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Executive Summary
Planning, Building, & Administrative Code Text Change
HEARING DATE: MARCH 13TH, 2014

Project Name:	**Authorization of Units Installed without a Permit**
Case Number:	2014.0230T [Board File No. 13-1148]
Initiated by:	Supervisor Chiu / Introduced February 11, 2014
Staff Contact:	Kimia Haddadan, Legislative Affairs Kimia.haddadan@sfgov.org , 415-575-9068
Reviewed by:	AnMarie Rodgers, Manager Legislative Affairs anmarie.rodgers@sfgov.org, 415-558-6395
Recommendation:	**Recommend Approval**

PLANNING & ADMINISTRATIVE CODE AMENDMENTS

The proposed Ordinance would amend the Planning and Building Codes to provide a process for granting legal status to certain existing dwelling units constructed without the required permits, temporarily suspending the code enforcement process for units in the process of receiving legal status, and prohibiting units from being legalized under the provisions of this ordinance if there have been no-fault evictions.

The proposed Ordinance would also amend the Administrative Code to prohibit the costs of legalization from being passed through to the tenant; affirming the Planning Department's California Environmental Quality Act determination, making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and directing the Clerk of the Board of Supervisors to submit this Ordinance to the California Department of Housing and Community Development in accordance with State law.

The Way It Is Now:

Similar to many other dense cities in the nation, San Francisco's housing stock includes residential units that were built without obtaining the appropriate permits. As these units are not recognized as official dwelling units, the City cannot oversee the life and safety standards of these units. Many of these units may exist in a state that violates a range of City codes, including Building, Fire, and Planning Codes. Until recently, once the City became aware of these units, it required their removal, which in turn resulted in potential eviction of tenants. On December 18, 2013, Mayor Ed Lee issued an Executive Order to all City departments to take certain actions regarding housing preservation and development, one of which switched the City's approach of removing housing units without permits. The Executive Directive called for discretionary review

when a housing unit is being removed, encouraging the property owners to maintain their housing units and to legalize the unit, if there is an avenue to do so[1].

California Government Code 65852.2 also provides a solution for local governments to maintain some units that were built without permits. This State law allows local governments to adopt an Ordinance that allows secondary units[2] in single-family or multifamily residential units. Currently, San Francisco only allows accessory dwelling units that are dedicated for seniors[3] and that are located within the RH-1(S) district. In addition, within zoning districts that have removed density limits units may be added without limitation as to the resident type.

The Way It Would Be:

The proposed Ordinance would allow granting legal status to those units constructed without the required permits. It would amend the Planning Code, Building Code, and the Administrative Code to establish such legalization process.

- The Ordinance would amend the Planning Code so that the following requirements would not apply in this legalization process:
  - ✓ open space, and exposure requirements so long as other existing units meet open space requirements;
  - ✓ rear yard requirements for an ancillary structure on the same lot; and
  - ✓ one unit to exceed the density limit requirement.
- No Building and Fire Code exceptions are provided except for certain equivalencies(See Exhibit C)
- The legalized units would be considered a lawful non-conforming use.
- The Ordinance waives notification requirements for the addition of units to a residential building.
- The unit will remain subject to rent control law; relocation fees would apply in cases where renovation necessitates temporary removal of tenants.
- Maintains other Planning Code requirements, including:
  - i. Landscaping and permeable pavers on front setback (132(g),(h));
  - ii. Street tree requirements (138.1); and
  - iii. Bicycle parking -- when more than 4 units would exist (155.2).

The following restrictions would apply:

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[1] The discretionary requirement process only applies where the buildings has three or more legal units.

[2] The State law defines secondary units as "an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel", which are built as a second unit to a single family dwelling unit located on a single family or multi-family zoned parcel.

[3] Section 209.1(m) of the Planning Code

- The Ordinance would allow only one unauthorized unit per lot to gain legal status.
- The unauthorized units should be constructed before January 1, 2013.
- No notice of eviction (Just Cause[4] evictions except for Owner Move-In) was served within 10 years prior to application for legalization but after effective date of legislation.
- No notice of Owner Move-In eviction was served within five years prior to application for legalization but after effective date of legislation.
- The costs of legalizing the unit cannot be passed on to the tenants of such units.
- The legalized unit may not become a condominium through subdivision for separate sale.

The Ordinance proposes the following process for legalization:

1. A screening process through the Department of Building Inspection: Applicants will complete and submit: 1) an assessment by a licensed contractor laying out a plan to comply with City requirements, 2) evidence to prove the existence of unit prior to Jan 1, 2013, and 3) floor plans of the entire building.
2. The application process is comprised of two distinct applications:
    a. File an application with the Zoning Administrator and
    b. File an application with other departments for required permits

BACKGROUND

San Francisco is experiencing a boom in development with over 6,000 units currently under construction and another 4,700 units permitted to start construction. Over 3,500 new units were added to the City's housing stock in the last two years, a steep increase from the 270 net new units built in 2011. This recent boom may well surpass the ten year average of 2,245 net units built between 2001 and 2010. Rental prices in San Francisco rose almost 11% over the last year. A recent report published by Trulia indicates that the median asking rents in recent listings varied by neighborhoods ranging up to $3,300 per bedroom[5]. Parallel with this steep rise in rents, eviction rates have soared. The Office of Budget and Legislative Analyst published a report in October 2013, which indicated a 38.2% increase in all types of evictions while Ellis Act evictions increased by a dramatic 169.8%[6]. In his State of the City speech in early January 2014, Mayor Lee acknowledged a housing shortage and established a seven-point plan for housing. The City has

[4] In order to evict a tenant from a rental unit covered by the Rent Ordinance, a landlord must have a "just cause" reason that is the dominant motive for pursuing the eviction. There are 15 just cause reasons for eviction under Ordinance Section 37.9(a).

[5] Trulia, San Francisco Real Estate Overview, Retrieved at http://www.trulia.com/real_estate/San_Francisco-California/ on February 1, 2014

[6] Memo to Supervisor Campos: Analysis of Tenant Displacement of in San Francisco" Budget and Legislative Analyst, October 30, 2013. Available online at: http://www.sfbos.org/Modules/ShowDocument.aspx?documentid=47040 , Retrieved on March 2, 2014

been taking on many approaches to preserve existing affordable housing stock while developing more affordable housing. San Francisco's current housing crisis necessitates the City to diligently preserve housing affordable to low and middle income households. Unauthorized units, more commonly known as illegal units, constitute an anecdotally large portion of San Francisco's housing stock. While the City does not maintain any database on these units, anecdotal references estimate a range between 30,000 to 50,000 of such units in San Francisco.

Having been built without permits, many of these units may not comply with city code requirements. Historically, once the City became aware of existence of such units, the life and safety hazard concerns required the owners to remove and demolish such units. Between 2000 and 2011, about 250 of such units have been removed[7]. In response to the existing housing crisis and the need for preserving our existing housing stock, the City has recently changed its approach towards these units.

In his Executive Directive to all Departments, published on December 18, 2013, the Mayor called for establishing a discretionary review to ensure that property owners have made every effort to maintain a housing unit before pursuing removal of the unit. The proposed Ordinance would provide a new avenue for maintaining additional unauthorized units through the provisions offered under the State law[8].

The public benefits of legalizing unauthorized dwelling units

Definition- Unauthorized dwelling units are residential units that were built without the benefit of permits. These units are typically subordinate to the other residential units in the same lot, due to their location on the lot, or location of the entrance, low ceiling heights, less light exposure, and so forth. These units may be exceeding the density limits of the parcel on which they are located. Unauthorized units usually take form of units known as Accessory Dwelling Units (ADUs), or alternatively called Secondary Units, In-Law Units, or Granny Flats. Such units are generally developed using unused spaces within a lot, whether a garage, storage, rear yard, or an attic. These units are wholly independent from the primary unit or units, with independent kitchen, bathroom, sleeping facilities, and access to the street; they may share laundry facilities, yards, and other traditional types of common spaces with the primary unit(s).

