San Francisco Planning

This Bulletin outlines how the Planning Department administers the provisions of the Housing Crisis Act of 2019 during the statewide housing emergency period through January 1, 2030. Please consult the references for additional information.

PLANNING DIRECTOR
BULLETIN NO. 7
HOUSING CRISIS ACT OF 2019 PROJECT REVIEW AND ZONING ACTIONS

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References:
Government Code Sections 65905.5, 65913.10, 66300 (Housing Crisis Act)
Government Code Sec. 65589.5 (Housing Accountability Act)
Government Code Sec. 65940-50 (Permit Streamlining Act)

INTRODUCTION

Effective January 1, 2020, and as further amended, "The Housing Crisis Act of 2019," (HCA) establishes a statewide "housing emergency" until January 1, 2030. During the housing emergency, the Housing Crisis Act suspends certain restrictions on the development of new housing and expedites the permitting of housing. This bulletin provides guidance on the application of the HCA to the review and approval processes for residential development projects and zoning actions in San Francisco during the housing emergency.

OVERVIEW

During the housing emergency, cities and localities in urban areas, such as San Francisco, are generally prohibited from rezoning or imposing new development standards that would reduce the net capacity for housing or adopting new design standards that are not objective. In these jurisdictions, the jurisdiction can only approve a project that requires the demolition of existing housing units if the project includes at least the same number of units as are demolished. In addition, the demolition of existing below-market rate, rent-controlled units, units rented by low-income households or units withdrawn from the rental market within the last 10 years is only permitted if replaced by units that meet certain conditions related to affordability and tenant protections.

Additionally, all jurisdictions must comply with additional project review requirements and timelines for housing development applications. These include a prohibition on applying new zoning regulations and development standards or listing the project as a local historic landmark after a project's application is submitted, except in certain circumstances. Housing developments that meet all applicable objective zoning standards may only be subject to five public hearings, including continuances and most appeal hearings.

The HCA does not establish any new ministerial approval programs, mandate any rezoning actions, prevent additional restrictions on short-term rentals or demolition of existing units, or supersede the requirements in the California Coastal Act or California Environmental Quality Act (CEQA).

HOUSING DEVELOPMENT PROJECTS

As used throughout this bulletin, a "housing development project" refers to 1) a residential development project consisting of one or more residential units, 2) a mixed-use development project where at least two-thirds of the square footage comprises residential uses, or 3) transitional or supportive housing development projects. The HCA applies to projects that involve both ministerial and discretionary approvals.

ZONING ACTIONS AND DESIGN STANDARDS

Zoning Actions

The HCA prohibits jurisdictions from taking any legislative action, including by voter initiative, that would reduce the zoned capacity of housing development below what was allowable as of January 1, 2018, including but not limited to actions that would:

- Reduce the maximum allowable height, density, or floor area ratio (FAR)
- Impose new or increased open space, lot size, setback or maximum lot coverage requirements
- Adopt or enforce a moratorium or cap on housing approvals

However, a city may reduce housing capacity below what was allowable as of January 1, 2018, if the city concurrently increases the housing capacity of other parcels elsewhere in the jurisdiction such that there would be no net loss in residential capacity. In most instances, "concurrently" means that the Board of Supervisors must approve both zoning changes at the same meeting.

Design Standards

For housing development projects, the city may not apply new design standards that were adopted on or after January 1, 2020, unless these design standards meet the state law definition of "objective standards." Specifically, an objective standard involves no personal or subjective judgement on the part of the city and is uniformly verifiable by reference to criteria that are available to the applicant at the time of application.

San Francisco will continue to apply all Design Guidelines that were adopted and in effect prior to January 1, 2020, to residential projects, including the Urban Design Guidelines, Residential Design Guidelines, and any special area or topic-based design guidelines. Non-residential projects may be subject to future non-objective design guidelines or standards.

PROJECT REVIEW PROCESS

Preliminary Housing Development Applications (PPS)

The Housing Crisis Act establishes a new "preliminary application" under Government Code section 65941.1, separate and distinct from a development application. In San Francisco, this preliminary application is called a Preliminary Housing Development Application (PPS) and is assigned a Planning Record number. A Preliminary Housing Development Application (PPS) must include specific site and project information in order to allow the department to determine the zoning, design, subdivision, and fee requirements that apply to a housing development project. Once a Preliminary Housing Development Application (PPS) is submitted, the zoning, design, subdivision, and fee requirements in effect at the time of submittal will remain applicable for the remainder of the project's approval and permitting process, except under the following circumstances:

- The project fails to submit a complete Project Application (PRJ) within 180 days of the complete Preliminary Housing Development Application (PPS).

