



# SAN FRANCISCO PLANNING DEPARTMENT

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June 23, 2016

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

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
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**415.558.6377**

**Re: Transmittal of Planning Department Case Number 2016.004042PCA:  
Allowing Accessory Dwelling Units Citywide  
Board File Nos. 160252 and 160657  
Planning Commission Recommendation: Approval with Modifications**

Dear Ms. Calvillo and Supervisor Peskin,

On June 16, the San Francisco Planning Commission (hereinafter: Commission) conducted duly noticed public hearings at regularly scheduled meetings to consider the proposed amendments introduced in two separate Ordinances, first by Supervisor Aaron Peskin, and second by Supervisors Farrell and Wiener to allow Accessory Dwelling Units citywide. At the hearing, the Planning Commission recommended approval with modifications for both Ordinances.

Both proposed Ordinance are covered under an Addendum to the 2204 and 2009 Housing Element Final Environmental Impact Report (Case No. 2016-004042ENV), pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15164.

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

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,

A handwritten signature in black ink, appearing to read "Aaron Starr", written over a horizontal line.

Aaron Starr  
Manager of Legislative Affairs

cc:

Lee Hepner, Supervisor Aaron Peskin's Legislative Aide  
Ann Fryman, Supervisor Scott Wiener's Legislative Aide  
Kanishka Karunaratne Supervisor Mark Farrell's Legislative Aide  
Jon Givner, City Attorney  
Judy Boyajian, City Attorney

Attachments (two hard copies of the following):

Planning Commission Resolution  
Planning Department Executive Summary



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Resolution No. 19663 Planning & Administrative Code Text Change

HEARING DATE: JUNE 16, 2016  
90 DAY DEADLINE: JUNE 23, 2016

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San Francisco,  
CA 94103-2479

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*Project Name:* Allowing New Accessory Dwelling Units Citywide  
*Case Number:* 2016-004042PCA, [Board File No. 160252]  
*Initiated by:* Supervisor Peskin / Introduced March 15, 2016  
*Staff Contact:* Kimia Haddadan, Legislative Affairs  
[Kimia.haddadan@sfgov.org](mailto:Kimia.haddadan@sfgov.org), 415-575-9068  
*Reviewed by:* AnMarie Rodgers, Senior Policy Advisor  
[anmarie.rodgers@sfgov.org](mailto:anmarie.rodgers@sfgov.org), 415-558-6395

**RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE AMENDING THE PLANNING CODE TO ALLOW THE CONSTRUCTION OF ACCESSORY DWELLING UNITS (ADUS, ALSO KNOWN AS SECONDARY OR IN-LAW UNITS) ON ALL LOTS IN THE CITY IN AREAS THAT ALLOW RESIDENTIAL USE; AMENDING THE ADMINISTRATIVE CODE TO REVISE THE DEFINITION OF "RENTAL UNIT" AS IT APPLIES TO ADUS; AFFIRMING THE PLANNING DEPARTMENT'S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1; ADOPTING FINDINGS UNDER PLANNING CODE, SECTION 302; AND DIRECTING THE CLERK TO SEND A COPY OF THIS ORDINANCE TO THE CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT AFTER ADOPTION.**

WHEREAS, on March 15, 2016, Supervisor Peskin introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 160252, which would amend the Planning Code to allow accessory dwelling units citywide; and,

WHEREAS, on May 31, 2016, Supervisors Farrell and Wiener introduced another Ordinance under Board File Number 160657, which would also amend the Planning Code to allow accessory dwelling units citywide; and

WHEREAS, on May 31, 2016, Supervisors Farrell and Wiener sent a letter to the Planning Department (hereinafter "Department") requesting that their Ordinance be heard on the same date as Supervisor Peskin's Ordinance at the Planning Commission (hereinafter "Commission"); and

WHEREAS, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinances on June 16, 2016; and,

WHEREAS, the proposed ordinance is covered under an Addendum to the 2004 and 2009 Housing Element Final Environmental Impact Report (Case No. 2016-004042ENV), pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15164; 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.

The following are the Commission's recommended modifications:

1. **Remove the cap on number of ADUs allowed per lot in mid to large sized buildings (5 or more units) and maintain a one ADU per lot cap for smaller buildings (less than 5 units). Establish a minimum unit size.** Among the ADU programs currently available in San Francisco, ADUs in buildings undergoing seismic retrofitting have been the most common type of ADU permits the Department has received. Buildings eligible for the mandatory seismic retrofitting are suitable candidates for new ADUs: the property owner already has to undertake construction, and new units would help offset the costs. Under this program, there is no limit on how many ADUs can be added on a lot so long as other physical controls are met and applicable Planning Code requirements. While the applications for ADUs under the soft story seismic program include on average less than two-units per building, some buildings propose up to 5 ADUs per lot. Currently, there are 68 ADUs under review in projects that proposed either more than two ADUs or propose two ADUs in buildings of 5-10 units. These 68 ADUs would not be lawful per the controls in the proposed Ordinance. Imposing a cap of two ADUs per building would not allow efficient use of available space in buildings. The proposed recommendation would maintain a cap of one ADU in smaller buildings ( 4 or less units) to preserve the smaller scale character of the building. For large buildings (5 or more units), the number of ADUs would remain limited by the available space on the ground floor, as well as the Building and Planning Code requirements (means of egress, exposure, bike parking, etc.).
2. **Clarify that "existing built envelope" includes spaces that can be filled in without notification as listed in the Zoning Administrator Bulletin No.4 that are exempt from the notification requirements of the Planning Code.** If ADUs are limited to the existing built envelope, staff proposes this recommendation. Currently space under the bay windows, cantilevered room, etc. can be filled in without notification per the Zoning Administrator Bulletin Number 4. The recommendation would allow ADUs to be expanded into these spaces, which would help make ADUs possible that are otherwise infeasible due to exposure or other code requirements.
3. **Further study to allow or prohibit ADUs to be subdivided and sold separately, especially in condominium buildings.**

4. **Modify the provision in Section 207(c)(4)(vi)(c), allowing a building to be raised 3 feet, to refer to the correct Building Code (Chapter 34) that requires full seismic retrofitting and not the soft story retrofitting(Chapter 34B). Clarify that this height increase is exempt from the existing built envelope limitation for ADUs in those eligible buildings.** Currently Section 207(c)(4)(vi)(c) of the Code refers to Chapter 34(B) of the Building Code regarding where a building can be raised 3 feet when undergoing seismic retrofitting. Chapter 34(b) discusses soft story seismic retrofitting which does not actually allow the three foot height increase. This provision is allowed in Chapter 34 of the Building Code which discusses *full* seismic retrofitting of a building (on all floors). Staff recommends correcting this reference so that it would not be tied to the *soft story* seismic retrofitting but to full seismic retrofitting per Chapter 34.

