



**MYRNA MELGAR**

November 20, 2023

Ms. Melinda Coy, Proactive Housing Accountability Chief  
Mr. Fidel Herrera, Senior Housing Policy Specialist  
Department of Housing and Community Development  
Division of Housing Policy Development  
2020 W. El Camino Avenue, Suite 500  
Sacramento, CA 95833

**SENT VIA ELECTRONIC MAIL**

***RE: Response to Constraints Reduction Ordinance -- Letter of Technical Assistance***

Dear Ms. Coy and Mr. Herrera,

As the Chair of the Land Use and Transportation Committee (“Committee”) and the lead sponsor of the Family Housing Opportunity Special Use District (“FHOSUD”), I received a copy of the Letter of Technical Assistance sent by the Department of Housing and Community Development (“HCD”) on October 26, 2023. The Planning Department is issuing a more comprehensive response to the Housing Policy and Practice Review on behalf of the City. I have been working closely in collaboration with Planning staff and the Mayor’s office in this process. Please note that I am writing this letter in my individual capacity, and would like to take this opportunity to clarify the proposed amendments to the Mayor’s Constraint Reduction Ordinance (“Ordinance”) discussed in the letter. In addition, I am including a chart of amendments that my office is supporting. I believe these amendments would address many of the issues raised in the letter. Many of these amendments would have been considered at the Land Use and Transportation Committee meeting on October 30, 2023, but upon receiving HCD’s technical assistance letter and the Housing Policy and Review Practice Review, the discussions were postponed to allow time for adequate review and to ensure that proposed amendments were in alignment.

The technical assistance letter states that the “carve out” for the FHOSUD “may impact the City’s implementation of key housing element Actions that the City committed to in its adopted housing element” and that “the proposed amendments may be inconsistent with the City’s obligations under Housing Element Law (Gov. Code, § 65580 et seq.) and Affirmatively Further Fair Housing (AFFH) (Gov. Code, § 8899.50).” This is untrue. As I explain below, the FHOSUD is consistent with and accomplishes the many Housing Element goals and objectives in a sensible way.

As background, I introduced the FHOSUD in January 2023 to further the policies and actions of the then-draft Housing Element. The FHOSUD, whose boundaries are coterminous with the City’s Well-Resources Neighborhoods, took effect in October 2023. The FHOSUD provides density and streamlining incentives, and as such, removes Housing Element-identified constraints to support additional dwellings in the Well-Resourced Neighborhoods. A copy of the FHOSUD is enclosed for your reference.

In enacting the FHOSUD, the Board of Supervisors found that the “ordinance is consistent with San Francisco’s obligation to affirmatively further fair housing . . . by increasing density . . . [to] meaningfully address[] significant disparities in housing needs and access to opportunity. . . [and] streamline[] the approval process to promote certainty in development outcomes in high- and highest-resource neighborhoods.” To this end, the FHOSUD provides a density exception and additional development incentives for projects that construct up to four units on single family lots or up to twelve units on merged lots. Examples of these development incentives include reductions of rear-yard requirements, reductions of required open space, relaxing dwelling unit exposure requirements, the ability to construct group housing units in RH-1 districts, and eliminating provisions of the

Planning Code that cap heights at 35 feet in RH-1 neighborhoods. In addition to these development incentives, qualifying projects that do not demolish rent-controlled housing stock are eligible for streamlining, including waivers from neighborhood notification and conditional use authorization requirements. The FHOSUD provides project sponsors flexibility; a qualifying project can use the FHOSUD’s streamlining benefits, including the waiver of the Conditional Use Authorization under Section 317, even if the project does not otherwise require a development incentive, like a density exception or rear-yard reduction.