Existing unauthorized units in San Francisco may have been established through many processes; They may have been built without the benefit of any permits; or may have been built with some permits for a different use -- generally bedrooms or an additional living area on the basement— but are being used as an independent housing unit. These unauthorized units may or may not exceed the density limits established through zoning requirements on a parcel. If they are within the density limits, the path to legalize those units already exists, which would include variance from many of the planning code requirements. In fact, between 2000 and 2008 about 80 illegal units were legalized[9].

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[7] San Francisco Housing Element 2009 Part I (Table I-54) and Housing Inventory 2011(Table 8)

[8] The discretionary requirement process only applies where the buildings has three or more legal units.

[9] San Francisco Housing Element 2009 Part I (Table I-54)

Maintain source of affordable housing- The unauthorized housing units provide a more affordable rental housing option to low and middle-income residents of San Francisco. The Asian Law Caucus carried out a report on secondary units in the Excelsior Neighborhood in San Francisco. This report suggests that "secondary units are home to tens of thousands of San Francisco residents", while acknowledging the uncertainty of this statement due to the hidden nature of them as illegal units[10]. A survey of existing in-law units in the Excelsior neighborhood, conducted as a part of this report, estimated a range of $1000-$1,200 for a 2-bedroom apartment. Based on this data the in law units in this neighborhood offer affordable rents compared to the market rate asking rental prices at $1,200 per bedroom in the same neighborhood reported by the Trulia map[11]. Another study of secondary units in the East Bay region, by Center for Community Innovation, found that the existing illegal secondary units stock are affordable to very low and low income households[12].

The California Department of Housing and Community Development identifies multiple potential benefits that ADUs can offer to communities including: an important source of affordable housing, easing a rental housing deficit, maximizing limited land resources and existing infrastructure, and assisting low and moderate-income homeowners with supplemental income[13].

Improve life and safety hazards- Unauthorized dwelling units reflect all these benefits; however due to their unofficial status they might present life and safety risks to their residents. These units were built without obtaining any permits and they may not comply with many city code requirements. While some of these requirements control life and safety standards, others control quality of life standards beyond the minimum life and safety standards. For example, while earthquake and fire safety measures along with access to light and air standards represent the minimum life and safety standards, Planning Code requirements regarding open space, exposure, and parking define the quality of life beyond minimum standards. Creating a path to legalize the unauthorized dwelling units would allow the City to maintain a large source of affordable rental housing, while ensuring such units are habitable and meet the minimum life and safety standards.

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[10] Asian Law Caucus, Our Hidden Communities: Secondary unit households in the Excelsior Neighborhood of San Francisco, March 22, 2013.

[11] Trulia, San Francisco Real Estate Overview, Retrieved at http://www.trulia.com/real_estate/San_Francisco-California/ on February 1, 2014

[12] "30% of secondary units are affordable to households in the Very Low-Income category (30% to just under 50% of AMI), and that 49% lie within the Low-Income category (50% to just under 80% of AMI)." Karen Chapple, Jake Wegmann, Alison Nemirow, Colin Dentel-Post; *Yes to My Back Yard, Mobilizing the Market for Secondary Units*; Center for Community Innovation at the Institute of Urban and Regional Development, June 2012.

[13] California Department of Housing and Community Development, Memorandum for Planning Directors and Interested Parties, August 6, 2003; http://www.hcd.ca.gov/hpd/hpd_memo_ab1866.pdf retrieved on January 29, 2014.

Increase property tax revenue- The City does not maintain any information on existing unauthorized dwelling units. Without knowledge of their existence, the Tax Assessor's office does not incur any property taxes for these units as well. Whether or not an unauthorized unit is occupied, it would generate some direct or indirect revenue for the owner, while no property tax is being paid to the General Fund. Granting legal status to these units would allow the City to charge property taxes on these units; the revenue generated would help offset the costs that these units and their residents already incur on the City's resources such as infrastructure, education, police, and so forth.

Property owner's incentives and deterrents for legalizing their unauthorized units

Protect owners from loss of unit- The proposed Ordinance would provide the opportunity for the property owners to maintain their otherwise required-to-be-demolished units and grant legal status for the unit. This would create security for the owners to rely on this unit as a source of income -- if rented out or to provide housing for relatives or friends. Without the unit legalized the property owners are constantly at risk of losing the unit and therefore losing a source of income or other changes in the household's lifestyle due to losing housing for their relatives or friends. Additionally, if and where the property owner decides to sell their property owner the legalized unit adds value to the whole property. While the proposed Ordinance establishes that the legalized units cannot be subdivided and sold as a separate unit, the addition of a legal unit to the whole building would add significant value to the building and therefore would prove a lucrative investment for the property owner.

Legalization Costs- The proposed Ordinance creates a path to legalize unauthorized units through exemptions from certain Planning Code requirements. However, compliance with other City code requirements – which regulate life and safety of units and their residents - would still remain required. This would limit the extent of unauthorized units that could potentially utilize the provisions of this Ordinance. DBI staff and inspectors identify three major Building and Housing Code requirement categories that could prove challenging and costly for these units to comply with: minimum floor to ceiling heights (7′ 6′′), ingress and egress access, sprinkler installations for fire safety for buildings with 3 units or more. Meeting any of these categories may render the legalization process financially infeasible for the property owner. In addition, while these buildings may have been built many years ago, the DBI requires compliance with the Building Code as it stands today, which includes updated and sometimes more costly standards. In order to minimize the costs while not compromising the life and safety standards, DBI would ease compliance with the Housing Code and the Building Code in certain circumstances. If the unauthorized unit contains rooms and living areas that were built with permits, the DBI would not review these structures for further compliance with the updated codes. The example is where a two unit building added bedrooms and a bathroom on the basement as a part of a permit for expansion of an existing unit, but proceeded with using this expanded area as a separate dwelling unit illegally. In reviewing the application to legalize this expanded unit as a legal unit, the DBI would deem the already built structure in compliance with the Housing and Building Codes and would only hold the portion built without benefit of permit to today's standards.

The proposed Ordinance also would require the DBI to provide applicants with information on potential funding sources available for code compliance such as the Mayor's Office of Housing and Community Development Code Enforcement Rehabilitation.

Ineligible unauthorized units- The risk of being found ineligible for the provisions of this Ordinance could potentially deter owners from embarking on the legalization process. If DBI finds a unit ineligible to become legalized, the property owner might fear disclosing the existence of an "illegal" unit could result in an immediate requirement for demolition and removal of such unit. The proposed Ordinance addresses this concern through creating a screening process before any application is filed. This screening process would allow the owner or their agent to reach out to DBI for information to evaluate their eligibility for the legalization process. If DBI finds the unit eligible, depending on the costs, the owner can decide whether or not to proceed with the process and file an application. If found ineligible, however, this Ordinance does not require the City to maintain any information on the existence of the unit; nor it does require an immediate removal and demolition of such unit. In those cases, the city would continue with the exiting practice to enforce when a complaint is filed against such units. Even when an enforcement or voluntary application is filed to demolish the unit, based on the Mayor's Executive Director, described earlier in this report, a discretionary review process is required to determine that legalizing of the unit is, in fact, financially or physically infeasible[14].

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATIONS AND BASIS FOR RECOMMENDATIONS:

The Department recommends that the Commission recommend ***approval with modifications*** of the proposed Ordinance and adopt the attached Draft Resolution to that effect. Below is a discussion of each recommended modification:

1. **Modify the screening process to screen for no-fault evictions.** The proposed Ordinance prohibits pursuing legalization of an unauthorized unit if there has been a no-fault eviction filed for that unit after the effective date of this Ordinance for a ten year period prior to filing application for legalization (5 years in cases of Owner-Move In evictions). The intent of this provision is to discourage property owners of unauthorized units from evicting tenants, which mirrors the City's policy goal of reducing evictions. The Ordinance also proposes a screening process in order to ensure that property owners incur minimum costs unless the legalization is in fact feasible. Throughout this screening process, DBI evaluates the eligibility of the unauthorized unit to benefit from this Ordinance and obtain legal status. The Department recommends that the no no-fault eviction consideration should also be monitored at the beginning of the legalization process as it represents a determinant factor on whether or not the applicant should pursue to the next step. The process laid out in the Ordinance currently lays out monitoring of this factor later in the process when the Planning Department is reviewing the application. The Department proposes to move this step up in

[14] The discretionary requirement process only applies where the buildings has three or more legal units.

the process and require screening for no no-fault eviction during the screening process so as to potentially advise property owners against evictions prior to the eviction taking place.