- The project does not commence construction within 30 months of the project's site permit being issued.
- The number of units or total square footage of the base project changes by 20% or more, exclusive of any additional density under the State Density Bonus law.
- A requirement is necessary to avoid an adverse impact to public health or safety as defined in state law.
- A requirement is necessary to avoid or lessen an impact under CEQA.
- Development impact fees, application and permit processing fees, capacity or connection fees, or other charges may be annually adjusted based on a published cost index.

SPECIAL CONSIDERATIONS:

Permit Streamlining Act

The Permit Streamlining Act (Government Code Sec. 65920-64) applies to housing development projects. During the housing emergency, the required timeframe to approve or disapprove a housing development project for which an Environmental Impact Report (EIR) is prepared is decreased by 30 days. The new review timelines are as follows: 1) 90 days after certification of an EIR for a housing development project; or 2) 60 days after certification of an EIR for a housing development project in which at least 50% of the units are affordable to low-income households and that receive public financing. All other required review timeframes in the Permit Streamlining Act continue to apply unchanged during the housing emergency.

Housing Accountability Act

The Housing Accountability Act ("HAA") (Government Code Sec. 65589.5) applies to certain housing development projects (at least two units, at least two-thirds residential, or transitional or supportive housing). Generally, the HAA limits the City's ability to deny or reduce the density of projects that comply with applicable objective zoning and development standards at the time of complete Project Application (PRJ). During the housing emergency, however, these limitations apply to housing development projects that comply with the objective zoning and development standards in effect at the time a "preliminary application" is submitted, as described below.

For housing development projects that did not submit a complete Project Application (PRJ) before January 1, 2020, a Preliminary Housing Development Application (PPS) may be submitted as an attachment to the Project Application (PRJ). A Preliminary Housing Development Application (PPS) may also be submitted independently, or prior to a Project Application (PRJ).

Housing development projects that submitted a complete Project Application (PRJ) prior to January 1, 2020, may submit a Preliminary Housing Development Application (PPS) to the Planning Department at any time. The zoning, design, subdivision, and fee requirements in effect on the date the Preliminary Housing Development Application (PPS) is submitted shall apply except as listed above.

Subsequent Changes to Projects

If a project has vested the applicable standards pursuant to the Housing Crisis Act, it may modify the project, provided the modifications do not exceed the thresholds mentioned above. For example, a project that has received a Planning Department approval may be modified within the limits discussed above and continue to rely on the Preliminary Housing Development Application (PPS) submitted with the original project. A project may also submit another Preliminary Housing Development Application (PPS) to lock into a later version of the Planning Code.

HISTORIC RESOURCE DETERMINATION

The HCA does not supersede, limit, or modify the requirements of CEQA. Accordingly, the Planning Department will continue to review the potential environmental impacts of proposed projects on historic and cultural resources, as required by CEQA, and may be required to conduct environmental review, as appropriate, to examine potential impacts to historic resources or impose mitigation measures necessary to avoid or lessen such impacts.

Determinations regarding whether the site of a proposed housing development is a historic site must be made at the time the development application is deemed complete. This determination remains valid for the duration of the project review process, except in limited circumstances where any archeological, paleontological, or tribal cultural resources are subsequently discovered at the project site. This determination does not modify the requirements of CEQA.

Housing development projects that submitted a complete Project Application (PRJ) prior to January 1, 2020 may only be subject to requirements of Planning Code Article 10 or Article 11 if the application to designate the property as a landmark or a part of a historic district was approved prior to submittal of a complete Project Application (PRJ). Housing development projects that submit a complete Project Application (PRJ) after January 1, 2020 may only be subject to the regulations in Planning Code Article 10 or Article 11 if the site is designated as a landmark or included in an historic district prior to submittal of a complete Project Application (PRJ).