The FHOSUD is the product of coordination with the Planning Department, and significant outreach to the public, including tenant advocates. In fact, the FHOSUD was one of the first proactive steps the City took to implement the Housing Element by addressing the following:

- **Action 2.4.2.** Explore regulatory paths, including a tax or other regulatory structures, to discourage short term speculative resale of residential units, particularly those which seek to extract value out of evicting tenants, or rapid reselling to more lucrative markets.
- **Action 6.1.3.** Encourage family-friendly housing, which could include higher numbers of two- or three-bedroom units, units that are affordable to a wide range of low- to middle-income households, and child-friendly amenities such as playgrounds, on-site childcare, or designated childcare units.
- **Action 6.1.4.** Continue to require multi-bedroom unit mixes.
- **Action 8.4.8.** Remove Conditional Use Authorizations or other regulatory barriers for lot mergers and lots or proposed densities that exceed conditional use thresholds on housing applications that net two or more housing units, do not demolish existing rent-controlled units, and meet tenant protection, relocation, and replacement standards as recognized in Housing Crisis Act of 2019 to facilitate larger and more efficient housing projects by January 31, 2025.
- **Action 8.4.9.** Remove Conditional Use Authorization requirement for demolition of single-family or multi-unit buildings that (1) are not tenant occupied and without history of tenant evictions, recent buyouts, no fault, Ellis, or OMI Evictions; (2) net two or more housing units in the case of projects that construct less than 4 units or that net an increase of at least 50% in the number of existing units for projects that construct 4 or more units, (3) do not demolish existing rent-controlled units, and (4) meet tenant protection, relocation, and replacement standards as recognized in Housing Crisis Act of 2019 by January 31, 2025[...]

Importantly, the FHOSUD also incorporates tenant protections and preserves existing rent-controlled stock, consistent with Actions 8.4.2, 8.4.8, 8.4.9, and 8.4.17 in the Housing Element. Currently, rent-controlled units are San Francisco’s largest source of affordable housing. With nearly 170,000 units under rent control, more tenants have stable rents than those served by newer inclusionary or 100% affordable projects. However, San Francisco’s rent-controlled stock is generally limited to housing constructed before 1979, and this stock will eventually diminish over time due to age, condominium conversions, or natural disasters. State law generally prevents the City from creating new rent-controlled housing stock. It is therefore of utmost importance to preserve existing rent-controlled units, as stated in the Housing Element Actions 8.4.2, 8.4.8, and 8.4.17. Both recently-enacted state laws, like SB 423 and AB 2011, and our Housing Element stress the importance of rent-controlled housing by exempting the demolition of rent-controlled units from streamlining processes in order to preserve these units. The loss of rent controlled units hinders the City and HCD’s shared goal of providing housing “across all income levels.”

As I previously mentioned, my office is actively working with the Mayor’s office and the Planning Department on reconciling some technical differences between the FHOSUD and the Ordinance. Here is a summary of responses to some of the points raised in the technical assistance letter:

<b>HCD Comment in Technical Assistance Letter</b>	<b>Response</b>
<p><b>Action 7.2.6</b> includes a requirement that the City “[p]ermit group housing broadly throughout the city, particularly in zones allowing single-family uses, increase group housing density permitted in these districts, and remove Conditional Use Authorizations or other entitlement barriers to group housing.”</p>	<p>The FHOSUD permits group housing in all RH zones and eliminates the conditional use authorization for such projects consistent with Action 7.2.6. (See Planning Code § 249.94(d)(1)(C).) The RH zoning table in the Ordinance contains a footnote with the cross-reference to the requirements of the FHOSUD.</p>
<p><b>Action 8.3.3</b> includes a requirement that the City “[e]valuate open space and exposure standards to reduce the number of projects seeking exceptions on typical lot conditions, for instance by removing the inner court five-foot setback at each level requirement under Planning Code Section 140...”</p>	<p>I am working with the Mayor’s Office to propose an amendment that would conform the FHOSUD’s open space and exposure standards to what was proposed in the Ordinance.</p>
<p><b>Action 8.4.10</b> requires that the City “[r]emove Conditional Use Authorizations where required to achieve greater height for a housing project or replace height and bulk districts that require Conditional Use Authorizations to exceed the base height with one that allows the current maximum height....”</p>	<p>The FHOSUD waives Planning Code Section 261(b), which limits the heights in RH-1(D), RH-1, and RH-1(S) Districts to 35 feet, regardless of the permitted height on the Zoning Map. The Committee will soon consider amendments to the FHOSUD to permit certain corner-lot projects to build above 40 feet. In addition, I am working with the Mayor’s Office to eliminate those CUA requirements in this Ordinance.</p>
<p><b>Action 8.4.11</b> requires that the City “[r]educe the minimum lot size to 1,200 square feet and minimum lot width to 20 feet for proposed projects that net at least one housing unit.”</p>	<p>There is a proposed amendment that will conform the minimum lot sizes inclusive of those in the FHOSUD to 1,200 square feet.</p>
<p><b>Action 8.4.17</b> includes a requirement that the City “[r]emove neighborhood notification requirements for projects outside of Priority Equity Geographies that are code complying, net at least one housing unit, and only expand the rear or side of an existing building and for all non-discretionary ministerial projects.”</p>	<p>The Ordinance, as amended, complies with Action 8.4.17, which states in full: “Amend the Planning Code to prohibit Discretionary Review requests for code compliant projects adding at least one net unit, except for projects affecting buildings with units that are tenant occupied, are located in Priority Equity Geographies, <i>or meet the definition of protected units under the Housing Crisis Act of 2019</i>. Remove neighborhood notification requirements for projects outside of <a href="#">Priority Equity Geographies</a> that are code complying, net at least one housing unit, and only expand the rear or side of an existing building and for all non-discretionary ministerial projects.” [Emphasis Added].</p> <p>Protected units under the Housing Crisis Act include “[r]esidential dwelling units that are or were subject to any form of rent or price control.. .” Thus, in order to ensure that no protected units are demolished, the Ordinance, as amended, contains a notification requirement to provide tenants or neighbors the ability to raise concerns with the Planning Department. The notification does not allow for community-led discretionary review requests, but instead provides the</p>