## 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. Allowing ADUs within existing residential buildings is a pragmatic infill strategy to create more housing. This strategy is crucial for San Francisco's housing market in multiple aspects. First, adding apartments to existing, older housing stock complements the current housing development trends in San Francisco, which primarily occurs on lots that are significantly underdeveloped or vacant. Second, this existing housing stock provides limited available rental housing to the market as many of these buildings are also under rent control where the turnover rate of units for rental is generally low. Lastly, this infill strategy would create more apartments in the areas of the city without increasing building heights or altering the built form. Such small-scale residential infill could create additional homes for existing and future San Franciscans spread throughout the city.
2. ADUs are usually located on the ground floor in space that was previously used for parking or storage, and as a result typically have lower ceilings heights. These units will also likely have less light exposure due to smaller windows or windows facing smaller open areas, and side entrances due to location of the unit on the lot. Such subordinate characteristics of ADUs result in lower rents compared to the rental rates of a unit in a newly developed building. Further, the lower rents would accommodate populations that are not adequately being served by the market: younger households, small families, senior and elderly individuals and so forth. Estimated rents for ADUs citywide would provide more rental housing affordable to these households earning 80% to 145% AMI.
3. **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 allow Accessory Dwelling units citywide in pursuit of goals to increase housing opportunities. San Francisco is in dire need for more housing due to high demand. Allowing ADUs in residential properties is an infill housing strategy and would provide one housing option among many options needed for San Francisco. This change in land use controls is not part of a traditional "community planning effort" as the Planning Department would typically pursue. However, the proposal emanates from an elected official who has done their own outreach. 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 compelling public goals in the interest of the neighborhoods and City, to warrant the undertaking of this change.*

#### **OBJECTIVE 7**

**SECURE FUNDING AND RESOURCES FOR PERMANENTLY AFFORDABLE HOUSING,  
INCLUDING INNOVATIVE PROGRAMS THAT ARE NOT SOLELY RELIANT ON  
TRADITIONAL MECHANISMS OR CAPITAL.**

#### **POLICY 7.7**

**Support housing for middle income households, especially through programs that do not require a direct public subsidy.**

*ADUs are subordinate to the original unit due to their size, location of the entrance, lower ceiling heights, etc. ADUs are anticipated to provide a lower rent compared to the residential units developed in newly constructed buildings and therefore the proposed Ordinance would support housing for middle income households.*

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 not have a negative effect on housing or neighborhood character. The new units would be built within the existing building envelope and therefore would impose minimal impact on the existing housing and neighborhood character.*

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 create units affordable to middle income households. The ordinance would, if adopted, increase the number of rent-controlled units in San Francisco.*

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.*

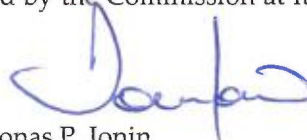
8. That our parks and open space and their access to sunlight and vistas be protected from development;

*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 June 16, 2016.



Jonas P. Ionin  
Commission Secretary

AYES: Johnson, Moore, Richards, Wu

NAYS: Antonini

ABSENT: Fong

RECUSED: Hillis

ADOPTED: June 16, 2016





# SAN FRANCISCO PLANNING DEPARTMENT

## Executive Summary Planning and Administrative Code Text Change

HEARING DATE: JUNE 16, 2016  
90 DAY DEADLINE: JUNE 23, 2016

*Date:* June 09, 2016  
*Project Name:* **Allowing New Accessory Dwelling Units Citywide**  
*Case Number:* 2016-004042PCA, [Board File No. 160252]  
*Initiated by:* Supervisor Peskin / Introduced March 15, 2016  
*Staff Contact:* Kimia Haddadan, Legislative Affairs  
[Kimia.haddadan@sfgov.org](mailto:Kimia.haddadan@sfgov.org), 415-575-9068  
*Reviewed by:* AnMarie Rodgers, Senior Policy Advisor  
[anmarie.rodgers@sfgov.org](mailto:anmarie.rodgers@sfgov.org), 415-558-6395  
*Recommendation:* **Recommend Approval with Modifications**

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**Note:** On May 31, 2016, Supervisors Farrell and Wiener sponsored an Ordinance that would also allow Accessory Dwelling Units (hereinafter "ADU"s) citywide. On the same date, these Supervisors sent a letter to the Planning Department (hereinafter "Department") requesting that their Ordinance be heard on the same date as Supervisor Peskin's Ordinance at the Planning Commission (hereinafter "Commission"). Upon consideration, the Department decided to discuss both Ordinances at the June 16 Commission hearing. Due to the short-time frame, this case report addresses the Ordinance sponsored by Supervisor Peskin. However, the content and Department recommendations would generally apply to both Ordinances. Below is a list of provisions in the Ordinance proposed by Supervisors Farrell and Wiener that are different than Supervisor Peskin's original Ordinance and any associated recommendations by the Department.

1. Allow one ADU per lot in buildings with 4 or less units, and no limit on number of ADUs for buildings with more than 4 units → *This provision is similar to staff recommendation number 1.*
2. RH-1(D) parcels would not be eligible for the ADU program described in the Planning Code but would be allowed as mandated by State Law
3. Allow reduction of a ground-story retail or commercial space up to 25% in Neighborhood Commercial Districts or Chinatown Community Business or Visitor Retail District. → *This issue is discussed in recommendation number 3. The Department supports allowing a limited reduction in commercial space.*
4. Allow subdivision and separate sales for ADUs. → *This provision is similar to staff recommended modification number 6.*
5. Clarifies the definition of built envelope to include spaces listed in the Zoning Administrator Bulletin No. 4, as well as infilling underneath rear extension. → *This provision is similar to staff recommended modification number 4. Infilling underneath rear extensions is a portion of staff recommended modification number 3.*

## **PLANNING & ADMINISTRATIVE CODE AMENDMENTS**

The proposed Ordinance would amend the Planning Code to allow the construction of Accessory Dwelling Units (ADUs, also known as Secondary or In-Law Units) on all lots in the City in areas that allow residential use; amending the Administrative Code to revise the definition of “rental unit” as it applies to ADUs; affirming the Planning Department’s determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; adopting findings under Planning Code, Section 302; and directing the Clerk to send a copy of this Ordinance to the California Department of Housing and Community Development after adoption.

### **The Way It Is Now:**

1. Currently, San Francisco allows new ADUs in all residential buildings in Supervisor Districts 3 and 8, and also in buildings that are undergoing voluntary or mandatory seismic retrofitting<sup>1</sup>.
  - In District 3 and District 8, ADUs are not allowed in RH-1(D) parcels.
  - In buildings undergoing seismic retrofitting, ADUs are not allowed in either RH-1 or RH-1 (D) zoned parcels.
2. The number of ADUs allowed per parcel varies under the various programs and geographies.
  - For ADUs in buildings undergoing seismic retrofitting there is no limit on how many ADUs can be built.
  - Within District 8 and within buildings with more than ten units, two ADUs can be added. However, in District 8 buildings with ten or less units, only one ADU can be added.
  - Within District 3 and within buildings with five or more units, there is no limit on how many ADUs that can be added. However, within District 3 buildings with less than five units, only one ADU can be added.
3. Restrictions:
  - ADUs can only be built within the existing built envelope.
  - ADUs cannot use space from an existing unit.
4. Waivers:
  - Certain provisions of the Planning Code such as rear yard, open space, partial exposure, and parking may be waived by the Zoning Administrator. The Zoning Administrator may reduce the exposure requirement so that qualifying windows may face an open area that is no less than 15’X15’ and is open to the sky.
  - Under seismic program and if allowed by the Building Code, a building may be raised up to three feet to satisfy the minimum ground floor ceiling height requirements. This height increase is exempt from notification requirements of Sections 311 and 312 of the Planning Code.
5. Applicability of Rent Control Ordinance:

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<sup>1</sup> See Planning Code Section 207(c)(4).

