

## Pending Legislation Holds Promise For SF Buildings

By **Caroline Chase and Nick DuBroff** (May 3, 2023)

New legislation recently proposed in San Francisco would facilitate the conversion of office buildings to residential use. Pending state legislation would also facilitate conversions by providing for "by right" — i.e., streamlined ministerial; no California Environmental Quality Act — approval of qualifying office-to-residential conversion projects and new funding sources for those projects.

These pending laws should help catalyze downtown San Francisco's post-COVID-19 recovery, but additional changes will likely be required to make conversion projects in San Francisco financially feasible, as discussed below.

### **Pending San Francisco Legislation**

On April 12, San Francisco Mayor London Breed and Supervisor Aaron Peskin introduced a substituted ordinance, which aims to revitalize commercial-zoned properties in the greater downtown area by "address[ing] twin problems of under-utilized office space and lack of affordable housing available in San Francisco."<sup>[1]</sup>

The proposed ordinance includes the following components that pertain to office-to-residential conversions.

### ***Commercial Residential Adaptive Reuse Program***

The proposed Commercial Residential Adaptive Reuse program would apply to qualifying residential conversion projects proposed on or before Dec. 31, 2028. To qualify, the project must:

- Include a change of use of existing gross floor area from a nonresidential use to a residential use;
- Be located in a commercial zoning district east of, or fronting, Van Ness/South Van Ness Avenue and north of Townsend Street and outside the Group Housing Special Use District;
- Limit any expansion of the existing building envelope to 20% of the existing gross floor area and one additional vertical story; and
- Not propose a density bonus under the State Density Bonus Law pursuant to Planning Code Sections 206.5 or 206.6. A density bonus could be proposed pursuant



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to the HOME-SF Program or 100 Percent Affordable Housing Program, subject to the limitations above.

The program would exempt qualifying residential conversion projects from certain otherwise applicable Planning Code requirements for residential projects, including but not limited to residential rear yard and usable open space requirements.

Modified dwelling unit exposure requirements would also apply. This is critical, because without these changes, at least one discretionary approval would almost certainly be required, which prolongs the project approval process.

### ***Alternative Building Standards***

The proposed ordinance also addresses the high construction costs of converting nonresidential to residential spaces by directing the San Francisco Building and Fire officials to prepare an alternative buildings standards manual for qualifying residential conversion projects, which would include, among other things, alternative standards if technical infeasibility is present.

This is critical because there are well-documented design challenges associated with the conversion of existing commercial buildings to residential use due to required compliance with the strict provisions of the San Francisco Building Code, which consists of the California Building Code, the 2022 California Residential Code and San Francisco-specific amendments to those codes.

It is not clear yet whether alternative standards would be available for required seismic upgrades for conversion projects, which are often cost-prohibitive.

### ***Relaxed Planning Code Requirements in Commercial Zoning Districts***

The proposed legislation includes numerous Planning Code amendments to "support existing and attract new businesses Downtown, and streamline approvals to draw consumers back Downtown."

These changes would include modified Planning Commission approval requirements, additional permitted uses, relaxed ground floor active and commercial use requirements, and other modifications.

The modified Planning Commission approval requirements would, in combination with the new Planning Code exceptions discussed above, newly allow for the administrative approval of qualifying residential conversion projects where, for example, a vertical addition is proposed that does not cause the total building height to exceed 120 feet.

The current trigger for Planning Commission approval is 75 to 85 feet, depending on the zoning district.

### ***Development Impact Fee Waivers***

On April 18, Supervisors Matt Dorsey and Ahsha Safai introduced a substituted ordinance, which would waive development impact fees for qualifying residential conversion projects, with the exception of any in-lieu fees proposed to satisfy inclusionary affordable housing requirements.[2]

San Francisco decision makers are separately contemplating reduced inclusionary housing requirements citywide, which would greatly improve the financial feasibility of office-to-residential conversion projects.

That reduction would track with findings from recent studies examining how inclusionary housing requirements negatively affect housing development projects, including conversion projects, in San Francisco.

A January report prepared by the San Francisco city controller explained that lowering San Francisco's inclusionary housing requirement and reducing impact fees could increase the financial feasibility for new housing development projects.

Similarly, the San Francisco Bay Area Planning and Urban Research Association's recent report, "Office-to-Residential Conversion in San Francisco's Changing Real Estate Market," found that "a significant reduction in the inclusionary requirement would be necessary to make office-to-residential conversions more viable."

The SPUR report further explained that incentives are also critical to the financial feasibility of residential conversion projects, including but not limited to incentive programs that provide funding or property tax abatements for residential conversion projects.

San Francisco decision makers should seriously consider such programs, which have been implemented in New York, Chicago and Washington, D.C., and have delivered promising results.

### **Pending State Legislation**

Pending state legislation would also facilitate the conversion of existing underutilized office buildings to residential use.

### ***Office to Housing Conversion Act***

A.B. 1532, introduced by State Assembly Member Matt Haney, D-San Francisco, would provide for by-right approval of qualifying office-to-residential conversion projects in all zoning districts.

To qualify, the residential conversion project must designate at least 10% of the on-site residential units as affordable to low- or moderate-income residents and utilize a skilled and trained workforce, as specified.

As currently drafted, A.B. 1532 appears to prohibit a local jurisdiction from imposing inclusionary housing requirements exceeding the A.B. 1532 requirement, which would greatly benefit qualifying residential conversion projects in San Francisco and other local jurisdictions with significantly higher inclusionary housing requirements.

In San Francisco, the affordability percentage requirement for on-site units is currently more than double the 10% requirement proposed under A.B. 1532.

A.B. 1532 would also (1) exempt qualifying residential conversion projects from impact fees that are not directly related to the office-to-residential conversion, and allow applicants to pay any applicable impact fees over a 10-year period; (2) prohibit the imposition of any open space requirements that were not imposed on the original office use, e.g., residential

usable open space requirements; and (3) prohibit the imposition of increased inclusionary affordable housing requirements that would apply specifically because the project is approved under A.B. 1532.

New state funding would also be available for qualifying office-to-residential conversion projects. A.B. 1532 would create the Office to Housing Conversion Fund in the State Treasury and upon appropriation, would require the California Department of Housing and Community Development to establish a grant program that would award funding to qualifying residential conversion projects based on the project square footage.

It is unclear what amount of state funding would be available, but this funding could greatly incentivize office-to-residential conversions.

### ***Revision of State Adaptive Reuse Codes***

A.B. 529, sponsored by Assembly Members Haney and Jesse Gabriel, D-Encino, would require the California Building Standards Commission to work with the Department of Housing and Community Development to revise existing state adaptive reuse codes to better facilitate office-to-residential conversion projects.

As explained above, San Francisco is already proposing related changes via an alternative buildings standards manual for qualifying residential conversion projects, but this would be an important change at the state level.

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[1] <https://sfgov.legistar.com/View.ashx?M=F&ID=11889902&GUID=849D86B7-A825-484C-9187-E34F21BF2054>.

[2] <https://sfgov.legistar.com/View.ashx?M=F&ID=11905407&GUID=49B055D7-58F3-4420-A02B-1FD7C7AB7532>.