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July 17, 2023

### San Francisco Adopts Ordinance To Facilitate the Conversion of Office Buildings to Housing



In downtown San Francisco, office vacancy has skyrocketed as hybrid work has transformed the way in which employers and employees use office space. This, in turn, has decreased activity downtown, negatively impacting the city's economy, small businesses, and the public's use of transportation. At the same time, San Francisco continues to fight a crisis of housing affordability and availability. In an effort to address the city's office vacancy and much-needed housing, the San Francisco Board of Supervisors approved the "Commercial to Residential Adaptive Reuse and Downtown Economic Revitalization" ordinance on June 27, 2023. On July 5, 2023, Mayor London Breed approved the ordinance, which will become effective on August 4, 2023.

Several factors affect the viability of a potential office-to-residential conversion, including but not limited to the physical characteristics of a building; the cost of development, impact fees, inclusionary housing requirements, and other factors that affect the financial feasibility of a conversion project; and planning and building code processes and requirements that make it difficult to convert an office building into housing. While the feasibility of office-to-residential conversion remains uncertain, the city's ordinance seeks to facilitate the conversion of qualifying downtown commercial buildings into housing by amending the City's Planning Code to establish a Commercial to Residential Adaptive Reuse program, relax certain requirements for eligible conversion projects, and streamline the permitting and approval process.

#### **Eligible Office Conversion Projects and Key Legislative Changes**

To be eligible for the Commercial to Residential Adaptive Reuse program, a project must meet all of the following requirements:

- Be located in a C-2 or C-3 zoning district that is east of or fronting Franklin Street/13th Street and north of Townsend Street.
- Not seek waivers or concessions under Planning Code Section 206.5 or 206.6.
- Not propose an addition to the building envelope that exceeds more than 33% of the existing building's Gross Floor Area, as defined in the City's Planning Code. Projects that exceed the 33% limit are still eligible for the benefits of the conversion program, but any portions in excess of the 33% limit (measured from the lowest floor to the highest floor) would be subject to the applicable Planning Code requirements.
- Submit an application on or before December 31, 2028.

In addition to the creation of the Commercial to Residential Adaptive Reuse program, the ordinance makes the following key changes:

- Authorizes the conversion of non-residential uses to residential uses in the C-2 and C-3 zoning district and exempts eligible conversion projects from certain development controls, including but not limited to those for rear yard, open space, streetscape improvements, dwelling unit exposure, bike parking, and dwelling unit mix.
- Seeks to facilitate the economic revitalization of downtown San Francisco by adding Flexible Workspace as a defined land use and authorizing other types of land uses within the C-2 and C-3 districts.
- Exempts certain eligible conversion projects located in the C-3 district from Planning Code Section 309 hearings, with narrow exceptions.
- For projects located in the C-3 district, the height requirement to trigger a Section 309 Planning Commission hearing is increased from 75 feet to 120 feet for new construction and or vertical additions.

A more detailed summary of the changes implemented by the ordinance is summarized in the table below.

## **Additional City Initiatives and Proposals**

Whether the changes enacted under the ordinance will spur downtown office-to-residential conversions remains unclear. However, the city has taken additional steps to encourage developers to take advantage of the changes under the new legislation. The city's Office of Economic and Workforce Development (OEWD) and Planning Department issued a request for interest (RFI), requesting that owners and stakeholders identify projects located in a C-3 or C-2 zoning district east of Franklin Street/13th Street and north of Townsend Street where the city could help accelerate or assist adaptive reuse conversion projects. Interested developers may submit a response to the RFI, identifying how the city can assist with project feasibility through regulatory modifications, financial incentives, or other means.

Separately, the Board of Supervisors is considering the companion legislation "Development Impact Fees for Commercial to Residential Adaptive Reuse Projects," which proposes waiving all development impact fees for qualifying adaptive reuse projects, except for inclusionary housing requirements. Stay tuned for future updates on this legislation.

