



October 24, 2014

Ms. Angela Calvillo, Clerk
Honorable Supervisor Melgar
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: **Transmittal of Planning Department Case Number 2024-007339PCA:**
Unauthorized and Rent-Controlled Dwelling Units
Board File No. 240803

Planning Commission Recommendation: Approval with Modification

Dear Ms. Calvillo and Supervisor Melgar,

On October 17, 2024, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider a proposed Ordinance, introduced by Supervisor Melgar. The proposed ordinance would amend the Planning Code concerning unauthorized dwelling units and units subject to the San Francisco Residential Rent Stabilization and Arbitration Ordinance. At the hearing the Planning Commission adopted a recommendation for approval with modifications.

The Commission's proposed modifications were as follows:

1. Remove the proposed reporting program from the ordinance, and instead work with DBI's to expand their Expanded Compliance and Control Program to include misrepresentation on Planning applications.
2. Modify the language under 317(j)(3) Planning Department Investigation to read "Such investigation may include research into property and Residential Rent Stabilization and Arbitration Board rental records, inspection of the property, or review of evidence of prior tenancy submitted by interviews with current and former owners, tenants, and neighbors, ~~and inspection of the property.~~"
3. Amend the definition of UDU to include a 10-year limit.

- "Unauthorized Unit" shall mean one or more rooms within a building that have been used, without the benefit of a building permit, as a separate and distinct living or sleeping space independent from Residential Units on the same property within the last 10 years.
4. Amend the applicability of the proposed penalty fee to only apply to significant misrepresentations on plans and have the Planning Commission define what significant is.
 5. Remove reference to the Planning Department's Property Information Map (PIM) and replace it with a more generic term.

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission.

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,



Aaron D. Starr
Manager of Legislative Affairs

cc: Peter R. Miljanich, Deputy City Attorney
Jennifer Fieber, Aide to Supervisor Melgar
John Carroll, Office of the Clerk of the Board

ATTACHMENTS :

Planning Commission Resolution
Planning Department Executive Summary



PLANNING COMMISSION RESOLUTION NO. 21627

HEARING DATE: OCTOBER 17, 2024

Project Name: Unauthorized and Rent-Controlled Dwelling Units
Case Number: 2024-007339PCA [Board File No. 240803]
Initiated by: Supervisor Melgar / Introduced July 30, 2024
Staff Contact: aaron starr, Legislative Affairs
aaron.starr@sfgov.org, 628-652-7533
Reviewed by: Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 628-652-7533

RESOLUTION ADOPTING A RECOMMENDATION FOR APPROVAL OF A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO REQUIRE THE PLANNING DEPARTMENT TO INVESTIGATE THE PRESENCE AND NUMBER OF UNAUTHORIZED DWELLING UNITS AT PROPERTIES SUBJECT TO A DEVELOPMENT APPLICATION; REFER DESIGN PROFESSIONALS THAT FAIL TO DISCLOSE THE PRESENCE OF UNAUTHORIZED DWELLING UNITS TO ANY APPLICABLE LICENSING BOARD OR REGULATORY AGENCY; POST ONLINE WHETHER A PROPERTY IS SUBJECT TO A REGULATORY AGREEMENT SUBJECTING ANY UNITS ON THE PROPERTY TO THE SAN FRANCISCO RESIDENTIAL RENT STABILIZATION AND ARBITRATION ORDINANCE; AND INSPECT PROPERTIES PRIOR TO RECOMMENDING APPROVAL OF ANY LOSS OF A RESIDENTIAL UNIT OR UNAUTHORIZED DWELLING UNIT; AFFIRMING THE PLANNING DEPARTMENT'S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1.

WHEREAS, on July 30, 2024 Supervisor Melgar introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 240803, which would amend the Planning Code to require the Planning Department to investigate the presence and number of Unauthorized Dwelling Units at properties subject to a Development Application; refer design professionals that fail to disclose the presence of Unauthorized Dwelling Units to any applicable licensing board or regulatory agency; post online whether a property is subject to a regulatory agreement subjecting any units on the property to the San Francisco Residential Rent Stabilization and Arbitration Ordinance; and inspect properties prior to recommending approval of any loss of a Residential Unit or Unauthorized Dwelling Unit;