- For ADUs that receive waivers from Planning Code requirements, if the original building is subject to rent control, the ADU(s) would also be subject to rent control<sup>2</sup>.
6. Monitoring:
- Currently, the Department is required to monitor the affordability of ADUs through inquiring rent information from property owners. The Code requires the Department to publish a report by April 1, 2016 to describe and evaluate the types of units being developed and their affordability rates. Subsequent years, this information would be included in the Housing Inventory. The Department is also required to inquire from property owners at the time of application whether or not they intend to use the ADU as short-term rentals.

### The Way It Would Be:

1. ADUs would be permitted citywide in any zoning district where a residential building already exists.
2. The number of ADUs allowed per parcel would reflect the existing controls in District 8. In buildings with more than 10 units, two ADUs can be added, and in buildings with 10 or less units, one ADU could be added. This means that the number of ADUs allowed per parcel in District 3, and under the seismic retrofit program would be decreased.
3. Restrictions:
  - a) Restrictions Maintained:
    - ADUs would still only be built within the existing built envelope; this control would also be incorporated into the definition of ADUs in Section 102.
    - ADUs would be still not allowed to use space from an existing unit.
  - b) Restrictions Added:
    - ADUs would be prohibited from eliminating or reducing a ground-story retail or commercial space in Neighborhood Commercial Districts, or in the Chinatown Community Business or Visitor Retail District.
    - ADUs could not be merged with an original unit(s).
    - ADUs could not be subdivided and sold separately.
    - ADUs could not be used for short-term rentals.
    - ADUs could not be built in a building with the following no-fault eviction history:
      - i. owner move-in<sup>3</sup> eviction within five year prior to the permit application date for ADU, or
      - ii. within 10 years prior to the application of ADUs: condo conversion, demolition, temporary evictions for capital improvements, substantial

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<sup>2</sup> Administrative Code Section 37.2 defines “rental units” as including Accessory Dwelling Units constructed pursuant to Planning Code Section 207(c)(4), provided that the building containing the ADU(s) or any unit within the building is already subject to the San Francisco Residential Rent Stabilization and Arbitration Ordinance (Administrative Code Chapter 37.)

<sup>3</sup> Section 37.9(a)(8) of the Administrative Code

rehabilitation, Ellis Act withdrawals, temporary eviction due to lead remediation<sup>4</sup>.

4. Waivers:
  - The waivers from rear yard, open space, partial exposure, and parking would still be available.
  - The exemption from notification requirements of Sections 311 and 312 of the Planning Code in case of raising a building for three feet in buildings undergoing seismic retrofitting would no longer be available.
5. Applicability of Rent Control Ordinance:
  - This provision remains unchanged but would be structured under a newly defined Regulatory Agreement.
6. Monitoring:
  - The requirements remain intact except for the dates. Planning would develop an annual report until April 1, 2019 to evaluate types of units developed, the affordability of those units, and the use of these units as short-term rentals. Subsequent years, this information would be included in the Housing Inventory.

## **BACKGROUND**

ADUs have been promoted as an important housing strategy in recent years in San Francisco and many other cities. They have been part of the existing housing stock in San Francisco for decades, especially post WWII, in form on unauthorized “in-law units.” Government Code Section 65852.2 (a.k.a. second-unit law) was enacted in 1982 and has been amended four times (1986, 1990, 1994 and 2002) to encourage the creation of second-units while maintaining local flexibility for unique circumstances and conditions. This State law requires jurisdictions to allow secondary units, units added to single family homes in single family or multi-family zoned areas. In 2014, San Francisco developed an official program that allowed ADUs in certain areas of the city. Ordinance 0049-14 allowed ADUs as a pilot program in the Castro NCD and within a quarter-mile buffer. This Ordinance was adapted in parallel with another ordinance that allowed legalizing existing unauthorized units which had been built beyond density limits. These two ordinances represented a turning point in the City’s long-standing approach which had previously always required removal of these units. Subsequently in April 2015, Ordinance 030-15 allowed new ADUs in buildings that are undergoing mandatory or voluntary seismic retrofitting across the city. Lastly, in October 2015, the ADU program was further expanded to the entire Supervisorial District 8, replacing the Castro pilot program. It was also allowed in Supervisorial District 3. The proposed Ordinance would expand the ADU program citywide.

### **What is an Accessory Dwelling Unit?**

An ADU is a residential unit added to an existing building or lot where residential uses are allowed. ADUs are subordinate to the other residential units due to their smaller size, location,

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<sup>4</sup> Administrative Code Sections 37.9(a)(9)-(14) respectively.

location of the entrance, low ceiling heights, less light exposure, and so forth. Also known as secondary units, in-law units, or granny flats, ADUs are generally developed using uninhabited spaces within a lot, whether a garage, storage, rear yard, or an attic. These units are entirely independent from the primary unit or units, with independent kitchen, bathroom, sleeping facilities, and access to the street; however, they may share laundry facilities, yards, and other traditional types of common spaces with the primary unit(s).

## **State Law for ADUs**

State Law regulates Accessory Dwelling Units under the definition of “secondary units”. Under State Law, Secondary Units are units added to an existing single-family home in single-family or multi-family zoned areas.

As stated previously, State Law currently authorizes but does not require local jurisdictions to adopt an ordinance imposing standards on secondary units and designating areas within single family or multi-family zoned areas where they would be allowed. In the absence of an ordinance local jurisdictions are required to ministerially (A.K.A. without a discretionary action) approve a permit for a second unit that complies with the state standards within 120 days.

More recently, there have been three new, pending State bills under review related to ADUs.

1. Pending State Senate Bill, SB 1069<sup>5</sup>, would require local jurisdictions to pass an ordinance to allow ADUs and no longer authorizes a jurisdiction to totally preclude them. It would shorten the ministerial review period for ADUs from 120 days to 90 days. Ministerial approval is required for one ADU on a lot in zoned for single-family residential use if the ADU is contained within the existing space of a single family residence or accessory structure has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety . Lastly, it would prohibit requiring parking for ADUs under certain circumstances.
2. Pending Assembly Bill AB 2299<sup>6</sup> would restrict controls that jurisdictions may impose on ADUs including: parking and other physical requirements such as setback.
3. Pending Assembly Bill AB2406<sup>7</sup> would introduce a new concept for the creation of units called a “junior accessory dwelling unit”. This unit could only occur in single-family residential zones. A junior accessory dwelling unit would be defined as a unit that is no more than 500 square feet in size, contained entirely within an existing single-family structure, and may include separate sanitation facilities or share sanitation facilities with

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<sup>5</sup> [http://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill\\_id=201520160SB1069](http://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201520160SB1069)

<sup>6</sup> California Legislative Information,  
[http://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill\\_id=201520160AB2299](http://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201520160AB2299)

<sup>7</sup> California Legislative Information,  
[http://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill\\_id=201520160AB2406](http://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201520160AB2406)

the existing structure. This bill would allow jurisdictions to enact ordinances that accommodate building such units. Some of the required provisions include: owner-occupancy in either the single family unit or the junior ADU, a deed restriction prohibiting the sale of the junior ADU separate from sale of the single-family unit and restricting the size and physical features of the junior ADU, construction of the junior ADU within the existing walls of the single family structure, and inclusion of an existing bedroom and a kitchen with specified features. No additional parking can be required.

