



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment

HEARING DATE: DECEMBER 3, 2015
90-DAY DEADLINE: FEBRUARY 15, 2016

Project Name: **Eliminating CUs for 100% Affordable Housing Project**
Case Number: **2015-012718PCA** [Board File No. 150914]
Initiated by: Supervisor Wiener / Introduced September 15, 2015
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Recommendation: **Recommend Approval with Modifications**

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PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code to eliminate conditional use requirements, Section 309, and Section 329 review for any project where the principal use is housing comprised solely of housing that is restricted for a minimum of 55 years as affordable for “persons and families of low or moderate income,” in all zoning districts, except in RH (Residential, House) zoning districts and on designated public open space or property under the jurisdiction of the Recreation and Park Department.

The Way It Is Now:

(1) The Planning Code has various Conditional Use (CU) requirements that can apply to the construction of housing. Some of these CU requirements include:

- **Large Lot Developments:** Most Neighborhood Commercial districts and RTO (Residential Transit Oriented) districts require a CU authorization for any development where the lot is over 10,000 sq. ft.
- **Lot Frontage:** RTO districts require a CU authorization for lot mergers greater than 5,000 sq. ft. and some NCT, NC and Mixed Use districts require CU authorization for lot frontages above a certain length (length ranges between 50 and 150 feet)
- **Height:** CU authorization is required for buildings taller than 40 feet in RH (Residential, House) Districts and 50 feet in RM (Residential-Mixed) and RC (Residential-Commercial) Districts. Dwellings are not permitted to be taller than 35 feet in RH-1 Districts and 40 feet in RH-2 Districts.
- **Minimum Dwelling Unit Mix:** In some district where there are no density controls for housing, the Planning Code requires a certain percentage of two and three bedroom units. These percentages can be modified with CU authorization.
- **Bulk Limits:** Bulk limits can be adjusted with CU authorization for a distinctly better design or a building or structure with widespread public service benefits and significance to the community at large.
- **Change in Use or Demolition of a Movie Theater:** CU authorization is required to change a movie theater use to another use or to demolition a movie theater.

- **Change in Use or Demolition of General Grocery Store Uses:** CU authorization is required to change a grocery store to another use or to demolish a grocery store.
- **Density:** In certain Districts, such as RH-2 and RH-3, CU authorization is required for additional density.
- **Parking:** Parking exceeding principally permitted amounts typically requires CU authorization.

Planned Unit Development (PUD). Through a PUD, projects can increase density up one unit less than what would be permitted in the next more permissive zoning district, which requires CU authorization. PUDs are also allowed to modify certain Planning Code requirements, such as rear yard, exposure, open space usability standards, and how height is measured. PUDs also allow limited commercial uses in R Districts.

(2) **Section 309 Review.** In C3 Districts, projects that will result in a net addition of more than 50,000 square feet of gross floor area of space or that will result in a building that is greater than 75 feet in height are required to go to the Planning Commission for Section 309 review. Section 309 review allows for the following code exceptions:

1. Exceptions to the setback, streetwall, tower separation, and rear yard requirements as permitted in Sections 132.1 and 134(d);
2. Exceptions to the ground-level wind current requirements as permitted in Section 148;
3. Exceptions to the sunlight to public sidewalk requirement as permitted in Section 146;
4. Exceptions to the limitation on curb cuts for parking access as permitted in Section 155(r);
5. Exceptions to the limitations on above-grade residential accessory parking as permitted in Section 155(s);
6. (Exceptions to the freight loading and service vehicle space requirements as permitted in Section 161(i);
7. Exceptions to the off-street tour bus loading space requirements as permitted in Section 162;
8. Exceptions to the use requirements in the C-3-O(SD) Commercial Special Use Subdistrict in Section 248;
9. Exceptions to the height limits for buildings taller than 550 feet in height in the S-2 Bulk District for allowance of non-occupied architectural, screening, and rooftop elements that meet the criteria of Section 260(b)(1)(M);
10. Exceptions to the height limits for vertical extensions as permitted in Section 260(b)(1)(G) and for upper tower extensions as permitted in Section 263.9;
11. Exceptions to the height limits in the 80-130F and 80-130X Height and Bulk Districts as permitted in Section 263.8 and in the 200-400S Height and Bulk District as permitted in Section 263.10;
12. Exceptions to the bulk requirements as permitted in Sections 270 and 272.