	<p>opportunity for new information to be presented to Planning staff. A pending amendment to the Ordinance will adjust the timing of the notification so that it can occur after an application is submitted.</p>
<p>Amendments to Planning Code Section 121.1, specifically 121.1(b)(1) and (2), appear to introduce subjective design review standards into the Planning Code.</p>	<p>As this amendment was originally proposed by the Mayor, my understanding is that the Mayor’s Office is compiling a response to this comment.</p>
<p>HCD urged that the Committee pass the “draft Ordinance as originally proposed without exempting the SUD from key housing element commitments.”</p>	<p>The Ordinance, as originally proposed, would have allowed the streamlined demolition of “up to two rent-controlled units,” which is in conflict with Housing Element, particularly Objective 1.A to “Ensure Housing Stability and Healthy Homes” by protecting existing rent-controlled units. However, this will be addressed in a pending amendment to disallow the streamlined demolition of any rent-controlled units. Additionally, the FHSUD as passed into law already provides for streamlining that meets many of the goals and objectives in the Housing Element. Thus the previous changes and upcoming proposed amendments are warranted to fully conform the Ordinance with the Housing Element.</p>

I hope this response provides clarity and context on the amendments that I have proposed to date and potential forthcoming amendments. My goal is to continue moving the Ordinance through the legislative process for its passage; however, I cannot guarantee the outcome as I am one of eleven members on the Board. In any event, I look forward to moving along the recommendations of the Policy and Practices Review. Before HCD takes any additional actions related to the Ordinance or the proposed amendments, I would like the opportunity to engage with you and your team more closely to ensure that there is clarity about the City’s goals. Please do not hesitate to contact me if there are further questions or concerns. Thank you again for your attention.

Sincerely,



Myrna Melgar  
 Supervisor, San Francisco Board of Supervisors  
 Chair, Land Use and Transportation Committee

Encl. Planning Code Section 249.94 (“Family Housing Opportunity Special Use District”)

Cc: Mr. David Zisser, Assistant Deputy Director, Local Government Relations & Accountability, HCD  
 Ms. Lisa Frank, Senior Housing Policy Specialist, HCD  
 Board of Supervisors  
 Lisa Gluckstein, Office of the Mayor  
 Tom Paulino, Office of the Mayor  
 Rich Hillis, Director, Planning Department  
 Aaron Starr, Planning Department

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## SEC. 249.94. FAMILY HOUSING OPPORTUNITY SPECIAL USE DISTRICT.

(a) **Purpose.** To incentivize the development of multifamily housing in the City's well-resourced neighborhoods, a special use district entitled "Family Housing Opportunity Special Use District" is hereby established.

