

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

MEMORANDUM

Date: May 30, 2023
To: Planning Department / Commission
From: Erica Major, Clerk of the Land Use and Transportation Committee
Subject: Board of Supervisors Legislation Referral - File No. 230596
Planning Code - Conditional Use for Residential Projects in RM, RC, and RTO Districts

- California Environmental Quality Act (CEQA) Determination
(*California Public Resources Code, Sections 21000 et seq.*)
 - Ordinance / Resolution
 - Ballot Measure

- Amendment to the Planning Code, including the following Findings:
(*Planning Code, Section 302(b): 90 days for Planning Commission review*)
 - General Plan
 - Planning Code, Section 101.1
 - Planning Code, Section 302

- Amendment to the Administrative Code, involving Land Use/Planning
(*Board Rule 3.23: 30 days for possible Planning Department review*)

- General Plan Referral for Non-Planning Code Amendments
(*Charter, Section 4.105, and Administrative Code, Section 2A.53*)
(Required for legislation concerning the acquisition, vacation, sale, or change in use of City property; subdivision of land; construction, improvement, extension, widening, narrowing, removal, or relocation of public ways, transportation routes, ground, open space, buildings, or structures; plans for public housing and publicly-assisted private housing; redevelopment plans; development agreements; the annual capital expenditure plan and six-year capital improvement program; and any capital improvement project or long-term financing proposal such as general obligation or revenue bonds.)

- Historic Preservation Commission
 - Landmark (*Planning Code, Section 1004.3*)
 - Cultural Districts (*Charter, Section 4.135 & Board Rule 3.23*)
 - Mills Act Contract (*Government Code, Section 50280*)
 - Designation for Significant/Contributory Buildings (*Planning Code, Article 11*)

Please send the Planning Department/Commission recommendation/determination to Erica Major at Erica.Major@sfgov.org.

1 [Planning Code - Conditional Use for Residential Projects in RM, RC, and RTO Districts]

2

3 **Ordinance amending the Planning Code to require conditional use authorization for**
 4 **residential housing developments that do not maximize residential density, as defined,**
 5 **in Residential-Mixed (RM), Residential Commercial (RC), and Residential Transit**
 6 **Oriented (RTO) Districts except for Residential-Transit Oriented - Mixed (RTO-M)**
 7 **Districts; affirming the Planning Department's determination under the California**
 8 **Environmental Quality Act; and making findings of consistency with the General Plan,**
 9 **and the eight priority policies of Planning Code, Section 101.1.**

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

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

18 Section 1. Environmental and Planning Code Findings.

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

24 (b) On _____, the Planning Commission, in Resolution No. _____,
 25 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The

1 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
2 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

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

8
9 Section 2. General Findings.

10 (a) In recent decades, the rate of housing production in San Francisco has failed to
11 keep pace with the growing demand for housing in the City and in the broader Bay Area. As a
12 result, housing is unaffordable to many City residents, and there have been waves of evictions
13 and displacement, largely to the detriment of long-term residents and lower-income
14 communities.

15 (b) Policymakers at the City and state level have sought to increase housing density
16 both in San Francisco and across the state. For example, San Francisco's Citywide
17 Accessory Dwelling Unit Program, which applies to existing structures and new construction,
18 allows for the increased densification of residential and mixed-use neighborhoods and zoning
19 districts. Section 207(c)(8) of the Planning Code, enacted in 2022, increased density to allow
20 four units, or six units on corner lots, in Residential-Housing (RH) zones in certain
21 circumstances. And Government Code Sections 65852.21 and 664117 require ministerial
22 approval of two units in single-family zoning districts and lot splits in single-family districts,
23 respectively.

24 (c) While significant emphasis has been placed on increasing the capacity for
25 increased housing density in residential and mixed-use zoning districts, and to remove various

1 substantive and procedural restrictions on the construction of affordable housing in particular,
2 comparatively little emphasis has been placed on setting density minimums and creating
3 disincentives for construction of low-density projects in zoning districts that allow for greater
4 density.

5 (d) The construction of large residences and low-density buildings in areas that are
6 zoned for greater density and that tend to be characterized by higher density, more affordable,
7 and rent-stabilized housing, is indicative of a market preference for demonstrably unaffordable
8 housing.

