

**Ordinance amending the Business and Tax Regulations Code to exempt from the real property transfer tax the first transfer of property that has been converted from nonresidential to residential use and to authorize the Board of Supervisors to amend or repeal any aspect of the real property transfer tax, including adopting additional exemptions from the tax, without voter approval to the extent constitutionally permitted; and amending the Planning Code to allow square footage of office space that is converted to non-office use or demolished to be available for allocation to office developments of at least 50,000 square feet in gross floor area, and to allow demolished office space that is preexisting on a site to be deducted from the required allocation for an office development on that same site.**

NOTE: **Unchanged Code text and uncodified text** are in plain font.

**Additions to Codes** are in *single-underline italics font*.

**Deletions to Codes** are in *~~strikethrough italics font~~*.

**Asterisks (\* \* \* \*)** indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Article 12-C of the Business and Tax Regulations Code is hereby amended by adding Sections 1108.7 and 1119, to read as follows:

**SEC. 1108.7. EXEMPTION FOR CONVERSION TO RESIDENTIAL USE.**

(a) **Definitions.** For purposes of this Section 1108.7, the following terms have the following meanings:

“Converted Residential Property” has the meaning set forth in subsection (b) of this Section 1108.7.

“Development Application” means any application for a building permit, site permit, conditional use authorization, variance, or for any other authorization of a conversion of a property or portion thereof from a Nonresidential Property to a Residential Property required to be approved by the Planning Department, Zoning Administrator, Planning Commission, or Historic Preservation Commission.

“Exemption Certificate” means a certificate issued by the Planning Department showing:

(1) the square feet of gross floor area being transferred that is a First Transfer of Converted Residential Property that falls within the 5,000,000 square foot limitation in subsection (c) of this Section 1108.7; and

(2) the total square feet of gross floor area being transferred.

“Final Approval” means:

(1) approval of a conversion’s first Development Application, unless such approval is appealed;

(2) if subsection (1) does not apply and a conversion only requires a site or building permit, issuance of the first site or building permit, unless such permit is appealed; or

(3) if the first Development Application or first site or building permit is appealed, then the final decision upholding the Development Application, or first site or building permit, on the appeal by the relevant City board or commission.

“First Certificate of Occupancy” means the earlier of a certificate of final completion and occupancy, or a temporary certificate of occupancy, as those terms are used in Section 109A of the Building Code, as may be amended from time to time.

“First Construction Document” means the first building permit, building permit addendum, or other document that authorizes construction of the conversion, not including permits or addenda for demolition, grading, shoring, pile driving, or site preparation work.

“First Transfer” means the first transfer of a Converted Residential Property following issuance of its First Certificate of Occupancy if such transfer would have been subject to the tax imposed under this Article 12-C absent the exemption in this Section 1108.7. For Converted Residential Properties transferred in part, the first taxable transfer of each portion of a Converted Residential Property following issuance of its First Certificate of Occupancy constitutes a “First Transfer,” but subsequent transfers of the same portion do not constitute “First Transfers.” Notwithstanding the prior sentence, a “First Transfer” does not include any transfer of all or a portion of a Converted Residential Property after a transfer subject to the exemption in this Section 1108.7 where the tax on such transfer would have been imposed on the fair market value of the entire Converted Residential Property absent the exemption in this Section 1108.7.

“Nonresidential Property” means any property or portion of a property, other than a Residential Property and other than a property that contains no buildings or other structures.

“Qualifying Certificate” means a certificate issued by the Planning Department showing the square feet of gross floor area that is proposed to qualify as Converted Residential

Property within the 5,000,000 square foot limitation in subsection (c) of this Section 1108.7.

“Residential Property” means a property or portion of a property with a structure or structures or portion thereof that may only be used for housing individuals, excluding travelers, vacationers, or other similarly transient individuals, for greater than 30 consecutive days (including permitted incidental uses). It includes, but is not limited to, dwelling units, student housing, group housing, residential hotels, senior housing, nursing homes, homeless shelters, and residential care facilities, regardless of how such uses would be considered under the Planning Code. “Residential Property” includes 100% of the gross floor area of a live/work unit. In properties with mixed residential and non-residential uses, “Residential Property” includes mechanical space and common areas including but not limited to circulation, lobbies, storage rooms, balconies, roof terraces, laundry rooms, and other resident amenity spaces, and including parking spaces or garages, in the proportion that such areas serve the residential uses to the total square feet of gross floor area served by such areas.