(b) **Boundaries.** The boundaries of the Family Housing Opportunity Special Use District are shown on Special Use District Maps Sheets SU 1, SU 2, SU 3, SU 4, SU 5, SU 6, SU 7, SU 11, SU 12, and SU 13. These boundaries consist generally of the areas designated as high-resource and highest-resource on the Well-Resourced Neighborhoods Map of the 2023-2031 Housing Element.

(c) **Eligibility.** An eligible project under this Section 249.94 shall be a project that complies with all the following criteria:

(1) is located in an RH District in the Family Housing Opportunity Special Use District, and is not located in the Telegraph Hill - North Beach Residential Special Use District (Section 249.94) or the North Beach Special Use District (Section 780.3);

(2) is not seeking or receiving approval under the provisions of Planning Code Sections 206.3, 206.5, or 206.6;

(3) is not located on a parcel resulting from a lot split under California Government Code Section 66411.7;

(4) proposes any of the following project types:

(A) **Single-Lot Development Project.** The construction on a single lot, including through the alteration of an existing structure, of at least two dwelling units and no more than the maximum number of dwelling units prescribed in subsection (d)(1)(A) of this Section 249.94, inclusive of any existing dwelling units on the site and any Unauthorized Units, as defined in Section 317, occupied by a tenant at any time within the five years preceding application. For a project proposing four dwelling units, the fourth dwelling unit shall be constructed in the rear yard pursuant to subsection (d)(3) of this Section 249.94. If the proposed rear-yard unit does not meet the requirements of subsection (d)(3) of this Section 249.94, the project shall be limited to three units. For a project proposing fewer than four dwelling units, up to one unit may be located in the rear yard pursuant to subsection (d)(3) of this Section 249.94.

(B) **Lot-Merger Development Project in RH-1 Districts.** A merger of up to three lots in RH-1, RH-1(D), or RH-1(S) districts and the construction on the resulting lot of at least nine dwelling units and no more than the maximum number of dwelling units prescribed in subsection (d)(1)(B) of this Section 249.94 for a three-lot merger project, or at least six dwelling units and no more than the maximum number of dwelling units prescribed in subsection (d)(1)(B) of this Section 249.94 for a two-lot merger project. A project proposing a lot merger shall not be eligible to construct a rear-yard unit pursuant to subsection (d)(3) of this Section 249.94.

(C) **Group Housing Development Project.** A single-lot project pursuant to subsection (c)(4)(A) of this Section 249.94 and a lot-merger project pursuant to subsection (c)(4)(B) of this Section 249.94 may also propose the construction of Group Housing up to the density limits prescribed in subsection (d)(1)(C) of this Section 249.94 for projects located in RH-1, RH-1(D), or RH-1(S) districts. For projects outside of those districts, the group housing density limit shall be the limits currently permitted under the Planning Code. A project shall not propose both dwelling units and Group Housing bedrooms. Projects proposing Group Housing bedrooms shall not be eligible for condominium subdivision, including but not limited to conversion pursuant to Subdivision Code Section 1396.7;

(5) contains the following bedroom configurations:

(A) for single-lot projects under subsection (c)(4)(A) of this Section 249.94, at least two dwelling units with two or more bedrooms, unless the project proposes the addition of one dwelling unit to a lot with three existing dwelling units, in which case the required bedroom configurations in this subsection (c)(5)(A) shall not apply;

(B) for two-lot merger projects under subsection (c)(4)(B) of this Section 249.94, at least two dwelling units with two bedrooms, or at least one dwelling unit with three bedrooms;

(C) for three-lot merger projects under subsection (c)(4)(B) of this Section 249.94, at least three dwelling units with two bedrooms, or at least two dwelling units with three bedrooms.

