

1 [Planning and Administrative Codes - Construction of In-Law Units in Existing Residential
2 Buildings or Auxiliary Structures on the Same Lot; Rent Control]

3 **Ordinance amending the Planning Code to allow the construction of an additional**
4 **dwelling unit or units within the existing envelope of a residential building or auxiliary**
5 **structure on the same lot (In-Law Units) on any parcel in the Castro Street**
6 **Neighborhood Commercial District and within 1,750 feet of the District boundaries,**
7 **excluding any lot within 500 feet of Block No. 2623, Lot Nos. 116 through 154;**
8 **authorizing the Zoning Administrator to waive density and other Planning Code**
9 **requirements in order to create the In-Law Units, and requiring the Department to**
10 **monitor rents and publish a report evaluating the effectiveness of the ordinance;**
11 **amending the Administrative Code to provide that an In-Law Unit constructed with a**
12 **waiver of Code requirements shall be subject to the provisions of the San Francisco**
13 **Residential Rent Stabilization and Arbitration Ordinance if the existing building or any**
14 **existing dwelling unit is already subject to the Rent Ordinance; making environmental**
15 **findings, and findings of consistency with the General Plan, and the eight priority**
16 **policies of Planning Code, Section 101.1; and directing the Clerk to send a copy of this**
17 **ordinance to the California Department of Housing and Community Development, in**
18 **accordance with State law.**

19
20 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
21 **Additions to Codes** are in *single-underline italics Times New Roman font*.
22 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
23 **Board amendment additions** are in double-underlined Arial font.
24 **Board amendment deletions** are in ~~strikethrough Arial font~~.
25 **Asterisks (* * * *) indicate the omission of unchanged Code**
subsections or parts of tables.

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

1 Section 1. General and Environmental Findings.

2 (a) The Planning Department has determined that the actions contemplated in this
3 ordinance comply with the California Environmental Quality Act (California Public Resources
4 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
5 Supervisors in File No. 131063 and is incorporated herein by reference.

6 (b) On March 6, 2014, the Planning Commission, in Resolution No. 19099, adopted
7 findings that the actions contemplated in this ordinance are consistent, on balance, with the
8 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board
9 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
10 Board of Supervisors in File No. 131063, and is incorporated herein by reference.

11 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code
12 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth
13 in Planning Commission Resolution No. 19099 and the Board incorporates such reasons
14 herein by reference. A copy of Planning Commission Resolution No. 19099 is on file with the
15 Board of Supervisors in File No. 131063.

16
17 Section 2. Specific Findings.

18 1. San Francisco has long had a housing shortage. The housing market continues to
19 be tight and housing costs are beyond the reach of many households.

20 2. Policy 1.5 of the City's 2009 Housing Element states that adding new units in
21 existing residential buildings represents a simple and cost-effective method of expanding the
22 City's housing supply.

23 3. In Section 65852.150 of the California Government Code, the State Legislature
24 finds and declares that second units are a valuable form of housing in California. Permitting
25 the creation of in-law units in existing residential buildings within the Castro Street

1 Neighborhood Commercial District and nearby will provide additional housing without
2 changing the built character of this established, already dense, and transit-rich neighborhood.
3 It also “greens” San Francisco by efficiently using existing buildings and allowing more
4 residents to live within walking distance of transit, shopping, and services.

5
6 Section 3. The Planning Code is hereby amended by revising Section 715.1 and the
7 Section 715 Zoning Control Table, to read as follows:

8 **SEC. 715.1. CASTRO STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**

9 (a) *The Castro Street District.* The Castro Street District is situated in Eureka Valley,
10 close to the geographic center of San Francisco between the Mission District, Twin Peaks,
11 and Upper Market Street. The physical form of the district is a crossing at Castro and 18th
12 Streets, the arms of which contain many small, but intensely active commercial businesses.
13 The multi-purpose commercial district provides both convenience goods to its immediate
14 neighborhood as well as comparison shopping goods and services on a specialized basis to a
15 wider trade area. Commercial businesses are active both in the daytime and late into the
16 evening and include a number of gay-oriented bars and restaurants, as well as several
17 specialty clothing and gift stores. The district also supports a number of offices in converted
18 residential buildings.