WHEREAS, the Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on October 14, 2024; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15378 and 15060(c); 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 49 South Van Ness Avenue, Suite 1400, San Francisco; and

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

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Commission hereby adopts a **recommendation for approval with modifications** of the proposed ordinance. The Commission’s proposed recommendation(s) is/are as follows:

1. Remove the proposed reporting program from the ordinance, and instead work with DBI’s to expand their Expanded Compliance and Control Program to include misrepresentation on Planning applications.
2. Modify the language under 317(j)(3) *Planning Department Investigation* to read “Such investigation may include research into property and Residential Rent Stabilization and Arbitration Board rental records inspection of the property, or review of evidence of prior tenancy submitted by ~~interviews with current and former owners, tenants, and neighbors, and inspection of the property.~~”
3. Amend the definition of UDU to include a 10-year limit.
 - "Unauthorized Unit" shall mean one or more rooms within a building that have been used, without the benefit of a building permit, as a separate and distinct living or sleeping space independent from Residential Units on the same property within the last 10 years.
4. Amend the applicability of the proposed penalty fee to only apply to significant misrepresentations on plans and have the Planning Commission define what significant is.
5. Remove reference to the Planning Department’s Property Information Map (PIM) and replace it with a more generic term.

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:

The Commission supports the proposal because it aims to preserve existing rent-controlled units and protect tenants from displacement. Given the informal nature of many UDUs, tenants living in them are especially vulnerable to displacement. Additionally, the Commission has encountered several instances where applicants have deliberately misled us about the existence of these units. There are often no consequences for such actions, leaving little to deter applicants from lying about UDUs. This ordinance seeks to address that by imposing a penalty fee and professional repercussions for non-compliant design professionals.

General Plan Compliance

The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

Policy 1

Minimize no-fault and at-fault evictions for all tenants, and expand direct rental assistance as a renter stabilization strategy.

The proposed ordinance is consistent with this policy because it seeks to minimize evictions by ensuring that UDUs are not demolished or removed without going through proper procedures.

Policy 4

Facilitate the legalization of unauthorized dwelling units while improving their safety and habitability.

The proposed ordinance is consistent with this policy in that it will help facilitate the legalization of unauthorized units by ensuring that they are properly identified and not removed without review by the Planning Commission.

Policy 21

Prevent the potential displacement and adverse racial and social equity impacts of zoning changes, planning processes, or public and private investments especially for populations and areas vulnerable to displacement.

Unauthorized units are often removed due to private investment into real estate. The proposed ordinance is consistent with this policy because it will help ensure that proper procedure is followed when such investments are made so that tenants are not unduly displaced.

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 effect on neighborhood serving retail uses and will not have a negative effect on 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 have a positive effect on housing or neighborhood character by ensuring that existing units are not removed without proper procedure and review.

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.

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 adverse effect 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 an adverse effect on the City's Landmarks and historic buildings.

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 adverse effect on the City's parks and open space and their access to sunlight and vistas.

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 ADOPTS A RECOMMENDATION FOR APPROVAL WITH MODIFICATIONS the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on October 17, 2024.



Jonas P. Ionin
Commission Secretary

Jonas P Ionin

Digitally signed by Jonas P Ionin
Date: 2024.10.22 17:20:44 -07'00'

AYES: Campbell, McGarry, Williams, Braun, Moore, So
NOES: None
ABSENT: Imperial
ADOPTED: October 17, 2024



EXECUTIVE SUMMARY

PLANNING CODE TEXT AMENDMENT

HEARING DATE: October 17, 2024

90-Day Deadline: November 5, 2024

Project Name: Unauthorized and Rent-Controlled Dwelling Units
Case Number: 2024-007339PCA [Board File No. 240803]
Initiated by: Supervisor Melgar / Introduced July 30, 2024
Staff Contact: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 628-652-7533

Environmental

Review: Not a Project Under CEQA

RECOMMENDATION: Adopt of Recommendation for Approval with Modifications

Planning Code Amendment

The proposed Ordinance would amend the Planning Code to require the Planning Department to investigate the presence and number of Unauthorized Dwelling Units (hereinafter UDU) at properties subject to a Development Application; refer design professionals that fail to disclose the presence of Unauthorized Dwelling Units to any applicable licensing board or regulatory agency; post online whether a property is subject to a regulatory agreement subjecting any units on the property to the San Francisco Residential Rent Stabilization and Arbitration Ordinance; and inspect properties prior to recommending approval of any loss of a Residential Unit or Unauthorized Dwelling Unit.

