

File No. 140954

Committee Item No. 2  
Board Item No. 15

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee: Land Use & Transportation

Date Mar. 2, 2015

Board of Supervisors Meeting

Date Mar. 10, 2015

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form                            |
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Completed by: Andrea Ausberry Date Feb. 25, 2015

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

[Planning Code - Exceptions from Dwelling Unit Density Limits and from Other Specified Code Requirements]

1  
2 **Ordinance amending the Planning Code to permit exceptions from dwelling unit**  
3 **density limits and other requirements of the Code when adding Dwelling Units to**  
4 **existing buildings undergoing seismic retrofitting; deleting the requirement that a new**  
5 **In-Law Unit constructed in and near the Castro Street Neighborhood Commercial**  
6 **District be limited to 750 square feet; correcting outdated cross-references and Code**  
7 **language; affirming the Planning Department’s California Environmental Quality Act**  
8 **determination; and making findings of consistency with the General Plan, and the eight**  
9 **priority policies of Planning Code, Section 101.1.**

10  
11 **NOTE: Unchanged Code text and uncodified text** are in plain Arial font.  
12 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
13 **Deletions to Codes** are in ~~italics Times New Roman font~~.  
14 **Board amendment additions** are in double-underlined Arial font.  
15 **Board amendment deletions** are in ~~Arial font~~.  
16 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
17 subsections or parts of tables.

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

19 Section 1. Findings.

20 (a) The Planning Department has determined that the actions contemplated in this  
21 ordinance comply with the California Environmental Quality Act (California Public Resources  
22 Code Sections 21000 et seq.). The Board of Supervisors hereby affirms this determination.  
23 Said determination is on file with the Clerk of the Board of Supervisors in File No. 140954 and  
24 is incorporated herein by reference.

25 (b) On February 12, 2015, the Planning Commission, in Resolution No. R-19322,  
adopted findings that the actions contemplated in this ordinance are consistent, on balance,  
with the City’s General Plan and eight priority policies of Planning Code Section 101.1. The

1 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of  
2 the Board of Supervisors in File No. 140954, and is incorporated herein by reference.

3 (c) Pursuant to Planning Code Section 302, this Board finds that the actions  
4 contemplated in this ordinance will serve the public necessity, convenience, and welfare for  
5 the reasons set forth in Planning Commission Resolution No. R-19322 and the Board  
6 incorporates such reasons herein by reference. A copy of the Planning Commission  
7 Resolution No. R-19322 is on file with the Clerk of the Board of Supervisors in File No.  
8 140954.

9 Section 2. The Planning Code is hereby amended by revising Sections 207, 207.1,  
10 208 and 307, and deleting Section 207.4, to read as follows:

11 **~~SEC. 207. DENSITY OF DWELLING UNITS DENSITY LIMITS IN R-DISTRICTS.~~**

12 (a) Applicability. The density of ~~d~~Dwelling ~~u~~Units permitted in the various Districts  
13 shall be as set forth in the Zoning Control Table for the district in which the lot is located. The  
14 term "Dwelling Unit" is defined in Section 102 of this Code. In districts where no density limit is  
15 specified, density shall not be limited by lot area but rather by the applicable requirements and  
16 limitations set forth elsewhere in this Code. Such requirements and limitations include, but are not  
17 limited to, height, bulk, setbacks, open space, exposure and unit mix as well as applicable design  
18 guidelines, elements and area plans of the General Plan and design review by the Planning  
19 Department.

20 **~~SEC. 207.1. RULES FOR CALCULATION OF DWELLING UNIT DENSITIES.~~**

21 (b) Rules for Calculating Dwelling Unit Density. In districts that establish a maximum  
22 dwelling unit density, the following rules shall apply in the calculation of dwelling unit densities  
23 under this Code:

24 (a) (1) The entire amount of lot area per Dwelling Unit specified by the Code shall  
5 be required for each Dwelling Unit on the lot. A remaining fraction of one-half or more of the

1 minimum of lot area per Dwelling Unit shall be adjusted upward to the next higher whole  
2 number of Dwelling Units.

