

**LEGISLATIVE DIGEST**  
(First Draft, 4/23/2019)

[Charter Amendment and Initiative Ordinance - Non-Discretionary Review of 100% Affordable Housing and Teacher Housing Projects]

**Describing and setting forth a proposal to the voters at an election to be held on November 5, 2019, to amend the Charter of the City and County of San Francisco to provide for streamlined review of eligible affordable housing and housing for teachers and employees of the San Francisco Unified School District or Community College District by limiting discretionary review by City boards and commissions and providing for Planning Department ministerial review in lieu of approvals by or certain appeals to City boards and commissions; and to make corresponding amendments to the Planning Code and the Business and Tax Regulations Code; and affirming the Planning Department's determination under the California Environmental Quality Act.**

**Existing Law**

**San Francisco Charter**

The Charter currently requires certain kinds of discretionary review for certain kinds of decisions and permits, as follows.

Charter Section 4.105 requires referral to the Planning Department for a written report regarding consistency with the General Plan for certain approval actions by the Board of Supervisors. Section 4.105 also requires the Planning Commission to review permits and licenses dependent on the Planning Code, and permits the Planning Commission to delegate this function to Planning Department staff.

Charter Section 4.106 allows the Board of Appeals to hear and determine appeals with respect to any permit or license, except for a permit or license under the jurisdiction of the Recreation and Park Commission or Department, or the Port Commission, or a building or demolition permit for a project that has received a permit or license pursuant to a conditional use authorization.

Charter Section 4.135 requires the Historic Preservation Commission to review and approve certificates of appropriateness for work to designated landmarks or within historic districts. Section 4.135 also grants the Historic Preservation Commission the authority to review and approve applications for permits to alter or demolish designated Significant or Contributory buildings or buildings within Conservation Districts, and to determine whether an alteration may be considered a "minor" or "major" alteration and to delegate review of minor alterations to Planning Department staff. Section 4.135 requires Historic Preservation Commission review and report of ordinances and resolutions concerning historic preservation issues and

historic resources, redevelopment project plans, waterfront land use and project plans, and other matters as may be prescribed by ordinance involving historic resources.

Charter Section 5.103 requires the Arts Commission to review the design of any public structure or private structure on public land.

Charter Section 9.118(a) provides that City contracts having anticipated revenue to the City of 1 Million Dollars or more shall be subject to approval by the Board of Supervisors. Charter Section 9.118(b) provides that City agreements having a term in excess of ten years, or requiring anticipated expenditures by the City and County of 10 Million Dollars or more, shall be subject to approval of the Board of Supervisors. Charter Section 9.118(c) provides that any lease of real property for a period of 10 or more years, or having anticipated revenue to the City of 1 million dollars or more, and any sale or other transfer of real property owned by the City, shall be approved by the Board of Supervisors. Leases of property under the jurisdiction of the Port Commission for maritime use are exempt from Section 9.118(c).

### San Francisco Planning Code

The Planning Code contains numerous notice, review and approval requirements applicable to proposed development projects generally, and the requirements vary depending on the type of project that is proposed and where it is located. Such requirements include conditional use permits, large project authorizations, variances, and modifications from Planning Code requirements, among other requirements. The Planning Code provides for discretionary review by the Planning Commission, which is required for certain kinds of projects or which may be requested by any member of the public.

In addition, there are streamlined procedures that are applicable to certain kinds of affordable housing projects. Planning Code Section 206.4 applies to a 100% affordable housing bonus project, which is a housing project that is exclusively affordable, providing housing for households making up to 80% of Area Median Income. The 100% affordable housing bonus program allows for certain objective zoning modifications in association with development bonuses, including a density bonus and height increase, and streamlined review.

Planning Code Section 315 also provides for streamlined review of housing projects that are 100% affordable, which is considered to be housing for households making up to 120% of Area Median Income. These affordable housing projects are considered a principally permitted use and must comply with administrative review procedures provided in Planning Code Section 315. An affordable housing project may seek exceptions to Planning Code requirements that may otherwise be available through the Planning Code without a Planning Commission hearing. The Planning Department will grant an exception that is equal to or less than the zoning modifications automatically granted to a 100% affordable housing bonus project in Planning Code Section 206.4. Any project granted such an exception will be considered to be consistent with the objective controls of the Planning Code.