(D) The requirements of this subsection (c)(5) may be satisfied by existing dwelling units retained on site. This subsection (c)(5) does not apply to Group Housing projects;

(6) includes more dwelling units than are existing on the site at the time of application. For the purposes of this subsection (c)(6), an existing dwelling unit includes an Unauthorized Unit, as defined in Planning Code Section 317, that has been occupied by a tenant at any time within the five years preceding application submittal and also includes an Accessory Dwelling Unit, as defined in Planning Code Section 102. Group Housing projects utilizing this Section 249.94 shall provide more bedrooms than are existing on the site at the time of application;

(7) does not propose the demolition of a building that is:

(A) located in an Article 10 Historic District;

(B) listed as a Landmark under Article 10 ;

(C) located in an Article 11 Conservation District, where the building has a rating of Category I, II, III or IV;

(D) listed in or determined eligible for listing in the California Register of Historical Resources individually and/or as a contributor to a historic district; or,

(E) listed in or determined eligible for listing in the National Register of Historic Places individually and/or as a contributor to a

historic district;

(8) complies with the Planning Code and any applicable design guidelines, including but not limited to the provisions of this Section 249.94 and does not seek any variances or exceptions from the Planning Code. Notwithstanding the previous sentence, an eligible project shall strive for consistency with the Residential Design Guidelines to the extent feasible;

(9) complies with the requirements of Section 66300(d) of the California Government Code, as may be amended from time to time and as are in effect at the time a complete project application is submitted, except as otherwise specified herein, including but not limited to requirements to replace all protected units and to offer existing occupants of any protected units that are lower income households relocation benefits and a right of first refusal for a comparable unit, as those terms are defined therein. Notwithstanding the foregoing sentence, if California Government Code Section 66300 becomes inoperative, the project shall comply with the last operative version of Section 66300 before it became inoperative. This subsection (c)(9) does not modify or supersede any other City requirements related to relocation, including but not limited to the requirements of Chapter 37 of the Administrative Code;

(10) the project sponsor certifies under penalty of perjury that at the time of the submittal of their application, the project sponsor has owned the subject lot for a minimum of five years if the site contains two or more dwelling units, or a minimum of one year if the site contains one or fewer dwelling units. Notwithstanding the foregoing sentence, a single-family home that contains an Unauthorized Unit shall be subject to the one-year requirement. This ownership requirement in this subsection (c)(10) shall be subject to the following:

(A) **Eligible Predecessor.** A property owner who has inherited the subject lot, including any inheritance in or through a trust, from a blood, adoptive, or step family relationship, specifically from either (i) a grandparent, parent, sibling, child, or grandchild, or (ii) the spouse or registered domestic partner of such relations, or (iii) the property owner's spouse or registered domestic partner (each an "Eligible Predecessor"), may add an Eligible Predecessor's duration of ownership of the subject lot to the property owner's duration of ownership of the same lot.

(B) **Multiple Ownership.** Whenever property proposed for development is jointly owned, owned as common property, or is otherwise subject to multiple ownership, the durational requirements of this subsection (c)(10) must be satisfied by: (i) the majority ownership, whether represented by stock, membership interest, partnership interest, co-tenancy interest, or otherwise, in the case of projects proposed under subsection (c)(4)(A); or (ii) the majority ownership of each lot to be merged, whether represented by stock, membership interest, partnership interest, co-tenancy interest, or otherwise, in the case of projects proposed under subsection (c)(4)(B).

(C) **Vacant or Abandoned Property.** The ownership requirement in this subsection (c)(10) shall not apply if the property has been registered as a vacant or abandoned building pursuant to Building Code Section 103A.4 *et seq.* for at least five years preceding the application submittal if the existing site contains two or more dwelling units, or one year preceding application submittal if the site contains one or fewer dwelling units or a single-family home containing an Unauthorized Unit.<sup>1</sup>

(D) The requirements of this subsection (c)(10) shall apply regardless of the legal form of ownership of the property, including but not limited to properties owned by a limited liability company.

(11) the project sponsor certifies under penalty of perjury that the project does not propose the demolition of:

(A) three or more dwelling units that are or were:

(i) subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income within the past five years; or

(ii) subject to limits on rent increases under the Residential Rent Stabilization and Arbitration Ordinance (Chapter 37 of the Administrative Code) within the past five years; or

(iii) rented by lower or very low income households within the past five years; or

(B) a dwelling unit occupied by a tenant at the time of application; or

(C) a dwelling unit from which a tenant has been evicted under Administrative Code Sections 37.9(a)(8)-(12) or 37.9(a)(14)-(16) within the past five years or a dwelling unit that has been vacated within the past five years pursuant to a Buyout Agreement, pursuant to the requirements of Administrative Code Section 37.9E, as it may be amended from time to time, regardless of whether the Buyout Agreement was filed and registered with the Rent Board pursuant to Administrative Code Section 37.9E(h).