### **ADU Programs in Other Cities**

Many cities have sanctioned ADUs by integrating these units into their codes, mostly in form of allowing a secondary unit added within a single family home. Cities with expensive housing markets around the world have been more and more frequently pursuing relaxing regulation of ADUs by encouraging these units as a strategy for infill housing. In the Bay Area, cities have been bolstering their secondary units programs to make them a more viable option. Oakland recently passed an ADU program. Berkeley has simplified their ADU controls. In most cities, ADUs are allowed as either attached to an existing unit, or detached as a free-standing cottage in the backyard. Vancouver allows one attached and one detached (or cottage-like) ADU to a single family home. Among the ADU programs staff studied in different jurisdictions<sup>8</sup>, San Francisco is the only city where the Code neither allows an expansion of an existing built envelope, or a detached cottage in the backyard. Overall, ADUs have become an important housing strategy both in larger cities such as Vancouver, Seattle, Portland, or even smaller cities such as Cambridge, Massachusetts<sup>9</sup>, Durango, Colorado<sup>10</sup>, or Portola Valley, California<sup>11</sup>.

### **Overview of Unit Additions in Existing Residential Buildings in San Francisco**

**Underbuilt Existing Residential Buildings-** Many residential properties in the city include fewer units than the permitted under current zoning controls. Property owners of these lots can apply for a permit to add a unit provided that it meets Planning Code requirements. Additionally, in late 2000s after many years of community planning, the City rezoned large areas of the City as a result of the Eastern Neighborhoods, Market Octavia, and Balboa Area Plans. These efforts removed numerical density limits that restrict the number of units per lot in these districts. Instead, the number of units is controlled through height, FAR, open space, rear yard, and

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<sup>8</sup> Santa Cruz, Oakland, Berkeley, San Jose, Portland, Seattle, Vancouver, Cambridge, MA, Durango, CO.

<sup>9</sup> <http://www.bostonglobe.com/opinion/2016/04/30/how-grandma-can-help-housing-crunch/BBul6fbzcinQ4iEPtsmvVJ/story.html>

<sup>10</sup> <http://www.citylab.com/design/2016/05/how-one-colorado-city-instantly-created-affordable-housing/483027/>

<sup>11</sup> <http://www.portolavalley.net/home/showdocument?id=4813>

exposure requirements. In the absence of traditional density limits, property owners are now able to add units to the existing buildings as long as other Planning Code requirements are met.

Since these units are also added to an existing building (similar to the ADU programs), it is likely that they were created as an infill of an existing unused space: smaller in size, subordinate location on the lot, potential lower ceiling. Many of these units seek variances from some Planning Code requirements such as open space, rear yard, and exposure. In the past ten years (2005-2015), over 700 have been added to existing residential buildings through permits to add 1-5 unit additions to existing residential buildings. Of these, 74 of the units were added to properties where the density controls were lifted in 2008. Staff estimated over 37,000 parcels within the city that are eligible to add a unit while keeping the property within the development capacity of the lot.

**Accessory Dwelling Unit Programs-** The City has also allowed ADUs, addition of new units beyond density limits. To date the Department has received 72 applications under the seismic retrofit ADU program, totaling approximately 130 ADUs. These permits have proposed between one to five units in an existing building. Additionally, in District 8, the Department has received eight applications (for eight units) to date and only one application in District 1 (for one unit). Based on these numbers, the seismic retrofit program has been the most successful program in creating new ADUs. Reasons for the success of the seismic retrofit program compared to D3 or D8 could include that:

- a) buildings undergoing soft story seismic retrofitting are generally multi-unit buildings with commercial property owners who are more savvy and up to date on new city rules;
- b) these buildings are also already required to undergo construction for seismic retrofitting and addition of ADUs can help offset those costs;
- c) these buildings by definition have soft story on the ground floor which usually includes storage or parking space that can more easily be converted to ADUs; and
- d) there is no cap on how many ADUs can be added to a building.

Property owners can maximize the use of available space to build new ADUs and maximize their future revenue.

From the ADU applications received to date, the majority have been proposed as a one-bedroom or studio unit, with the one-bedroom being over twice prevalent as studios. The average size of the proposed ADUs was just under 600 sq. ft. About half of the applications use spaces from existing storage, or other unused space, and the other half use only garage or garage space combined with storage.

ADU Count	Bedroom	Average square footage	# of ADUs <sup>12</sup>
Studio		373 ft <sup>2</sup>	23
One bedroom		590 ft <sup>2</sup>	59
Two bedrooms		743 ft <sup>2</sup>	12
Three bedrooms		781 ft <sup>2</sup>	8
Four bedrooms		1190 ft <sup>2</sup>	1

### BENEFITS OF ACCESSORY DWELLING UNITS

**Infill strategy-** Allowing ADUs within existing residential buildings is a pragmatic infill strategy to create more housing. This strategy is crucial for San Francisco’s housing market which is in the midst of a severe housing affordability crisis. First, adding apartments to existing, older housing stock primarily occurs on lots that are significantly underdeveloped or vacant. This addition does not reduce the number of existing units and ensures that the existing housing stock is more viable. ADUs allow more efficient use of land within our existing housing stock as the majority of the city’s residential properties are already developed and are unlikely to be redeveloped in near or long-term future. Second, this existing housing stock provides limited available rental housing to the market, as many of these buildings are also under rent control with a generally low turnover rate. Lastly, this infill strategy would create more apartments in the areas of the city without increasing building heights or altering the built form. Such residential infill could create additional homes for existing and future San Franciscans throughout the City.

**Middle Income Housing-** Despite the increase in development where currently about 7,000 units are under construction, the city’s rental market remains the most expensive in the nation. Median rent for a one-bedroom unit has been reported as high as \$3,590 by Zumper<sup>13</sup> or \$3,400 by Paragon<sup>14</sup>, or as low as \$2,950 by Trulia<sup>15</sup>.

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<sup>12</sup> These numbers add up to only 103 units while the Department has received application for 134 units to date. This is because bedroom count and size information was not available for all ADUs. Planning review of 31 ADUs has been completed at the time of this analysis which means that easy access to plans was not possible to derive information on bedroom counts and average unit size.

<sup>13</sup> Zumper National Rent Report: March 2016, <https://www.zumper.com/blog/2016/03/zumper-national-rent-report-march-2016/> retrieved June 2, 2016

<sup>14</sup> March 2016 San Francisco Real Estate Report, Paragon Real Estate Group, <http://www.paragon-re.com/3-2016-San-Francisco-Real-Estate-Report>, retrieved June 2, 2016

<sup>15</sup> Real Estate Data for San Francisco, Trulia, [http://www.trulia.com/real\\_estate/San\\_Francisco-California/market-trends/](http://www.trulia.com/real_estate/San_Francisco-California/market-trends/), retrieve June 2, 2016



ADUs are usually located on the street level, potentially behind the garage, or a side entrance, possibly low ceiling heights or less light exposure. In the Department's previous report on ADU programs in Districts 3 & 8, staff estimated that a one bedroom ADU would rent between \$2,600 to \$2900. The proposed Ordinance would expand the ADU program citywide. ADUs created in already more affordable areas of the city, outer-sunset, outer-Richmond, Excelsior, Ingleside, etc., could be expected to rent as low as \$1,700 for a one bedroom. Assuming that rent is affordable to a household if they are spending less than 30% of their gross income, such apartment would be affordable to a two-person household with a combined income of starting from \$68,000 to \$116,000 equivalent to 80% to 145% of AMI<sup>16,17</sup>. For San Francisco, this income level represents moderate to middle-income households who are today, more than ever, feeling the pressure to leave the city for lower-rental markets in the Bay Area; therefore ADUs can serve this section of the population who are currently poorly served by the new development.

