

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Vincent C. Matthews, Ed.D., Superintendent, San Francisco Unified School District  
Eric D. Shaw, Director, Mayor's Office of Housing and Community Development

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: December 8, 2021

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Safai on November 30, 2021:

**File No. 211234**

**Ordinance amending the Planning Code to create a density bonus program in RH-1 (Residential, House, One-Family), RH-2 (Residential, House, Two-Family), and RH-3 (Residential, House, Three-Family) zoning districts; 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.**

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: [erica.major@sfgov.org](mailto:erica.major@sfgov.org).

cc: Viva Mogi, San Francisco Unified School District  
Esther Casco, San Francisco Unified School District  
Mele Lau Smith, San Francisco Unified School District  
Lydia Ely, Mayor's Office of Housing and Community Development  
Brian Cheu, Mayor's Office of Housing and Community Development  
Maria Benjamin, Mayor's Office of Housing and Community Development

1 [Planning Code - Single- and Two-Family Home Bonus Program]

2

3 **Ordinance amending the Planning Code to create a density bonus program in RH-1**  
 4 **(Residential, House, One-Family) and RH-2 (Residential, House, Two-Family) zoning**  
 5 **districts; affirming the Planning Department’s determination under the California**  
 6 **Environmental Quality Act; and making findings of consistency with the General Plan,**  
 7 **and the eight priority policies of Planning Code, Section 101.1, and findings of public**  
 8 **necessity, convenience, and welfare under Planning Code, Section 302.**

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

13

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

15

16 Section 1. Environmental and Land Use Findings.

17 (a) The Planning Department has determined that the actions contemplated in this  
 18 ordinance do not constitute a project for purposes of the California Environmental Quality Act  
 19 (California Public Resources Code Sections 21000 et seq.), under Government Code section  
 20 65913.5. The Board affirms this determination.

21 (b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_, adopted  
 22 findings that the actions contemplated in this ordinance are consistent, on balance, with the  
 23 City’s General Plan and eight priority policies of Planning Code Section 101.1. The Board  
 24 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the  
 25 Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.

1 (c) Pursuant to Planning Code Section 302, the Board of Supervisors find that this  
2 ordinance will serve the public necessity, convenience, and welfare for the reasons set forth in  
3 Planning Commission Resolution No. \_\_\_\_\_, and incorporates such reasons by this  
4 reference thereto. A copy of said resolution is on file with the Clerk of the Board of  
5 Supervisors in File No. \_\_\_\_\_.

6  
7 Section 2. Additional Findings.

8 (a) San Francisco is experiencing a severe housing shortage. The shortage of  
9 affordable housing has forced lower-income and middle-class families out of the City. There is  
10 a need to make it easier to build affordable and middle-income housing to keep our city  
11 diverse, and provide homes for lower- and middle-income workers, including nurses,  
12 firefighters, teachers, small business owners, retail and non-profit workers, and Muni drivers.  
13 In the midst of this severe housing shortage and affordability crisis, San Francisco must  
14 immediately remove barriers to building housing for low- and middle-income residents and  
15 working families.

16 (b) Teachers and other employees of the San Francisco Unified School District as well  
17 as employees of the City and County of San Francisco suffer from the City's severe housing  
18 shortage combined with high housing costs and the escalating cost of living. Yet when it  
19 comes to providing quality public service for our residents, it is far preferable for employees to  
20 live in the City where they work.

21 (c) Many of our service sector employers, including homeless service providers,  
22 mental health providers, child care facilities, restaurants, retail stores, and other small  
23 business operators cannot hire sufficient employees to keep their businesses fully operational  
24 because these employees cannot afford to live in San Francisco. This contributes to  
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1 storefront vacancies, restaurant closures, and the inability to provide services to the most  
2 vulnerable communities in the City.

3 (d) Affordable housing is an especially paramount concern in San Francisco. San  
4 Francisco has one of the highest housing costs in the nation, but our economy and culture  
5 rely on a diverse workforce at all income levels. It is the policy of the City to enable these  
6 workers to afford housing in San Francisco and ensure that they pay a reasonably  
7 proportionate share of their incomes to live in adequate housing and to not have to commute  
8 ever-increasing distances to their jobs.