(D) For the purposes of this subsection (c)(11) of Section 249.94, "lower or very low income households" shall have the same meaning as in Government Code Section 66300; and

(12) the project sponsor has conducted one pre-application meeting prior to filing a development application. The Planning Department shall not accept a development application under this Section 249.94 without confirmation that the project sponsor has held at least one pre-application meeting conforming to the requirements of this subsection (c)(12) and any additional procedures established by the Planning Department. The project sponsor shall provide mailed notice of the pre-application meeting to the individuals and neighborhood organizations specified in Planning Code Section 333(e)(2)(A) and (C). The Planning Department shall establish additional procedures to administer this subsection (c)(12).

(d) **Other Controls.**

(1) **Density Exceptions.** Projects that meet the eligibility criteria in subsection (c) of this Section 249.94 are exempt from residential density limits, calculation of which shall not include any Accessory Dwelling Units permitted under Section 207, as follows:

(A) **Single-Lot Density Exception.** For projects eligible under subsection (c)(4)(A), up to four dwelling units per lot;

(B) **Lot-Merger Density Exception.** For projects eligible under subsection (c)(4)(B), the greater of twelve dwelling units per lot or one dwelling unit per 1,000 square feet of lot area, if the lot is the result of a merger of three lots, or the greater of eight dwelling units per lot or one dwelling unit per 1,000 square feet of lot area, if the lot is the result of a merger of two lots;

(C) **Group Housing Density Exception.** For both Single-Lot and Lot-Merger Development Projects under subsection (c)(4)(A) or (B), up to one Group Housing bedroom per 415 square feet of lot area in RH-1, RH-1(D), and RH-1(S) districts.

(2) **Height.** Notwithstanding any other provision of this Code, including but not limited to Section 261(b), the height limit for a project that meets the eligibility criteria in subsection (c) of this Section 249.94 shall be 40 feet, if 40 feet is authorized by the Height Map of the Zoning Map. Notwithstanding the foregoing sentence, a project shall comply with the requirements of Section 261(c).

(3) **Construction of Rear-Yard Unit.** Construction of a rear-yard unit shall be governed by the following standards:

(A) The subject parcel must be at least 2,400 square feet;

(B) The rear-yard unit shall be located at least four feet from the side and rear lot lines and shall not share structural walls with any other structure on the lot;

(C) Compliance with minimum rear-yard requirements shall not be required, except that a minimum 25 feet separation shall be provided between the facades that face each other;

(D) For the rear-yard unit and units in the primary building that obtain their only Code-complying exposure from the rear yard, the dwelling unit exposure requirements of Section 140(a)(2) may be satisfied through qualifying windows facing an unobstructed open area that is no less than 25 feet in every horizontal dimension, and such open area is not required to expand in every horizontal dimension at subsequent floors;

(E) The rear-yard building height shall be limited to 20 feet measured from existing grade at any given point to either i) the highest point of a finished roof, in the case of a flat roof, or ii) the average height of a pitched roof or stepped roof, or similarly sculptured roof form. The rear-yard building shall not be eligible for any height exemptions in subsection (d)(2) of this Section 249.94 or in Section 260(b); and

(F) Each dwelling unit or group housing bedroom shall have at least 100 square feet of usable open space if private, or 133 square feet if common.

(4) **Rear-Yard Requirements**<sup>1</sup> For projects that do not construct a rear-yard unit pursuant to subsection (d)(3) of this Section 249.94, the basic rear yard requirement shall be equal to 30% of the total depth of the lot on which the building is situated, but in no case less than 15 feet.

(5) **Open Space Requirements for Lot-Merger Projects.** For projects eligible under subsection (c)(4)(B) of this Section 249.94, each dwelling unit shall have at least 100 square feet of usable open space if private, or 133 square feet if common.

(6) **Minimum Density Requirement on Merged Lots.** For lots merged pursuant to subsection (c)(4)(B) of this Section 249.94, any development on the resulting lot shall be subject to the following minimum densities:

(A) six units per lot, if the lot results from a two-lot merger; or

(B) nine units per lot, if the lot results from a three-lot merger.