2. **Modify the permit process to ensure a ministerial review process:** The proposed Ordinance calls for a ministerial process when reviewing the legalization of unauthorized dwelling units. However, requiring the Zoning Administrator (hereinafter "ZA") to review these application conflicts with this intention and establishes a discretionary process. The legislative sponsor intends to streamline the legalization process to facilitate and ensure minimum process costs for applicants. This compliments the overall goal of legalizing unauthorized units to maintain affordable rental housing while ensuring habitability of these units. In order to reflect this role, the Department proposes to modify the permit process so that planners can review these applications based on code requirements without the need for the ZA's discretionary approval. This can be accomplished by removing the amendments presented in Section 207.3(d) in the proposed Ordinance.

3. **Modify the permit process to reflect the City's existing practice of building permit issuance**: The proposed Ordinance establishes the legalization process including two separate applications: a building permit application and a ZA application. In order to maintain consistency with the existing City practices for issuing permits, the Department proposes to eliminate the proposed ZA application. The permitting process therefore would start with the filing of a building permit application with the Department of Building Inspection. DBI would then route these permits to the Planning Department for ministerial review. This process reflects the current process of permit issuance practiced by both DBI and the Planning Department and would help streamline the process of granting legal status to the existing unauthorized units.

4. **Expand the Planning Code exceptions so that the open space requirements would not apply to these units whether or not other existing dwelling units meet the open space requirements:** Currently the open space requirements would not apply to the unauthorized units seeking legalization; but only if existing legal units already meet those requirements**.** Based on this restriction, if existing legal units are lawful non-forming dwelling units, which may or may not comply with the open space requirements, an unauthorized unit may not be eligible for legalization. The majority of San Francisco's housing stock predates open space requirements and may not meet today's standards. Requiring existing units to comply with a standard that did not exist when the unit was entitled may dramatically reduce the number of units which could be eligible for legalization.

5. **Expand the Planning Code exceptions so that the reduction of parking requirements for existing units will be allowed.** Existing unauthorized units may have been built in a required garage space in an existing building. In case such garage was a required parking space for the existing legal units within the building, the applicant will need to apply for parking reduction per section 161(J) the Planning Code. Since the garage has already been occupied by such unauthorized unit, the Department believes that no additional pressure on parking demand would be imposed by legalizing the existing unit. The Department, therefore, recommends relieving the parking requirements described in Section 161(J) the Planning Code.

6. **Require the unauthorized unit once legalized to count towards density limits, if the parcel is under its density limit capacity.** Unauthorized units may or may not exceed the allowable

density limits on a lot. For example, an RH-3 zoned parcel may include two legal units and one unauthorized unit. Currently, the path to legalize the third unit in the example above exists absent of this Ordinance. Applicants can apply for a variance from Planning Code requirements such as: open space, rear yard, parking removal, and so forth. When legalized through the existing process, the unit would count as a legal unit towards the density limits on the parcel. With the proposed Ordinance a new and faster path to legalize such unit would be in place, as no variance would be required due to the exemptions from the Planning Code requirements in the Ordinance. However, per this Ordinance such unit would *not* count towards density limits; the property owner can potentially seek a permit for yet another unit within the density limits. The City's intention is in fact to encourage property owners to create units that comply with all Planning Code requirements; exemptions should therefore be allowed in such unique situations: to maintain the existing housing stock which is a source of affordable rental housing. The Department proposes this Ordinance to count the legalized unauthorized unit towards density limits, if such unit is within the density capacity of the lot. In the example above, if the owner chooses to legalize their unauthorized unit through this Ordinance, they would not be able to add a fourth unit later).

7. **Require construction to commence within 30 days after the building permit is issued.** The proposed Ordinance does not specify any timeline during which improvements need to occur. The unauthorized units are already in built structures and may currently pose some life safety concerns. Therefore, the City needs to regulate the legalization process so that the required improvements to these units occur in a timely manner. DBI currently requires construction to commence on issued building permits within 30 days. The Department proposes to subject these legalization permits to the same construction timeline in order to ensure the life and safety upgrades in these units occur within the process seeking legal status.

8. **Clarify definition of unauthorized dwelling units to indicate that units should be in existing residential space:** The Ordinance refers to units built without permits as unauthorized dwelling units. However, it does not clarify in the definition that these are existing units that have been used as residential space. This intent is clear in other parts of the Ordinance (Building Code 106.A.3.1.3) where it requires for evidence proving the unit existing prior to January 1, 2013. The Department proposes to clarify the definition of unauthorized units in Section 207.3(b)(1) of the proposed Ordinance to the Planning Code to say:

   "an unauthorized dwelling unit is an existing habitable space within an existing residential building or on an ancillary structure in a residentially zoned lot that was built without permits before January 1, 2013"

   Proof to indicate that the space has been habitable is required in the amendments to the Building Code (Section 106.A.3.1.3) where it requires for evidence proving the unit existing prior to January 1, 2013.

9. **Allow legalizing one unauthorized dwelling unit in buildings with 10 units or less, and two unauthorized units in buildings with more than 10 units. Number of units per lot legalized:** The Ordinance only allows one unauthorized unit per lot to be granted legal status. However, on more dense parcels, allowing more than one unit to legalize beyond the density limits would marginally have same impacts on the allowable density of that parcel.

This proposal is parallel with another Ordinance regarding Accessory Dwelling Units in the Castro [BF 131063 Addition of Dwelling Units in the Castro, sponsored by Supervisor Wiener] currently in process for approval. Supervisor Wiener's proposed Ordinance would allow the creation of new ADUs in the Castro and would allow the same change in density levels when building new ADUs. In an effort to be consistent with the Department recommendation on Supervisor Wieners, ordinance we recommend amending Supervisor Chiu's ordinance to allow up to two unauthorized units in buildings with more than 10 units.

10. **Allow the expansion of the unauthorized unit within the building envelope as a part of the legalization permit process.** The proposed Ordinance establishes that once the unauthorized units are legalized they are considered lawful nonconforming units subject to 180 to 189. Section 181(c)(2) of the Planning Code allows for lawful non-conforming units to be enlarged or altered provided that the alterations not extend beyond the building envelope as it existed on January 1, 2013. Based on this once the unauthorized units become a lawful non-conforming unit, the property owner can obtain another permit to enlarge the unit within the building envelope per Section 181(c)(2). The Department proposes that this Ordinance be modified to allow the unauthorized units to enlarge within the building envelope as a part of their legalization permits.
11. **Amend the Subdivision Code to reflect 207.3(h) in the Planning Code amendments:** The proposed Ordinance establishes that the Article 9 of the Subdivision Code would not apply to the legalized unauthorized units – those units would not be allowed to subdivide and to be sold separately. The Department proposes to amend the Subdivision Code as well to cross-reference and reflect this amendment in the Planning Code.
12. **Remove the units from the City's records, when merged with the original unit, after the final Certificate of Occupancy is obtained.** The proposed Ordinance allows the legalized units to be merged with the original units pursuant to Section 317 of the Planning Code. In such case the Ordinance requires such unit to be removed from the Department's Master List of legalized unauthorized units as well as the Assessor-Recorder's records after the final approval of required permits. The Department proposes to move the timeline for such removal of the City's records to when the final Certificate of Occupancy is obtained in order to ensure that the merger has in fact occurred.

ENVIRONMENTAL REVIEW

The proposed Ordinance is identified not a project under CEQA guidelines Sections 15060(c) and 15378 attached in Exhibit A.

PUBLIC COMMENT

As of the date of this report, the Planning Department has received one comments about this Ordinance attached in Exhibit D.