	The Way It Is Now:	The Way It Would Be:
1	The Planning Department's <u>policy</u> is to do a site visit to the subject property when a unit is proposed to be removed under Planning Code Section 317.	The Planning Code will require Planning staff to do a site visit when a dwelling unit is proposed to be removed under Code Section 317.
2	The Planning Department uploads the Notice of Special Restrictions (NSR) onto our Property Information Map (PIM) data base for projects that enter into a regulatory agreement subjecting any units on the property to the Residential Rent Stabilization and Arbitration Ordinance. This is often done for ADUs approved under our local program.	The Planning Code will require the Department to note the existence of the recorded regulatory agreement on the Property Information Map (or other similar, publicly accessible website) whenever the Code requires a property owner to enter into a regulatory agreement with the City subjecting any dwelling units to the San Francisco Residential Rent Stabilization and Arbitration Ordinance.
3	Planning Code violations are subject to fines and penalties; however, misrepresentations on plans generally do not result in penalties and are not considered a violation of the Planning Code.	Misrepresentations made on any applications or plans, including failure to disclose or misrepresentation of tenant history at a site submitted to the Planning Department would constitute a violation of the Planning Code under Section 176. The applicant would then be liable for a penalty of up to \$250,000 upon issuance of a notice of violation.
4	The Code stipulates that the Zoning Administrator may reject any Development Application as inaccurate and may require the applicant to re-file the application where the Zoning Administrator determines that the application includes material misstatements or omissions.	The Planning Code would now direct the Zoning Administrator to cancel an application instead of rejecting them. The Code would further be amended to direct the Zoning Administrator to cancel any development application as inaccurate and shall require the applicant to re-file the application where they determine that the application includes material misstatements or omissions regarding the presence or number of Unauthorized Dwelling Units or tenants on the property.
5	Disclosure of existing Unauthorized Dwelling Units is not required on applications unless there is a proposal to remove a UDU or if staff suspects there is a UDU on site.	The Planning Code would require all development applications under Section 317 of the Planning Code to disclose the presence of any Unauthorized Dwelling Units at the subject property.

6	The Department uses a screening form to detect any unauthorized dwelling unit on proposed plans. We also conduct a site visit when a dwelling unit is proposed for removal under Section 317 of the Planning Code; however, we do not typically perform a proactive investigation into the rental history of a property.	Under Section 317, the Planning Code would require Department staff to investigate whether the property contains any Unauthorized Unit if the application states that the property does not contain any Unauthorized Unit, but the information contained in the application leads Department staff to reasonably believe that an Unauthorized Unit may exist on the property.
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Background

San Francisco began protecting UDUs in early 2016 with the adoption of [Ordinance 33-16](#) (BF 160115), sponsored by Supervisor Avalos. The ordinance aimed to protect tenants living in informal units—those established without permits and often substandard—from displacement. It added the definition of UDUs to the Planning Code and included them within the controls of Planning Code Section 317, which requires Conditional Use authorization for the removal of any dwelling unit, including UDUs. Although there have been few changes to these controls or the definition of UDUs since then, the Planning Department has adapted its application procedures to better identify UDUs. Unfortunately, some unscrupulous applicants have also adapted, and we often discover the presence of a UDU only after an application has been brought to the Planning Commission or sent out for notice. There is little deterrent for applicants who misrepresent conditions on their plans. This ordinance seeks to address that.

Issues and Considerations

The Expanded Compliance Control Program

The [Expanded Compliance Control Program](#) (ECC) was created in 2021 to ensure that contractors, design professionals, building owners, and their agents fully comply with the City of San Francisco’s Building Code. The ECC program requires the Department of Building Inspection (DBI) to track significant violations, and all parties associated with such violations, review those tracking reports to identify candidates for expanded compliance control measures and, when appropriate, place them on the Expanded Compliance Control List.