**(b) Converted Residential Property.**

(1) For purposes of this Section 1108.7, “Converted Residential Property” means a property or portion thereof that has received a First Certificate of Occupancy following conversion from a Nonresidential Property to a Residential Property, including conversions involving the demolition of Nonresidential Property to construct new Residential Property, and that meets all of the following requirements for such conversion:

(A) received a Final Approval before January 1, 2030;

(B) a Qualifying Certificate was requested with respect to the property or portion thereof on or after the effective date of this Section 1108.7, but before January 1, 2030;

(C) within three years of the later of receiving Final Approval or the effective date of this Section 1108.7, but not before the effective date of this Section, received a First Construction Document; and

(D) at the time of the transfer for which the exemption in this Section 1108.7 is claimed, the square feet of gross floor area of the improvements on the property divided by the lot area of that property is at least one.

(2) New square feet of Residential Property gross floor area in excess of the square feet of gross floor area of the original Nonresidential Property shall constitute Converted Residential Property only up to the new square feet of gross floor area that equals 10% of the square feet of gross floor area that was converted from Nonresidential Property to Residential Property.

(3) For demolitions of Nonresidential Property to construct new Residential Property, "Converted Residential Property" includes only the square feet of gross floor area of Residential Property in the new building that exceeds the square feet of gross floor area of Residential Property in the demolished building, up to a maximum square feet of gross floor area of Converted Residential Property equal to the total gross floor area of Non-Residential Property in the demolished building plus 10%.

(c) **Exemption from Tax.** Any deed, instrument, or writing that effects a First Transfer of Converted Residential Property, up to the first 5,000,000 square feet of gross floor area of Converted Residential Property, shall be exempt from the tax imposed under this Article 12-C, except as otherwise provided in this Section 1108.7. For purposes of this subsection (c), the "first 5,000,000 square feet of gross floor area" shall be determined in the order that the Planning Department receives each request for a Qualifying Certificate and shall be aggregated across all Qualifying Certificates issued and outstanding. If a deed, instrument, or writing effects a transfer of property only a portion of which is a First Transfer of Converted Residential Property, or only a portion of which is within the 5,000,000 square foot limitation, the tax shall apply to the proportion of the consideration or value that the square feet of gross floor area transferred that is not a First Transfer of Converted Residential Property or that is not within the 5,000,000 square foot limitation bears to the total square feet of gross floor area transferred, with the rate in Section 1102 determined based solely on that proportional consideration or value. Land associated with gross floor area qualifying for the exemption in this subsection (c) shall also be exempt in the proportion that the square feet of gross floor area transferred that is exempt under this subsection (c) bears to the total square feet of gross floor area transferred.

(d) **Requirements for Exemption.** Every person claiming the exemption under this Section 1108.7 must do all of the following:

(1) Request, at any time after Final Approval and in the form and manner required by the Planning Department, a Qualifying Certificate from the Planning Department. At any time after receiving a Qualifying Certificate, a request to confirm or adjust the square feet of gross floor area that is proposed to qualify as Converted Residential Property may be submitted to the Planning Department in the form and manner required by the Planning Department. Any increase in the square feet of gross floor area requested under this subsection (d)(1) that exceeds the qualifying square feet of gross floor area stated on the Qualifying Certificate or any amendment thereto shall qualify for the exemption in this Section 1108.7 only to the extent that the 5,000,000 square foot limitation in subsection (c) has not been exceeded at the time the Planning Department approves the requested increase.

(2) After receiving the First Certificate of Occupancy and in the form and manner required by the Planning Department, request an Exemption Certificate from the Planning Department for each transfer for which the person intends to claim the exemption in this Section 1108.7. Any increase in the square feet of gross floor area requested under this subsection (d)(2) that exceeds the qualifying square feet of gross

floor area stated on the Qualifying Certificate or any amendment thereto shall qualify for the exemption in this Section 1108.7 only to the extent that the 5,000,000 square foot limitation in subsection (c) has not been exceeded at the time the Planning Department issues the Exemption Certificate.

(3) For each transfer for which the exemption in this Section 1108.7 is claimed, submit the Exemption Certificate to the County Recorder at the time such person submits the affidavit described in subsection (c) or (d) of Section 1111.

(4) Failure to timely satisfy the requirements of this subsection (d) renders the transfer ineligible for the exemption in this Section 1108.7.

(e) **Effect of Exemption on Other Taxes.** Any tax exempted under this Section 1108.7 shall be deemed to have been paid for purposes of Section 954(d) of Article 12-A-1 of the Business and Tax Regulations Code.

(f) **Regulations.** The Planning Department and the County Recorder may each issue rules, regulations, and interpretations of this Section 1108.7 consistent with the provisions of this Section and Article 12-C of the Business and Tax Regulations Code as may be necessary or appropriate to carry out and enforce the exemption in this Section.

(g) **Sunset Date.** This Section 1108.7 shall expire by operation of law at the end of the day on December 31, 2054, and shall not apply to any deeds, instruments, or writings delivered on or after January 1, 2055.

#### **SEC. 1119. AMENDMENT OF ARTICLE.**

The Board of Supervisors may amend or repeal this Article 12-C by ordinance without a vote of the people except as limited by the California Constitution.

Section 2. Article 12-C of the Business and Tax Regulations Code is hereby amended by revising Section 1102, to read as follows:

#### **SEC. 1102. TAX IMPOSED.**

There is hereby imposed on each deed, instrument or writing by which any lands, tenements, or other realty sold within the City and County of San Francisco shall be granted, assigned, transferred or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his or her or their direction, when the consideration or value of the interest or property conveyed (not excluding the value of any lien or encumbrances remaining thereon at the time of sale) (a) exceeds \$100 but is less than or equal to \$250,000, a tax at the rate of \$2.50 for each \$500 or fractional part thereof; or (b) more than \$250,000 and less than \$1,000,000, a tax at the rate of \$3.40 for each \$500 or fractional part thereof for the entire value or consideration, including, but not limited to, any portion of such value or consideration that is less than \$250,000;

or (c) at least \$1,000,000 and less than \$5,000,000, a tax at the rate of \$3.75 for each \$500 or fractional part thereof for the entire value or consideration, including, but not limited to, any portion of such value or consideration that is less than \$1,000,000; or (d) at least \$5,000,000 and less than \$10,000,000, a tax at the rate of \$11.25 for each \$500 or fractional part thereof for the entire value or consideration, including, but not limited to, any portion of such value or consideration that is less than \$5,000,000; or (e) at least \$10,000,000 and less than \$25,000,000, a tax at the rate of \$27.50 for each \$500 or fractional part thereof for the entire value or consideration, including but not limited to, any portion of such value or consideration that is less than \$10,000,000; or (f) at least \$25,000,000, a tax at the rate of \$30 for each \$500 or fractional part thereof for the entire value or consideration, including but not limited to, any portion of such value or consideration that is less than \$25,000,000. ~~The People of the City and County of San Francisco authorize the Board of Supervisors to enact ordinances, without further voter approval, that will exempt rent-restricted affordable housing, as the Board may define that term, from the increased tax rate in subsections (d), (e), and (f).~~

### Section 3. Background on Office Development Allocations Under Sections 4 and 5.

(a) The City's Office Allocation Program (Planning Code Sections 320 *et seq.*) sets an annual limit for new office development. But the Office Allocation Program does not increase the annual limit to reflect conversions or demolitions of existing office space, which decrease the City's preexisting supply of office space. Sections 4 and 5 of this measure would allow office space that is converted to a non-office use or demolished to be returned to the Office Allocation Program and made available for allocation to new office developments of at least 50,000 square feet in gross floor area.

(b) To construct a new office development, a project sponsor must obtain an allocation from the Office Allocation Program. Where new office space is added to a site with existing office space, the Office Allocation Program permits converted or modified, but not demolished, office space to be deducted from the required allocation. Section 4 of this measure would permit demolished office space to be deducted from the required allocation.

(c) To address situations where demolished or converted office space returns to the Office Allocation Program and office space is subsequently proposed on that site, Section 5 of this measure provides that the amount of preexisting office space on the site shall be reduced by the amount of office space that was returned to the Office Allocation Program.

Section 4. Article 3 of the Planning Code is hereby amended by revising Sections 320 and 321, to read as follows:

#### **SEC. 320. OFFICE DEVELOPMENT: DEFINITIONS.**

When used in Sections 320–325, the following terms shall each have the meaning indicated. See also Sections 102 and 321.4.

(a) "Additional office space" shall mean the number of square feet of gross floor area of office space created by an office development, reduced, in the case of a modification, ~~or conversion,~~ or demolition, by the number of square feet of gross floor area of preexisting office space which is lost.

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## **SEC. 321. OFFICE DEVELOPMENT: ANNUAL LIMIT.**

### **(a) Limit.**

(1) (A) No office development may be approved during any approval period if the additional office space in that office development, when added to the additional office space in all other office developments previously approved during that approval period, would exceed either 950,000 square feet or ~~the any lesser~~ amount resulting from the calculation of available office development pursuant to this Section 321 et. seq. application of Section 321.1. To the extent the total square footage allowed in any approval period is not allocated, the unallocated amount shall be carried over to the next approval period.

(B) For the one-year approval period that commences in October 2020, the Large Cap Maximum shall be permanently reduced by a percentage equal to the percentage by which the total of New Affordable Housing Units Produced in the City during the five calendar years of 2015-2019 is less than the combined total of five years of the Annual RHNA Affordable Housing Goal (i.e., 10,210 units). In no case shall operation of this ~~S~~subsection (a)(1)(B) act to increase the office development permitted pursuant to ~~S~~subsection (a)(1)(A).

