the School Fees that would be due for residential units .

5 (b) **Permitted Uses.** The permitted uses in this Special Use District shall be housing and
6 retail; a mixed-use development is permitted. Office use is not allowed. All previously approved but not
7 yet constructed live/work units may be converted to market-rate residential units and additional new
8 market-rate residential units may be constructed pursuant to the provisions of subsection (a) above.

9 (c) **Dwelling Unit Density.** The dwelling unit density shall be governed by the allowable
10 building envelope..

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

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

17 (f) **Sunlight Exposure Requirements.** The requirements of Section 135(g)(2) and Section
18 140 of this Code shall not apply to this Special Use District.

19 (g) **Off-Street Parking.** One off-street parking space shall be provided for each dwelling
20 unit.

21 (h) **Height and Bulk Restrictions.** The base height and bulk applicable to this Special Use
22 District is 50-X. An exception to the height requirement up to a maximum of 85 feet may be approved
23 pursuant to Section 263.16 of this Code.

24 (i) **Setbacks.** There are no front, side, or rear setback requirements in this Special Use
25 District.

1 (j) **Issuance of Certificate of Occupancy.** No Certificate of Occupancy for a market-rate
2 housing development in this Special Use District constructed in compliance with the provisions of
3 subsection (a) above shall be issued until such time as construction of the off-site affordable housing
4 development has begun; provided, however, that if the failure to begin the off-site affordable housing
5 development is through no fault of the developer, the developer may (i) provide evidence satisfactory to
6 the Zoning Administrator and acceptable to the nonprofit housing organization that such off-site
7 affordable units will be constructed in the future on land owned or purchased by the developer, or (ii)
8 provide the affordable units on-site.

9 (k) **Notice.** Upon receipt of a building or site permit application for a residential
10 development meeting the requirements of subsection (a), the Planning Department shall provide notice
11 of the development to property owners within a 150' radius of this Special Use District.

12 (l) **Appeals.** In order to expedite the completion of the off-site affordable housing units, the
13 approval of the Planning Department or that of the Planning Commission after a discretionary review
14 hearing for a residential or mixed-use structure or structures in this Special Use District meeting the
15 requirements of subsection (a), and the approval of the associated off-site affordable housing
16 development, may be appealed to the Board of Appeals within fifteen (15) days after such approval.
17 The procedure for the appeal shall be as described in Section 308.2 of this Code. The decision of the
18 Planning Department or the Planning Commission, or that of the Board of Appeals on appeal, shall
19 constitute a final determination on all land use and Planning Code issues, except for review by a court
20 of competent jurisdiction.

21 Section 3. The San Francisco Planning Code is hereby amended by adding Section
22 263.16, to read as follows:

23 **SEC. 263.16. SPECIAL HEIGHT AND BULK EXCEPTIONS: FOURTH AND FREELON**
24 **STREETS SPECIAL USE DISTRICT.**

1 (a) In order to provide additional housing opportunities for low- and moderate-income
2 households, in the Fourth and Freelon Streets Special Use District established pursuant to Section
3 249.23 of this Code and within the boundaries of the 50/85-X height and bulk district as designated on
4 Sectional Map 1H of the Zoning Map of the City and County of San Francisco, an exception to the 50
5 foot base height limit up to 85 feet may be approved by the Planning Commission in accordance with
6 Section 303 of this Code and the criteria and conditions set forth below.

7 (b) Such height exception may be permitted provided that:

8 (1) The height of the building or structure does not exceed 85 feet; and

9 (2) The previously-approved but unbuilt live/work units on the site are converted to
10 residential units and the developer constructs, at the developer's own expense, affordable housing in
11 accordance with the provisions of Section 249.23 of this Code.

12 Section 4. SEVERABILITY.

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

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18 APPROVED AS TO FORM:
19 DENNIS J. HERRERA, City Attorney

20 By: _____
21 JUDITH A. BOYAJIAN
22 Deputy City Attorney