BOARD of SUPERVISORS

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M E M O R A N D U M

TO: Sarah Dennis-Phillips, Executive Director, Office of Economic and Workforce Development
Daniel Adams, Director, Mayor's Office of Housing and Community Development

FROM: John Carroll, Assistant Clerk, Land Use and Transportation Committee

DATE: October 2, 2024

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Mayor Breed on September 24, 2024.

File No. 240927

Ordinance amending the Planning Code to exempt certain types of projects in the downtown area that replace non-residential uses with residential uses from development impact fees and requirements, including the Inclusionary Housing fee, and remove the application deadline from the Commercial to Residential Adaptive Reuse Program; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and making findings of public necessity, convenience, and welfare pursuant to 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: john.carroll@sfgov.org.

cc:
Offices of Chair Melgar and Mayor Breed
Anne Taupier, Office of Economic and Workforce Development
Alesandra Lozano, Office of Economic and Workforce Development
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
Sheila Nickolopoulos, Mayor's Office of Housing and Community Development
Kyra Geithman, Mayor's Office of Housing and Community Development

[Planning Code - Development Impact Fees and Requirements for Non-Residential to Residential Conversion Projects]

Ordinance amending the Planning Code to exempt certain types of projects in the downtown area that replace non-residential uses with residential uses from development impact fees and requirements, including the Inclusionary Housing fee, and remove the application deadline from the Commercial to Residential Adaptive Reuse Program; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and making findings of public necessity, convenience, and welfare pursuant to Planning Code, Section 302.

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

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

Section 1. Land Use and Environmental Findings.

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

(b) On _____, the Planning Commission, in Resolution No. _____, 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 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No. _____, and is incorporated herein by reference.

Section 2. Legislative Findings.

(a) San Francisco's Regional Housing Needs Allocation in the current 2023-2031 Housing Element cycle is 82,069 units over eight years, which is more than 2.5 times the allocation of the previous eight-year cycle.

(b) The City's Chief Economist has estimated that approximately 5,000 new market-rate housing units per year would be required to keep housing prices in San Francisco consistent with the general rate of inflation.

(c) At the same time, demand for office space has declined and commercial vacancy rates have increased. The impacts to office space demands wrought by the COVID-19 pandemic – most notably the shift toward remote work – persist even as public health threats have waned. These changes have been particularly prominent in the Greater Downtown Area, defined as the North Financial District, South Financial District, Mid-Market, Union Square, Jackson Square, Mission Bay/China Basin, North Waterfront, Showplace Square, South of Market, and the Van Ness Corridor (collectively, "Downtown"). In the Greater Downtown Area, the office sector has experienced a fivefold increase in total vacancy rate between the first quarter of 2019 and the first quarter of 2024.

(d) To address the twin problems of under-utilized office space and lack of affordable and available housing in San Francisco, a recent report from the Board of Supervisors' Budget and Legislative Analyst, dated January 6, 2023, urges City policymakers to consider

programs to incentivize the conversion of office space into residential units ("BLA Report"). The BLA Report identifies various policy options to incentivize the conversion of office buildings, including reducing regulatory hurdles, such as protracted approval timeframes; exempting projects from or relaxing various standards in the Planning Code; and offering financial incentives to offset the costly architectural and engineering challenges of these conversions.

(e) San Francisco is also the economic hub for the Bay Area. Prior to the COVID-19 pandemic, two-thirds of the City's total jobs were located Downtown, representing more than three-quarters of the City's gross domestic product ("GDP"). With a $250 billion annual GDP in 2022, San Francisco accounted for more than one-quarter of the nine-county Bay Area economy – and 79% of the City's share of the Bay Area economy stems from office-based industries concentrated Downtown. Downtown-based businesses have historically generated nearly half of the City's sales tax revenue and almost all (95%) of the City's business tax revenue. This revenue funds many key services such as public safety, cleaning, open space, and transportation.

(f) The shift to hybrid work, with its consequent reduction in office workers and foot traffic, has adversely impacted the City's Downtown and other sectors of the City's economy, including retail and small business, and more broadly has impacted use and activation of public space, transportation, and public safety.

(g) On February 9, 2023, Mayor Breed issued a Roadmap to San Francisco's Future. Several of the plan's key policies include: (1) the economic diversification of Downtown and repurposing underutilized office space there; (2) expanding Downtown housing; (3) activating Downtown and enacting zoning controls that draw people Downtown; and (4) maximizing flexibility for uses and economic activity in the Union Square area, which has historically

played a unique role citywide, regionally, and internationally as a center for shopping, entertainment, and services.