(C) Thereafter, for the one-year approval period that commences in October 2021 and for all subsequent annual approval periods, the Large Cap Maximum for each single year shall be permanently reduced by a percentage equivalent to the percentage by which New Affordable Housing Units Produced in the City during the single complete calendar year prior to the calendar year in which the approval period commenced is less than the annual RHNA Affordable Housing Goal. In no case shall operation of this ~~S~~subsection (a)(1)(C) act to increase the office development permitted pursuant to ~~S~~subsection (a)(1)(A).

(D) For any Approval Period commencing on or after October 17, 2024, following the completion of the calculations set forth in subsection (a)(1)(C), the Large Cap Maximum shall be increased by any Converted Square Footage, as provided in Section 321.4.

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Section 5. Article 3 of the Planning Code is hereby amended by adding Section 321.4, to read as follows:

## **SEC. 321.4. CONVERTED SQUARE FOOTAGE; ANNUAL LIMIT INCREASE.**

**(a) Definitions.** For purposes of this Section 321.4, the following terms have the following meanings:

“Converted Square Footage” means the total converted or demolished gross floor area of Office Space associated with a project that received on or after January 1, 1986: (1) a First Certificate of Occupancy authorizing the change of use of at least 10,000 square feet of gross floor area from Office Space to a non-office use, or (2) a completed permit, including any final inspections, to demolish at least 10,000 square feet of gross floor area of Office Space. “Converted Square Footage” includes the gross floor area associated with any approved Office Space, regardless of the type of Project Authorization approved for the Office Space, or if the Office Space was approved prior to November 29, 1984.

“First Certificate of Occupancy” has the meaning set forth in Section 401, as amended from time to time.

### **(b) Increases to Annual Limit.**

(1) For any projects that convert or demolish Office Space on or after March 5, 2024, the Planning Department shall track the total Converted Square Footage resulting from the conversions and demolitions during each Approval Period, and add the total Converted Square Footage to the Large Cap Maximum annually.

(2) For any project that converted or demolished office space before March 5, 2024, the Large Cap Maximum shall be increased by the total Converted Square Footage of such projects no later than the Approval Period beginning October 17, 2024, consistent with the procedures in subsection (c), including any adjustments pursuant to subsection (c)(2).

(3) Any Converted Square Footage calculated pursuant to subsections (b)(1)-(2) of this Section 321.4 shall be treated the same as the newly available office development pursuant to Section 321(a)(1)(A), including being carried over to the next Approval Period; however, pursuant to Section 321(a)(1)(D), such Converted Square Footage shall not be subject to the reductions set forth in Section 321(a)(1)(C).

### **(c) Administration.**

(1) No later than September 1, 2024, the Zoning Administrator shall publish an inventory of projects that converted or demolished Office Space between January 1, 1986 and March 5, 2024 (“Inventory”), inclusive, and the Converted Square Footage proposed to be added to the Large Cap Maximum for the Approval Period beginning October 17, 2024. The Zoning Administrator shall provide the public with an opportunity for meaningful review and comment on the Inventory. Following public review and comment, the Zoning Administrator shall adopt the Inventory, including any revisions.



pursuant to the standard set forth in subsection (c)(3) of this Section 321.4. The Zoning Administrator shall then update the Large Cap Maximum accordingly.

(2) Should the Zoning Administrator identify additional Converted Square Footage after the deadlines specified in subsection (c)(1), the Zoning Administrator shall publish an updated Inventory. Following public review and comment, the Zoning Administrator shall adopt the updated Inventory, including any revisions, pursuant to the standard set forth in subsection (c)(3) of this Section 321.4. The new Converted Square Footage shall be added to the Large Cap Maximum for the Approval Period following final approval of the updated Inventory.

(3) In determining whether Converted Square Footage was lawfully converted or demolished for the purposes of this Section 321.4, the Zoning Administrator shall presume that such space was lawfully converted or demolished unless there is clear and convincing evidence otherwise.

(4) The Zoning Administrator is authorized to adopt such rules and regulations as the Zoning Administrator determines are appropriate to carry out the purposes and provisions of this Section 321.4, including but not limited to the process for verifying increases to the Large Cap Maximum resulting from any Converted Square Footage.

(d) **Loss of Existing Office Space.** Upon the issuance of a First Certificate of Occupancy or completed demolition permit for a project that converted or demolished Office Space, the amount of Preexisting Office Space on the site shall be reduced by the amount of Converted Square Footage that was returned to the Large Cap Maximum.

Section 6. Scope of Ordinance. In enacting this ordinance, the People of the City and County of San Francisco intend to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions or deletions, in accordance with the "Note" that appears under the official title of the ordinance.

Section 7. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the ordinance. The People of the City and County of San Francisco hereby declare that they would have enacted this ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this ordinance or application thereof would be subsequently declared invalid or unconstitutional