9 (e) The construction of large residences and low-density buildings in zoning districts
10 that permit greater capacity for housing density, such as Residential-Commercial Combined
11 (RC), Residential - Mixed (RM), and Residential - Transit Oriented (RTO) districts, is at the
12 expense of opportunities for more units, and more affordable housing, and frequently results
13 in the loss or conversion of housing protected by rent stabilization provisions of the San
14 Francisco Rent Ordinance.

15 (f) Objective 4B of San Francisco’s 2022 Housing Element is to “expand small and
16 mid-rise multi-family housing production to serve our workforce, prioritizing middle-income
17 households.”

18 (g) The 2020 Housing Balance Report, produced by the Planning Department
19 pursuant to Section 103 of the Planning Code, indicates that for the period from 2010 Quarter
20 1 to 2019 Quarter 4, 7,081 units of net new affordable housing have been built in San
21 Francisco while 3,951 units have been removed from protected status, a ratio of just 1.79
22 units built for every 1 unit lost.

23 (h) The loss of affordable and rent controlled housing is driven in part by the
24 demolition, merger, and conversion of such housing, and its replacement with market rate
25

1 housing and large single-family homes in zoning districts that permit increased capacity for
2 housing density.

3 (i) To address the loss of affordable and rent controlled housing and the construction
4 of large single-family homes in zoning districts that allow greater density, in January 2021, the
5 Board of Supervisors adopted interim controls to require projects that did not maximize the
6 number of units on a lot to seek conditional use authorization. The Planning Department
7 issued a report studying the interim controls and recommended permanent legislation to
8 address the issues posed by large residential developments that do not maximize the
9 allowable density. The Board has reviewed and considered the Planning Department report,
10 and proposes the controls as set forth in this ordinance.

11 (j) This ordinance will facilitate and encourage the development of multi-family housing
12 in zoning RM, RC, and RTO districts. By incentivizing the creation of more units on a parcel,
13 the cost per unit of housing will be reduced. Similarly, the ordinance will preserve and facilitate
14 the construction of housing for moderate- and lower-income households by incentivizing the
15 creation of additional units on a subject lot. Units in multi-family housing are generally lower in
16 price per square foot than units in a comparably sized single-family home. Therefore, by
17 creating more multi-family units, rather than large single-family homes in areas where multi-
18 family units are allowed, the price per square foot of each unit will be lower and more
19 affordable to lower and moderate income households.

20

21 Section 3. Articles 2 and 3 of the Planning Code are hereby amended by revising
22 Sections 209.2, 209.3, 209.4, and 303, to read as follows:

23

24 **SEC. 209.2. RM (RESIDENTIAL, MIXED) DISTRICTS.**

25

* * * *

Table 209.2

ZONING CONTROL TABLE FOR RM DISTRICTS

Zoning Category	§ References	RM-1	RM-2	RM-3	RM-4
* * * *					
RESIDENTIAL STANDARDS AND USES					
Residential Uses					
Residential Density, Dwelling Units (7)	§ 207	<i>P if 3 units per lot or up to at least one unit per 800 square feet of lot area, whichever is greater. (11)</i>	<i>P if 3 units per lot or up to at least one unit per 600 square feet of lot area, whichever is greater. (11)</i>	<i>P if 3 units per lot or up to at least one unit per 400 square feet of lot area, whichever is greater. (11)</i>	<i>P if 3 units per lot or up to at least one unit per 200 square feet of lot area, whichever is greater. (8), (11)</i>
****	****	****	****	****	****

* * * *

(11) C per Section 303(cc) if the residential building does not maximize principally permitted density, while meeting minimum unit size requirements set forth in Section 415.6(f)(2), except as set forth in section 303(cc)(1).