Section 309 review also has several design requirements and limitations such to meet the objectives and policies of the General Plan and include the following:

1. Building siting, orientation, massing and facade treatment, including proportion, scale, setbacks, materials, cornice, parapet and fenestration treatment, and design of building tops;
2. Aspects of the project affecting views and view corridors, shadowing of sidewalks and open spaces, openness of the street to the sky, ground-level wind current, and maintenance of predominant streetwalls in the immediate vicinity;
3. Aspects of the project affecting parking, traffic circulation and transit operation and loading points;
4. Aspects of the project affecting its energy consumption;
5. Aspects of the project related to pedestrian activity, such as placement of entrances, street scale, visual richness, location of retail uses, and pedestrian circulation, and location and design of open space features;
6. Aspects of the project affecting public spaces adjacent to the project, such as the location and type of street trees and landscaping, sidewalk paving material, and the design and location of street furniture as required by Section 138.1;
7. Aspects of the project relating to quality of the living environment of residential units, including housing unit size and the provisions of open space for residents;
8. Aspects of the design of the project which have significant adverse environmental consequences;
9. Aspects of the project that affect its compliance with the provisions of Sections 1109(c), 1111.2(c), 1111.6(c), and 1113 regarding new construction and alterations in conservation districts;
10. Other aspects of the project for which modifications are justified because of its unique or unusual location, environment, topography or other circumstances.

(3) **Section 329 Review.** Large projects proposed in the Eastern Neighborhoods Mixed Use Districts require Large Project Authorization, per Planning Code Section 329. Large project review is triggered when the project includes the construction of a new building greater than 75 feet in height, or includes a vertical addition to an existing building with a height of 75 feet or less resulting in a total building height greater than 75 feet; or the project involves a net addition or new construction of more than 25,000 gross square feet. Section 329 is primarily a design review so that the Commission can review and evaluate all physical aspects of a proposed project at a public hearing. Section 329 review allows for the following code exceptions:

1. Exceeding the principally permitted accessory residential parking ratio described in Section 151.1 and pursuant to the criteria therein;
2. Exception from residential usable open space requirements. In circumstances where such exception is granted, a fee shall be required pursuant to the standards in Sections 135(j), pursuant to the criteria of Section 305(c).
3. Modification of the horizontal massing breaks required by Section 270.1 in light of any equivalent reduction of horizontal scale, equivalent volume of reduction, and unique and superior architectural design, pursuant to the criteria of Section 270.1(d).
4. Exception from satisfaction of loading requirements per Section 152.1 pursuant to the criteria contained therein.
5. Exception to height limits for vertical non-habitable architectural elements described in Section 263.21 and pursuant to the criteria therein;