San Francisco Building Code Section 103A.6 mandates that the Department perform the following Expanded Compliance Control measures for everyone placed on the Expanded Compliance Control List:

- Provide the Director’s final determination and findings to any applicable licensing board or regulatory agency (if any)
- Require all new or existing permits or addenda submitted by, or containing reference to, a listee undergo Expanded Compliance Control by senior Plan Review Services staff and review at intake by applicable departments
- Notify the listee and all other parties associated with the listee on a permit application or addenda of the Expanded Compliance Control requirements
- Require a licensed contractor be named on a permit

- Require site inspection by DBI and the Planning Department prior to permit issuance for projects associated with the listee
- Dedicate a senior inspector to respond to complaints and conduct all inspections regarding the listee
- Consult with City Attorney, if warranted, about any other enforcement options

Proposed Reporting Program

The proposed ordinance proposes a program that has similarities with DBI's Expanded Compliance Control Program. Both programs have an outcome that results in bad actors being referred to their respective professional organizations; however, the ECC program puts future applications by those individuals under additional scrutiny. The following are some other key differences between the programs:

- The proposed program would only focus on misrepresenting UDUs on plans or applications submitted to the Planning Department. Being placed in the ECC program can result from a myriad of different DBI violations, but not Planning Code violations. The ECC program also specifies that the violations must be "significant."
- Under the proposed program, only one determination that an applicant failed to disclose an UDU could result in the design professional being referred to their relevant licensing board. The ECC program generally goes by a three-strikes rule before any professional is placed on any compliance list or referred to their relevant licensing board.
- Under the proposed program, the Zoning Administrator makes the determination as to whether the applicant has lied on their application, and if the design professional should be referred to the relevant licensing board. Under the ECC, the Department of Building Inspection's Director makes the ultimate decision whether someone is placed in ECC program.
- Under the proposed program the Zoning Administrator's determination can be appealed to the Planning Commission. ECC program placement is appealable to the Building Inspection Commission.

Unauthorized (Dwelling) Unit Definition

An Unauthorized (Dwelling) Unit (hereinafter UDU) is defined in Planning Code Section 317(b)(13) as follows: *"Unauthorized Unit" shall mean one or more rooms within a building that have been used, without the benefit of a building permit, as a separate and distinct living or sleeping space independent from Residential Units on the same property. "Independent" shall mean that (i) the space has independent access that does not require entering a Residential Unit on the property and (ii) there is no open, visual connection to a Residential Unit on the property."*

The definition relies on how a space has been or is being used, and physical characteristics. The physical characteristics are easily reflected on plans. Planners can also verify physical characteristics with a site visit. It also possible to tell if the qualifying space is currently being used by tenants; however, it's impossible to determine from plans or a site inspection if rooms have been used as living space at any time in the past. How a space is or has been used is an integral part in determining if a UDU is present on the property. Yet a significant part of what qualifies a UDU cannot be determined by arcuate plans or a site inspection.

Failure to identify a UDU in the plans or on an application would subject the design professional to the proposed reporting program. This in turn could jeopardize their professional license. There is a difference between a design professional misrepresenting current or proposed conditions on plans, and not disclosing past activities of which they may have no knowledge. The proposed program, however, places a significant burden on the design professional. It requires them to know past activities on the site, or risk jeopardizing their professional license.

Investigation

The proposed ordinance would require Department staff to investigate whether the property contains any UDUs. This investigation is triggered if the information contained in the application leads Department staff to reasonably believe that an UDU may exist on the property. To complete this investigation the code would direct planning staff to “conduct research into property and Residential Rent Stabilization and Arbitration Board rental records, interviews with current and former owners, tenants, and neighbors, and inspection of the property.” It further stipulates that Department staff shall review and consider inspection reports and notices of violation prepared by the Department of Building Inspection and any relevant information contained in the Property Information Map and the Department’s annual Housing Inventory.

The Department already uses many of these tools to assess potential UDUs at a property; however, we typically do not interview current or former owners, tenants, or neighbors. As a regulatory agency, our focus is on the physical characteristics of buildings and information from official records, not informal accounts. Due to time and resource constraints, we do not pursue past owners or tenants. Our investigations focus on physical indicators such as separate entrances, kitchens, mailboxes, and distinct electrical and water meters. We also review voter rolls, DBI records, notices of violation, Rent Board records, and other relevant documentation.