RECOMMENDATION:	**Recommendation of Approval with Modifications**

Attachments:

Exhibit A: Environmental Review Exemption
Exhibit B: Supervisor Chiu's In Law Legislation Fact Sheet
Exhibit C: DBI Administrative Bulletin: Building Code Equivalencies
Exhibit D: Draft Planning Commission Resolution
Exhibit E: Draft Ordinance [Board of Supervisors File No. 13-1148]
Exhibit F: Letter from Cayuga Improvement Association

Exhibit A

BOARD of SUPERVISORS

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December 20, 2013

Planning Commission and
Attn: Jonas Ionin
1660 Mission Street, 5th Floor
San Francisco, CA 94103

Dear Commissioners:

On November 26, 2013, Supervisor Chiu introduced the following legislation:

File No. 131148

Ordinance amending the Planning and Building Codes to provide a process for granting legal status to existing dwelling units constructed without the required permits, and establishing a fee for administering the authorization program; amending the Administrative Code to provide that a dwelling unit that was subject to the Rent Ordinance before legalization will remain under the Rent Ordinance, and requiring the property owner to provide relocation assistance to displaced tenants; making environmental findings, and findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1; and directing the Clerk to submit this Ordinance to the California Department of Housing and Community Development in accordance with state law.

The proposed ordinance is being transmitted pursuant to Planning Code Section 302(b) for public hearing and recommendation. The ordinance is pending before the Land Use & Economic Development Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A Ausberry

By: Andrea Ausberry, Committee Clerk
Land Use & Economic Development Committee

c: John Rahaim, Director of Planning
Scott Sanchez, Zoning Administrator
Sarah Jones, Chief, Major Environmental Analysis
AnMarie Rodgers, Legislative Affairs
Monica Pereira, Environmental Planning
Nannie Turrell, Environmental Planning

Not a project under CEQA Guidelines Sections 15060(c) and 15378 because there is no direct or indirect physical change in the environment.
Nannie L. Turrell 2/7/14

Exhibit B

President, Board of Supervisors
District 3

City and County of San Francisco

DAVID CHIU
邱信福
市參事會主席

In-Law Legislation Fact Sheet

What are in-law units?

In-law units are self-contained residences on the same lot as an existing house. They can either be attached to the house, like an attic or basement unit, or separate, like a cottage. These units are also called secondary units, accessory units, guest houses, or granny flats.

According to a door-to-door survey conducted by the Asian Law Center in 2013, the people who live in these units are often family members, students, the elderly, in-home health care providers, the disabled, and other low-income residents. These units are often much less expensive for the renters, while providing the owners with additional income.

What does it mean for in-law units to be illegal?

In-law units are illegal if they lack the proper permits and do not meet Building and Planning Codes to ensure the safety of those living in them. The illegal status of in-law units has a negative impact on both tenants and owners. Tenants may not have leases or basic protections and the units may lack the life safety standards set by the Building Code. Despite earning income from renting in-law units illegally, owners face the potential of losing the unit through enforcement and being subject to penalties and lawsuits.

Why is there a need for legislation?

San Francisco has estimated 30,000 – 40,000 in-law units in existence. They are a valuable source of affordable housing and represent nearly 10% of the City's total housing stock. Some units may meet life and safety requirements and would only require a limited number of exceptions to become legalized.

Creating a process to legalize existing units allows the City to preserve housing at risk of elimination, make sure that they are safe and up to code and activate units being kept off the market.

Tenants and homeowners will both benefit from this legislation. Homeowners will benefit from: (1) increase property values associated with an additional legal unit, (2) fewer barriers to legalizing their units, and (3) clarity and certainty as they rent.

Tenants, who have lived without tenant protections and leases, will benefit from: (1) protection of their current rent control status, (2) no cost pass-through for construction required to legalize, (3) protection from future condo conversion, and (4) relocation protections during construction.

What is the process for legalization?

This legislation allows homeowners with a secondary unit built before January 1, 2013 to apply without penalty to legalize one illegal unit. The new law sets up a screening process, which allows the owner to apply for all needed permits if they pass. Approved applications will give the secondary unit legal nonconforming status.

For units that have received a notice of violation, the City would temporarily enforcement if the owner begins the legalization process and the application is accepted. The notice of violation will be rescinded if the legalization of the unit is approved within one year.

The step-by-step process includes:

Step 1. Department of Building Inspection Screening

- An interested property owner goes to the Department of Building Inspection with floor plans to receive guidance on how the unit could be brought up to code. The Department would provide a Dwelling Unit Legalization Checklist.
- This screening phase of the process is meant to help property owners obtain more information about potential costs for renovation and building permits before submitting the application and without fear of triggering enforcement.

Step 2. Planning Department Application

- If the property owner voluntarily decides to pursue legalization, they would initiate an application with the Planning Department. The application must be accompanied by preliminary plans approved by the Department of Building Inspection in the screening process.
- The Planning Department would waive certain zoning and open space requirements for only one existing in-law unit on the property.

Step 3. Obtaining Required Permits

- If the unit needs renovation work to comply with the Building Code, the property owner would need to apply for the appropriate building construction permits to proceed.
- If tenants need to be temporarily relocated for renovation work, the property owner must provide relocation assistance and the right to return to the unit.

What are the costs associated with legalization?

The costs associated with legalization vary depending on the in-law unit. The screening process will help property owners determine if their unit is up to building code, and if not, what renovations are needed to meet code requirements.

The following are rough estimates for renovation costs for the legalization of an additional unit for a single-family home:

	LOWEST	**MIDDLE**	**HIGHEST**
Renovation description for single family home + 1 legalized unit	Kitchen	Kitchen, Bathroom, 1-2 Bedroom	Kitchen, Bathroom, 1-2 Bedroom, Structural Renovations
Capital Improvement Cost	$10,000	$50,000	$100,000
Planning and Building Fees	$1100	$4500	$6000
Architect/Engineer Fees	$1,000-$1,500	$1,500-$2,500	$3,000-$5,000

Have there been similar legislative attempts in the past?

Members of the San Francisco Board of Supervisors had introduced legislation to legalize existing units or allow for the creation of new in-law units. Previous attempts were made by Supervisors Hallinan, Ammiano and Teng in 1997 and Supervisor Peskin in 2002.

In 2009, Supervisors Mirkarimi, Chiu and Mar passed legislation that would allow a secondary unit to be built if Building and Planning Code requirements were met.

In 2013, Supervisor Weiner introduced legislation to allow for the creation of new secondary units in the Castro Neighborhood Commercial District. His legislation is pending approval by the Board of Supervisors.

Exhibit C- DBI Administrative Bulletin- Building Code Equivalencies

AB-009: Approval of New Openings in New and Existing Building Property Line Walls

These openings may not be used to meet light, ventilation or emergency egress requirements, but can be retained when certain measures are taken, to prevent them from having to be removed in existing buildings. This is a critical issue when determining whether an existing ADU meets light and ventilation requrements.

AB-018: Local Equivalency of Approval of Emergency Escape or Rescue Windows at Courts and Lightwells

This is handled on a case by case basis and could be used to mitigate issues surrounding ADU's that face courts or light wells.

AB-019: Local Equivalency for Approval of Fire Escapes as a Required Means of Egress

This is handled on a case by case basis and could be used to mitigate issues surrounding ADU's that require an additional means of egress from the building.

AB-020: Local Equivalency for Exiting Through a Garage Area for Type V, Group R Buildings

This is handled on a case by case basis to achieve adequate egress from a rear yard to the street through the garage. This will be important when considering both existing and new ADU's.

AB-027: Illegal Unit Re-occupancy Enforcement Procedure

This bulletin has to do with the re-occupancy of illegal units. While it will remain on the books if the ADU legislation is passed, it may be wise to review how this is used when an illegal ADU is legalized.

AB-102: Substantial Change, Type V, R-3

This bulletin has to do with allowing for framing changes to a single or two family building to meet seismic requirements, including the removal of existing and installation of new gypsum board, while not defining the work as "substantial changes" to the building, which otherwise would trigger additional compliance.