9 (e) By creating additional density and allowing additional units by right with an  
10 affordable component, this ordinance will result in thousands of additional units for working  
11 families who need to be housed. Adding affordability to the increased density preserves San  
12 Francisco's rich diversity while helping to solve the City's housing shortage.

13 (f) This ordinance zones all RH-1 (D), RH-1, and RH-2 parcels (as shown on the  
14 Zoning Maps ZN 01 through ZN 14) within the City for up to 10 units of residential density at  
15 the heights currently specified in the City's Zoning Maps (Height Maps HT 01 through HT 14).  
16 All parcels affected by this ordinance are considered urban infill sites under California  
17 Government Code Section 65913.5(e)(3). This Board therefore declares that this ordinance is  
18 adopted pursuant to Government Code Section 65913.5.

19 (g) By creating additional density in high opportunity areas and ensuring that units will  
20 be affordable to lower- and middle-class households, this Board finds that this ordinance is  
21 consistent with San Francisco's obligation to affirmatively further fair housing pursuant to  
22 California Government Code Section 8899.50.

23  
24 Section 3. The Planning Code is hereby amended by adding Sections 206.10 and  
25 315.2, to read as follows:

1                   **SEC. 206.10. AFFORDABLE HOUSING INCENTIVE PROGRAM.**

2                   (a) Purpose. The propose of the Affordable Housing Incentive Program is to facilitate the  
3 construction of housing projects with up to four units in single- and two-family home districts if at least  
4 one of the units in a three-unit building, or two of the units in a four-unit building, are affordable to  
5 moderate-income families.

6                   (b) Definitions. The definitions in Section 102 and the definitions in Section 401 for “Area  
7 Median Income” or “AMI,” “Housing Project,” and “Life of the Project,” shall generally apply to this  
8 Section 206.10.

9                   (c) Applicability. An Affordable Housing Incentive Program project shall be a housing project  
10 that:

11                           (1) is located in an RH-1 (D), RH-1, or RH-2 district;

12                           (2) is located within one mile of a major transit stop, which shall include a BART  
13 Station, Caltrain Station, or MUNI Rapid Network or Light Rail stop;

14                           (3) is located on a lot no smaller than 2500 square feet;

15                           (4) includes at least three dwelling units, including the additional units allowed under  
16 this Section 206.10;

17                           (5) is not seeking and receiving a density or development bonus under the provisions of  
18 California Government Code Sections 65915 et seq. or any other State or local program that allows  
19 additional density or development bonuses;

20                           (6) if the project requires the demolition, removal, or conversion of residential units,  
21 consists of at least as many residential units as will be demolished, removed, or converted, and  
22 replaces any demolished, removed, or converted protected units, as required by California Government  
23 Code Section 66300(d)(2);

24                           (7) consists of new construction or additions to existing structures; and

25                           (8) includes only Dwelling Units.

1           (d) Requirements. An Affordable Housing Incentive Program project shall be a housing  
2 project that:

3                   (1) includes units affordable to households with incomes up to 110% of Area Median  
4 Income if Rental Units, or 140% of Area Median Income if Owned Units, in the following quantities:

5                           (A) in a three-unit building, provides at least one unit as an affordable unit. The  
6 restricted affordable unit or units shall be restricted for the Life of the Project and shall comply with all  
7 of the requirements of the Procedures Manual authorized in Section 415, except as otherwise provided  
8 herein. The affordable unit or units shall be no smaller than 75% of the size of the smallest market-rate  
9 unit.

10                           (B) in a four-unit building, provides at least two units as affordable units. The  
11 restricted affordable units shall be restricted for the Life of the Project and shall comply with all of the  
12 requirements of the Procedures Manual authorized in Section 415, except as otherwise provided  
13 herein;

14                           (2) includes at least 2 units containing at least one bedroom; and

15                           (3) includes units that are no smaller than the minimum unit sizes set forth by the  
16 California Tax Credit Allocation Committee as of May 16, 2017.

17           (e) Development Bonuses. Notwithstanding any other provision of this Code, Affordable  
18 Housing Incentive Program projects shall be entitled to the following development bonuses:

19                           (1) Density. An Affordable Housing Incentive Program project may include up to four  
20 units.