LIMITED PUBLIC HEARINGS

Under the HCA, housing development projects that comply with applicable zoning standards and that are not seeking any exceptions, rezoning, or other legislative actions, can be subject to a maximum of five public hearings to consider project approval by the city. These include informational hearings, hearings at which the project is continued to another date at the request of the government agency, sub-committee hearings, and appeal hearings. Public hearings required by CEQA, including those arising out of a timely appeal of a CEQA decision, do not count toward the five- hearing limit. Continuances requested by a project proponent will not count against the five-hearing limit

REPLACEMENT HOUSING UNITS

Replacement of Existing Housing Units
The Housing Crisis Act requires housing projects that will demolish existing residential units to create at least as many units as the greatest number of residential dwelling units that existed on the project site within the last five years, including any demolished units. If a housing or non-housing project demolishes "protected" units, as specified below, special provisions apply. The following requirements shall only be applied to housing development projects that submit a complete Project Application (PRJ) after January 1, 2020, and non-housing Project Application (PRJ)s (PRJ) submitted after January 1, 2024.

The City may not approve a housing development project that requires the demolition of existing residential units unless the replacement project includes at least as many residential units as the greatest number of residential dwelling units that existed on the project site within the last five years, including any demolished units. Proposals to merge, rather than demolish, dwelling units under Planning Code Section 317 continue to require the Planning Commission to grant a Conditional Use Authorization.

Replacement of "Protected" Units
Additionally, certain requirements apply to housing and non-residential development projects that would demolish any existing "protected" units. Protected units are units that are or were in the five years prior to the development application: 1) affordable units deed-restricted to households earning below 80% of Area Median Income (AMI); 2) subject to a local rent control program; 3) rented by low-income households earning below 80%t of AMI; or 4) withdrawn from the rental market under the Ellis Act within 10 years prior to development application. Single-family homes may be considered protected units. Units constructed without permit, or Unauthorized Units, may be considered protected units if they meet any of the criteria above.

Except in limited circumstances, any development project that would demolish any protected units shall, as a condition of approval, provide replacement units of the same number of bedrooms, and at an affordable rent or sales price to households of the same or lower income category as that of the last household in occupancy of the unit in the past five years. Such rental units shall remain under the affordability restriction for a period of at least 55 years. The low-income categories defined in state law are:

1. "extremely low income" households earning up to 30% of AMI,
2. "very-low income" households earning up to 50% of AMI, and
3. "lower income" households earning up to 80% of AMI.

Where the household income of current or previous occupants is not known, the replacement units shall be provided as affordable to very-low (earning up to 50% AMI) and low-income households (earning between 50% and 80% of AMI) in an amount proportional to the number of very low and low-income households present in the jurisdiction according to the most current data from the Comprehensive Housing Affordability Strategy (CHAS) database provided by the Department of Housing and Urban Development (HUD).

Where the existing units to be demolished are subject to a local rent control program and the last household in occupancy earned moderate or above moderate income (above 80% of AMI), the project shall provide either: 1) replacement units affordable to low-income households (i.e. earning up to 80% of AMI) for a period of at least five years; or 2) replacement units that are subject to the City's rent control program. Effective January 1, 2022, Senate Bill 8 clarifies that replacement units can be constructed even if they exceed local density controls.

If the project is not a housing development project, the project sponsor must ensure that any required replacement housing is developed prior to or concurrently with the development project. The replacement housing may be located on a site other than the project site but must be located in San Francisco. The project sponsor may contract with another entity to develop the required replacement housing.

Relocation Assistance and Right of Return
Projects proposing the demolition of any protected units shall, as a condition of approval, provide all of the following to occupants of such protected units:

- For lower-income households, a right of first refusal to a comparable unit in the replacement project that shall be provided at a rent or sale price affordable to households of the same or lower income category, except when the replacement project is a single residential unit, a single-family home, or a 100% affordable project.
- For lower income households, relocation benefits pursuant to state or local law, whichever requires greater assistance.
- For all households, right to remain in the unit until six months before the start of construction.

- For all households, right to return if demolition does not proceed and units are returned to rental market.

The HCA was amended by Senate Bill 8 (2021) to apply to single-family homes. If a single-family home has been rented by a lower income household within five years preceding the date of the application, then the single-family home is considered a protected unit.

If a housing development project proposes to demolish a single-family home and construct a new single-family home, then the project sponsor must provide relocation benefits to the current renters of the home but are not required to offer the existing renters a right of first refusal for the new single-family home. The new single-family home may be provided at any size and at any income level. If the housing development project proposes to demolish a single-family home and construct a building with two or more units, then the project sponsor must comply with the replacement, relocation, and right of first refusal requirements as set forth above. If the protected single-family home included three bedrooms or fewer, the replacement unit must include at least the same number of bedrooms as the existing single-family home. If the protected single-family home contained four or more bedrooms, then the replacement unit must include at least three bedrooms. The replacement unit is not required to have the same or similar square footage or the same number of total rooms.

The HCA was amended effective January 1, 2024 to require a notice be sent to existing tenants alerting them to the proposed construction. The project proponent shall provide existing occupants with written notice of the planned demolition, the date they must vacate, and their rights under the Housing Crisis Act. Notice shall be provided at least six months in advance of the date that existing occupants must vacate.

Manner of Replacement of Existing Units
Where multiple options are provided under state law as to the manner of replacement of any existing protected units, the Planning Department shall follow the guidance set forth below to determine the required restrictions on replacement unit(s). For purposes of implementing the HCA, there shall be a rebuttable presumption that any multifamily building constructed prior to 1979 is subject to the San Francisco Residential Rent Stabilization and Arbitration Ordinance (hereinafter "rent control").

If the protected unit that is being demolished is subject to rent control, then the following replacement provisions would apply:

- If the protected unit was not previously rented by a low-income tenant in the five years preceding the application, and the project will construct rental units, then the replacement unit(s) shall be subject to rent control. If the project will construct ownership units, then the replacement unit(s) shall be deed-restricted at 80% of AMI.
- If the protected unit was previously rented by a low-income tenant in the five years preceding the application, then the replacement unit will be deed-restricted at the income category that most closely corresponds to the previous tenant's income.
- If the household income of current or previous occupants is not known, then 47% of the units must be replaced with deed restricted units. Of the units being replaced, 69% of such units shall be replaced by units affordable to very low-income households earning up to 50% of AMI and 31% of such units shall be replaced by units affordable to low-income households earning up to 80% of AMI for a period of at least 55 years.[1] The remaining 53% of replacement units shall be subject to rent-control.

1 Pursuant to state law, this proportion reflects the most current data published by HUD on September 9, 2022 for the period of 2015 - 2019. (huduser.gov/portal/datasets/cp.html).

If the protected unit that is being demolished is a **deed-restricted affordable unit**, then the replacement unit must also be deed-restricted at the income category that most closely corresponds to the protected unit.

If the protected unit that is being demolished is not subject to rent control and is not deed-restricted but has been **rented by a low-income tenant** in the five years preceding the application, then the replacement unit shall be deed- restricted at the income category that most closely corresponds to the protected unit being demolished. Where the household income of current or previous occupants of protected units is unknown, 47% of the units must be replaced with deed restricted units. Of the units being replaced, 69% of such units shall be replaced by units affordable to very low-income households earning up to 50% of AMI and 31% of such units shall be replaced by units affordable to low-income households earning up to 80% of AMI for a period of at least 55 years. All replacement calculations resulting in fractional units shall be rounded up to the next whole number.

Inclusionary Housing Program
The HCA allows for jurisdictions to apply locally adopted objective provisions that further restrict or condition the demolition of existing units, including if the local provision requires a greater number of low-income households to be provided. Pursuant to Planning Code Sec. 415.6(a)(9), existing rent-control or affordable units must be replaced in addition to on-site units provided to comply with the requirements of the Inclusionary Housing Program. This provision shall also apply to replacement protected units required by state law. The sponsor of any housing development subject to both the replacement requirements in the HCA and the Inclusionary Housing Ordinance in Planning Code section 415 may appeal to the Planning Commission for authorization to impose rent control on any replacement units based on the absence of any reasonable relationship or nexus between the impact of the development and the total number of required on-site affordable housing units.

Relocation Payments
Where relocation benefits are required by state or local law, the amount of relocation payments to be provided shall be the applicable amount as published by the San Francisco Residential Rent Stabilization and Arbitration Board. Current relocation payment requirements and amounts can be found on the Rent Board website: sfrb.org/forms-center.

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