3 ~~(b)~~ (2) Where permitted by this Code, two or more of the dwelling and other housing  
4 uses specified in the Code may be located on a single lot, either in one structure or in  
5 separate structures, provided that the specified density limits are not exceeded by the total of  
6 such combined uses. Where Dwelling Units and Group Housing are combined, the maximum  
7 permitted density for Dwelling Units and for Group Housing shall be prorated to the total lot  
8 area according to the quantities of these two uses that are combined on the lot.

9 ~~(c)~~ (3) Where any portion of a lot is narrower than five feet, such a portion shall not  
10 be counted as part of the lot area for purposes of calculating the permitted dwelling density.

11 ~~(d)~~ (4) No private right-of-way used as the principal vehicular access to two or more  
12 lots shall be counted as part of the lot area of any such lot for purposes of calculating the  
13 permitted dwelling unit density.

14 ~~(e)~~ (5) Where a lot is divided by a use district boundary line, the dwelling unit  
15 density limit for each district shall be applied to the portion of the lot in that district, and none  
16 of the Dwelling Units attributable to the district permitting the greater density shall be located  
17 in the district permitting the lesser density.

18 (6) In Neighborhood Commercial Districts, the dwelling unit density shall be at a  
19 density ratio not exceeding the number of Dwelling Units permitted in the nearest Residential District,  
20 provided that the maximum density ratio shall in no case be less than the amount set forth in the Zoning  
21 Control Table for the district in which the lot is located. The distance to each Residential District shall  
22 be measured either from the midpoint of the front lot line or from a point directly across the street  
23 therefrom, whichever permits the greater density.

24 (c) Exceptions to Dwelling Unit Density Limits.  
25

1            ~~f)~~    (1) Affordable Units in Projects with 20 percent or more Affordable Units. For  
2 projects that are not located in any RH-1 or RH-2 zoning district, or are not seeking and  
3 receiving a density bonus under the provisions of California Government Code Section 65915,  
4 where 20 percent or more of the Dwelling Units on-site are "Affordable Units," the on-site  
5 Affordable Units shall not count towards the calculation of dwelling unit density. This Planning  
6 Code Section does not provide exceptions to any other Planning Code requirements such as  
7 height or bulk. For purposes of this Section 207.1, "Affordable Units" shall be defined as  
8 meeting (1) the criteria of Section 406(b); (2) the requirements of Section 415 et seq. for on-  
9 site units; or (3) restricted units in a project using California Debt Limit Allocation Committee  
10 (CDLAC) tax-exempt bond financing and 4 percent tax credits under the Tax Credit Allocation  
11 Committee (TCAC). If a project sponsor proposes to provide "Affordable Units" that are not  
12 restricted by any other program, in order to receive the benefit of the additional density  
13 permitted under this Subsection (c)(1) ~~f)~~ or Subsection (c)(2) ~~(g)~~, the project sponsor shall  
14 elect and the Planning Department and MOHCD shall be authorized to enforce, restricting the  
15 units as affordable under Planning Code Section 415.6 up to a maximum of 20 percent of the  
16 units in the principal project. The project sponsor shall make such election through the  
17 procedures described in Section 415.5(g) including submitting an Affidavit of Compliance  
18 indicating the project sponsor's election to pursue the benefits of Subsection (c)(1) ~~f)~~ or (c)(2)  
19 ~~(g)~~ and committing to 20% on-site units restricted under Section 415.6 prior to approval by the  
20 Planning Commission or Planning Department staff. If a project sponsor obtains the  
21 exemption from the density calculation for Affordable Units provided in this subsection, the  
22 exemption shall be recorded against the property. Any later request to decrease the number  
23 of Affordable Units shall require the project to go back to the Planning Commission or  
24 Planning Department, whichever entity approved the project as a whole.

5

1           ~~(g)~~    **(2) Affordable Units in RTO Districts.** In the RTO District, on site Dwelling Units  
2 that are "Affordable Units," as defined in Subsection ~~(a)~~ ~~(f)~~, shall not count toward density  
3 calculations or be limited by lot area.