Exhibit D

SAN FRANCISCO
PLANNING DEPARTMENT

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

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Planning Commission Draft Resolution
Planning & Administrative Code Text Change
HEARING DATE: MARCH 13TH, 2014

Project Name:	**Authorization of Units Installed without a Permit**
Case Number:	2014.0230T [Board File No. 13-1148]
Initiated by:	Supervisor Chiu / Introduced February 11, 2014
Staff Contact:	Kimia Haddadan, Legislative Affairs Kimia.haddadan@sfgov.org , 415-575-9068
Reviewed by:	AnMarie Rodgers, Manager Legislative Affairs anmarie.rodgers@sfgov.org, 415-558-6395
Recommendation:	**Recommend Approval**

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE WITH MODIFICATIONS AS RECOMMENDED BY THE PLANNING COMMISSION THAT WOULD 1) AMEND THE PLANNING AND BUILDING CODES TO PROVIDE A PROCESS FOR GRANTING LEGAL STATUS TO CERTAIN EXISTING DWELLING UNITS CONSTRUCTED WITHOUT THE REQUIRED PERMITS, TEMPORARILY SUSPENDING THE CODE ENFORCEMENT PROCESS FOR UNITS IN THE PROCESS OF RECEIVING LEGAL STATUS, AND PROHIBITING UNITS FROM BEING LEGALIZED UNDER THE PROVISIONS OF THIS ORDINANCE IF THERE HAVE BEEN NO-FAULT EVICTIONS; AND 2) AMEND THE ADMINISTRATIVE CODE TO PROHIBIT THE COSTS OF LEGALIZATION FROM BEING PASSED THROUGH TO THE TENANT; AFFIRMING THE PLANNING DEPARTMENT'S CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION, MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1, AND DIRECTING THE CLERK OF THE BOARD OF SUPERVISORS TO SUBMIT THIS ORDINANCE TO THE CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT IN ACCORDANCE WITH STATE LAW.

WHEREAS, on February 11, 2014, Supervisors Chiu introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 131148, which would amend the planning Code to add Sections 207.3; amend Section 311 of the Planning code; amend the Building Code to add section 106A.3.1.3; and amend the Administrative Code Section 37.7 to grant legal status to certain units built with permits; and,

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on March 13, 2014; and,

WHEREAS, the proposed Ordinance has been found not a project per under CEQA guidelines Sections 15060(c) and 15378; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve with modifications** the proposed ordinance. Specifically, the Commission recommends the following modifications:

1. **Modify the screening process to screen for no-fault evictions.** The Commission recommends that the no no-fault eviction consideration be monitored at the beginning of the legalization process- the screening process- as it represents a determinant factor on whether or not the applicant should pursue to the next step.

2. **Modify the permit process to ensure a ministerial review process:** The Commission proposes to modify the permit process so that planners can review these applications based on code requirements without the need for the ZA's discretionary approval. This can be accomplished by removing the amendments presented in Section 207.3(d) in the proposed Ordinance.

3. **Modify the permit process to reflect the City's existing practice of building permit issuance:** In order to maintain consistency with the existing City practices for issuing permits, the Commission proposes to eliminate the proposed ZA application and to start the permitting process with the filing of a building permit application with the Department of Building Inspection.

4. **Expand the Planning Code exceptions so that the open space requirements would not apply to these units whether or not other existing dwelling units meet the open space requirements.** The majority of San Francisco's housing stock predates open space requirements and may not meet today's standards. Requiring existing units to comply with a standard that did not exist when the unit was entitled may dramatically reduce the number of units which could be eligible for legalization and therefore the Commission recommends removing this condition.

5. **Expand the Planning Code exceptions so that the reduction of parking requirements for existing units will be allowed.** Existing unauthorized units may have been built in a required garage space in an existing building. In case such garage was a required parking space for the existing legal units within the building, the applicant will need to apply for parking reduction per section 161(J) the Planning Code. The Commission recommends relieving the parking requirements described in Section 161(J) the Planning Code.

6. **Require unauthorized unit, once legalized, to count towards density limits, if the parcel is under its density limit capacity.** Unauthorized units may or may not exceed the allowable density limits on a lot. For example, an RH-3 zoned parcel may include two legal units and one unauthorized unit.

Currently, the path to legalize the third unit in the example above exists absent of this Ordinance. Applicants can apply for a variance from Planning Code requirements such as: open space, rear yard, parking removal, and so forth. When legalized through the existing process, the unit would count as a legal unit towards the density limits on the parcel. With the proposed Ordinance a new and faster path to legalize such unit would be in place, as no variance would be required due to the exemptions from the Planning Code requirements in the Ordinance. However, per this Ordinance such unit would not count towards density limits; the property owner can potentially seek a permit for yet another unit within the density limits. The City's intention is in fact to encourage property owners to create units that comply with all Planning Code requirements; exemptions should therefore be allowed in such unique situations: to maintain the existing housing stock which is a source of affordable rental housing. The Commission proposes this Ordinance to count the legalized unauthorized unit towards density limits, if such unit is within the density capacity of the lot. In the example above, if the owner chooses to legalize their unauthorized unit through this Ordinance, they would not be able to add a fourth unit later).

7. **Require construction to commence within 30 days after the building permit is issued.** The Commission proposes to subject these legalization permits to the DBI's construction timeline for other building permits -- which is 30 days after the building permit is issued-- in order to ensure that the life and safety upgrades in these units occur within the process seeking legal status.

8. **Clarify definition of unauthorized dwelling units to indicate that units should be in existing residential space:** The Commission proposes to clarify the definition of unauthorized units in Section 207.3(b)(1) of the proposed Ordinance to the Planning Code to say:

   "an unauthorized dwelling unit is an existing habitable space within an existing residential building or on an ancillary structure in a residentially zoned lot that was built without permits before January 1, 2013"

   Proof to indicate that the space has been habitable is required in the amendments to the Building Code (Section 106.A.3.1.3) where it requires for evidence proving the unit existing prior to January 1, 2013.

9. **Allow legalizing one unauthorized dwelling unit in buildings with 10 units or less, and two unauthorized units in buildings with more than 10 units. Number of units per lot legalized:** This proposal is parallel with another Ordinance regarding Accessory Dwelling Units in the Castro [BF 131063 Addition of Dwelling Units in the Castro, sponsored by Supervisor Wiener] currently in process for approval. Supervisor Wiener's proposed Ordinance would allow the creation of new ADUs in the Castro and would allow the same change in density levels when building new ADUs. In an effort to be consistent in regulation ADUs of all types, The Commission recommends amending Supervisor Chiu's ordinance to allow up to two unauthorized units in buildings with more than 10 units.

10. **Allow the expansion of the unauthorized unit within the building envelope as a part of the legalization permit process.** The proposed Ordinance establishes that once the unauthorized units are legalized they are considered lawful nonconforming units subject to 180 to 189. Section 181(c)(2) of the Planning Code allows for lawful non-conforming units to be enlarged or altered provided that the alterations not extend beyond the building's envelope as it existed on January 1, 2013. Based on this, once the unauthorized units become a lawful non-conforming unit, the property owner can obtain another permit to enlarge the unit within the existing building envelope per Section 181(c)(2). The Commission proposes that this Ordinance be modified to allow the unauthorized units to enlarge within the building envelope as a part of their legalization permits.

11. **Amend the Subdivision Code to reflect 207.3(h) in the Planning Code amendments:** The proposed Ordinance establishes that the Article 9 of the Subdivision Code would not apply to the legalized unauthorized units – those units would not be allowed to subdivide and to be sold separately. The Commission proposes to amend the Subdivision Code as well to cross-reference and reflect this amendment in the Planning Code.

