



SAN FRANCISCO PLANNING DEPARTMENT

April 28, 2020

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

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**Re: Transmittal of Planning Department Case Number 2020-002054PCA:
Reauthorization and Extension of Fee Waiver - Legalization of Unauthorized
Dwelling Units (UDUs)
Board File No. 200113
Planning Commission Recommendation: Approval**

Dear Ms. Calvillo and Supervisor Mar,

On April 16, 2020, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Mar that would amend the Planning and Building Codes to reauthorize the waiver of fees related to granting legal status to existing dwelling units constructed without required permits and extending the waiver through December 31, 2024. At the hearing the Planning Commission recommended approval.

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.

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 D. Starr".

Aaron D. Starr
Manager of Legislative Affairs

Transmittal Materials

**CASE NO. 2020-002054PCA
Fee Waiver for UDUs**

cc:

Judy Boyajian, Deputy City Attorney
Daisy Quan, Aide to Supervisor Mar
John Carroll, Office of the Clerk of the Board

Attachments :

Planning Commission Resolution
Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 20682

HEARING DATE: APRIL 16, 2020

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Project Name: Reauthorization and Extension of Fee Waiver - Legalization of Unauthorized Dwelling Units
Case Number: 2020-002054PCA [Board File No. 200113]
Initiated by: Supervisor Mar / Introduced February 4, 2020
Staff Contact: Veronica Flores, Legislative Affairs
Veronica.Flores@sfgov.org, 415-575-9173
Reviewed by: Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362

RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD THE PLANNING AND BUILDING CODES TO REAUTHORIZE THE WAIVER OF FEES RELATED TO GRANTING LEGAL STATUS TO EXISTING DWELLING UNITS CONSTRUCTED WITHOUT REQUIRED PERMITS AND EXTENDING THE WAIVER THROUGH DECEMBER 31, 2024; REQUIRING ANNUAL REPORTS ON THE FEE WAIVER PROGRAM; AND MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1, AND FINDINGS OF PUBLIC NECESSITY, CONVENIENCE, AND WELFARE UNDER PLANNING CODE, SECTION 302.

WHEREAS, on February 4, 2020 Supervisor Mar introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 200113, which would amend the Planning and Building Codes to reauthorize the waiver of fees related to granting legal status to existing dwelling units constructed without required permits and extending the waiver through December 31, 2024; requiring annual reports on the fee waiver program; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302; and,

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on April 16, 2020; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Sections 15378 and 15060(c)(2); 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

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 Planning Commission hereby **approves** the proposed ordinance.

FINDINGS

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

1. The Commission finds that the proposed Ordinance supports the Housing Element’s goals to ensure adequate housing for current and future San Franciscans by increasing the potential for new housing units.
2. The Commission finds that the proposed Ordinance supports the Legalization Program, without which, some existing units would not have a path to be legalized.
3. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

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.

OBJECTIVE 2

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

Policy 2.1

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

Policy 2.4

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

Policy 2.5

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

OBJECTIVE 3

PROTECT THE AFFORDABILITY OF THE EXISTING HOUSING STOCK, ESPECIALLY RENTAL UNITS.

Policy 3.4

Preserve “naturally affordable” housing types, such as smaller and older ownership units.

OBJECTIVE 10

ENSURE A STREAMLINED, YET THOROUGH, AND TRANSPARENT DECISION-MAKING PROCESS.

Policy 10.1

Create certainty in the development entitlement process, by providing clear community parameters for development and consistent application of these regulations.

The Ordinance supports the Housing Element’s goals to ensure adequate housing for current and future San Franciscans. The Ordinance is intended to help address the City’s ongoing housing crisis by encouraging the retention of existing housing units and prioritizing legalizing existing dwelling units constructed without permits. The Ordinance incentivizes legalizing existing dwelling units by reducing the financial burden on the applicant, allowing for the preservation of these units.

4. **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 not have a negative effect on housing or 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. The Ordinance encourages legalizing existing unauthorized dwelling units, adding to the housing stock.

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.

5. **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 APPROVES the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on April 16, 2020.



Jonas P. Ionin
Commission Secretary

AYES: Diamond, Fung, Imperial, Johnson, Koppel, Moore

NOES: None

ABSENT: None

ADOPTED: April 16, 2020



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning and Building Code Text Amendments

HEARING DATE: APRIL 16, 2020
90-DAY DEADLINE: MAY 12, 2020

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Initiated by: Supervisor Mar / Introduced February 4, 2020
Staff Contact: Veronica Flores, Legislative Affairs
Veronica.Flores@sfgov.org, 415-575-9173
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Recommendation: **Approval**

PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning and Building Codes to reauthorize the waiver of fees related to granting legal status to existing dwelling units constructed without required permits and extending the waiver through December 31, 2024; and requiring annual reports on the fee waiver program.