21                           (2) Height. Notwithstanding any other provision of this Code, including but not limited  
22 to Section 261 and 253, the height of an Affordable Housing Incentive Program project shall be the  
23 height authorized by the Height Map of the Zoning Map.

24                           (3) Zoning modifications. Affordable Housing Incentive Program projects shall be  
25 entitled to the following zoning modifications:

1                    (A) **Rear Yard.** The required rear yard per Section 134 may be reduced to no  
2 less than 25% of the lot depth, or 15 feet, whichever is greater. Corner properties may provide 25% of  
3 the lot area at the interior corner of the property to meet the minimum rear yard requirement, provided  
4 that each horizontal dimension of the open area is a minimum of 15 feet and the open area is wholly or  
5 partially contiguous to the existing midblock open space, if any, formed by the rear yards of adjacent  
6 properties.

7                    (B) **Dwelling Unit Exposure.** The dwelling unit exposure requirements of  
8 Section 140(a)(2) may be satisfied through qualifying windows facing an unobstructed open area that  
9 is no less than 25 feet in every horizontal dimension, and such open area is not required to expand in  
10 every horizontal dimension at each subsequent floor.

11                    (C) **Open Space.** The Open Space requirements for RM-1 districts set forth in  
12 Section 135 shall control.

13                    (4) **Priority Processing.** Affordable Housing Incentive Program projects shall be  
14 reviewed in coordination with relevant priority processing and shall be approved, denied, or approved  
15 subject to conditions by the Planning Director under Section 315.2 within 180 days of submittal of a  
16 complete project application, unless the Environmental Review Officer determines that an  
17 environmental impact report is required for the project under Administrative Code Section 31.09.

18                    (f) **Regulatory Agreements.** Recipients of development bonuses under the Affordable Housing  
19 Incentive Program projects shall enter into a Regulatory Agreement with the City.

20                    (1) The terms of the Regulatory Agreement shall include:

21                    (A) a statement that the restricted affordable units in an Affordable Housing  
22 Incentive Program project are not subject to the Costa-Hawkins Rental Housing Act (California Civil  
23 Code Sections 1954.50 et seq.) because, under Section 1954.52(b), the owner has entered into an  
24 agreement with the City in consideration for a complete or partial waiver of the density limits and  
25

1 zoning modifications of this Code or other direct financial contribution or other form of assistance  
2 specified in California Government Code Sections 65915 et seq. (“Agreement”);

3 (B) a description of the complete or partial waiver of Code requirements  
4 granted by this Section 206.10 and/or the Planning Director, or other direct financial contribution or  
5 form of assistance provided to the property owner; and

6 (C) a description of the remedies for breach of the Agreement and other  
7 provisions to ensure implementation and compliance with the Agreement.

8 (2) The property owner and the Planning Director (or the Director’s designee), on  
9 behalf of the City, will execute the Agreement, which shall be reviewed and approved by the City  
10 Attorney’s Office. The Agreement shall be executed prior to the City’s issuance of the First  
11 Construction Document for the project, as defined in Section 107A.13.1 of the San Francisco Building  
12 Code.

13 (3) Following execution of the Agreement by all parties and approval by the City  
14 Attorney, the Agreement or a memorandum thereof shall be recorded against the property and shall be  
15 binding on all future owners and successors in interest.

16 (g) **Prohibition of Short-Term Rentals.** Units in an Affordable Housing Incentive Program  
17 project shall not be used for Short-Term Residential Rentals under Chapter 41A of the Administrative  
18 Code, which restriction shall be recorded as a Notice of Special Restriction on the subject lot.

19 (h) **Review and Approval.** Notwithstanding any other provision of this Code, building permit  
20 applications to construct an Affordable Housing Incentive Program project pursuant to this Section  
21 206.10 shall not be subject to the notification or review requirements of Section 311. Projects under  
22 this Section 206.10 shall be approved under the provisions set forth in Section 315.2. As long as the  
23 Planning Commission has delegated its authority to the Planning Department to review applications  
24 for an Affordable Housing Incentive Program project, no requests for discretionary review shall be  
25



1 accepted by the Planning Department or heard by the Planning Commission for Affordable Housing  
2 Incentive Program projects.