**Flexibility in Lifestyle-** For property owners the immediate purpose of building an ADU is creating additional revenue for the household. For a small property owner, adding an ADU at the current construction costs and rental market could break even in about 4 to 5 years. The additional revenue would support the household financially with an increase in their disposable income.

But ADUs can provide flexibility in lifestyle in many other ways. Families living together in one building, but independent units, could provide much needed support to each other. A young family with newborn children could significantly cut on childcare costs by having their parents living in an ADU in the same building. Similarly, households can provide care to their elderly parents or disabled family members if the care providers lived in an ADU only a flight of stairs away. A family can offer the ADU to their young adult children in college or after, to provide their needed independence while maintaining some financial support. Empty nesters can rent ADUs to international students, and build new connections, which would help both students and owners. A senior household can move into an ADU on their ground floor for easier accessibility (no stairs), and smaller space. They can then rely financially on renting the larger original unit while still staying in the same building and the same community.

## ISSUES AND CONCERNS

### Number of Accessory Dwelling Units per Parcel

Similar to previous Ordinances allowing ADUs, the proposed Ordinance would allow waivers from density limits. This waiver is a critical provision in these programs to create ADUs on lots where buildings are already at capacity or even beyond density limits<sup>18</sup>.

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<sup>16</sup> Area Median Income (AMI) is the dollar amount where half the population earns less and half earns more.

<sup>17</sup> San Francisco Mayor's Office of Housing, *Maximum Rent by Unit Type: 2015*, <http://www.sf-moh.org/modules/showdocument.aspx?documentid=8829>

<sup>18</sup> It is important to note that per the State law, an ADU in a single-family home would not need a waiver from density. This is because State law requires ADUs in single-family homes to not be counted towards density. San Francisco's existing ADU program and the proposed Ordinance go beyond the provisions of the State Law and therefore density waivers are needed.

Among the existing programs, the number of permitted ADUs per parcel varies as shown in Table below.

<b>ADU Program</b>	<b>Building size Eligibility</b>	<b>Controls</b>
Mandatory Seismic	Buildings of 5 or more units	No limit
Voluntary Seismic	Buildings of 4 or less units	No limit
District 8	All	One ADU for buildings with 10 or less units, and two ADUs for buildings of more than 10 units
District 3	All	One ADU for buildings with 4 or less units, and no cap for buildings with more than 4 units

The proposed Ordinance reflects the controls in District 8-- the most restrictive among all the existing programs. This new proposal, will substantially restrict the existing programs, and especially the ADUs under the soft story seismic retrofitting program. In a review of the existing permits under review, the Department found that a total of 68 units are in projects that would not be permitted under the current proposal. Specifically, this ordinance would prohibit:

- a) 35 units (10 projects) where the number of proposed ADUs are three or more, and
- b) 33 units (15 projects) in buildings with 5 to 10 units where two ADUs are being proposed.

Removing a numerical cap on number of ADUs permitted would better align with the City’s more recent policies on density controls. The City’s most recently updated land use controls regulate number of units per parcel through height, bulk, form, quality of life requirements, as well as minimum bedroom counts. State law already controls minimum bedroom size, minimum unit size, and number of people per bedroom, addressing health and safety issues. The new land use controls therefore avoid double regulating the number of people living in each parcel. Reflecting on these policies adopted by this Commission and the Board of Supervisors, the cap on number of ADUs in the proposed Ordinance could unnecessarily restrict the efficient use of existing unused space and limit the production of new units. At the same time, in neighborhoods where buildings are smaller scale, allowing an unlimited number of ADUs in each lot could change the neighborhood character. To strike a balance, number of ADUs can be limited in buildings of smaller scale, and unlimited in buildings of larger scale. In consideration of previous Ordinances, the Commission had proposed using 5 unit buildings as a threshold to define large scale buildings.

**Waivers from Quality of Life Controls**

Similar to the current ADU controls in the Code, the proposed Ordinance allow ADUs to obtain waivers from certain quality of life controls in the Planning Code. The Building, Fire, Housing, and Planning Codes all regulate quality of life standards in housing units in order to ensure

habitability of residential units. While earthquake and fire safety measures along with access to light and air standards represent the minimum life and safety standards, the Planning Code requirements regarding open space, exposure, and parking define the quality of life beyond minimum habitation standards. Historically, applications for adding a unit in areas that are already allowed sought variance from some of the Planning Code requirements such as open space, rear yard, exposure, and parking. The existing ADU programs provide complete or partial waivers from these requirements:

- **Rear Yard-** The rear yard waiver is only used in cases where an ADU is being proposed in an existing auxiliary structure that is non-conforming to the rear yard requirements. These buildings were built prior to establishment of rear yard requirements.
- **Exposure-** New ADUs can apply for partial waiver from the exposure requirements of the Planning Code. Exposure requirements contribute significantly to quality of life as they regulate light and air into residential space. The Building Code regulates the size of windows, while the Planning Code regulates the size and quality of the open area to which the windows face. Generally, the Planning Code requires this open area to be 25' in every direction and expand vertically. A dwelling unit may also satisfy exposure requirements by facing a street or complying rear yard. The ADU programs allowed this open area to be reduced to 15 feet in every direction. Allowing flexibility in the size of the open area would not harm livability of ADUs and may be critical to ensuring these units are built.
- **Parking-** The existing ADU programs provide waivers from parking requirements which facilitates ADUs in two ways: First, it allows removing an existing required parking space to provide space for an ADU. Second, if two or more ADUs are proposed on a lot, the parking requirement can also be waived. It is important to note that currently, the Planning Code does not require parking space if only one unit is being added to an existing building. In a typical new construction project, an average cost of a podium parking spot has been reported nearly \$30,000 per space<sup>19</sup>. In the case of new ADUs, while this cost can be lower due to the existing structure, maintaining a parking requirement for these units may render new ADUs as infeasible. These waivers also align with the new proposals under the Assembly bills described earlier in this report. The recent proposed changes in State law would also relax parking requirements that jurisdictions can impose on ADUs.