## **Summary of Changes Under Office Conversion Ordinance**

Code Provision	Existing Law	Amended Law
<b>Facilitate Residential Uses Downtown</b>		
Planning Code Section 210.5 – Adopting Commercial to Residential Adaptive Reuse Programs	Does not account for Adaptive Reuse projects.	Adopted to facilitate Commercial to Residential Reuse projects, defined as projects that include a change of use of any existing Gross Floor Area from a non-residential use, other than a hotel use, to a residential use.
Planning Code Section 134 – Lot Coverage for C districts	C districts are subject to rear yard setbacks.	Eligible Reuse projects are exempt from this requirement.
Planning Code Section 135 – Usable Open Space	Dwelling units and group housing are required to provide usable open space.	Eligible Reuse projects are exempt from this requirement.
Planning Code Section 138.1 – Streetscape and Pedestrian Improvements	Streetscape and pedestrian improvements are required.	Eligible Reuse projects are exempt from this requirement.
Planning Code Section 140 – Facing Open Area	Dwelling units to face an open area.	Eligible Reuse projects would be subject to a reduced dwelling unit exposure requirement.
Planning Code Sections 155.1 and 155.2 – Bicycle Parking	Bicycle parking spaces are required in at least the minimum quantities specified.	Eligible Reuse projects are exempt from this requirement.
Planning Code Section 169 – Transportation Demand Management	Does not exempt Adaptive Reuse projects.	Eligible Reuse projects are exempt from this requirement.
Planning Code Section 207.7 – Dwelling Unit Mix	Ensures an adequate supply of family-sized units in new housing stock; new residential construction must include a minimum percentage of units of at least two or more bedrooms.	Eligible Reuse projects are exempt from this requirement.

Code Provision	Existing Law	Amended Law
Planning Code Sections 202.10(b)(1) and (b)(2) – Intermediate Length Occupancy controls	Does not account for Adaptive Reuse projects.	Intermediate Length Occupancies would be principally permitted and exempt, regardless of the number of units in the Adaptive Reuse project.
Planning Code Section 309 – Hearing and Review Process	Governs approval of permits in the C-3 district. Project sponsors may seek exceptions from certain Planning Code standards through the Section 309 review process. A public hearing is required for projects that result in a net addition of more than 50,000 square feet of gross floor area, including the construction of a new building greater than 75 feet in height or a vertical addition to an existing building that results in a total building height greater than 75 feet, or that require an exception.	Eligible projects would not be subject to the hearing requirements of Planning Code Section 309 unless the project seeks exceptions not otherwise waived or modified in Section 210.5. The height triggers for a Section 309 Planning Commission hearing also would be increased from 75 feet, such that a Planning Commission hearing would be required for new construction that would exceed 120 feet in height and for vertical additions that would cause a building to exceed 120 feet.
Planning Code Section 260 – Height Limits	Does not account for modifications to the dimensional limits on exemptions to height restrictions for mechanical equipment, elevator, stair, and mechanical penthouses, including restrictions applicable to existing buildings in the C-3 district.	Modifies the dimensional limits on exemptions to height restrictions for mechanical equipment, elevator, stair, and mechanical penthouses, including restrictions applicable to existing buildings in the C-3 district.
<b>Economically Revitalize Downtown</b>		
Planning Code Section 102 – Flexible Workspace	Does not account for Flexible Workplace.	Defines Flexible Workspace as: "Retail Sales and Service Use that is a combination of any uses within the Retail Sales and Service use category or a General Entertainment Use that operates in conjunction with a principally or conditionally permitted Non-Retail Sales and Service Use other than a Commercial Storage, Wholesale Sales, or Wholesale Storage Use."
Planning Code Section 145.4 – Required Ground Floor Commercial Uses	Does not account for Flexible Workplace in the C-3 district.	Allows Flexible Workspace as an active ground floor commercial use along certain street frontages in the C-3 district.
Planning Code Section 121.6 – Large Scale Retail Uses	Certain large-scale retail uses are conditionally permitted or not permitted at all in the C-3 district.	Authorizes large-scale retail uses (uses in excess of 50,000 gross square feet) in the C-3 district.