(e) **Applicability of Rent Ordinance; Regulatory Agreements.**

(1) Sponsors of projects utilizing any of the density exceptions above the base density up to the limits in subsection (d)(1) of this Section 249.94 shall enter into a regulatory agreement with the City subjecting the new units created pursuant to such density exception, except for any required Affordable Units as defined in Planning Code Section 401, to the Residential Rent Stabilization and Arbitration Ordinance (Chapter 37 of the Administrative Code), as a condition of approval of the density exception (“Regulatory Agreement”).

(2) The property owner and the Planning Director, or the Director’s designee, on behalf of the City, will execute the Regulatory Agreement, which is subject to review and approval by the City Attorney’s Office. The Regulatory Agreement shall be executed prior to the City’s issuance of the First Construction Document for the project, as defined in Section 107A.13.1 of the Building Code. Following execution of the Regulatory Agreement by all parties and approval by the City Attorney, the Regulatory Agreement or a memorandum thereof shall be recorded in the title records in the Office of the Assessor-Recorder against the property and shall be binding on all future owners and successors in interest.

(3) At a minimum, the Regulatory Agreement shall contain the following:

(A) A description of the total number of units approved, including the number of units subject to the Rent Stabilization and Arbitration Ordinance and other restricted units, if any, and the location, square footage of dwelling units, and number of bedrooms in each unit;

(B) A statement that the new units created pursuant to the density exception are not subject to the Costa-Hawkins Rental Housing Act (California Civil Code Section 1954.50 *et seq.*). Further, that under Section 1954.52(b), the property owner has entered into and agreed to the terms of the agreement with the City in consideration for an exception from residential density limits, or other direct financial contribution or other forms of assistance specified in California Government Code Section 65915 *et seq.*;

(C) A description of the residential density exception or other direct financial contribution or forms of assistance provided to the property owner; and

(D) A description of the remedies for breach of the agreement and other provisions to ensure implementation and compliance with the agreement.

(f) **Review and Approvals.** Notwithstanding any other provision of this Code, the following shall apply to any project that meets the eligibility criteria in subsection (c) of this Section 249.94, irrespective of whether a project is utilizing a density exception to construct units above the applicable density limit in the RH district pursuant to subsection (d)(1) of this Section 249.94:

(1) No conditional use authorization shall be required, including but not limited to the requirements of Sections 303 and 317 of this Code, unless:

(A) a project would demolish any units that are subject to limits on rent increases under the Residential Rent Stabilization and Arbitration Ordinance (Chapter 37 of the Administrative Code); or

(B) a project requires a conditional use authorization pursuant to Sections 249.77 or 249.92.

(2) Compliance with Section 311 of this Code shall not be required, unless a project would demolish any units that are subject to limits on rent increases under the Residential Rent Stabilization and Arbitration Ordinance (Chapter 37 of the Administrative Code), in which case the requirements of Section 311 shall apply; and

(3) A Notice of Special Restrictions (“NSR”) shall be recorded on the title of any property receiving approval under this Section 249.94. The NSR shall:

(A) Describe the uses, restrictions, and development controls approved under Planning Code Section 249.94, including but not limited to the minimum density restrictions set forth in subsection (d)(6);

(B) State that the NSR runs with the land and is binding on all future owners and successors in interest;

(C) Provide the Planning Department with the ability to enforce the provisions of this Section 249.94;

(D) Describe any other conditions that the Planning Director or Planning Commission deems appropriate to ensure compliance with this Section 249.94; and

(E) Be signed by the City and recorded prior to issuance of the building permit for the project receiving approval under this Section 249.94.

(g) **Review of Program.** The Planning Department shall include the location and number of units of projects using this Section 249.94 in the Housing Inventory Report. Prior to December 31, 2030, the Planning Department shall prepare a report containing recommendations for modifications to this Section 249.94, including modifications to the boundaries described in subsection (b), to further the goals of the City’s Seventh Housing Element Cycle.

(Added by Ord. [195-23](#), File No. 230026, App. 9/15/2023, Eff. 10/16/2023)

#### CODIFICATION NOTE

1. So in Ord. [195-23](#).