19 (b) *Intent of Controls.* The Castro Street District controls are designed to maintain
20 existing small-scale development and promote a balanced mix of uses. Building standards
21 permit small-scale buildings and uses and protect rear yards above the ground story and at
22 residential levels. In new buildings, most commercial uses are permitted at the ground and
23 second stories. Special controls are necessary to preserve the existing equilibrium of
24 neighborhood-serving convenience and specialty commercial uses. In order to maintain
25 convenience stores and protect adjacent residential livability, controls authorize some

1 additional eating and drinking establishments with a conditional use, permit self-service
2 specialty food establishments, and permit with certain limitations new late-night uses, adult
3 and other entertainment, and financial service uses. The continuous retail frontage is
4 maintained by prohibiting most automobile and drive-up uses.

5 Housing development in new buildings is encouraged above the second story. Existing
6 housing units are protected by limitations on demolitions and upper-story conversions.

7 (c) **“In-Law Units.** “In-Law Units,” which are also known as Secondary Units or Accessory
8 Dwelling Units, are allowed in the Castro Street Neighborhood Commercial District and on a lot
9 within 1,750 feet of the District boundaries, excluding any lot within 500 feet of Block 2623, Lots 116
10 through 154. For purposes of this Section, an In-Law Unit is defined as an additional dwelling unit that
11 (1) is permitted to be constructed within the envelope of an existing building zoned for residential use
12 or within the envelope of an existing auxiliary structure on the same lot and (2) will be constructed with
13 a complete or partial waiver from the Zoning Administrator of the density limits and/or the parking,
14 rear yard, exposure, or open space standards of this Code pursuant to the Special Provisions in Table
15 715 and Section 307(l).

16 (1) **Monitoring of Affordability.** The Department shall establish a system to monitor the
17 affordability of the In-Law Units authorized to be constructed in the Castro Street Neighborhood
18 Commercial District by this Section 715.1. Property owners shall provide the Department with rent
19 information as requested by the Department. The Board of Supervisors recognizes that property owners
20 and tenants generally consider rental information sensitive and do not want it publicly disclosed. The
21 intent of the Board is for the Department to obtain the information so that it can be used by the
22 Department in aggregate form, not in a manner that would be linked to specific individuals or units.
23 The Department shall only request rental information from property owners if the notice includes the
24 statement that the Department is acquiring it in confidence and will publicly disclose it only in
25 aggregate form. The Department shall not ask property owners to provide rental information if it

determines, after consulting with the City Attorney's Office, that the information would be publicly disclosable under federal, state, or local law in nonaggregated form.

(2) **Department Report.** The Department shall publish a report one year after the effective date of Subsection (c) that describes and evaluates the types of units being developed and their affordability rates. The report shall contain such additional information as the Director determines would inform decisionmakers and the public on the effectiveness and implementation of Subsection (c) and make recommendations for any amendments or expansion of areas where In-Law Units should be constructed. In subsequent years, information on In-Law Units shall be included in the Housing Inventory.