<b>Code Provision</b>	<b>Existing Law</b>	<b>Amended Law</b>
Planning Code Section 145.1 – Window Displays	Does not account for the C-3 zoning district.	Allows window displays of at least four feet in depth in the C-3 district.
Planning Code Section 204.3 – Accessory Storage	Does not account for the C zoning districts.	Allows accessory storage in C districts.
Planning Code Section 205.1 – Temporary Installation	Does not account for the C-3-R zoning district.	Allows the temporary installation for 60 days of certain signs in the C-3-R district.
Planning Code Section 205.2 – Pop-up Activation	Allows for pop-ups for a 60-day limit.	Allows temporary pop-up non-residential uses in vacant spaces for up to one year in parcels in C-2 and C-3 districts east of or fronting Franklin Street/13th Street and north of Townsend Street, NC, NCT, or Mixed-Use Districts. This would include formula retail if that use is permitted in the underlying zoning district.
Planning Code Section 210.1 – C- 2 Districts, Community Business	Laboratory, Life Science, and Agricultural and Beverage Processing are not permitted in C-2 districts. Animal Hospitals are conditionally permitted in C-2 districts.	Principally permits Laboratory, Life Science, Agricultural and Beverage Processing, and Animal Hospitals in C-2 districts.
Planning Code Section 210.2 – C- 3 Districts, Downtown Commercial	Outdoor Entertainment, Open Recreation Areas, Animal Hospitals, and Trade Schools are not permitted in certain C-3 district.  Also regulates permissible uses on various floors of a building, for example, office and design professional uses on the second floor or higher in the C-3-R zoning district.	Principally permits Senior Housing, Residential Care Facilities, Outdoor Entertainment, Open Recreation Areas, Animal Hospitals, and Trade Schools in C-3 districts.  Allows formula retail as a ground floor use on Market Street in C-3 districts.  Principally permits office and design professional uses on the second floor and higher in the C-3-R zoning district.
Planning Code Section 248 – Transit Center C-3- O(SD), Commercial Special Use District	Provides that in the Transit Center C-3-O(SD) Commercial Special Use District, all new development on lots larger than 15,000 square feet shall include not less than 2 gross square feet of principally or conditionally permitted commercial uses for every 1 gross square foot of dwellings or other housing uses.	Requires consideration of office vacancy rates in consideration of granting exceptions in the Transit Center Commercial Special Use District.

<b>Code Provision</b>	<b>Existing Law</b>	<b>Amended Law</b>
<b>Streamline Sign Permitting in C-3 Districts and Citywide</b>		
Planning Code Section 604 – Sign Permitting	Requires a permit for new signs and certain changes in sign copy and restricts removal of certain neon signs for routine maintenance and repair.	Exempts existing business signs in the C-3 district from certain sign permit requirements. The ordinance would also allow certain nonconforming neon signs to be physically detached from a building for repairs or maintenance, subject to conditions. This provision would be applicable citywide.
<b>Streamline Historic Preservation Review</b>		
Planning Code Sections 1005 and 1111.1 – Historic Preservation Review	Does not account for streamlining review or permitting.	Streamlines review of administrative certificates of appropriateness and minor permits to alter for awnings, and Qualifying Scopes of Work, as may be delegated by the Historic Preservation Commission.
<b>Provide Alternatives to the On-Site Open Space Requirement in Certain C-3 Districts</b>		
Planning Code Section 426 – On- Spite Open Space Requirement	Does not account for an alternative to providing on-site privately-owned public open space (POPOS).	As an alternative to providing POPOS in the C-3-O, C-3-S, C-3-G, and C-3-R districts, this ordinance allows for payment of an in-lieu fee. The amount of the in-lieu fee would be equal to the fee currently assessed for the in lieu open space fees in the C-3-O(SD) District (Section 426(b)) and also adjusted annually. In the C-3-O, C-3-S, and C-3-G districts, POPOS fees would be paid into the Downtown Park Fund. POPOS fees in the C-3-R district would be paid into the Union Square Park, Recreation, and Open Space Fund.
<b>Facilitate Residential Adaptive Reuse</b>		
Building Code Section 111A – Adaptive Reuse	Does not account for Adaptive Reuse projects.	Creates Section 111A of the Building Code entitled "Adaptive Reuse." The ordinance would direct the Building Official and Fire Code Official to develop an alternative building standards manual, which would provide the building standards applicable to Commercial to Residential Adaptive Reuse projects. This alternative building standards manual would include technical information and implementation parameters, standards for determining technical infeasibility, and alternative standards if technical infeasibility is present, as well as other rules.
<b>Principally Permitting Formula Retail and Waiving Size Controls for a Portion of the Showplace Square Area in the Urban Mixed Use Zoning District</b>		

<b>Code Provision</b>	<b>Existing Law</b>	<b>Amended Law</b>
Planning Code Section 843.46 – Formula Retail	Formula retail is conditionally permitted in the Urban Mixed Use zoning district and uses over certain sizes require a condition use authorization.	Rezones a portion of the Urban Mixed Use zoning district to allow formula retail as a principally permitted use at the Showplace Square shopping center and waives any size controls for such uses.

*The authors wish to acknowledge the contributions of Summer Associate Jenna Kwak to this Update.*

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