(h) On July 5, 2023, the City approved Ordinance 122-23 which established the Commercial to Residential Adaptive Reuse Program to facilitate residential uses Downtown by exempting eligible projects from certain Planning Code standards and requirements, including those concerning rear yard, open space, streetscape improvements, dwelling unit exposure, bike parking, transportation demand management, dwelling unit mix, and Intermediate Length Occupancy controls.

(i) On December 14, 2023, consistent with Housing Element Implementing Action 8.5.2, and following the Board of Supervisors' approval of the Housing Production Ordinance, enacted as Ordinance No. 248-23, the Planning Commission passed Resolution No. 21473, which delegated authority to the Planning Director to make findings necessary for waivers and concessions under the State Density Bonus law, pursuant to Planning Code Section 206.6.

(j) In March 2024, San Francisco voters approved Proposition C, which amended the Business and Tax Regulations Code by waiving the real estate transfer tax for first time transfers on non-residential properties converted to residential use, as long as the property owner receives permission to convert the property before January 1, 2030. The exemption is available for up to 5 million square feet of converted properties.

(k) Despite these efforts, increased costs of construction and financing continue to present obstacles to the conversion of under-utilized non-residential spaces. Permit applications for new projects have declined and many previously approved projects have stalled.

(l) It is reasonable to further incent the conversion of non-residential space into residential units by exempting eligible projects from local inclusionary housing requirements and development impact fees in Article 4 of the Planning Code.

Section 3. Articles 2 and 4 of the Planning Code are hereby amended by revising Sections 210.5 and 406, to read as follows:

SEC. 210.5. COMMERCIAL TO RESIDENTIAL ADAPTIVE REUSE PROGRAM.

* * * *

~~*(f) **Applications.** Any application to establish a residential use pursuant to this Section 210.5 must be filed on or before December 31, 2028.*~~

SEC. 406. WAIVER, REDUCTION, OR ADJUSTMENT OF DEVELOPMENT PROJECT REQUIREMENTS.

* * * *

*(j) **Waiver for Certain Non-Residential to Residential Conversion Projects**. This subsection 406(j) provides eligible Non-Residential to Residential conversion projects with a waiver of any Development fee or Development impact requirement imposed by this Article 4, as specified in this subsection.*

*(1) **Eligible Projects**. To be eligible for the waiver, a project must replace Gross Floor Area of existing Non-Residential uses, other than a Hotel use, with Gross Floor Area established as Residential use, whether as part of a change of use of existing Gross Floor Area, or through the demolition of Non-Residential Gross Floor Area and construction of new Gross Floor Area for Residential use. For purposes of this subsection 406(j), any Gross Floor Area established as Live/Work use shall be considered as Residential use. Projects must be located in a C-3 district, or a C-2 district east of or fronting Franklin Street/13th Street and north of Townsend Street.*

*(2) **Waiver Amount**. Eligible projects shall be entitled to a waiver from any applicable Development fee or Development impact requirement imposed by this Article 4 on any net new Gross Floor Area of Residential use in an amount up to 110% of the Gross Floor Area of Non-Residential use*

converted to Residential use. Converted Non-Residential Gross Floor Area shall be calculated as the net reduction of Non-Residential Gross Floor Area resulting from the project.

*(3) **Calculation of Space**. In a mixed-use project with Residential and Non-Residential uses, the Gross Floor Area of Residential use shall include mechanical space and common areas such as spaces for circulation, lobbies, storage rooms, balconies, roof terraces, laundry rooms, and other resident amenity spaces, including parking spaces or garages, in the proportion that such areas serve the Residential use to the total square feet of Gross Floor Area served by such areas.*

*(4) **Limitation of Waiver**. Any portion of a project's Gross Floor Area that is not entitled to this waiver shall be subject to the otherwise applicable Development fees and Development impact requirements of this Article 4, including the Inclusionary Housing Program. Applicable Development fees and Development impact requirements shall be calculated based solely on the proportion of the project that is not entitled to this waiver, and not on the project as a whole. In the event the project provides On-site or Off-site Affordable Units to satisfy the requirements of Section 415.1 et seq., the equivalency, minimum size, and distribution of any such Affordable Units shall be based on consideration of the project as a whole, and the requirements of the Inclusionary Housing Program shall apply.*

*(5) **Modification of Previously Approved Projects**. Notwithstanding the definitions in Section 401 and 415A.2, a project shall be considered Finally Approved for purposes of this subsection 406(j), if prior to January 1, 2025, it received: (1) approval of its first Development Application; or (2) planning approval of its first site or building permit, if a project only requires a building permit; or (3) if either of the Development Application or building permit were appealed, the final decision upholding the Development Application, or first site or building permit, on the appeal by the relevant City Board or Commission. Projects that have been Finally Approved, and have not been issued a First Construction Document shall be entitled to request a modification under this subsection 406(j) to that project's conditions of approval, conditions on a project permit, notice of special restrictions, or other*

requirements necessary to: (1) waive any Development fee, and/or Development impact requirement of this Article 4, as specified in this subsection 406(j); and (2) modify conditions that require a project sponsor to obtain a site permit or building permit within a certain timeframe after project approval. The project shall comply with all other conditions of approval, conditions on a project permit, or notice of special restrictions and any applicable requirements of the Planning Code.