**SEC. 715. CASTRO STREET NEIGHBORHOOD COMMERCIAL DISTRICT
ZONING CONTROL TABLE**

No.	Zoning Category	§ References			Castro Street
					Controls by Story
		§ 790.118	1st	2nd	3rd+

RESIDENTIAL STANDARDS AND USES					
715.90	Residential Use	§ 790.88	P	P	P
715.91	Residential Density, Dwelling Units	§§ 207, 207.1, 790.88(a)	Generally, 1 unit per 600 sq. ft. lot area § 207.4#		
715.92	Residential Density, Group Housing	§§ 207.1, 790.88(b)	Generally, 1 bedroom per 210 sq. ft. lot area		

			§ 208		
715.93	Usable Open Space [Per Residential Unit]	§§ 135, 136	Generally, either 80 sq. ft. if private, or 100 sq. ft. if common § 135(d)#		
715.94	Off-Street Parking, Residential	§§ 150, 153 - 157, 159 - 160, 204.5	Generally, 1 space for each dwelling unit §§ 151, 161(a) (g)#		
715.95	Community Residential Parking	§ 790.10	C	C	C

**SPECIFIC PROVISIONS FOR CASTRO STREET
NEIGHBORHOOD COMMERCIAL DISTRICT**

Article 7 Code Section		Other Code Section	Zoning Controls
§ 715.21	§ 121.1		Use Size shall generally not exceed 4,000 square feet except that an Institution, Other Large as defined in Section 790.50 that is operated by a non-profit and is neighborhood-serving may exceed 4,000 sq. ft. by Conditional Use Authorization.
§ 715.31	§ 608.10		UPPER MARKET STREET SPECIAL SIGN DISTRICT Boundaries: Applicable only for the portions of the Castro Street NCD as mapped on Sectional Map SSD Controls: Special restrictions and limitations for signs
§ 715.32			
§ 715.44	§ 790.91		CASTRO STREET LIQUOR LICENSES FOR RESTAURANTS Boundaries: Applicable to the Castro Street Neighborhood Commercial District

		<p>Controls: A Restaurant Use may only add ABC license types 47, 49 or 75 as a conditional use on the ground level if, in addition to the criteria set forth in Section 303, the Planning Commission finds that the restaurant is operating as a Bona Fide Eating Place, as defined in Section 790.142 of this Code. Should a restaurant fail to operate as a Bona Fide Eating Place for any length of time, the conditional use authorization shall be subject to immediate revocation.</p>
<p>§ 715.54</p>	<p>§ 790.60, <u>§ § 29.1-</u> <u>29.32</u> 1900 Health Code</p>	<p align="center">MESSAGE ESTABLISHMENT</p> <p>Controls: Massage shall generally be subject to Conditional Use authorization. Certain exceptions to the Conditional Use requirement for massage are described in Section 790.60(c). When considering an application for a conditional use permit pursuant to this subsection, the Planning Commission shall consider, in addition to the criteria listed in Section 303(c), the additional criteria described in Section 303(o).</p>
<p>§ 715.68</p>	<p>§ 249.35</p>	<p align="center">FRINGE FINANCIAL SERVICE RESTRICTED USE DISTRICT (FFSRUD)</p> <p>Boundaries: The FFSRUD and its 1/4 mile buffer includes, but is not limited to, the Castro Street Neighborhood Commercial District.</p> <p>Controls: Within the FFSRUD and its 1/4 mile buffer, fringe financial services are NP pursuant to Section 249.35. Outside the FFSRUD and its 1/4 mile buffer, fringe financial services are P subject to the restrictions set forth in Subsection 249.35(c)(3).</p>
<p>§ 715</p>		<p align="center"><u>IN-LAW UNITS</u></p> <p align="center"><u>Boundaries: The Castro Street NCD and on a lot within 1,750 feet of the District boundaries, excluding any lot within 500 feet of Block 2623, Lots 116</u></p>

1 through 154.

2 **Controls:** An “In-Law Unit,” as defined in Section 715, is permitted to be
3 constructed within an existing building zoned for residential use or within an
4 existing and authorized auxiliary structure on the same lot under the following
5 conditions:

6 (1) An In-Law Unit shall be constructed entirely within the existing building
7 envelope.

8 (2) For buildings that have no more than 10 existing dwelling units, one In-
9 Law Unit is permitted; for buildings that have more than 10 existing dwelling units,
10 two In-Law Units are permitted.