### Restrictions on Space Used

The current ADU programs provide strict regulations on what types of spaces can be used for ADUs in two major ways: protecting existing units and preventing the expansion of the building envelope. The proposed Ordinance would maintain these two restrictions:

- a) **Space from existing residential units cannot be used.** This restriction aims to preserve the existing housing stock in terms of unit size. Department analysis shows that the newly built housing is generally smaller than the existing housing stock and has less

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<sup>19</sup> Seifel Consulting Inc, Inclusionary Housing Financial Analysis, December 2012, Report prepared for San Francisco Mayor's Office of Housing, page 15.

number of bedrooms. Existing housing stock is also more affordable compared to similar types of units, in terms of unit size or bedroom counts, newly developed. Prohibiting ADUs to use space from existing units would help prevent losing our larger housing stock, and dividing up larger units into smaller ADUs. This would help protect the City's existing housing stock.

b) **ADU is limited to the exiting built envelope of the residential building.** This restriction has been a significant factor in limiting the production of units under the current ADU programs. It aims to protect the built form and maintain the mid-block open space. It also may be unique to San Francisco, as other cities staff reviewed with ADU policies have not been using this physical restriction. While San Francisco is a denser city than other California cities, San Francisco does allow limited building expansions. It seems contradictory to allow the expansion of a building where no new unit is produced but to prohibit an expansion of the same size when a new dwelling unit is produced.

Given that the proposed Ordinance expands the ADU program to the entire city, this issue should be carefully considered. In some areas of the City, the built form consists of large private open spaces with small building footprints. Limiting the ADU to the existing built envelope in these lots could render adding an ADU infeasible. Residents in these areas of the City also rely more heavily on driving and converting their parking space to an ADU may not be a viable option. About 60% of lots with a residential building are more than 45% open, and about 25% of lots are more than 60% open (more than 45%, or 60% of each lot is open and not developed, respectively). Portions of these open areas that are currently in the buildable envelope of the lot could already be expanded on. The Department receives many applications annually that expand the building, to add a bedroom, create a deck, or additional habitable space. When reviewing these applications, staff considers the effects on adjacent properties, as well as the collective "mid-block open space": the aggregate of private open spaces in each city block, usually divided up by 10 foot tall wooden fence at property line, providing residents with light, air, visual relief and a psychological comfort zone. The mid-block open space, if landscaped, can also provide habitat for birds and other animals, enriching the City's biodiversity and wellbeing.

Applications for expansion of a building are generally subject to Neighborhood Notification pursuant to Planning Code Sections 311 and 312. Additionally, expansions over a certain threshold are also reviewed by the Department's Residential Design Team (RDT). RDT reviews these projects and generally requires modifications to the rear yard expansions to minimize light and privacy impact on the adjacent properties, as well as the mid-block open space. This existing comprehensive due process justifies allowing ADUs to also use space from the buildable envelope, so long as the strict conditions currently exercised are met.

The proposed Ordinance would add a new restriction:

c) **Prohibit use of space from an existing retail space in certain Neighborhood Commercial Districts:** This prohibition aims to protect small businesses from competing with the currently booming residential market. In most cases, a commercial tenant is

more appealing to the owner than a residential tenant, especially since commercial tenants are not subject to rent control. However, in cases where a small business is struggling, this prohibition removes another factor that could aggravate the competition for commerce on our major neighborhood commercial corridors.

### **Restrictions on Use of Accessory Dwelling Units for Short-term Rentals**

Currently, the short-term rental controls in the City require resident occupancy for the unit that would be used as short-term rental. If a property owner adds an ADU, in order for the property owner to rent the unit for short-term rentals legally, the property owner would have to use the unit as their permanent residence. Alternatively, if the property owner rents the ADU as a standard rental unit (long-term), then only the tenant can apply for short-term rental of the unit. The proposed Ordinance would ban use of ADUs for short-term rentals entirely, either for the property owner, or the potential long-term tenant. The purpose of this prohibition rests in the two-fold concern that 1) ADUs are susceptible to being used as short-term rentals instead of long-term rental and 2) it has been difficult to enforce the existing laws regulating short-term rentals. While the existing controls already limit the property owner's use of ADUs for short-term rentals, owners may still use the ADUs as short-term rentals unlawfully. The proposed Ordinance would create a strict blanket prohibition that would render ADUs ineligible to register for short-term rental. This prohibition would help protect ADUs for the fundamental purpose of adding units to the City's housing stock for long-term rental.

### **Restrictions for Subdivision and Sale**

The proposed Ordinance would also prohibit subdivision and independent sale of ADUs. Most ADU applications the Department has received to date are located in larger sized rental buildings (5 or more units). These buildings are generally not eligible for subdivision and individual sale of the unit per Article 9 of the Subdivision Code and recent changes in 2013 to this law<sup>20</sup>. The proposed Ordinance would expand where ADUs are allowed to the entire city. With this prohibition in place, if an ADU is added to a single-family home, the owner would not be able to sell the original single-family or the ADU as separate units. This may create a disincentive for single-family homeowners to build ADUs. Additionally, while condominium buildings are less likely to add an ADU due to their ownership structure, the Department has received a few applications for ADUs in condominium buildings. These ADUs are likely to be built for future subdivision and sale. The proposed Ordinance would remove the option for sale of an ADU in a condominium building which would further disincentivize ADUs in those buildings.

Additionally, the home sales market in San Francisco has been among the top two most expensive markets in the nation. While the rental market in the City has been notoriously also

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<sup>20</sup> These changes suspended the annual condominium conversion lottery. The current eligibility criteria for subdivision and condominium conversion include: a) only two-unit owner-occupied buildings, b) buildings that lost the lottery 2012 or 2013, or buildings owned as Tenancy in Common as of April 15, 2013.

unaffordable to a large proportion of population, the sales market is unaffordable to a much larger population. An analysis of sales data in San Francisco between My 2014 to May 2015 indicates that a majority of the sales options are affordable to households earning at least more than 200% of the Area Median Income<sup>21</sup>. ADUs would have the potential to offer homeownership opportunities to households of moderate or middle income, given that the physical characteristics of the unit would mean lower sales prices compared to an average newly constructed unit.

### **Restrictions on Merging ADUs**

The proposed Ordinance prohibits merger of ADUs to other units in the building. Effective on April 10, 2016, the Planning Code requires Conditional Use Authorization (hereinafter “CUA”) to remove any unit, including unauthorized units. These recent changes impose the highest level of scrutiny for removing units through merger, demolition, or conversion. The controls apply to Unauthorized Units, which are very similar to ADUs in physical and use characteristics. This means that similar to all other housing units, if a property owner files an application to merge an Unauthorized Unit to the original unit, a CUA process is required. The Planning Code provides flexibility based on, among other factors, whether or not the unit is currently rented, or whether the proposed use is for growing the household in the original unit. For an ADU, it is also possible that the property owner’s needs and lifestyle may change in near or far future which would warrant a merger. It would be unjustified to not provide the opportunity for mergers to ADUs while other housing units including Unauthorized Units maintain that right.