12. **Remove the units from the City's records, when merged with the original unit, after the final Certificate of Occupancy is obtained.** The proposed Ordinance allows the legalized units to be merged with the original units pursuant to Section 317 of the Planning Code. In such case the Ordinance requires such unit to be removed from the Department's Master List of legalized units as well as the Assessor-Recorder's records after the final approval of required permits. The Department proposes to move the timeline for such removal of the City's records to when the final Certificate of Occupancy is obtained in order to ensure that the merger has in fact occurred.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The California Department of Housing and Community Development identifies multiple potential benefits that ADUs can offer to communities including: an important source of affordable housing, easing a rental housing deficit, maximizing limited land resources and existing infrastructure, and assisting low and moderate-income homeowners with supplemental income[1].

2. California Government Code 65852.2 also provides a solution for local governments to maintain some units that were built without permits. This State law allows local governments to adopt an Ordinance that allows secondary units[2] in single-family or multifamily residential units. Currently, San Francisco only allows accessory dwelling units that are dedicated for seniors3 and that are located within the RH-1(S) district. In addition, within zoning districts that have removed density limits units may be added without limitation as to the resident type.

3. Unauthorized units were built without obtaining permits and they may not comply with many city code requirements. While some of these requirements control life and safety standards, others control quality of life standards beyond the minimum life and safety standards. For example, while earthquake and fire safety measures along with access to light and air standards represent the minimum life and safety standards, Planning Code requirements regarding open space, exposure, and parking define the quality of life beyond minimum standards. Creating a path to legalize the

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[1] California Department of Housing and Community Development, Memorandum for Planning Directors and Interested Parties, August 6, 2003; http://www.hcd.ca.gov/hpd/hpd_memo_ab1866.pdf retrieved on January 29, 2014.

[2] The State law defines secondary units as "an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel", which are built as a second unit to a single family dwelling unit located on a single family or multi-family zoned parcel.

[3] Section 209.1(m) of the Planning Code

unauthorized dwelling units would allow the City to maintain a large source of affordable rental housing, while ensuring such units are habitable and meet the minimum life and safety standards.

4. In his Executive Directive to all Departments, published on December 18, 2013, the Mayor called for establishing a discretionary review to ensure that property owners have made every effort to maintain a housing unit before pursuing removal of the unit[4]. The proposed Ordinance would provide a new avenue for maintaining additional unauthorized units through the provisions offered under the State law.
5. The proposed Ordinance aims to introduce more affordable housing to the current unaffordable market of housing in San Francisco. If such ADUs provide affordable housing, due to their physical design constraints, the value recapture mechanism would be inherent in the provision: the value of density waivers would be recaptured by an increase in stock of affordable housing. If, however, these ADUs would prove unaffordable to the middle or low income households, the City should revisit and modify the regulations in order to capture the public value of density limit and other Planning Code exceptions.

6. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the Objectives and Policies of the General Plan:

OBJECTIVE 1
IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

POLICY 1.5
Consider secondary units in community plans where there is neighborhood support and when other neighborhood goals can be achieved, especially if that housing is made permanently affordable to lower-income households.

The proposed Ordinance would create a path to legalize existing unauthorized units. This change in land use controls is not part of a community planning effort led by the Planning Department. However, the Commission listened to the public comment and considered the outreach completed by the Board Member and finds that there is sufficient community support and potential to achieve goals in the public interest of the neighborhood, to warrant the undertaking of this change.

OBJECTIVE 2
RETAIN EXISTING HOUSING UNITS, AND PROMOTE SAFETY AND MAINTENANCE STANDARDS, WITHOUT JEOPARDIZING AFFORDABILITY.

POLICY 2.4
Promote improvements and continued maintenance to existing units to ensure long term habitation and safety.

POLICY 2.5

[4] The discretionary requirement process only applies where the buildings has three or more legal units.

Encourage and support the seismic retrofitting of the existing housing stock.

The proposed Ordinance would create a path to maintain existing units not built without permits and to improve life, safety, and habitability standards in these units through compliance with the City's Building, Fire, and Housing Codes.

POLICY 2.1
Discourage the demolition of sound existing housing, unless the demolition results in a net increase in affordable housing.

The proposed Ordinance would discourage demolition of unauthorized units and would help bring these units up to the City codes which would improve the life and safety standards of the existing housing stock in San Francisco.

1. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

    1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

        The proposed Ordinance would not have a negative impact on neighborhood serving retail uses and will not impact opportunities for resident employment in and ownership of neighborhood-serving retail.

    2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

        The proposed Ordinance would help improve the life and safety standards of the existing stock of unauthorized units in the City.

    3. That the City's supply of affordable housing be preserved and enhanced;

        The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing and aims to maintain existing in-law units which are a source of affordable rental housing.

    4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

        The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

    5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

   The proposed Ordinance would not have an impact on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

   The proposed Ordinance would not have a negative impact on the City's Landmarks and historic buildings as the new units would be added under the guidance of local law and policy protecting historic resources, when appropriate. Further, the additional income that may be gained by the property owner may enable the property owner to pursue a higher standard of maintenance for the building.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

   The proposed Ordinance would not have an impact on the City's parks and open space and their access to sunlight and vistas.

8. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance with modifications as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on March 13, 2014.

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED:

[Planning, Building, Administrative Codes - Legalization of Dwelling Units Installed Without a Permit]

Ordinance amending the Planning and Building Codes to provide a process for granting legal status to existing dwelling units constructed without the required permits, temporarily suspending the code enforcement process for units in the process of receiving legal status, and prohibiting units from being legalized under the provisions of this ordinance if there have been no-fault evictions; amending the Administrative Code to prohibit the costs of legalization from being passed through to the tenant; affirming the Planning Department's California Environmental Act determination, making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and directing the Clerk of the Board of Supervisors to submit this Ordinance to the California Department of Housing and Community Development in accordance with State law.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial 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. General and Environmental Findings.

(a) This ordinance is adopted under the California Second Unit Law (Government Code Section 65852.2).

(b) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources

Code Sections 21000 et seq.). The Board of Supervisors hereby affirms this determination. Said determination is on file with the Clerk of the Board of Supervisors in File No. _____ and is incorporated herein by reference

(c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that these Planning Code amendments will serve the public necessity, convenience, and welfare for the reasons set forth in this ordinance and in Planning Commission Resolution No. _____. A copy of Planning Commission Resolution No. _____ is on file with the Clerk of the Board of Supervisors in File No. _____ and is incorporated herein by reference.

(d) On _____, in Resolution No. _____, the Planning Commission adopted findings that the actions contemplated in this ordinance are consistent, on balance, with the City's General Plan and the eight priority policies of Planning Code Section 101.1. The Board of Supervisors adopts these findings as its own.

Section 2. The Planning Code is hereby amended by adding Section 207.3, to read as follows:

SEC. 207.3. AUTHORIZATION OF DWELLING UNITS CONSTRUCTED WITHOUT A PERMIT IN AN EXISTING BUILDING ZONED FOR RESIDENTIAL USE.

Notwithstanding Section 207.2 or any other provision of this Code, certain dwelling units that were constructed without benefit of permit in an existing residential building or in an ancillary structure located on the same lot may be granted legal status subject to the conditions and procedures set forth below. For purposes of this Section 207.3, a dwelling unit shall not include single room occupancy units.

(a) ***Purpose and Findings.***

(1) In California Government Code Section 65852.150, the Legislature declared that second units are a valuable form of housing in California because they "provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below

market prices within existing neighborhoods" and that "homeowners who create second units benefit from added income, and an increased sense of security."

(2) San Francisco has long had a housing shortage, especially of affordable housing. The housing market continues to be tight and housing costs are beyond the reach of many households. Policy 1.5 of the City's 2009 Housing Element states that secondary units in existing residential buildings represents a simple and cost-effective method of expanding the City's housing supply.

(3) The City has no definitive information on the number of dwelling units that have been added to existing residential buildings without the benefit of a permit, but unofficial estimates indicate that as many as 30,000 to 40,000 such dwelling units exist as of 2013. Often these illegal units have been built in the basements, garages, and attics of existing buildings or in rear-yard structures. While many of these units may not meet existing Planning Code requirements, they constitute a major supply of San Francisco's affordable housing units, often meet life and safety standards, and may require only exceptions from density, open space, and other Planning Code requirements in order to become legal.

(4) Providing a mechanism to grant legal status to an illegally constructed dwelling unit in an existing building zoned for residential use furthers several public policy objectives. By encouraging the legalization of these units, the City can add legitimate units to the City's supply of affordable housing, ensure that these units are safe and habitable, and properly include these units when calculating the City's existing housing supply.

*(b) **Scope.***

(1) Except as provided in subsection (2) below, this Section 207.3 shall apply to an existing building or an ancillary structure on the same lot, that is located in a district where residential use is principally permitted, and that has one or more dwelling units that were constructed prior to January 1, 2013 without benefit of permit. One of the unauthorized dwelling units per lot meeting this

threshold requirement may be granted legal status under this Section, regardless of the density limits of the zoning district.

(2) ***No-fault eviction.*** *The Zoning Administrator shall not approve an application for legalization if any tenant has been evicted from the unit pursuant to Administrative Code Sections 37.9(a)(9) through (a)(14) where the tenant was served with the notice of eviction after March 13, 2014 if the notice was served within ten (10) years prior to filing the application for legalization. Additionally, the Zoning Administrator shall not approve an application for legalization of the unit if any tenant has been evicted pursuant to Administrative Code Section 37.9(a)(8) where the tenant was served with a notice of eviction after March 13, 2014 if the notice was served within five (5) years prior to filing the application for legalization. The Zoning Administrator shall verify with the Rent Board that no no-fault eviction had been filed. This subsection (b)(2) shall not apply if the tenant was evicted under Administrative Code Section 37.9(a)(11) and the applicant(s) have either:(A) certified that the original tenant reoccupied the unit after the temporary eviction or (B) submitted to the Zoning Administrator a declaration from the property owner or the tenant certifying that the property owner or the Rent Board has notified the tenant of the tenant's right to reoccupy the unit after the temporary eviction and the tenant chose not to reoccupy it.*

(c) ***Notices of Violation.*** *If the Director or Zoning Administrator has issued a notice of violation for the unauthorized unit for which legalization is being sought and all violations would be corrected by legalization of the unit, the Director or Zoning Administrator shall:*

(1) temporarily suspend the notice of violation and enforcement action upon initiation of the legalization process by the owner or owner's authorized agent and acceptance of the required applications by the City; and

(2) rescind the notice of violation and remove any related liens on the property if legalization of the unit is approved within one year of initiation of the process set forth in subsection (d).

*(d) **Legalization Application.***

(1) The Zoning Administrator shall accept for review an application for legalization of an unauthorized dwelling unit only if the application is accompanied by a DBI Dwelling Unit Legalization Checklist and plans preliminarily approved by the Department of Building Inspection in the screening process described in Section 106A.3.1.3(a) of the Building Code.

(2) The Zoning Administrator shall exercise ministerial approval of the application if it complies with Planning Code requirements as specified in subsection (e) below and with other City codes as specified in subsection (f) below, if the Rent Board verifies that no no-fault eviction was filed pursuant to subsection (b)(2) above, and if the permit application is completed at and plans approved by the Department of Building Inspection.

*(e) **Compliance with Planning Code Requirements; Exceptions.***

(1) A dwelling unit authorized under this Section 207.3 must satisfy all applicable requirements of this Code except for the usable open space requirements set forth in Section 135 and the light and air requirements set forth in Section 140 so long as open space requirements are met for the other existing units.

(2) A dwelling unit in an ancillary structure on the same lot as the single-family or multi-family building shall not require a variance from the rear yard requirements of Section 134 in order to be granted legal status under this Section 207.3.

(3) One such dwelling unit on the lot is allowed to exceed the permitted density authorized for that zoning district provided that a residential use is principally permitted in that zoning district. Authorization of an additional unit over the density limits will not change the official zoning classification of the lot.

*(f) **Compliance With Other City Codes.** A dwelling unit authorized under this Section 207.3 must meet all applicable provisions of other City codes other than the provisions of the Planning Code cited in subsection (e). Any Code equivalencies authorized under the Building Code, Electrical*

Code, Plumbing Code, Mechanical Code, Fire Code, or other applicable Code shall be considered by the relevant agency.

Legalization of a dwelling unit under this Section 207.3 shall not affect whether the dwelling unit is subject to the Residential Rent Stabilization and Arbitration Ordinance (Chapter 37 of the Administrative Code). A dwelling unit that was subject to the Residential Rent Stabilization and Arbitration Ordinance prior to legalization under this Section 207.3 shall remain subject to the Residential Rent Stabilization and Arbitration Ordinance after legalization. Landlords shall pay relocation assistance to tenants who are temporarily displaced due to work required for dwelling unit legalization pursuant to the provisions in Section 37.9C of the Residential Rent Stabilization and Arbitration Ordinance or California Civil Code Section 1947.9 for displacements of less than 20 days.

*(g) **Additional Dwelling Unit Considered a Lawful Nonconforming Use.** Any dwelling unit authorized under this Section 207.3 shall be considered a lawful nonconforming use subject to the provisions of Planning Code Sections 180 through 189.*

*(h) **Subdivision and Lot Splits Prohibited.** Notwithstanding the provisions of Article 9 of the Subdivision Code, a lot with an additional unit authorized under this Section 207.3 may not be subdivided in a manner that would allow for the additional unit to be sold or separately financed pursuant to any condominium plan, housing cooperative, or similar form of separate ownership.*

*(i) **Merging Secondary and Original Units.** If the property owner wants to merge the secondary and original units, the owner may request merger pursuant to Section 317 of this Code. If the Planning Department or Commission approves the merger, the secondary unit will be removed from the Planning Department's Master List and the Assessor-Recorder's records after the final approval of any required permits.*

*(j) **Reports.** Six months from the effective date of this Section 207.3 and every six months for the first three years after the effective date, the Zoning Administrator and the Director of the Department of Building Inspection shall issue a joint report on the effectiveness of the additional*

dwelling unit authorization program. After three years, the report will be included in the City's Annual Housing Inventory. The report shall, at a minimum, state the number of screening forms and building permit applications that have been filed pursuant to this Section 207.3. For the first three years, copies of these reports shall be submitted to the Clerk of the Board of Supervisors, the Mayor, and the Controller.

*(k) **Master List of Additional Dwelling Units Approved.** The Planning Department shall create and maintain a master list of dwelling units approved pursuant to the provisions of this Section 207.3 and corresponding property addresses for use by the San Francisco Rent Stabilization and Arbitration Board, Tax Assessor, and other interested City departments, boards or commissions.*

Section 3. The Planning Code is hereby amended by revising Section 311, to reach as follows:

SEC. 311. RESIDENTIAL PERMIT REVIEW PROCEDURES FOR RH, RM, AND RTO DISTRICTS.

*** * * ***

(b) **Applicability.** Except as indicated herein, all building permit applications for demolition and/or new construction, and/or alteration of residential buildings in RH, RM, and RTO Districts shall be subject to the notification and review procedures required by this Section. Subsection 311(e) regarding demolition permits and approval of replacement structures shall apply to all R Districts.

(1) For the purposes of this Section, an alteration in RH and RM Districts shall be defined as any change in use ~~*or change in the number of dwelling units of a residential building*~~, removal of more than 75 percent of a residential building's existing interior wall framing or the removal of more than 75 percent of the area of the existing framing, or an increase to the exterior dimensions of a residential building except those features listed in Section 136(c)(1) through 136(c)(24) and 136(c)(26).

(2) For the purposes of this Section, an alteration in RTO Districts shall be defined as a change of use described in Section 312(c) ~~*or a change in the number of dwelling units of a building*~~, removal of more than 75 percent of a building's existing interior wall framing or the removal of more than 75 percent of the existing framing, or an increase to the exterior dimensions of a building except for those features listed in Section 136(c)(1) through 136(c)(24) and 136(c)(26).

* * * *

Section 4. The Building Code is hereby amended by adding Section 106A.3.1.3, to read as follows:

106A.3.1.3. Authorization of Dwelling Units Installed Without a Permit.

*(a) **Screening required**. Prior to filing a permit application to legalize an existing unauthorized dwelling unit under Section 207.3 of the Planning Code, the owner of the building or the owner's authorized agent shall submit the following information to the Department for the purpose of determining whether the unauthorized dwelling unit can comply with the requirements of this Code or other codes administered and enforced by the Department, or whether equivalencies from Code requirements can be obtained:*

(1) a Dwelling Unit Legalization Checklist form, created by the Department, together with floor plans for the entire building and a plan showing the location of all structures on the subject lot;

(2) evidence from the San Francisco Water Department, telephone, gas or electric records, written lease agreements, or other evidence acceptable to the Department showing that the dwelling unit for which approval is sought existed prior to January 1, 2013;

(3) an assessment prepared by a licensed contractor, architect, or engineer that outlines a plan to comply with all applicable requirements of the Building Code and other Codes administered and enforced by the Department; and

(4) other information as the Building Official shall require.

*(b) **Imminent and Substantial Hazard.** If the Department identifies an imminent and substantial hazard as described in Section 102A.16 of this Code during the screening process, the Department shall inform the applicant of the appropriate remedial actions and notifications to tenants.*

*(c) **Application Process; Required Permit(s).** After completion of the screening process required by subsection (a,) a property owner or the owner's authorized agent may file with the Zoning Administrator an application to legalize one existing unauthorized dwelling unit on the property and may file applications with the Department, Fire Department, or other City department for any building or other permits that are required. The application(s) shall refer explicitly to this Section 106A.3.1.3 and Section 207.3 of the Planning Code. If there is more than one existing unauthorized unit on the site, the owner or agent shall designate the unauthorized unit for which legalization is sought. The approval, issuance, expiration, or cancellation of an application filed pursuant to this Section 106A.3.1.3 and any resulting permits shall be in accordance with the provisions of all City codes, except as provided below. Cancellation or disapproval of the application or any resulting permit shall terminate all rights under this Section created by the application. A dwelling unit is not lawful unless and until all necessary approvals have been obtained.*

*(d) **Notices of Violation.** If the Department has issued a notice of violation for the unauthorized unit for which legalization is being sought and all violations would be corrected by legalization of the unit, the Director shall:*

(1) temporarily suspend the notice of violation and enforcement action upon initiation of the process set forth in subsection (a) by the owner or owner's authorized agent and acceptance of the required applications by the City; and

(2) rescind the notice of violation and remove any related liens on the property if legalization of the unit is approved within one year of initiation of the process set forth in subsection (a).

(e) ***Funding Resources Information.*** *The Department shall provide information about the Mayor's Office of Housing and Community Development Code Enforcement Rehabilitation Fund and other potential funding sources that may be available for code compliance.*

Section 5. The Administrative Code is hereby amended by revising 37.7, to read as follows:

SEC. 37.7. CERTIFICATION OF RENT INCREASES FOR CAPITAL IMPROVEMENTS, REHABILITATION WORK, ENERGY CONSERVATION IMPROVEMENTS, AND RENEWABLE ENERGY IMPROVEMENTS.

(a) **Authority.** In accordance with such guidelines as the Board shall establish, the Board and designated Administrative Law Judges shall have the authority to conduct hearings in order to certify rental increases to the extent necessary to amortize the cost of capital improvements, rehabilitations, energy conservation improvements, and renewable energy improvements. Costs determined to be attributable to such work and improvements shall be amortized over a period which is fair and reasonable for the type and the extent of the work and improvements, and which will provide an incentive to landlords to maintain, improve and renovate their properties while at the same time protecting tenants from excessive rent increases. Costs attributable to routine repair and maintenance, *or any costs attributable to legalizing an existing dwelling unit under Section 207.3 of the Planning Code*, shall not be certified.

* * * *

Section 6. Equivalencies. The Director of the Department of Building Inspection and the Fire Marshal shall determine whether equivalencies from the provisions of the San Francisco Building Code can be developed in order to facilitate authorization of existing dwelling units under Planning Code Section 207.3, shall prepare one or more Administrative Bulletins to define and implement the code equivalencies, and shall coordinate with the Zoning Administrator in the development of any joint Administrative Bulletins that the Planning and

Building Departments determine are necessary or desirable in order to implement the policy and provisions of this ordinance. Any Administrative Bulletins developed jointly or by either Department shall be completed within one year of the effective date of this ordinance.

Section 7. Notice. Within one month from the effective date of this ordinance, the Clerk of the Board of Supervisors shall cause to be published at least once in a newspaper of general circulation notice that the program for authorization of existing dwelling units under Planning Code Section 207.3 is in effect. The Tax Collector shall mail notice to property owners with the first property tax bill sent after the effective date of this ordinance. The notices by the Clerk of the Board and the Tax Collector shall advise property owners of the provisions of Section 207.3. The Zoning Administrator and the Director of the Department of Building Inspection shall supplement the aforementioned notices with any additional notice they deem necessary to insure that the public receives adequate notice of the provisions of said Section 207.3.

Section 8. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

Section 9. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends 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, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

Section 10. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any

court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The Board of Supervisors hereby declares that it would have passed 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 would be subsequently declared invalid or unconstitutional.

Section 11. Conflict with Federal or State Law. Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 12. Directions to Clerk. The Clerk of the Board of Supervisors is hereby directed to submit a copy of this ordinance to the California Department of Housing and Community Development within 60 days following adoption pursuant to Section 65852.2(h) of the California Government Code.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
JUDITH A. BOYAJIAN
Deputy City Attorney

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Exhibit F

Cayuga Improvement Association
318 Foote Ave
San Francisco, Ca 94112
CIAPres@hotmail.com
415-585-7021

Planning Commission
c/o Kimia Haddadan
Scott Sanchez, ZA
Planning Department
1650 Mission St, 4th Fl
San Francisco, Ca 94103

Re: 2014-0230 T
Legalization of existing illegal In-law apartments in RH1 Zoning

Dear Commissioners,

The Cayuga Improvement Association respectfully requests the Planning Commission defer hearing this legislation for three months. During that time we have had the opportunity to hold a meeting with our full membership in April 2014 and if necessary develop working groups with suggestions to modify the legislation. Item 2014-0230T also known as the illegal in-law legislation, is not popular in this single family home neighborhood. We would like the opportunity to offer suggestions that would encourage engagement not more of the type of anger and alienation we see expressed against Tech workers and others because of changes to a neighborhood.

For example, CIA Members have suggested this item include language that would require the applicant insure the paved area in front of the home is no more than 70% of the front yard space. This would bring them into compliance with current city laws, increase permeable space for rainwater and reduce the load to the water treatment plants in San Francisco. It would also improve the appearance of the neighborhood making it a good thing for the community.

Another suggestion is , if the goal of this legislation is to protect lower income tenants, limiting this to owner occupied properties would exclude the current influx of out of state absentee landlords. Neighbors would feel more comfortable knowing the landlord of an in-law is more likely to care about the person who lives essentially in their home. And, for the tenant we think it possible that the tenant landlord relationship would encourage tenant consideration. In our experience a long term tenant is a positive addition to the neighborhood, a short term tenant seldom participates in the neighborhood or it's quality of life concerns.

It has been suggested that if it is the goal of the Board of Supervisors to increase housing immediately why not set a three year expiration date for applications. The legislation could always be extended and with an expiration date might this not encourage owners to go through this process sooner rather than later.

We believe a general membership meeting could generate more helpful ideas that might go a long way to mitigating current home owner complaints with legislation that essentially does away with all RH1 zoning throughout the entire city of San Francisco.

We would also like to suggest that any legislation that seeks to circumvent the zoning of entire neighborhoods, let alone the entire city of San Francisco, should not be rushed and should at least allow for public hearings. Homeowner notification should be the City's responsibility. This may be an issue that will have to be resolved at the ballot box but we would like the opportunity to seek a compromise that is acceptable to all parties concerned.

Thank you in advance for your kind consideration in this matter.

Regards,

Barbara Fugate
President
Cayuga Improvement Association