*(A) **Planning Commission Review**. Any modification of the conditions of approval, conditions on a project permit, or notice of special restrictions consistent with this subsection 406(j) that would result in the significant modification of approved plans shall require review and approval by the Planning Commission under the modification process otherwise applicable to the project, including but not limited to Planning Code Sections 303(e), 309(j), or 329(f)(7). A significant modification shall include:*

(i) a change in the number of Residential or Group Housing units by more than 20%, or a change of more than 10% in Gross Floor Area; or,

(ii) a change of use from Dwelling Units to Group Housing.

*(B) **Administrative Modifications**. If the Planning Commission has delegated its authority to the Planning Director to review and approve requests for modifications consistent with this subsection 406(j), the following modifications shall be reviewed and approved by the Director of the Planning Department, and the Planning Commission shall not hold a public hearing for discretionary review. Modifications under this subsection 406(j) shall not be subject to review under Planning Code Sections 303(e), 309(f), 309(j), or 329(f)(7). If so delegated, the Planning Director shall be authorized to modify one or more of the following:*

(i) The applicable Development fee or Development impact requirement, including the applicable Inclusionary Housing fee.

(ii) The applicable percentage of On-site or Off-site units.

(iii) For projects that elected to develop using the State Density Bonus Law, Government Code Section 65915, or State Density Bonus Program: Individually Requested, under Planning Code Section 206.6, the number of on-site Affordable Units, and the affordability levels of those on-site Affordable Units if such levels require modification for the project to continue to qualify for the same amount of density bonus previously approved, and findings required by Section 206.6(e) related to eligibility for a density bonus, concessions, and incentives and/or waivers of development standards. Notwithstanding the previous sentence, modifications to a density bonus project that are significant as set forth in subsection 406(j)(5)(A), shall be reviewed by the Planning Commission.

*(6) **Relationship to Other Planning Code Sections**. The waiver in this subsection 406(j) may be combined with any other reduction or waiver of fees or development impact requirements applicable to the project, as provided in this Article 4.*

Section 4. 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.

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

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: */s/*
AUSTIN M. YANG
Deputy City Attorney

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FILE NO. 240927

LEGISLATIVE DIGEST

[Planning Code - Development Impact Fees and Requirements for Non-Residential to Residential Conversion Projects]

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Existing Law

New development projects must pay specified development impact fees, and comply with development impact requirements in Article 4 of the Planning Code. These requirements are intended to offset new impacts and demands for public facilities that are created by the new projects. Section 406 provides for certain waivers from Article 4.

The City's Commercial to Residential Adaptive Reuse Program is codified in Section 210.5. That program provides specified relief from certain Planning Code standards for qualifying programs. To qualify for the program, a project must submit an application by December 31, 2028.

Amendments to Current Law

This ordinance would amend Article 4 to create an exemption for projects that propose to convert existing non-residential uses (e.g. office space) to residential uses. The fee waiver would apply both to projects that propose a change of use to an existing building and projects that propose to demolish existing non-residential buildings and construct new residential buildings. The fee waiver would apply only to the amount of gross floor area, as that term is defined in Section 102 of the Planning Code, that is converted to residential floor area. While the waiver would not apply to parts of the project that do not propose to convert non-residential to residential uses, other sections of the Planning Code may provide additional relief from Article 4 (e.g. Section 406 and 415A).

This ordinance would allow projects that were approved before January 1, 2025 but have not pulled a First Construction Document to benefit from the waiver. If the Planning Commission delegates its authority, the Director would be authorized to approve certain modifications to existing conditions of approval, so long as the changes are not considered significant.

Background Information

The City has experience as decline in demand for office space, and a commensurate increate in commercial vacancy rates. These changes have been particularly prominent in the Greater Downtown Area, defined as the North Financial District, South Financial District, Mid-Market, Union Square, Jackson Square, Mission Bay/China Basin, North Waterfront, Showplace Square, South of Market, and the Van Ness Corridor. In the Greater Downtown Area, the office sector has experienced a fivefold increase in total vacancy rate between the first quarter of 2019 and the first quarter of 2024.

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