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1 **SEC. 209.3. RC (RESIDENTIAL-COMMERCIAL) DISTRICTS.**

2 * * * *

3 **Table 209.3**

4 **ZONING CONTROL TABLE FOR RESIDENTIAL-COMMERCIAL DISTRICTS**

5

Zoning Category	§ References	RC-3	RC-4
* * * *			
<i>RESIDENTIAL STANDARDS AND USES</i>			
<i>Development Standards</i>			
Residential Density, Dwelling Units (7), <u>(13)</u>	§207	<u><i>P if 3 units per lot or up to at least one unit per 400 square feet of lot area, whichever is greater. (13)</i></u>	<u><i>P if 3 units per lot or up to at least one unit per 200 square feet of lot area, whichever is greater. No density limits in the Van Ness SUD (§243). (8), (13)</i></u>
* * * *			

18 * * * *

19 *(13) C per Section 303(cc) if the residential building does not maximize principally permitted residential density, while meeting minimum unit size requirements set forth in Section 415.6(f)(2), except as set forth in section 303(cc)(1).*

20

21

22

23 **SEC. 209.4. RTO (RESIDENTIAL TRANSIT ORIENTED) DISTRICTS.**

24 * * * *

Table 209.4

ZONING CONTROL TABLE FOR RTO DISTRICTS

Zoning Category	§ References	RTO	RTO-M
* * * *			
RESIDENTIAL STANDARDS AND USES			
* * * *			
Residential Uses			
Residential Density, Dwelling Units (7)	§207	P if at least up to one unit per 600 square feet of lot area (8), C above below , per criteria of §207(a). <u>(11)</u>	No density limit. Density is regulated by the permitted height and bulk, and required setbacks, exposure, and open space of each parcel, along with Residential Design Guidelines.
* * * *			

(11) C per Section 303(cc) if the residential building does not maximize principally permitted residential density, while meeting minimum unit size requirements set forth in Section 415.6(f)(2), except as set forth in section 303(cc)(1).

SECTION 303. CONDITIONAL USES.

(a) General. The Planning Commission shall hear and make determinations regarding applications for the authorization of Conditional Uses in the specific situations in which such

1 authorization is provided for elsewhere in this Code. The procedures for Conditional Uses
2 shall be as specified in this Section 303 and in Sections 306 through 306.6, except that
3 Planned Unit Developments shall in addition be subject to Section 304, Hospitals and Post-
4 Secondary Educational Institutions shall in addition be subject to the Institutional Master Plan
5 requirements of Section 304.5.

6 * * * *

7
8 (cc) Maximizing Density in RM, RC, and RTO Districts.

9 (1) In order to promote, protect, and maintain the maximum number of residential units
10 in RM, RC, and RTO Districts, except for RTO-M Districts, new construction or alterations of existing
11 buildings that do not meet the maximum principally permitted residential density as set forth in Tables
12 209.2, 209.3, and 209.4, respectively, while meeting the minimum unit size requirements set forth in
13 Planning Code Section 415.6(f)(2), shall be permitted only as a Conditional Use. The maximum
14 principally permitted residential density shall not include any additional density permitted under state
15 law or Planning Code sections 206 et seq. Notwithstanding the preceding sentence, a project meeting
16 one of the following exceptions to this Section 303(cc) shall not require a Conditional Use:

17 (A) The project includes new construction or alteration of an existing building
18 and meets all of the following conditions:

19 (i) existing lot conditions or form-based restrictions on development
20 (e.g., height, bulk, rear yard requirements) are such that a proposed project cannot maximize density
21 without seeking a variance or subdividing existing units on the lot because it is physically infeasible to
22 do so; and

23 (ii) the proposed project will create more units on the subject lot; and

24 (iii) the project does not include any single unit greater than 2,000
25 square feet in size; and

1 (iv) the project is not subject to Conditional Use Authorization under any
2 other provision of the Planning Code.

3 (B) The project is an expansion of an existing residential building that would
4 increase the total square footage of the residential building by no more than 25% of the square footage
5 of the existing residential building, and meets all of the following requirements:

6 (i) the expansion does not increase the size of any unit that is already
7 larger than 2,000 square feet; and

8 (ii) the expansion does not create any new unit that is greater than 2,000
9 square feet; and

10 (iii) the expansion would not cause an existing unit that is less than 2,000
11 square feet to be larger than 2,000 square feet.