11 (3) An In-Law Unit shall not exceed 750 square feet of habitable space.

12 (4) An In-Law Unit shall not be constructed using space from an existing
13 dwelling unit.

14 (5) Pursuant to the provisions of Section 307(l) of this Code, an In-Law Unit
15 may receive a waiver of the density limits and/or parking, rear yard, exposure, and
16 open space standards of this Code from the Zoning Administrator; provided,
17 however, that if the existing building or any existing dwelling unit within the
18 building is subject to the provisions of the San Francisco Residential Rent
19 Stabilization and Arbitration Ordinance (Chapter 37 of the San Francisco
20 Administrative Code), the property owner shall submit to the Department (i) a
21 proposed agreement demonstrating that the In-Law Unit(s) are not subject to the
22 Costa Hawkins Rental Housing Act (California Civil Code Section 1954.50)
23 because, under Section 1954.52(b), the owner has entered into this agreement with
24 the City in consideration for a direct financial contribution or any other form of
25 assistance specified in California Government Code Sections 65915 et seq.

	<p>1 (<i>“Agreement”</i>) and (ii) if the Planning Director determines necessary, an Affidavit 2 containing information about the direct financial contribution or other form of 3 assistance provided to the property owner. The property owner and the Planning 4 Director (or his designee), on behalf of the City, will execute the Agreement, which 5 shall be reviewed and approved by the City Attorney’s Office. The Agreement shall 6 be approved prior to the City’s issuance of the First Construction Document, as 7 defined in Section 107A.13.1 of the San Francisco Building Code.</p>
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9 Section 4. The Planning Code is hereby amended by revising Section 307, to read as
10 follows:

11 **SEC. 307. OTHER POWERS AND DUTIES OF THE ZONING ADMINISTRATOR.**

12 In addition to those specified in Sections 302 through 306, and Sections 316 through
13 316.6 of this Code, the Zoning Administrator shall have the following powers and duties in
14 administration and enforcement of this Code. The duties described in this Section shall be
15 performed under the general supervision of the Director of Planning, who shall be kept
16 informed of the actions of the Zoning Administrator.

17 * * * *

18 (l) Exceptions from Certain Specific Code Standards through Administrative Review in the
19 Castro Street Neighborhood Commercial District and within 1,750 feet of the District boundaries,
20 excluding any lot within 500 feet of Block 2623, Lots 116 through 154.

21 The Zoning Administrator may allow complete or partial relief from the density limits and from
22 the parking, rear yard, exposure, and open space requirements of this Code when modification of the
23 requirement would facilitate the construction of an In-Law Unit, as defined in Section 715.1 of this
24 Code. The exposure requirements of Section 140 may be satisfied through windows facing a 15 foot by
25 15 foot rear yard. In considering any request for complete or partial relief from these Code

1 requirements, the Zoning Administrator shall facilitate the construction of such In-Law Units to the
2 extent feasible and shall consider any criteria elsewhere in this Section 307 that he or she determines to
3 be applicable.

4 Section 5. The Administrative Code is hereby amended by revising Section 37.2, to
5 read as follows:

6 * * * *

7 (r) **Rental Units.** All residential dwelling units in the City and County of San Francisco
8 together with the land and appurtenant buildings thereto, and all housing services, privileges,
9 furnishings and facilities supplied in connection with the use or occupancy thereof, including
10 garage and parking facilities.

11 Garage facilities, parking facilities, driveways, storage spaces, laundry rooms, decks,
12 patios, or gardens on the same lot, or kitchen facilities or lobbies in single room occupancy
13 (SRO) hotels, supplied in connection with the use or occupancy of a unit, may not be severed
14 from the tenancy by the landlord without just cause as required by Section 37.9(a). Any
15 severance, reduction or removal permitted under this Section 37.2(r) shall be offset by a
16 corresponding reduction in rent. Either a landlord or a tenant may file a petition with the Rent
17 Board to determine the amount of the rent reduction.