6. Provision of the required minimum dwelling unit mix, as set forth in Section 207.6, pursuant to the criteria of Section 305(c);
7. Exception for rear yards, pursuant to the requirements of Section 134(f);
8. The number of Designated Office Stories for projects which are subject to vertical office controls pursuant to 219.1 or 803.9(h) and contain more than one building on the project site, so long as:
 - a. an increase in the number of Designated Office Stories would result in a total square footage of office space no greater than that which would otherwise be permitted by the project.
 - b. office uses are consolidated within a lesser number of buildings than would otherwise be the case, and
 - c. the resulting location and mix of uses increases the project's consistency with nearby land uses;
9. Relief from dwelling unit exposure requirements for buildings which are designated landmark buildings or contributory buildings within designated historic districts under Article 10 of this Code, and/or buildings recorded with the State Historic Preservation Office as eligible for the California Register, when the following criteria are met:
 - i. literal enforcement of Section 140 would result in the material impairment of the historic resource; and
 - ii. the project complies with the Secretary of the Interior's Standards, (36 C.F.R. § 67.7 (2001)) and/or Section 1006 and any related Article 10 appendices of this Code.
10. Modification of the accessory use provisions of Section 803.3(b)(1)(c) for dwelling units. Dwelling units modified under this Subsection shall continue to be considered dwelling units for the purposes of this Code and shall be subject to all such applicable controls and fees. Additionally, any building which receives a modification pursuant to this Subsection shall (i) have appropriately designed street frontages to accommodate both residential and modified accessory uses and (ii) obtain comment on the proposed modification from other relevant agencies prior to the Planning Commission hearing, including the Fire Department and Department of Building Inspection. Modifications are subject to the following:
 - i. A modification may only be granted for the ground floor portion of dwelling units that front on a street with a width equal to or greater than 40 feet.
 - ii. The accessory use may only include those uses permitted as of right at the subject property. However, uses permitted in any unit obtaining an accessory use modification may be further limited by the Planning Commission.
 - iii. The Planning Commission may grant exceptions to the size of the accessory use, type and number of employees, and signage restrictions of the applicable accessory use controls.
11. Where not specified elsewhere in this Subsection (d), modification of other Code requirements which could otherwise be modified as a Planned Unit Development (as set forth in Section 304), irrespective of the zoning district in which the property is located.

Section 29 review also has several design requirements and limitations such to meet the objectives and policies of the General Plan and include the following:

1. Overall building massing and scale;
2. Architectural treatments, facade design and building materials;
3. The design of lower floors, including building setback areas, commercial space, townhouses, entries, utilities, and the design and siting of rear yards, parking and loading access;
4. The provision of required open space, both on- and off-site. In the case of off-site publicly accessible open space, the design, location, access, size, and equivalence in quality with that otherwise required on-site;
5. The provision of mid-block alleys and pathways on frontages between 200 and 300 linear feet per the criteria of Section [270](#), and the design of mid-block alleys and pathways as required by and pursuant to the criteria set forth in Section [270.2](#);
6. Streetscape and other public improvements, including tree planting, street furniture, and lighting;
7. Circulation, including streets, alleys and mid-block pedestrian pathways;
8. Bulk limits;
9. Other changes necessary to bring a project into conformance with any relevant design guidelines. Area Plan or Element of the General Plan.

The Way It Would Be:

1. Any project where the principal use is housing comprised solely of housing that is restricted for a minimum of 55 years as affordable for "persons and families of low or moderate income" would be exempt from any CU requirement related to the housing.
2. Projects as defined above would not be required to go through Section 309 review.
3. Projects as defined above would not be required to go through Section 329 review.

ISSUES AND CONSIDERATIONS

Affordable Housing Bonus Program

As part of the Mayor's Housing Work Group, the Department has been working on the Affordable Housing Bonus Program, which will provide 30% affordable housing for low, moderate, and middle income households and has presented the program to this Commission in detail on November 5, 2015. The proposed Affordable Housing Bonus Program is an optional program for market rate and publicly funded affordable housing projects¹. Generally the program requires that projects provide greater

¹To learn more about the Affordable Housing Bonus Program visit <http://www.sf-planning.org/AHBP>

benefits to the City in the form of more affordable housing. Projects that choose to provide higher levels of affordable housing will be awarded commensurate development incentives in the form of increased density, heights, and limited reductions in other zoning requirements. The analysis completed by the architect consultant studies demonstrates that development incentives offered through these programs can result in high quality buildings that will add to San Francisco’s urban fabric and housing supply. The AHBP Design Guidelines ensure that the projects will be well designed. While the financial considerations may vary for a given parcel, the analysis conducted by Seifel Consulting demonstrates that the AHBP programs are feasible and maximizes the re-capture of value conferred to development sites in the form of additional affordable housing.