12 (C) For a project consisting of an expansion to a building with two or more
13 units, no resulting individual unit would be greater than 3,000 square feet, and no resulting individual
14 unit would be less than 50% of the size of the largest unit in the building.

15 (D) For any project consisting of an expansion to an existing building of 600
16 square feet or less.

17 (E) For any project where maximizing density would be inconsistent with the
18 preservation of a historic resource or would preclude the issuance of a Certificate of Appropriateness
19 under Article 10 of this Code.

20 (2) In addition to the findings stated in Section 303(c), the Commission shall make the
21 following findings:

22 (A) The project proposes the maximum physically feasible density based on
23 existing lot conditions or form-based restrictions on development (e.g. height, bulk, rear yard
24 requirements); and

25

1 (B) The project proposes additional density equal to that of adjacent buildings;

2 and

3 (C) Maximizing density is financially or physically infeasible.

4

5 Section 4. Effective Date. This ordinance shall become effective 30 days after
6 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
7 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
8 of Supervisors overrides the Mayor’s veto of the ordinance.

9

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

16

17 APPROVED AS TO FORM:
18 DAVID CHIU, City Attorney

19 By: /s/ Audrey Pearson
20 AUDREY PEARSON
21 Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning Code - Conditional Use for Residential Projects in RM, RC, and RTO Districts]

Ordinance amending the Planning Code to require conditional use authorization for residential housing developments that do not maximize residential density, as defined, in Residential-Mixed (RM), Residential Commercial (RC), and Residential Transit Oriented (RTO) Districts except for Residential-Transit Oriented - Mixed (RTO-M) 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

Existing Law

Existing law limits the density of residential buildings in RC, RM, and RTO districts, to generally, three units per lot, or one unit for every 200-800 square feet depending on the district. The code does not prescribe a minimum number of units that must be constructed on a lot. Residential projects that do not exceed the maximum number of units are principally permitted, and generally do not need a conditional use authorization.

Amendments to Current Law

This ordinance would require a conditional use authorization for residential development projects in RC, RM and RTO (but not RTO-M) districts that do not construct the maximum allowable density on a lot, except in specified circumstances. "Maximize density" is defined as the greater of three units per lot, or one unit for every 200-800 square feet of lot area depending on the district, while meeting specified minimum unit sizes.

However, projects would not need a conditional use authorization if they met certain requirements:

- Projects in which: (i) existing lot conditions or form-based restrictions on development (e.g., height, bulk, rear yard requirements) are such that a proposed project cannot maximize density because it is physically infeasible without seeking a variance or subdividing existing units on the lot; (ii) the proposed project will create more units on a subject lot; (iii) the project does not include any single unit greater than 2000 square feet in size; and, (iv) the project is not subject to Conditional Use Authorization under any other provision of the Planning Code.
- Projects that consist of an expansion of an existing residential building that is 25% or less of the square footage of the existing residential building, and (i) the expansion does not increase the size of any unit that is already larger than 2000 square feet; (ii)

the expansion does not create any new unit that is greater than 2000 square feet; and (iii) the expansion would not cause an existing unit that is less than 2000 square feet to be larger than 2000 square feet;

- Projects consisting of an expansion to a building with two or more units, no resulting individual unit would be greater than 3000 square feet, and no resulting individual unit would be less than 50% of the size of the largest unit in the building.
- Projects consisting of an expansion to an existing building of 600 square feet or less.
- Projects where maximizing density would be inconsistent with the preservation of an historic resource or would preclude issuance of a Certificate of Appropriateness under Article 10 of the Planning Code.

Background Information

This ordinance is intended to encourage the construction of multi-family housing developments, rather than single-family “monster homes,” in zoning districts that allow multi-family housing developments.

The Board of Supervisors adopted interim controls similar to the controls in this ordinance in January 2021, and renewed the controls in September 2022. The interim controls expired in January 2023.

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Introduction Form

(by a Member of the Board of Supervisors or the Mayor)



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

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)
(Routine, non-controversial and/or commendatory matters only)
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor inquires..."
- 5. City Attorney Request
- 6. Call File No. from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the Board on

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes No

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

Sponsor(s):

Subject:

Long Title or text listed:

Signature of Sponsoring Supervisor: