San Francisco Planning

PLANNING DIRECTOR
BULLETIN NO. 7
Housing Crisis Act of 2019 Project Review and Zoning Actions

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, 2025.

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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

California Senate Bill 330, "The Housing Crisis Act of 2019," was signed into law by Governor Newsom on October 9, 2019 and became effective January 1, 2020. The bill establishes a statewide housing emergency to be in effect until January 1, 2025. This bulletin provides guidance on the application of the bill to the review and approval processes for housing development projects and zoning actions related to residential uses in San Francisco during the housing emergency period.

OVERVIEW

During the housing emergency period cities and localities in urban areas are generally prohibited from rezoning actions or imposing new development standards that would reduce the zoned capacity for housing, or adopting new design standards that are not objective. In these jurisdictions, the demolition of existing housing units is only permitted if replacement units are provided and the demolition of existing low-income units is only permitted if certain conditions related to affordability and tenant protections are met.

Additionally, all localities are subject to additional project review requirements and timelines with regard to applications for housing developments. 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 as provided. Housing developments that meet all applicable objective zoning standards may only be subject to a limited number of public hearings, including continuances and most appeal hearings. The Planning Department has determined that San Francisco is designated as an urban area in the 2010 census, and therefore is subject to all the provisions of the bill.

The bill 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 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 development project consisting of two 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.

ZONING ACTIONS AND DESIGN STANDARDS

Zoning Actions

The city is prohibited 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:

- Reducing the maximum allowable height, density, or floor area ration (FAR)
- Imposing new or increased open space, lot size, setback or maximum lot coverage requirements
- Adopting or enforcing any moratorium or cap on housing approvals

However, such reductions may be permissible if the city concurrently increases the zoned capacity of housing elsewhere such that no net loss in residential capacity within the jurisdiction would result.

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 definition of objective standards provided in state law. 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.

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

PROJECT REVIEW PROCESS

Permit Streamlining Act

The Permit Streamlining Act (Government Code Sec. 65920-64) continues to apply to housing development projects. During the housing emergency period, 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 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 percent 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 period.

Housing Accountability Act

The Housing Accountability Act (Government Code Sec. 65589.5) continues to apply to housing development projects, and the city continues to be very limited in the ability to deny or reduce the density of such projects that comply with applicable objective zoning and development standards in effect at the time a development application is determined to be complete. During the housing emergency period, these limitations are modified to 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.

Preliminary Applications

Requirements of State Law
The Housing Crisis Act establishes a new "preliminary application" under Government Code section 65941.1, which is separate and distinct from a development application. This preliminary application is required by state law to collect specific site and project information in order to determine the zoning, design, subdivision, and fee requirements that shall apply to a housing development project.

If an applicant submits a complete development application within 180 days of submitting a preliminary application, then the zoning, design, subdivision, and fee requirements in effect at the time the preliminary application was submitted shall remain in effect for the remainder of the entitlement and permitting process except under the following circumstances:

- The project does not commence construction within 30 months of the project's site permit being issued
- The project increases by more than 20 percent in the number of units or total square footage beyond the preliminary application, except as the project may be revised using the State Density Bonus
- The requirement is necessary to avoid an adverse impact to public health or safety as defined in state law
- The 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

Implementation
For housing development projects that have not submitted a complete Project Application as of January 1, 2020, a preliminary housing development application may be submitted as an attachment to the Project Application. For housing development projects that require a Preliminary Project Assessment (PPA) application to be filed prior to submittal of a Project Application, the preliminary housing development application may be submitted as an attachment to the PPA application. A preliminary housing development application may also be submitted prior to either a Project Application of PPA application, provided that a Project Application is submitted within 180 days.

Housing development projects that submitted a complete Project Application prior to January 1, 2020 may submit a preliminary housing development application to the Planning Department at any time after that date. The zoning, design, subdivision, and fee requirements in effect on the date such preliminary application is submitted shall be applied except as listed above.

Historic Resource Determinations

Requirements of State Law
The Housing Crisis Act 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 impose mitigation measures necessary to avoid or lessen such impacts or may be required to prepare an Environmental Impact Report (EIR), as appropriate, to examine potential impacts to historic resources.

However, the Act does require that any other determination or designation that the site of a proposed housing development is a historic site shall be made at the time the development application is deemed complete, and shall remain 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 change the identification and analysis of historic resources that CEQA requires.

Implementation
Housing development projects that submitted a complete Project Application prior to January 1, 2020 may only be designated as an historic landmark or included in an historic conservation district pursuant to Article 10 or 11 or the Planning Code if the application to designate was submitted prior to 2020. Housing development projects that submit a complete Project Application after January 1, 2020 may only be designated if such designation is made prior to submittal of a complete Project Application.

Limited Public Hearings

Housing development projects that comply with applicable zoning standards shall 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, sub-committee hearings, and appeal hearings. Public hearings required by CEQA, including those arising out of a timely appeal to a CEQA determination, shall not count toward the limit. The city must consider and either approve or disapprove the project at one of these five hearings, after which no further hearings may be held in connection with project approval.

The limit applies only to housing development projects that comply with all applicable zoning standards and are not seeking any exceptions or rezoning or other legislative actions.

Projects that comply with applicable zoning standards generally include:

- Projects for which a hearing is required due to lot size or scale of development through a Conditional Use Authorization (CUA), Sec. 309 (DNX), Sec. 329 (ENX) or other review process, and are not seeking any exceptions to objective, quantifiable standards set forth in the Planning Code
- Projects that qualify for and seek approval pursuant to the State Density Bonus Program
- Ministerial and as-of-right projects that may require a public hearing

Projects that do not comply with applicable zoning standards generally include:

- Projects seeking any exception to objective, quantifiable standards set forth in the Planning Code through Sec. 309 (DNX), Sec. 329 (ENX), Sec. 304 (PUD) or other review process
- Projects that require a Conditional Use Authorization (CUA) for additional height, density, or floor area than what is principally permitted in the Planning Code
- Projects seeking a Variance from Planning Code requirements
- Projects seeking establishment of a Special Use District (SUD), a General Plan Amendment, Planning Code amendment, or other zoning or height map amendment
- Projects that include approval of a Development Agreement

Implementation
Eligible projects that submitted a complete Project Application prior to January 1, 2020 will be subject to no more than five public hearings after January 1, 2020, regardless of any previous public hearings. Projects that submit a complete development application after January 1, 2020 shall be subject to a maximum of five public hearings.

To facilitate compliance, the Planning Department will indicate whether these provisions apply to a specific project, and the total number of previous hearings in department case reports and on Planning Commission agendas. To accommodate the possibility of a timely appeal to the Board of Appeals or Board of Supervisors, the number of Planning Commission and Historic Preservation Commission hearings will be limited.

REPLACEMENT HOUSING UNITS

Requirements of State Law

The Housing Crisis Act requires housing projects that will demolish existing residential units to replace those units, as specified. The following requirements shall only be applied to housing development projects that submit a complete development application after January 1, 2020.

Replacement of Existing Housing Units
No housing development project on a site where any existing residential units would be demolished, including any "protected" units as described below, may be approved unless the replacement project includes at least as many residential units as the existing residential building. Where the building on site was demolished within the past five years prior to development application, the replacement project shall provide at least the maximum number of units that were present during the five-year period.

Non-residential development projects are not subject to the Housing Accountability Act and may be approved, disapproved, or subject to conditions of approval in accordance with local requirements regarding the removal of existing residential units.

Replacement of "Protected" Units
Additionally, certain conditions must be applied to housing development projects that would demolish any existing "protected" units occupied by renter households, including units that are or were in the five years prior to development application: 1) affordable units deed-restricted to households earning below 80 percent of AMI, 2) subject to a local rent control program, 3) occupied by low-income households earning below 80 percent of AMI. Units vacated under the Ellis Act within 10 years prior to development application are also considered "protected" units.

Any housing 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 in the past five years. Such rental units shall remain under the affordability restriction for a period of 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 low-income households (earning up to 80% of AMI) in an amount proportional to the number of 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, meaning those earning above 80 percent of AMI, the project shall provide either 1) replacement units affordable to low-income households (i.e. earning up to 80 percent of AMI) for a period of at least 55 years, or 2) replacement units that are subject to the local rent control program.

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:

- 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
- Relocation benefits pursuant to state or local law, whichever requires greater assistance
- Right to remain in the unit until six months before the start of construction

Implementation
The above requirements shall apply to any housing development project that submits a complete Project Application after January 1, 2020. Projects proposing to demolish, merge, or remove any existing unit shall remain subject to the provisions of Planning Code Sec. 317, and such projects shall be required to provide all necessary information regarding the occupancy, eviction, and household income history as part of a complete Project Application, and as may be verified during the project review process.

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, such determination shall be at the discretion of the Planning Commission.

Where the household income of current or previous occupants of protected units is not known, 48 percent of such units shall be replaced by units affordable to low-income households earning up to 80% of AMI for a period of 55 years. Pursuant to state law, this proportion reflects the most current data published by HUD on August 5, 2019 for the period 2012-2016. (huduser.gov/portal/datasets/cp.html).

Inclusionary Housing Program
The Housing Crisis Act 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, existing affordable units must be replaced in addition to compliance with the requirements of the Inclusionary Housing Program. This provision shall also apply to replacement protected units required by state law.

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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