Proposed Penalties

The proposed ordinance also creates a new penalty of up to \$250,000 for *any* misrepresentation of material information within any Development Application or Building Permit. The ZA would determine how much of a penalty would be applied; however, the ordinance states that Planning Commission is responsible for adopting factors and criteria for consideration to provide guidance to the Zoning Administrator when determining the appropriate penalty amount. While this allows the Commission to narrow the scope of what would constitute a violation, the ordinance states that *any* misrepresentation would qualify. This is a very broad application and in contrast to DBI’s ECC program which applies only to “significant violations.”

General Plan Compliance

The proposed ordinance complies with several policies in the housing element including Policy 1, which seeks to minimize no-fault and at-fault evictions; Policy 4, which seeks to help facilitate the legalization of UDUs; and Policy 21 which seeks to prevent displacement from, among other things, private investment.

Racial and Social Equity Analysis

Understanding the potential benefits, burdens, and opportunities to advance racial and social equity through the proposed amendments is a key component of the Department’s Racial and Social Equity Action Plan. This approach aligns with the Mayor’s Citywide Strategic Initiatives for equity and accountability, the 2020 Equity Resolutions adopted by the Planning and Historic Preservation Commissions, and the mandates

of the Office of Racial Equity, which require all departments to conduct such analyses. Below are some specific issues to consider:

The Planning Code amendments in the proposed ordinance aim to preserve existing housing stock, much of which is rent-controlled. It achieves this by creating two deterrents for applicants who misrepresent conditions on their plans: a substantial fee and reporting to the relevant licensing agency. Given the often-informal nature of these units, tenants are at high risk for displacement. Many of these tenants are also among the most vulnerable in our community, including immigrants with limited English proficiency or those who are financially insecure. By deterring misrepresentation, preserving these units, and reducing displacement, the Department believes this ordinance will help advance racial and social equity in the city.

However, this effort could be strengthened through programs that help homeowners finance the rehabilitation of these units. Not all property owners have the financial means to bring their units up to code. Providing financial assistance, such as low-interest or forgivable loans, would not only ease the burden on homeowners but also help improve the safety and quality of these units. This approach aligns with Implementation Program 2.4.5 from the Housing Element, which encourages the legalization of unauthorized units through financial support for property owners.

Implementation

The Department has determined that this ordinance will impact our current implementation procedures in the following ways:

1. The proposed ordinance set up a very elaborate process the ZA would use to determine if an applicant intentionally misled the Planning Department and Commission (see pages 10-12 in the proposed ordinance). The ordinance also requires Staff to draft a report for the ZA to use to make this determination. This would be a new procedure for Planning of which we have little precedent.
2. Planning would need to amend its PIM to create a marker for units that have entered into a regulatory agreement. Currently we just upload the NSR to the parcel's record. While this will change our current procedures it is something that can be easily accommodated.
3. Our enforcement Team and the ZA will be responsible for administering a new penalty fee. Staff would need to determine how severe the infraction is and how much of the penalty to apply. We currently do this for other penalty fees; however, they are for code violations, and not misrepresentation on plans or application.
4. Planning Staff will be required to conduct a much more robust investigation into whether a UDU exists on the property. This could include interviews with past and current tenants. This enhanced investigation will take up a lot more staff time. It's not clear where the money to cover this enhanced investigation will come from and processing these applications will likely take more time.

Recommendation

The Department recommends that the Commission ***adopt a recommendation for approval with modifications*** of the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. Remove the proposed reporting program from the ordinance, and instead work with DBI's to expand their Expanded Compliance and Control Program to include misrepresentation on Planning applications.
2. Remove the reference to "interviews with current and former owners, tenants, and neighbors" when conducting research into past tenancy.
3. Amend the definition of UDU to include a 10-year limit.
 - "Unauthorized Unit" shall mean one or more rooms within a building that have been used, without the benefit of a building permit, as a separate and distinct living or sleeping space independent from Residential Units on the same property within the last 10 years.
4. Amend the applicability of the proposed penalty fee to only apply to significant misrepresentations on plans and have the Planning Commission define what significant is.
5. Remove reference to the Planning Department's Property Information Map (PIM) and replace it with a more generic term.

Basis for Recommendation

The Planning Department supports the proposal because it aims to preserve existing rent-controlled units and protect tenants from displacement. Given the informal nature of many UDUs, tenants living in them are especially vulnerable to displacement. Additionally, the Department has encountered several instances where applicants have deliberately misled us about the existence of these units. There are often no consequences for such actions, leaving little to deter applicants from lying about UDUs. This ordinance seeks to address that by imposing a penalty fee and professional repercussions for non-compliant design professionals. However, the Department has concerns and proposes the following amendments to resolve them.