There are other forms of streamlined review, including under Planning Code Section 206.6, which implements the California Density Bonus Law, for projects that provide on-site affordable housing in compliance with State law. The State Law offers three categories of benefits to incentivize on-site affordable housing - 35% additional density; up to three incentives or concessions (generally, defined as a reduction of development standards, modifications of zoning code requirements, or approval of mixed use zoning); and waivers from any local development standard if needed to construct on-site affordable housing. The amount of the density bonus and the number of incentives and concessions depends on the amount and level of affordability of the affordable units in the project.

Planning Code Section 101.1 contains 8 Priority Policies that the voters adopted in 1986. Policy Number 3 provides that the City's supply of affordable housing should be preserved and enhanced. Section 101.1 also requires a finding of consistency with the 8 Priority Policies prior to issuing a permit for any project or adopting any legislation that requires an initial study under the California Environmental Quality Act (CEQA), and prior to issuing a permit for any demolition, conversion or change of use, and prior to taking any action that requires a finding of consistency with the General Plan.

#### San Francisco Business and Tax Regulations Code

San Francisco Business and Tax Regulations Code Section 26 provides the City with the discretionary authority to consider the effect of a proposed business or calling upon surrounding property and upon its residents, and inhabitants thereof; and to exercise its sound discretion as to whether any permit should be granted, transferred, denied or revoked.

#### State Law

There is California law, known as Senate Bill (SB) 35, which provides for streamlined, non-discretionary review of certain kinds of eligible residential projects that are 50% affordable housing, considered to be serving households making up to 80% of the Area Median Income. SB 35 requires the City to streamline the approval of eligible housing projects by providing a ministerial approval process, removing the requirement for CEQA analysis, and removing the requirement for Conditional Use Authorization or other similar discretionary entitlements granted by the Planning Commission. Similarly, Assembly Bill (AB) 2162 requires that supportive housing must be a use that is permitted by right in zones where multifamily and mixed-use development is permitted. AB-2162 requires local entities to streamline the approval of housing projects containing a minimum amount of supportive housing by providing a ministerial approval process, removing the requirement for CEQA analysis and removing the requirement for Conditional Use Authorization or other similar discretionary entitlements granted by a Planning Commission. The Planning Department has provided guidance on how it implements these State laws in Director's Bulletin No. 5.

**Amendments to Current Law**

**San Francisco Charter Amendments**

New Charter Section 16.126 would provide as follows:

1. Definitions.

100% Affordable Housing: Residential units that are deed-restricted to be affordable to households with an income up to 140% of the unadjusted area median family income (AMI) for the HUD Metro Fair Market Rent Area (HMFA) that contains San Francisco, as published annually by MOHCD.

100% Affordable Housing Project: A project for the development of 100% Affordable Housing. In the alternative, a 100% Affordable Housing Project also is a mixed use development consisting of residential and nonresidential uses with at least two-thirds of the gross building square footage designated for residential use, which shall be restricted as 100% Affordable Housing. The maximum affordable rent or sales price for a unit in such project may be no higher than 20% below median market rents or sales prices for the neighborhood in which the 100% Affordable Housing Project is located. MOHCD would determine the allowable rents and sales prices, and the eligible households for such units accordingly. Any prior tenant who may return to the 100% Affordable Housing Project whose income exceeds 140% AMI would not change the definition of the housing project as a 100% Affordable Housing Project and cause the housing project to be excluded from the provisions of Section 16.126.