THE WAY IT IS NOW:

THE WAY IT WOULD BE:

Projects related to legalizing unauthorized dwelling units need to pay all permit fees.	These Projects would receive a partial fee waiver for only the permit fees related legalizing the existing unit.
The Department of Building Inspection is not required to submit reports regarding the fee waivers related to permits granted legal status for unauthorized dwelling units.	The Department of Building Inspection would need to submit a report to the Mayor, the Board of Supervisors, the Building Inspection Commission, and the Planning Commission on the fee waivers related to permits granting legal status for unauthorized dwelling units.

BACKGROUND

In 2014, the City enacted Ordinance No. 43-14, which amended the Planning Code, the Building Code, and the Administrative Code to establish a legalization process for dwelling units built without a building permit.¹ In 2015, to encourage the legalization of existing unauthorized units, the City enacted Ordinance No. 146-15, which partially waived the permit fees related to legalizing existing unauthorized units for

¹ [Board File 131148](#)

permits issued prior to January 1, 2020.² One goal of partially waiving Planning Department and Building Department fees related to legalizing existing dwelling units constructed without permits was to incentivize the preservation and legalization of these units. This Ordinance would reauthorize and extend the partial fee waiver enacted by Ordinance No. 146-15 for an additional five years commencing on January 1, 2020.

ISSUES AND CONSIDERATIONS

Housing Stock and Affordability

San Francisco and the Bay Area have a housing shortage. The Planning Department is working to meet these housing needs through a variety of programs. This Ordinance ensures that we preserve not only existing permitted housing, but also unpermitted housing units. In the City's Housing Element, Objective Three seeks to preserve "naturally" affordable housing types, such as smaller and older ownership units. Legalizing existing units falls into this category. Additionally, legalizing existing units is typically more cost effective than building net new housing.

Minimal Fiscal Impact

The Department estimates that the fiscal impact of reauthorizing this partial fee waiver will be minimum. According to the Department of Building Inspection's data, more than 700 legalization permits have been filed and approximately \$1.6 million worth of fees waived for Planning Department review from 2015-2020. This amount is marginal compared to the overall permitting costs. Additionally, the partial fee waiver to incentivize legalizing existing units outweighs the loss of potential housing.

Additionally, the proposed Ordinance will not have a change in Planning revenue because the Department has been waiving the fee since 2015, just one year after the Legalization Program was established. This means that this partial fee waiver has not been included in Department budget for the past five years, and therefore there will not be a change. Additionally, the Department of Building Inspection processes, implements, and manages the fee waivers. This means that reauthorizing the partial fee waiver would not have any associated costs for the Department. While not yet effective, there is a separate Ordinance that proposes to eliminate the cap of units permitted to be legalized per lot.³ This will have a potential impact on the future revenue collected; however, the extent of this impact is unknown.

Legalization Program Success

The Ordinance supports a program that has already added more than 150 units to the housing stock. This number reflects the number of legalization permits that have already received their Certificate of Final Completion, which differs from the total number of legalization permits filed described above. Reauthorizing the partial fee waiver will continue to encourage more projects to participate in the Legalization Program. The City's 2014 Housing Element notes that while 76 unauthorized units were granted legal status between 2004 and 2013, a much larger number (226 units) were removed during that same period. The Ordinance would help curb this loss by incentivizing applicants and property owners to

² [Board File 150571](#)

³ [Board File 190757](#)

legalize existing units. The latest Housing Inventory shows that in 2018 alone, 76 unauthorized units were granted legal status,⁴ indicating the growth and success of the program.

Legalization Program versus Accessory Dwelling Unit Program

When seeking to legalize existing units, applicants can do so through either the Legalization Program, the Accessory Dwelling Unit (ADU) program, or as-of-right if density allows. Without the Legalization Program, some existing units would not have a path to be legalized, resulting in a loss of potential housing. Generally, applicants are eligible for the Legalization Program if there is proof of occupancy, no no-fault evictions, and no other unpermitted features within the existing unit. The existing unit may still need to be altered to meet basic life, health, and safety requirements. Some of these unpermitted units may have been eligible for the ADU program. However, the ADU Program has more strict requirements (such as complying with rear yard, open space, and exposure requirements), oftentimes requiring more renovation and funds to do so. In such cases where an unauthorized dwelling unit does not provide adequate open space or comply with the exposure requirements for example, then said unit would not be eligible for the ADU Program but may still have a path to be legalized through the Legalization Program.