Recommendation 1: Remove the proposed reporting program from the ordinance, and instead work with DBI's to expand their Expanded Compliance and Control Program to include misrepresentation on Planning applications.

Rather than creating a new process in the Planning Code, the Department recommends incorporating Planning application violations into DBI's ECC Process. The ECC offers several advantages over the proposed program. First, the ECC addresses any significant violation, not just UDUs, making it more comprehensive. While identifying UDUs is important, misrepresenting existing site conditions—something Planning encounters more frequently—is also a major concern. Second, the ECC follows a three-strikes model, acknowledging the difficulty in determining whether false information was added to plans intentionally or by mistake. In contrast, the proposed program places the burden on the Zoning Administrator and, ultimately, the Planning Commission to determine if someone was dishonest. It's far easier to identify a

pattern of misrepresentation than to assess the intent behind a single action. Lastly, the ECC process is already established. Creating a new program that focuses on only one type of Planning Code violation is inefficient and misses an opportunity for broader enforcement.

To make this system truly effective, however, DBI would need to adopt the definition of a UDU. Currently, there is no definition for UDUs in the Building Code, which can create enforcement confusion. DBI might cite a property owner for having a UDU based on physical characteristics, but upon further investigation, Planning may determine the space was never used as a UDU. As part of expanding the ECC program, we recommend that DBI adopt the same UDU definition found in the Planning Code.

Recommendation 2: Remove the reference to “interviews with current and former owners, tenants, and neighbors” when conducting research into past tenancy.

The Department already employs many of the tools proposed in the ordinance to assess potential UDUs at a property. However, we generally do not conduct interviews with current or former owners, tenants, or neighbors. As a regulatory agency, our focus is on the physical characteristics of buildings and information from official records rather than informal reports. Including this language in the Code creates an expectation that Planning will actively seek out past neighbors and owners. While we welcome such information when voluntarily provided, we lack the time and resources to pursue it. Excluding this language from the Code does not prevent us from considering it in our investigations, but its inclusion would imply that the Department will make this a routine part of its operations.

Recommendation 3: Amend the definition of UDU to include a 10-year limit.

Currently, a space can be considered a UDU if it has been used as a separate living space at any point in the past. The Department recommends setting an expiration date on UDUs to aid enforcement and for practical reasons. If a space has not been used as an independent unit within 10 years and was never legally established, the unit, for all intents and purposes, does not exist. Requiring a homeowner to obtain conditional use authorization to remove a non-existent unit is unfair and a poor use of time for both the Department and the Planning Commission. The original intent of the UDU controls was to protect existing tenants from displacement. Setting a 10-year timeline strikes a balance by deterring displacement while aligning with the exemption provided in the Senior and Family Housing Special Use District, recently passed by the Board. This exemption allows projects to benefit from density exceptions and process waivers if the UDU has not been occupied within the last 10 years.

Recommendation 4: Amend the applicability of the proposed penalty fee to only apply to significant misrepresentations on plans and have the Planning Commission define what significant is.

As currently drafted, *any* misrepresentation on plans or applications can result in a fine under Section 176. Although the ordinance directs the Planning Commission to adopt factors and criteria to guide the Zoning Administrator in determining penalty amounts, Staff believes the current language is too broad. The Department proposes replacing "any" with "significant." This change would allow the Planning Commission to define what constitutes a significant misrepresentation of material information on a development application and provide more specific guidance to the Zoning Administrator.

Recommendation 5: Remove reference to the Planning Department’s Property Information Map (PIM), and replace it with a more generic term.

This is more of a clerical issue. The ordinance currently refers to “the Property Information Map or other similar, publicly accessible website.” While the publicly accessible website leaves room for flexibility, this language also occurs in several places in the ordinance. Were we to ever change the name of the website or how we present property information, this language would eventually need to be amended. To avoid this, we are recommending that references to PIM be removed and replaced with more generic language.

Commission Action

The proposed Ordinance is before the Commission so that it may adopt a recommendation of approval, disapproval, or approval with modifications.

Environmental Review

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

Public Comment

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

ATTACHMENTS:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 240803
- Exhibit C: Letters of Support/Opposition or other supporting documentation, etc.