### **Restrictions on Eviction History**

Parallel with the recent housing boom in San Francisco, evictions have also been increasing significantly. Local and State policy-makers have been seeking solutions to curb evictions, especially non-warranted evictions. One strategy is San Francisco has been to withdraw certain rights and privileges from properties that have undergone certain no-fault evictions. In 2013, two Ordinances were passed that incorporated this strategy. Ordinance 286-13 allowed expansion of existing non-conforming residential housing units. However, this opportunity is not provided to properties that have an eviction history for: condo conversion, demolition, temporary evictions for capital improvements, substantial rehabilitation, Ellis Act withdrawals, temporary eviction due to lead remediation, and owner move-in evictions. Similarly, Ordinance 287-13, revoked the right to merge or the City passed another Ordinance that prohibited mergers in buildings with the same eviction history as Ordinance 286-13. To avoid punitive treatment of property owners without knowing that certain rights will be taken away as a result of exercising lawful evictions, these two Ordinances apply the prohibition prospectively rather than retroactively. Both Ordinances provide a timeline for the eviction history, which starts with the effective day of the Ordinance and spans for ten years before the permit application date for all evictions except for owner move-in eviction, which spans for five years only. For the temporary evictions, the two

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<sup>21</sup> SF Planning Department Housing Database, created summer 2015 based on data scraping, as well as data from the Assessor’s Office

Ordinances also exempt buildings from the prohibition if the units was either offered to or reoccupied by the tenant subsequent to the improvements.

The proposed Ordinance also uses this similar strategy in not providing the opportunity to build an ADU if the building maintains a history of evictions types similar to the ones in Ordinance 286-13. However, the proposed Ordinance applies this prohibition retroactively rather than prospectively: the timeline for the eviction history spans for ten years prior to the application permit date (and five years for owner move-in) independent of when this prohibition went into effect. An eviction that may have occurred eight years ago in a building that has been sold three times since the eviction would not be able to build an ADU. By retroactively applying this requirement, new owners may be unduly penalized for the actions previous property owners many years before. The proposed Ordinance also does not exempt buildings from the prohibition, where the unit was offered to re-occupied by the tenant subsequent to a temporary eviction.

### **Application of Rent Control Regulations**

San Francisco Residential Rent Stabilization and Arbitration Ordinance<sup>22</sup> (Rent Control Law) regulates the existing housing stock in San Francisco, establishing rent increase constraints for rental units in residential buildings built prior to 1979. The Rent Control Law also protects the tenants residing in these units against no-fault evictions, restricting evictions of these tenants to only fourteen specified just causes. Similar to the previous ADU Ordinances, the proposed Ordinance also requires that any new ADU constructed in a building with units currently subject to rent control would also be subject to rent control, if the ADU is granted complete or partial waivers of the Planning Code requirements.

This change has created the opportunity to increase the approximately 170,000 units currently protected under Rent Control<sup>23</sup>. Similar to the existing ADU program, these controls would apply the annual rent increase limits to new ADUs at a regulated reasonable rate—helping to ensure tenants won't become priced out of their unit during an economic upturn. The rent stabilization strategy of the City's rent control law limits the amount that the rent can be increased in rent-controlled units, stabilizing rental prices for the tenants of such units, especially during economic booms like the one we are currently in.

The Planning Code already outlines the procedure through which an ADU would legally be subject to the Rent Control law. This procedure includes an agreement between the City and the property owner that would waive the unit from the Costa Hawkins Act, a State law that prohibits municipal rent control ordinances for buildings built after 1995. Under the Costa Hawkins Act, for buildings built after 1995, the property owner may establish the initial and all subsequent rental rates. This agreement represents a condition for permitting an ADU, which is also being used when on-site inclusionary rental units are provided within a project. The proposed

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<sup>22</sup> Chapter 37 of the Administrative Code.

<sup>23</sup> San Francisco Rent Board. <http://www.sfrb.org/index.aspx?page=940> Retrieved on 6/2/16.

Ordinance further clarifies this agreement and creates a title for this agreement, called "Regulatory Agreement."

### **Feasibility of Accessory Dwelling Units**

Adding an ADU within an existing building requires existing uninhabited space, typically on the ground floor, usually a garage or storage space. Such space is not always available in San Francisco buildings, especially the older buildings without any garage. Other owners may not favor removing garage spaces to add an apartment. Other factors can also prohibit owners from deciding to add a unit: lengthy and complex permitting process, lack of familiarity with the construction process, costs of construction, lack of interest for managing a rental apartment, and so forth.

Based on these challenges, unit additions are not very common in San Francisco, despite the already existing vast potential for adding units within existing buildings throughout the city. Over 37,000 parcels<sup>24</sup> can add at least one unit within the allowable density in residential buildings in San Francisco. However, the Department receives unit additions permits for only a very small fraction of that each year. Since 2014 when the two ADU programs were established, only three applications have been received: two ADUs in the Castro and one in a seismic retrofit program.

To encourage more ADUs, the Department has recently published an ADU handbook developed by a consultant. It is the Department's hope that this handbook will help guide and encourage homeowners that may have the ability to add an ADU to their building. This handbook includes six prototypes of adding a unit to an existing building and summarizes the City regulations that govern such permits. This handbook also includes cost analysis for adding a unit to a building. It found that on average an ADU could cost from \$150,000 to \$200,000. While this cost could make adding a unit financially infeasible to many, it indicates that with some investment a property owner could add a unit to their building that would pay for itself within about five years.

Given many factors contributing to the feasibility of an ADU, it is uncertain how many ADUs could potentially result from the proposed Ordinances. Despite this, staff used a methodology to approximate such a number for purposes of the environmental review (see Exhibit B and the Addendum to the Housing Element EIR). ADUs resulting from the proposed Ordinance would be added incrementally and spread out in different residential blocks.

### **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.

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<sup>24</sup> This number includes density controlled lots that are underbuilt by at least one unit to a maximum of five units, as well as residential lots without density controls throughout the city; it does not include the ADUs allowed beyond the density limits per the new Ordinances since 2014.



## RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance and adopt the attached Draft Resolution to that effect. The proposed modifications are as follows:

1. Remove the cap on number of ADUs allowed per lot in mid to large sized buildings (5 or more units) and maintain a one ADU per lot cap for smaller buildings (less than 5 unit).
2. Allow one ADU to be built in new construction of small-sized residential buildings (Less than 5 units). Require that in new construction the smallest unit be designated as ADU.
3. Modify definition and controls of ADUs to allow using space in the buildable envelope, while limiting this expansion to the ground floor only.
4. Clarify that “existing built envelope” includes spaces that can be filled in without notification as listed in the Zoning Administrator Bulletin No.4 that are exempt from the notification requirements of the Planning Code.
5. Subject the merger of ADUs to the same controls regulating the merger of Unauthorized Units.
6. Allow ADUs to be subdivided and sold separately.
7. Apply the prohibition on adding ADUs within buildings with an eviction history prospectively, and exempt buildings with temporary evictions where the unit has been offered to or re-occupied by the tenant.
8. Modify the provision in Section 207(c)(4)(vi)(c), allowing a building to be raised 3 feet, to refer to the correct Building Code (Chapter 34) that requires full seismic retrofitting and not the soft story retrofitting(Chapter 34B). Clarify that this height increase is exempt from the existing built envelope limitation for ADUs in those eligible buildings.

## BASIS FOR RECOMMENDATION

The Department strongly supports the proposed Ordinance to expand the ADU program citywide in San Francisco. This is a strategy that has recently been further promoted and encouraged by many small and large cities in the Bay Area, California, as well as other states and even internationally. ADUs represent one housing strategy among many that the City is promoting to facilitate a variety of housing options. This strategy would create potential to add new homes to properties that otherwise would not have any development potential, efficiently using unused space on properties with existing residential buildings as a resource to provide more housing.