Teacher Housing Project: A project for the development of residential units, where no less than two-thirds of the units are deed-restricted to occupancy by at least one employee of the Unified School District or Community College District. A Teacher Housing Project is also a mixed use development consisting of residential and nonresidential uses with at least two-thirds of the gross building square footage designated for residential use, of which no less than two-thirds of the residential units shall be deed restricted to occupancy by at least one employee of the Unified School District or Community College District. The residential units that are deed-restricted to occupancy by these employees shall also be deed-restricted to be affordable to households with an income up to 140% of the unadjusted AMI. The maximum affordable rent or sales price for a unit in such project may be no higher than 20% below median market rents or sales prices for the neighborhood in which the Teacher Housing Project is located. MOHCD would determine the allowable rents and sales prices, and the eligible households for such units accordingly. Any prior tenant who may return to the Teacher Housing Project whose income exceeds 140% AMI would not change the definition of the housing project as a Teacher Housing Project and cause the housing project to be excluded from the provisions of Section 16.126.

2. Eligibility. In order to use the streamlined procedures contained in this Initiative ordinance, a 100% Affordable Housing Project or Teacher Housing Project may not be located on a site that (A) is designated open space under the jurisdiction of the Recreation and Park Department that is used as a public park, (B) is in a zoning district that prohibits dwelling units, (C) is located in an RH-1, RH-1(D), or RH-2 zoning district, or (D) causes any removal or demolition of a designated state or national landmark, or designated City landmark or contributory building in a designated historic district, or a Significant Building designated Category I or II.

3. Intent and Application. Section 16.126 intends to exempt eligible 100% Affordable Housing and Teacher Housing Projects from any requirements for discretionary approvals by the City, including but not limited to the Planning Commission, Historic Preservation Commission, Arts Commission, Board of Supervisors, and Board of Appeals. The Planning Department, in consultation with MOHCD, may adopt regulations to implement Section 16.126.

Section 16.126 would allow the City to enact ordinances applying the controls of Section 16.126, and the Charter provisions expressly related to Section 16.126, to additional forms of housing, but the City may not restrict its application to 100% Affordable Housing and Teacher Housing Projects.

#### Other Charter Amendments

Charter Section 4.105 amendments would not require a separate General Plan report for 100% Affordable Housing or Teacher Housing Projects by the Planning Department. If the Planning Department determines such projects to be consistent with the Planning Code, they would be deemed consistent with the General Plan and would not require a separate report. The amendment also would not require Planning Commission approval for permits, licenses, or other approvals for 100% Affordable Housing or Teacher Housing Projects.

The Charter Section 4.106 amendment would preclude an appeal to the Board of Appeal for permits and licenses for 100% Affordable Housing or Teacher Housing Projects.

Charter Section 4.135 amendments would provide that a Certificate of Appropriateness would not be required for construction of 100% Affordable Housing or Teacher Housing Projects in a historic district, provided that the Planning Department develops and applies objective criteria substantially similar to the criteria used for issuance of a Certificate of Appropriateness to review the design of such projects. The amendments also would preclude Historic Preservation Commission review of applications for permits to alter buildings for 100% Affordable Housing or Teacher Housing Projects, provided that the Planning Department develops and applies objective criteria substantially similar to the applicable criteria for issuance of a permit to alter to review the design of such projects. The amendments provide that Historic Preservation Commission review of ordinances and resolutions concerning historic preservation issues and historic resources, redevelopment project plans, waterfront

land use and project plans, and other matters as may be prescribed by ordinance is not required for 100% Affordable Housing or Teacher Housing Projects.

The Charter Section 5.103 amendment would provide that Arts Commission design review is not required for 100% Affordable Housing or Teacher Housing Projects.

Charter Section 9.118 amendments provide that Board of Supervisors approval is not required for (a) City contracts having anticipated revenue to the City of 1 Million Dollars or more, or (b) for City agreements having a term in excess of ten years, or requiring anticipated expenditures by the City and County of 10 Million Dollars or more, when such contracts or agreements may be required for 100% Affordable Housing or Teacher Housing Projects. Under Section 9.118(c) amendments, Board of Supervisors approval would not be required for ground leases of real property, when the terms of such ground leases are no less than 55 years and no longer than 99 years for 100% Affordable Housing and Teacher Housing Projects.