The table below provides a quick snapshot of the key differences between the legalization and ADU programs. The Department provides this information to each applicant when vetting unauthorized dwelling units; however, the applicant ultimately decides which program best meets their needs. If eligible, applicants sometimes prefer the Legalization Program because of the limited renovation and fee savings. Additionally, using the Legalization Program preserves the option of adding ADUs in the future. Therefore, some applicants have opted to use the Legalization Program first, and then add ADUs in a subsequent permit in order to maximize density per the property’s permitted zoning.

Legalization	ADU Program
Existing unit is reviewed for basic Code requirements, but mostly approved in as-is conditions	Existing unit is reviewed for more strict Code requirements, sometimes still requiring Variances
Legalization permit fees are partially waived	Building Code permit fees are waived under a pilot program
Does not require Costa-Hawkins Regulatory Agreements	Requires Costa-Hawkins Regulatory Agreements if waivers (such as density, rear yard, open space or exposure) are granted
Legalized units are permitted to be short-term rentals	ADUs are not permitted to be short-term rentals

General Plan Compliance

The Ordinance supports the Housing Element’s goals to ensure adequate housing for current and future San Franciscans. The Ordinance is intended to help address the City’s ongoing housing crisis by encouraging the retention of existing housing units and prioritizing legalizing existing dwelling units

⁴ [Housing Inventory 2018](#)

constructed without permits. The Ordinance incentivizes legalizing existing dwelling units by reducing the financial burden on the applicant, allowing for the preservation of these units.

Racial and Social Equity Analysis

Understanding the benefits, burdens and opportunities to advance racial and social equity that proposed Planning Code amendments provide is part of the Department’s Racial and Social Equity Initiative. This is also consistent with the Mayor’s Citywide Strategic Initiatives for equity and accountability and with the forthcoming Office of Racial Equity, which will require all Departments to conduct this analysis.

The Planning Code amendments in the proposed Ordinance ensure that applicants pursuing legalization permits benefit from a partial fee waiver. Many of these legalization permits are submitted by property owners who do not regularly engage with the City on development permits. It is likely that some of those households that do not regularly engage with the City on development permits include mono-lingual households or immigrant households due to language barriers, cultural barriers, lower incomes, etc. The Legalization Program provides extra guidance on how to legalize the existing unit and provides financial relief to the property owner through the partial fee waiver. This is especially helpful for lower-income households who benefit more from such fee waiver, even if just waived partially.

Additionally, the partial fee waiver supports the Legalization Program, which yields “naturally” affordable housing types since these units are typically smaller and already constructed. The Legalization Program focuses on existing units oftentimes created out of extra space typically on the ground floor. The Legalization Program and the associated partial fee waiver produces additional units that the City otherwise might not be able to add to the housing stock.

The Legalization Program is most commonly used in single-family or small multi-family residential neighborhoods, such as the Sunset or the Richmond neighborhoods. Therefore, the Ordinance may inadvertently encourage legalizing existing units in these types of neighborhoods more so than others. However, any potential concentration of legalized units in these neighborhoods does not negate the merit of the Legalization Program’s success in adding to the housing stock.

The Ordinance also considers retroactively applying the partial fee waiver. This means that any collected legalization permit fees collected between January 1, 2020 and the effective date of the subject Ordinance will be reimbursed. This ensures that all current legalization permits receive the same benefits and incentives as those approved as recently as last year.

Implementation

The Department has determined that this ordinance will not impact our current implementation procedures.

RECOMMENDATION

The Department recommends that the Commission *approve* the proposed Ordinance and adopt the attached Draft Resolution to that effect.

BASIS FOR RECOMMENDATION

The Department supports the proposed Ordinance because it supports the Housing Element’s goals to ensure adequate housing for current and future San Franciscans. Specifically, the Ordinance continues the efforts of past legislation and supports the Department’s efforts to increase housing. Reauthorizing this partial fee waiver yields a low fiscal impact to the Planning Department. Given the importance of maintaining and legalizing existing housing, the Department recommends that the Commission support the Ordinance to reauthorize the partial fee waiver for legalizing existing units.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it 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. 200113