ADUs are usually located on the ground floor in space that was previously used for parking or storage, and as a result typically have lower ceilings heights. These units will also likely have less light exposure due to smaller windows or windows facing smaller open areas, and side entrances due to location of the unit on the lot. Such subordinate characteristics of ADUs result in lower rents compared to the rental rates of a unit in a newly developed building. Further, the lower rents would accommodate populations that are not adequately being served by the market: younger households, small families, senior and elderly individuals and so forth.

The following is the basis for each of the Department’s recommended modifications:

- 1. Remove the cap on number of ADUs allowed per lot in mid to large sized buildings (5 or more units) and maintain a one ADU per lot cap for smaller buildings (less than 5**

**units).** Among the ADU programs currently available in San Francisco, ADUs in buildings undergoing seismic retrofitting have been the most common type of ADU permits the Department has received. Buildings eligible for the mandatory seismic retrofitting are suitable candidates for new ADUs: the property owner already has to undertake construction, and new units would help offset the costs. Under this program, there is no limit on how many ADUs can be added on a lot so long as other physical controls are met and applicable Planning Code requirements. While the applications for ADUs under the soft story seismic program include on average less than two-units per building, some buildings propose up to 5 ADUs per lot. Currently, there are 68 ADUs under review in projects that proposed either more than two ADUs or propose two ADUs in buildings of 5-10 units. These 68 ADUs would not be lawful per the controls in the proposed Ordinance. Imposing a cap of two ADUs per building would not allow efficient use of available space in buildings. The proposed recommendation would maintain a cap of one ADU in smaller buildings (4 or less units) to preserve the smaller scale character of the building. For large buildings (5 or more units), the number of ADUs would remain limited by the available space on the ground floor, as well as the Building and Planning Code requirements (means of egress, exposure, bike parking, etc.).

2. **Allow one ADU to be built in new construction of small-sized residential buildings (Less than 5 units). Require that in new construction the smallest unit be designated as ADU.** This modification would provide an opportunity to property owners to add one unit when demolishing and replacing a building or in new construction on vacant lots. When application of demolition and replacement of a single family home is filed with the Department, this provision would allow the owner to provide an ADU as well as a part of their new construction. In cases of demolition and new construction, the Department has been encouraging maximizing density. Expanding this option to include an ADU would help add to the City's housing stock within the existing built context even in areas of the city that have restrictive zoning controls. Specifying provisions on which unit should be designated as ADU in new construction (smallest unit in the building) would help in future permit documentation.
3. **Modify definition and controls of ADUs to allow using space in the buildable envelope, while limiting this expansion to the ground floor only.** The proposed Ordinance constricts space that can be used to convert to ADUs in a variety of ways: a) No space from existing residential units; b) No space from existing retail; c) Limit to existing built envelope. Making additional space available for ADUs would further advance the potential of the ADU program. The first two limitations help stabilize existing housing stock and small businesses, respectively. The ADU Ordinance proposed by Supervisors Farrell and Wiener would allow limited use of space from existing retail (no more than 25%). The Department supports this recommendation to allow use of retail space especially where a business maintains excess space. The third limitation aims to protect the private open space on the lot; however, this open space can already be used to expand the existing unit. About 60% of lots have more than 45% of the area open and undeveloped. The Department has received over 1000 permit to expand the building in rear over the past decade. It seems contradictory to allow the expansion of a building where no new unit is produced but to prohibit an expansion of the same size when a new

dwelling unit is produced. This recommendation would provide more flexibility in terms of space that could be converted to an ADU. It would also help areas of the city which have less access to transit in maintaining their parking space while adding an ADU. The recommended modification would also limit this expansion to the ground floor only to minimize the effects on the built form, and adjacent properties. Neighborhood notification and RDT review would remain applicable for these expansions.

4. **Clarify that “existing built envelope” includes spaces that can be filled in without notification as listed in the Zoning Administrator Bulletin No.4 that are exempt from the notification requirements of the Planning Code.** If ADUs are limited to the existing built envelope, staff proposes this recommendation. Currently space under the bay windows, cantilevered room, etc. can be filled in without notification per the Zoning Administrator Bulletin Number 4. The recommendation would allow ADUs to be expanded into these spaces, which would help make ADUs possible that are otherwise infeasible due to exposure or other code requirements.
5. **Subject merger of ADUs to the same controls regulating merger of Unauthorized Units.** Recent legislation subjects merger of Unauthorized Units to CUA authorization. Merger controls for ADUs should reflect the controls for Unauthorized Units since these units are similar in terms of physical or use characteristics.
6. **Allow ADUs to be subdivided and sold separately.** Prohibiting ADUs from subdivision could deter condominium buildings, or single family homes from adding ADUs. Property owners of these types of buildings are more likely to sell the ADU, either subsequent to construction or in the future. Additionally, ADUs are generally smaller, with limited light access, and uncommon layouts. As such ADUs can fill an unmet need in the sales market for more affordable homeownership opportunities.
7. **Apply the prohibition on adding ADUs in buildings with an eviction history prospectively, and exempt buildings with temporary evictions where the unit has been offered to or re-occupied by the tenant.** The proposed Ordinance would apply prohibition of ADUs in buildings with certain no-fault eviction history retroactively rather than prospectively. This prohibition seems an unjust punitive measure for owners who exercised lawful evictions without knowing that their building would be withdrawn from certain rights and privileges. If this prohibition is applied only after enactment of the law, it would clearly be a disincentive to future evictions. Additionally, in case of temporary evictions, if the tenant has reoccupied the unit subsequent to the improvements, or that they owner has offered the unit back to the tenant, it seems unjustified to still withdraw the buildings from the opportunity to add an ADU.
8. **Modify the provision in Section 207(c)(4)(vi)(c), allowing a building to be raised 3 feet, to refer to the correct Building Code (Chapter 34) that requires full seismic retrofitting and not the soft story retrofitting(Chapter 34B). Clarify that this height increase is exempt from the existing built envelope limitation for ADUs in those eligible buildings.** Currently Section 207(c)(4)(vi)(c) of the Code refers to Chapter 34(B) of the Building Code regarding where a building can be raised 3 feet when undergoing seismic retrofitting. Chapter 34(b) discusses soft story seismic retrofitting which does not actually allow the three foot height increase. This provision is allowed in Chapter 34 of the

Building Code which discusses *full* seismic retrofitting of a building (on all floors). Staff recommends correcting this reference so that it would not be tied to the *soft story* seismic retrofitting but to full seismic retrofitting per Chapter 34.

## **ENVIRONMENTAL REVIEW**

The proposed ordinance is covered under an Addendum to the 2004 and 2009 Housing Element Final Environmental Impact Report (Case No. 2016-004042ENV), pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15164.

## **PUBLIC COMMENT**

As of the date of this report, the Planning Department has not received any comments about this Ordinance.

<b>RECOMMENDATION:</b>	<b>Recommendation of Approval with Modification</b>
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### **Attachments:**

- Exhibit A: Draft Planning Commission Resolution for BF No. 160252
- Exhibit B: Potential Number of New ADUs
- Exhibit C: Addendum to the 2004 and 2009 Housing Element EIR (to be delivered separately)
- Exhibit D: Draft Ordinance [Board of Supervisors File No. 160252]
- Exhibit E: Draft Ordinance [Board of Supervisors File No. 160657]