### San Francisco Planning Code Amendments

The Planning Code amendments would add new Planning Code Section 344, which includes the same definitions and eligibility requirements as proposed Charter Section 16.126, as well as specific provisions that reflect the Charter amendments. New Section 344 more specifically would provide that 100% Affordable or Teacher Housing Projects that comply with the Zoning Maps, Height and Bulk Maps and objective standards of the Planning Code, including but not limited to modifications permitted by Planning Code Sections 206 *et seq.*, any discretionary approval that could be authorized under the Planning Code, and the State Density Bonus Law, would be deemed consistent with the Planning Code and would be considered ministerial actions. If a 100% Affordable Housing or Teacher Housing Project would be permitted with a conditional use authorization, such project would be considered a principally permitted use, consistent with the Planning Code, and would not require a conditional use permit or authorization from the Planning Commission.

Section 344 would further provide that 100% Affordable Housing or Teacher Housing Projects would not require authorization by the Historic Preservation Commission or the Planning Commission. No requests for discretionary review could be accepted by the Planning Department or heard by the Planning Commission for 100% Affordable Housing and Teacher Housing Projects. 100% Affordable Housing and Teacher Housing Projects would not require a Certificate of Appropriateness under Planning Code Article 10 or a Permit to Alter under Planning Code Article 11, provided that the Planning Department develops and applies objective criteria for review that is substantially similar to the criteria for issuance of a Certificate of Appropriateness or a Permit to Alter to the design of a proposed 100% Affordable Housing or Teacher Housing Project, but the Planning Department would not have the authority to disapprove such projects. Section 344 states that it is intended to exempt eligible 100% Affordable Housing and Teacher Housing Projects from any requirements for

review by the Planning Commission, Historic Preservation Commission, Board of Supervisors, and Board of Appeals.

Section 344 would require the Planning Director, in consultation with the Environmental Review Officer, to adopt objective standard measures that would be incorporated, if applicable, into the approval of 100% Affordable Housing and Teacher Housing Projects. The measures could address, but would not be limited to relevant topics such as archeology, air quality, greenhouse gas emissions, noise, historic resources, water supply, wind, and shadow.

Section 344 would require the Planning Department to conduct a review of the aesthetic elements of 100% Affordable Housing and Teacher Housing Projects within 60 days of the submission of an application from the project sponsor. Design review would be limited to the aesthetic aspects and design of the 100% Affordable Housing or Teacher Housing Project and not to the uses, density, height, zoning modifications, or any other approval or disapproval of the proposed eligible project.

Section 344 would require 100% Affordable Housing and Teacher Housing Projects to comply with the requirements of Planning Code Article 4, "Development Impact Fees and Project Requirements that Authorize the Payment of In-Lieu Fees," except as such projects or any portion of such projects may otherwise be exempt from such requirements, or in the event such requirements are reduced, adjusted, or waived as provided in Planning Code Article 4. 100% Affordable Housing and Teacher Housing Projects would not be required to comply with the Inclusionary Affordable Housing Requirements set forth in Sections 415 *et seq.*

Section 344 would provide for ministerial approval of building permit applications for 100% Affordable Housing and Teacher Housing Projects that comply with the controls in Section 344 and would not permit an appeal to the Board of Appeals. Such projects would not require a Planning Code Article 3 authorization, discretionary review hearing, or any other Planning Commission or Historic Preservation Commission hearing. Section 344 would exempt eligible 100% Affordable Housing Projects and Teacher Housing Projects from any requirements for discretionary review by the City, including but not limited to the Planning Commission, Historic Preservation Commission, Board of Supervisors, and Board of Appeals.

Amendment to Section 101.1: An amendment to Priority Policy #3 contained in Planning Code Section 101.1 would add a provision stating that new housing for households of all income levels should be produced to meet the needs of all City residents today and tomorrow. Section 101.1 would also be amended so that a separate finding of consistency with Section 101.1 would not be required for 100% Affordable Housing or Teacher Housing Projects.

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San Francisco Business and Tax Regulations Code Amendment

The San Francisco Business and Tax Regulations Code Section 26 would be amended to preclude discretionary review for permits associated with 100% Affordable Housing or Teacher Housing Projects.

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