4           ~~(h)~~    **(3) Double Density for Senior Housing in RH, RM, RC, and NC Districts.**  
5 Senior Housing, as defined in and meeting all the criteria and conditions defined in Section  
6 102 of this Code, is permitted up to twice the dwelling unit density otherwise permitted for the  
7 District.

8                           **(A)** Projects in RC Districts or within one-quarter of a mile from an RC or  
9 NC-2 (Small-Scale Neighborhood Commercial District) zoned area or higher, including Named  
10 Commercial Districts, and located in an area with adequate access to services including but  
11 not limited to transit, shopping and medical facilities, shall be principally permitted.

12                           **(B)** Projects in RH and RM Districts located more than one-quarter of a  
13 mile from an RC or NCD-2 (Small-Scale Neighborhood Commercial District) zoned area or  
14 higher, including Named Commercial Districts, shall require Conditional Use authorization.

15                           ~~**(4) In-Law Units Within and Adjacent to the Castro Neighborhood**~~  
16 ~~**Commercial District. Accessory Dwelling Units.**~~

17                           **(A) Definition.** ~~An "Accessory Dwelling Unit," "In-Law Unit," also known as a~~  
18 ~~Secondary Unit or Accessory Dwelling In-Law Unit, is defined for purposes of this Subsection~~  
19 ~~207(c)(4) as an additional Dwelling Unit that:~~

20   ~~(i) is permitted to be constructed entirely within the existing built~~  
21 ~~envelope, as it existed three (3) years prior to the time of the application, of an existing building~~  
22 ~~zoned for Residential use or within the envelope of an existing and authorized auxiliary structure on~~  
23 ~~the same lot; and~~

1 (ii) will be constructed with a complete or partial waiver from the Zoning  
2 Administrator of the density limits and/or the parking, rear yard, exposure, or open space standards of  
3 this Code pursuant to the provisions of this Section 207(c)(4) and Section 307(l) of this Code.

4 As used in this Section 207, the term Accessory Dwelling Unit is separate and distinct  
5 from the term "dwelling units accessory to other uses" in Section 204.4.

6 (B) Applicability. The exceptions permitted by this Subsection 207(c)(4) shall  
7 apply only to lots:

8 (i) lots within the Castro Street Neighborhood Commercial District  
9 (NCD); or

10 (ii) on a lot within 1,750 feet of the Castro Street NCD boundaries,  
11 excluding any lot within 500 feet of Block 2623 Lots 116 through 154; and

12 (ii) lots located in a building undergoing mandatory seismic  
13 retrofitting in compliance with Section 34B of the Building Code or voluntary seismic  
14 retrofitting in compliance with the San Francisco Department of Building Inspection's  
15 Administrative Bulletin 094.

16 (C) Controls. An Accessory Dwelling Unit, "In-Law Unit," as defined above  
17 is permitted to be constructed within an existing building zoned for Residential use or within an  
18 existing and authorized auxiliary structure on the same lot under the following conditions:

19 (i) An Accessory Dwelling Unit shall not be constructed using  
20 space from an existing Dwelling Unit.

21 (ii) Castro Street NCD and Surrounding Area. For Accessory  
22 Dwelling Units on lots covered by Subsection 207(c)(4)(B)(i):

23 a. An In-Law Accessory Dwelling Unit shall not be permitted  
24 in any RH-1(D) zoning district.

5 (ii) b. An In-Law Accessory Dwelling Unit shall be constructed

1 entirely within the existing building envelope or auxiliary structure, as it existed three (3) years  
2 prior to the time of the application.

3 (iii)c. For buildings that have no more than 10 existing dwelling  
4 units, one In-Law Accessory Dwelling Unit is permitted; for buildings that have more than 10  
5 existing dwelling units, two In-Law Accessory Dwelling Units are permitted.

6 (iv) An In-Law Unit shall not be constructed using space  
7 from an existing Dwelling Unit.