3  
4 **SEC. 315.2. AFFORDABLE HOUSING INCENTIVE PROGRAM REVIEW AND**  
5 **AUTHORIZATION.**

6 (a) Purpose. The purpose of this Section 315.2 is to ensure that all Affordable Housing  
7 Incentive Program projects under Planning Code Section 206.10 are reviewed in coordination with  
8 Priority Processing.

9 (b) Applicability. This Section 315.2 applies to all Affordable Housing Incentive Program  
10 projects that meet the requirements described in Section 206.10.

11 (c) Design Review. The Planning Department shall review and evaluate all physical aspects of  
12 an Affordable Housing Incentive Program project as follows:

13 (1) Affordable Housing Incentive Program projects shall be consistent with the  
14 Residential Design Guidelines, except for the provisions under Section IV. Building Scale and Form  
15 that address “Building Scale and Form” and “Building Scale at the Mid-Block Open Space,” and any  
16 other applicable design guidelines.

17 (2) As set forth in subsection (d), the Planning Director may also grant minor  
18 exceptions to the provisions of this Code, or require minor modifications to a project to reduce the  
19 impacts of an Affordable Housing Incentive Program project on surrounding buildings. However, such  
20 exceptions or modifications may only be granted to allow building mass to appropriately shift to  
21 respond to surrounding context, and only when such modifications do not substantially reduce or  
22 increase the overall building envelope permitted by the Program under Section 206.10. All  
23 modifications and exceptions shall be consistent with the Residential Design Guidelines as set forth in  
24 Section 315.2(c)(1).

1                   (3) The Planning Director may require other design-related modifications or conditions  
2 in order to achieve the objectives and policies of the Program. This review shall be limited to design  
3 issues including the following:

4                   (A) whether the bulk and massing of the building is consistent with the  
5 Residential Design Guidelines, except for the provisions under Section IV. Building Scale and Form  
6 that address “Building Scale and Form” and “Building Scale at the Mid-Block Open Space;” and

7                   (B) whether building design elements including, but not limited to, architectural  
8 treatments, facade design, and building materials, are consistent with the Residential Design  
9 Guidelines, except for the provisions under Section IV. Building Scale and Form that address  
10 “Building Scale and Form” and “Building Scale at the Mid-Block Open Space,” and any other  
11 applicable design guidelines.

12                   (d) **Exceptions.** As a component of the review process under this Section 315.2, the Planning  
13 Director may grant minor exceptions (no greater than 15%) to the provisions of this Code as provided  
14 below, in addition to the development bonuses granted to the project in Section 206.10(e). Such  
15 exceptions, however, may only be granted to allow building mass to appropriately shift to respond to  
16 surrounding context, and only when the Planning Director finds that such modifications do not  
17 substantially reduce or increase the overall building envelope permitted by the Program under Section  
18 206.10, and the project, with the modifications and exceptions, is consistent with the Residential Design  
19 Guidelines. These exceptions may include:

20                   (1) Exception from residential usable open space requirements of Section 135.

21                   (2) Exception for rear yards, pursuant to the requirements of Section 134.

22                   (3) Exception from dwelling unit exposure requirements of Section 140.

23                   (e) **Decision and Imposition of Conditions.** The Planning Director may authorize, disapprove,  
24 or approve subject to conditions, the project and any associated requests for exceptions and shall make  
25 appropriate findings. The Director may impose additional conditions, requirements, modifications, and

limitations on a proposed project in order to achieve the objectives, policies, and intent of the General Plan or of this Code.

(f) Discretionary Review. As long as the Planning Commission has delegated its authority to the Planning Department to review applications for an Affordable Housing Incentive Program project, the Planning Commission shall not hold a public hearing for discretionary review of an Affordable Housing Incentive Program project that is subject to this Section 315.2.

(g) Appeals. The Planning Director’s administrative determination regarding an Affordable Housing Incentive Program project pursuant to this Section 315.2 shall be considered part of a related building permit. Any appeal of such determination shall be made through the associated building permit.