The Affordable Housing Bonus and 100% Affordable Housing Projects

The draft Affordable Housing Bonus legislation (BF 150969) includes a section for 100% Affordable Housing Projects. Projects that meet the definition of 100% Affordable Housing would be entitled to the zoning modifications listed below if they are:

- On lots that allow residential uses and permit at least three residential dwelling units; and
- Demonstrate to the satisfaction of the Environmental Review Officer that the project does not :
 - Cause a substantial adverse change in the significance of an historic resource as defined by California Code of Regulations, Title 14, Section 15064.5;
 - Create new shadow in a manner that substantially affects outdoor recreation facilities or other public areas; and
 - Alter wind in a manner that substantially affects public areas.

Proposed Zoning Modifications for 100% Affordable Housing Projects:

100 Percent AHBP	Rear Yard	No less than 20% of the lot depth, or 15 feet whichever is greater
	Dwelling Unit Exposure	Can be satisfied through qualifying windows facing an unobstructed open area that is no less than 15 feet in every horizontal dimension, and such open area is not required to expand in every horizontal dimension at each subsequent floor.
	Off-Street Loading	None required
	Parking	Up to a 100% reduction in residential and commercial requirements
	Open Space	Up to a 10% reduction in common open space if provided per Section 135 or any applicable special use district.

Additionally these projects would be entitled to three additional residential stories and form based density controls.

Proposed Entitlement Process for the Affordable Housing Bonus Program (AHBP)

The proposed AHBP also includes a specific entitlement process for projects that include 30% affordable housing or more – which is included in Section 328 of the draft Planning Code Ordinance². This process was modeled after the existing Large Project Authorization (LPA Section 329) of the Planning Code. It generally consolidates all of a project’s entitlements into a single case. Additionally, the LPA process includes exceptions to the planning code that are focused on the overall design of the building. The exceptions allow staff and the Commission the flexibility of modifying physical aspects of a building such as, but not limited to exposure, parking, loading, open space, and setbacks.

Section 328 would require a Planning Commission hearing for all projects entitled under the Local AHBP or 100% Affordable AHBP. The appeal process for the proposed 328 entitlement process is heard through the Board of Appeals. In Section 309 and Section 329 review the appeals process is also heard through the Board of Appeals. The entitlement process and proposed zoning modifications outlined in the Section 328 were developed in consultation with the Council of Community Housing Organizations (CCHO) and the Mayor’s Office of Community Development and Housing (MOHCD).

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department’s proposed recommendations are as follows:

1. Draft a separate Code section specific to the approval process for 100% Affordable Housing Projects. This code section would:
 - a. Eliminate all CUs for 100% Affordable Housing except CUs for additional parking and those that are voter mandated (Formula Retail CUs).
 - b. Allow the same modifications permitted in Section 309 and Section 329, except for increased parking exceptions.
 - c. Allow the modifications permitted in Section 304 for Planned Unit Developments
 - d. Allow projects to be approved administratively by the Director of Planning

BASIS FOR RECOMMENDATION

The Department supports the overall goal to reduce the burden of approval for 100% Affordable projects. The City has clear goals in the Housing Element, the Mayor’s Housing Working Group and Proposition K to produce affordable housing as quickly as possible. Currently projects with 20% of affordable housing or more receive priority processing in several City Departments, including the Planning Department. Priority processing, however, does not mean that a 100% Affordable Housing Project would not need a

² The draft Affordable Housing Bonus Legislation can be found here:
<https://sfgov.legistar.com/LegislationDetail.aspx?ID=2474234&GUID=C3463948-D066-4AA3-B27B-8887AE979436&Options=ID|Text|&Search=affordable+housing+bonus>

Planning Commission hearing. Eliminating a Planning Commission hearing could save these projects as much as three to six months of review time which translates into these affordable units coming online at a slightly faster rate than current regulations.