18 The term "rental units" shall not include:

19 (1) Housing accommodations in hotels, motels, inns, tourist houses, rooming and
20 boarding houses, provided that at such time as an accommodation has been occupied by a
21 tenant for 32 continuous days or more, such accommodation shall become a rental unit
22 subject to the provisions of this Chapter; provided further, no landlord shall bring an action to
23 recover possession of such unit in order to avoid having the unit come within the provisions of
24 this Chapter. An eviction for a purpose not permitted under Section 37.9(a) shall be deemed
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1 to be an action to recover possession in order to avoid having a unit come within the
2 provisions of this Chapter;

3 (2) Dwelling units in nonprofit cooperatives owned, occupied and controlled by a
4 majority of the residents or dwelling units solely owned by a nonprofit public benefit
5 corporation governed by a board of directors the majority of which are residents of the
6 dwelling units and where it is required in the corporate by-laws that rent increases be
7 approved by a majority of the residents;

8 (3) Housing accommodation in any hospital, convent, monastery, extended care
9 facility, asylum, residential care or adult day health care facility for the elderly which must be
10 operated pursuant to a license issued by the California Department of Social Services, as
11 required by California Health and Safety Chapters 3.2 and 3.3; or in dormitories owned and
12 operated by an institution of higher education, a high school, or an elementary school;

13 (4) Except as provided in Subsections (A), (B) and (C), dwelling units whose rents
14 are controlled or regulated by any government unit, agency or authority, excepting those
15 unsubsidized and/or unassisted units which are insured by the United States Department of
16 Housing and Urban Development; provided, however, that units in unreinforced masonry
17 buildings which have undergone seismic strengthening in accordance with Building Code
18 Chapters 16B and 16C shall remain subject to the Rent Ordinances to the extent that the
19 ordinance is not in conflict with the seismic strengthening bond program or with the program's
20 loan agreements or with any regulations promulgated thereunder;

21 (A) For purposes of Sections 37.2, 37.3(a)(10)(A), 37.4, 37.5, 37.6, 37.9, 37.9A,
22 37.10A, 37.11A and 37.13, and the arbitration provisions of Sections 37.8 and 37.8A
23 applicable only to the provisions of Sections 37.3(a)(10)(A), the term "rental units" shall
24 include units occupied by recipients of tenant-based rental assistance where the tenant-based
25 rental assistance program does not establish the tenant's share of base rent as a fixed

1 percentage of a tenant's income, such as in the Section 8 voucher program and the "Over-
2 FMR Tenancy" program defined in 24 CFR Section 982.4;

3 (B) For purposes of Sections 37.2, 37.3(a)(10)(B), 37.4, 37.5, 37.6, 37.9, 37.9A,
4 37.10A, 37.11A and 37.13, the term "rental units" shall include units occupied by recipients of
5 tenant-based rental assistance where the rent payable by the tenant under the tenant-based
6 rental assistance program is a fixed percentage of the tenant's income; such as in the Section
7 8 certificate program and the rental subsidy program for the Housing Opportunities for
8 Persons with Aids ("HOPWA") program (42 U.S.C. Section 12901 et seq., as amended);

9 (C) The term "rental units" shall include units in a building for which tax credits
10 are reserved or obtained pursuant to the federal low income housing tax credit program
11 (LIHTC, Section 42 of the Internal Revenue Code, 26 U.S.C. Section 42), that satisfy the
12 following criteria:

13 (i) Where a tenant's occupancy of the unit began before the applicable
14 LIHTC regulatory agreement was recorded; and,

15 (ii) Where the rent is not controlled or regulated by any use restrictions
16 imposed by the City and County of San Francisco, the San Francisco Redevelopment
17 Agency, the State of California Office of Housing and Community Development, or the United
18 States Department of Housing and Urban Development.

19 Nothing in this Section 37.2(r)(4)(C) precludes a landlord from seeking an exemption
20 from rent regulation on the basis of substantial rehabilitation under Section 37.2(r)(6).

21 This Section 37.2(r)(4)(C) definition of "rental unit" shall apply to any unit where the
22 qualifying tenant (see Section 37.2(r)(4)(C)(i)) is in possession of the unit on or after the
23 effective date of this ordinance (Ord. No. 281-06), including but not limited to any unit where
24 the tenant has been served with a notice to quit but has not vacated the unit and there is no
25

1 final judgment against the tenant for possession of the unit as of the effective date of this
2 ordinance (Ord. No. 281-06).

3 (D) The term “rental units” shall include In-Law Units constructed pursuant to Section
4 715.1 of the Planning Code and the Section 715 Zoning Control Table and that have received a
5 complete or partial waiver of the density limits and/or the parking, rear yard, exposure, and open space
6 standards from the Zoning Administrator pursuant to Planning Code Section 307(l), provided that the
7 building containing the In-Law Unit(s) or any unit within the building is already subject to this
8 Chapter.

9 (5) Rental units located in a structure for which a certificate of occupancy was first
10 issued after the effective date of this ordinance; (A) except as provided for certain categories
11 of units and dwellings by Section 37.3(d) and Section 37.9A(b) of this Chapter, (B) except as
12 provided in a development agreement entered into by the City under San Francisco
13 Administrative Code Chapter 56; and (C) except as provided for foreclosed units and
14 dwellings by Section 37.9D.

15 (6) Dwelling units in a building which has undergone substantial rehabilitation after
16 the effective date of this ordinance; provided, however, that RAP rental units are not subject to
17 this exemption; and except as provided for foreclosed units and dwellings by Section 37.9D.

18 (7) Dwellings or units otherwise subject to this Chapter 37, to the extent such
19 dwellings or units are partially or wholly exempted from rent increase limitations by the Costa-
20 Hawkins Rental Housing Act (California Civil Code Sections 1954.50, et seq.) and/or San
21 Francisco Administrative Code Section 37.3(d).

22 * * * *

23 Section 6. This section is uncodified. The Director of the Department of Building
24 Inspection shall determine whether equivalencies from the provisions of the San Francisco
25 Building Code can be developed in order to facilitate the construction of the In-Law Units

1 defined in Planning Code Section 715, shall prepare one or more Administrative Bulletins to
2 define and implement the code equivalencies, and shall coordinate with the Zoning
3 Administrator in the development of any joint Administrative Bulletins that the Planning and
4 Building Departments determine are necessary or desirable in order to implement the policy
5 and provisions of this ordinance. Any Administrative Bulletins developed jointly or by either
6 Department shall be completed within one year of the effective date of this ordinance.
7

8 Section 7. Effective Date. This ordinance shall become effective 30 days after
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
11 of Supervisors overrides the Mayor’s veto of the ordinance.
12

13 Section 8. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
17 additions, and Board amendment deletions in accordance with the “Note” that appears under
18 the official title of the ordinance.
19

20 Section 9. Severability. If any section, subsection, sentence, clause, phrase, or word of
21 this Section is for any reason held to be invalid or unconstitutional by a decision of any court
22 of competent jurisdiction, such decision shall not affect the validity of the remaining portions of
23 the Section. The Board of Supervisors hereby declares that it would have passed this Section
24 and each and every section, subsection, sentence, clause, phrase, and word not declared
25

1 invalid or unconstitutional without regard to whether any other portion of this Section would be
2 subsequently declared invalid or unconstitutional.

3
4 Section 10. Directions to Clerk. The Clerk is hereby directed to submit a copy of this
5 ordinance to the California Department of Housing and Community Development within 60
6 days following adoption pursuant to Section 65852.2(h) of the California Government Code.

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

10 By: _____
11 JUDITH A. BOYAJIAN
12 Deputy City Attorney

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