Section 4. The Planning Code is hereby amended by revising Section 209.1 to read as follows:

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

\* \* \* \*

**TABLE 209.1**

**ZONING CONTROL TABLE FOR RH DISTRICTS**

| Zoning Category             | § Reference<br>s                                | RH-1(D)  | RH-1 | RH-1(S) | RH-2                                   | RH-3                  |
|-----------------------------|---|--|------|---------|--|-----------------------|
| <b>BUILDING STANDARDS</b>   |   |  |      |         |  |                       |
| <b>Massing and Setbacks</b> |   |  |      |         |  |                       |
| Height and Bulk Limits      | §§ 102, 105, 106, <u>206.10</u> , 250-252, 253, | No portion of a Dwelling may be taller than 35 feet, <u>except as allowed by §</u> |      |         | No portion of a Dwelling may be taller | Varies, but generally |

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|----------------|---|---|--|---|
|                | <p>260, 261,<br/>261.1, 270,<br/>271, See also<br/>Height and<br/>Bulk District<br/>Maps.</p> | <p><u>206.10.</u> Structures with<br/>uses other than Dwellings<br/>may be constructed to the<br/>prescribed height limit,<br/>which is generally 40 feet.<br/>Per § 261, the height limit<br/>may be decreased or<br/>increased based on the<br/>slope of the lot.</p> | <p>than 40 feet.<br/>Structures<br/>with uses<br/>other than<br/>Dwellings<br/>may be<br/>constructed<br/>to the<br/>prescribed<br/>height limit.<br/>Per § 261<br/>the height<br/>limit may be<br/>decreased<br/>based on the<br/>slope of the<br/>lot.</p> | <p>40 feet.<br/>Height<br/>sculpting<br/>on Alleys<br/>per<br/>§ 261.1.</p> |
| <p>* * * *</p> |   |   |  |   |

\* \* \* \*

Section 5. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board 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  
9 APPROVED AS TO FORM:  
10 DAVID CHIU, City Attorney

11 By: /s/ Audrey Pearson  
12 AUDREY PEARSON  
13 Deputy City Attorney

14 n:\legana\as2021\2100439\01568052.docx

## **LEGISLATIVE DIGEST**

[Planning Code - Single- and Two-Family Home Bonus Program]

**Ordinance amending the Planning Code to create a density bonus program in RH-1 (Residential, House, One-Family) and RH-2 (Residential, House, Two-Family) zoning districts; 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

Currently, residential buildings in single-family and two-family residential districts (RH-1 and RH-2) are limited to one or two units, respectively. Residential buildings must comply with Planning Code provisions including the Residential Design Guidelines, and are generally limited to a height of 35 feet.

### Amendments to Current Law

This ordinance would create a density bonus program to allow up to four units in RH-1 and RH-2 districts if the project sponsor enters into a regulatory agreement requiring that at least one unit in a three-unit building, or two units in a four-unit building, be affordable to households earning up to 110% of area median income if the units are rental units, and 140% if the units are owned units. Eligible projects would be allowed additional density, zoning modifications to rear yard, dwelling unit exposure and open space, and would be limited by the heights as set forth in the Planning Code's Zoning Maps (generally 40 feet), as well as other minor modifications granted by the Planning Director. Projects would be reviewed and approved by the Planning Department under a new approval process. Projects would be required to comply with the Residential Design Guidelines, except for Section IV of the RDGs that address Building Scale and Form, and Building Scale at the Mid Block Open Space.

The ordinance would be adopted pursuant to Senate Bill 10 (2021).

### Background Information

This ordinance would allow additional density and other Planning Code modifications if units are affordable to middle-income households. Senate Bill 10, effective January 1, 2022, allows cities to adopt ordinances rezoning parcels for up to 10 units without review under CEQA.

# Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [ ] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. [ ]
- 9. Reactivate File No. [ ]
- 10. Topic submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.**

Sponsor(s):

Ahsha Safai

Subject:

Planning Code - Single- and Two-Family Home Bonus Program

The text is listed:

Ordinance amending the Planning Code to create a density bonus program in RH-1 and RH-2 zoning districts; 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

Signature of Sponsoring Supervisor: [ ]

For Clerk's Use Only