Note that the definition of 100% Affordable is varied throughout the current Code. The definition used by the draft Affordable Housing Bonus Program relies on Code section 406 (b) which defines affordable housing as the following:

- (1) Is affordable to a household at or below 80% of the Area Median Income (as published by HUD), including units that qualify as replacement Section 8 units under the HOPE SF program;
- (2) Is subsidized by MOHCD, the San Francisco Housing Authority, and/or the San Francisco Redevelopment Agency; and
- (3) Is subsidized in a manner which maintains its affordability for a term no less than 55 years, whether it is a rental or ownership opportunity. Project sponsors must demonstrate to the Planning Department staff that a governmental agency will be enforcing the term of affordability and reviewing performance and service plans as necessary.

The recently passed Transportation Sustainability Fee (TSF) also relies on definition 406 (b) for Affordable Projects, however, residential uses with projects where all residential units are affordable to households at or below 150 % AMI shall not be subject to the TSF.

Proposition C established the Housing Trust Fund which supports creating, acquiring and rehabilitating affordable housing and promoting affordable home ownership programs in the City. The City through the Mayor's Office of Housing and Community Development (MOHCD) can distribute funding for the creation, acquisition, and rehabilitations of rental and homeownership for Households earning up to 120% of AMI. The City's loan programs under this fund are also targeted to households earning 120% pf the AMI.

The proposed ordinance defines Affordable Housing as any project where the principal use is housing comprised solely of housing that is restricted for a minimum of 55 years as affordable for "persons and families of low or moderate income" as defined in California Code Section 50093. This code section defines low and moderate as the following:

"persons and families whose income does not exceed 120 percent of area median income, adjusted for family size by the department in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937."

This definition is consistent with the goals of the Mayor's Housing Working Group, the Housing Trust Fund, and the recently passes Housing Bond measure which establishes a middle income rental and ownership program.

Recommendation 1: Draft a separate Code section for the entitlement of 100% Affordable Housing Projects

The proposed legislation exempts 100% Affordable Housing projects from CU, 309 and 329 review but does not provide a clear administrative path for these projects to take advantage of the modifications afforded by these processes. These waivers may be helpful or desired to ensure better design of the building or an increase in the number of units. To address this, staff recommended drafting a separate Code section for the entitlement of 100% Affordable Housing projects.

This code section would include the following:

1. The modifications in a PUD, 309, or 329 would be available to projects that trigger these respective code sections. If a project under this new Code section triggers Section 329 review it would be entitled to the modifications referenced in Section 329 but would not be entitled to modifications available in Section 309.
2. The elimination of CUs, except where they are voter mandated or are a CU for increased parking;
3. No Commission Hearing, subject to approval by the Director of Planning.

This Code section would pertain to the entitlement of the 100% Affordable Housing as defined in the ordinance. Projects that are 100% Affordable Housing and Code conforming that would trigger a PUD, a LPA, or Section 309 review due to the size of the project would be able to be reviewed administratively under this new Code section. For example, if a 100% Affordable Housing Project wanted to take advantage of the increased density offered under the PUD process, the project would be able to and would not be subject to a CU hearing. If a project under this code section triggers Section 329 review it would be entitled to the modifications referenced in Section 329 but would not be entitled to modifications available in Section 309. Note all of the modifications and design review considerations are listed on pages three through five of this report.

These projects would still be subject to Neighborhood Notification (Planning Code Section 311/312) as this Code section is tied to the building permit. As such, these projects would still be subject to Discretionary Review for any member of the public that asks the Commission to exercise its Discretionary Review powers. Furthermore, all newly constructed 100% Affordable Projects would trigger a Pre-Application meeting prior to submittal to the Planning Department. Pre Application meetings are required when projects trigger Planning Code Section 311 or 312.

The Director of Planning would be responsible for review of key issues related to the design of the project, and projects that qualify for Section 309 and Section 329 review are still subject to the design considerations in those respective code sections. In Section 329, the Director of Planning be giving the authority for final design review. For all projects defined as 100% Affordable, the Director of Planning would be authorized to approve the project on behalf of the City.

ENVIRONMENTAL REVIEW

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

PUBLIC COMMENT

The San Francisco Council of Community Housing Organizations informed the Department that their organization and members were not involved in the drafting of this ordinance.

RECOMMENDATION:	Recommendation of Approval with Modification
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Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 150914