8 (iii) Buildings Undergoing Seismic Retrofitting. For Accessory  
9 Dwelling Units on lots covered by Subsection 207(c)(4)(B)(ii):

10 a. An Accessory Dwelling Unit shall not be permitted in any  
11 RH-1 or RH-1(D) zoning district.

12 b. If allowed by the Building Code, a building in which an  
13 Accessory Dwelling Unit is constructed may be raised up to three additional feet in height to  
14 create ground-floor ceiling heights suitable for residential use.

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



1 financial contribution or other form of assistance provided to the property owner. The property owner  
2 and the Planning Director (or his designee), on behalf of the City, will execute the Agreement, which  
3 shall be reviewed and approved by the City Attorney's Office. The Agreement shall be approved prior  
4 to the City's issuance of the First Construction Document, as defined in Section 107A.13.1 of the San  
5 Francisco Building Code.

6 **(D) Monitoring Program.**

7 **(i) Monitoring of Affordability.** The Department shall establish a system  
8 to monitor the affordability of the In-Law Accessory Dwelling Units authorized to be constructed by  
9 this Subsection 207(c)(4). Property owners shall provide the Department with rent information as  
10 requested by the Department. The Board of Supervisors recognizes that property owners and tenants  
11 generally consider rental information sensitive and do not want it publicly disclosed. The intent of the  
12 Board is for the Department to obtain the information so that it can be used by the Department in  
13 aggregate form, not in a manner that would be linked to specific individuals or units. The Department  
14 shall only request rental information from property owners if the notice includes the statement that the  
15 Department is acquiring it in confidence and will publicly disclose it only in aggregate form. The  
16 Department shall not ask property owners to provide rental information if it determines, after  
17 consulting with the City Attorney's Office, that the information would be publicly disclosable under  
18 federal, state, or local law in nonaggregated form.

19 **(ii) Department Report.** The Department shall publish a report one  
20 year after the effective date of this Subsection 207(c)(4) by April 1, 2016, that describes and  
21 evaluates the types of units being developed and their affordability rates. The report shall contain such  
22 additional information as the Director determines would inform decisionmakers and the public on the  
23 effectiveness and implementation of the Subsection and make recommendations for any amendments or  
24 expansion of areas where In-Law Accessory Dwelling Units should be constructed. In subsequent  
25 years, information on In-Law Accessory Dwelling Units shall be included in the Housing Inventory.

1                                    ~~(5) Additional Dwelling Units in Buildings Undergoing Seismic~~

2 ~~Retrofitting.~~

3                                    ~~\_\_\_\_\_ (A) Purpose.~~ San Francisco requires the seismic retrofitting of certain  
4 buildings to protect residents and preserve housing in the event of an earthquake. The  
5 purpose of this Subsection 207(c)(5) is to provide exceptions from or modification of certain  
6 requirements of this Code in order to foster the creation of new Dwelling Units within existing  
7 buildings as they are seismically retrofitted.

8                                    ~~\_\_\_\_\_ (B) Applicability.~~ The exceptions permitted by this Subsection shall  
9 apply to the addition of Dwelling Units which meet all of the following criteria. They are:

10                                   ~~\_\_\_\_\_ (i)~~ located in a building undergoing mandatory seismic retrofitting  
11 in compliance with Section 34B of the Building Code or voluntary seismic retrofitting in  
12 compliance with the San Francisco Department of Building Inspection's Administrative Bulletin  
13 094;

14                                   ~~\_\_\_\_\_ (ii)~~ constructed entirely within an existing building zoned for  
15 Residential use, or within an existing and authorized auxiliary structure on the same lot. If  
16 allowed by the Building Code, buildings may be raised upon to three feet to create ground-  
17 floor ceiling heights suitable for residential use;

18                                   ~~\_\_\_\_\_ (iii)~~ not located in an RH-1 or RH-1(D) District;

19                                   ~~\_\_\_\_\_ (iv)~~ not constructed using space from an existing unit; and

20                                   ~~\_\_\_\_\_ (v)~~ if the existing building or any existing Dwelling Unit within the  
21 building is subject to the provisions of the San Francisco Residential Rent Stabilization and  
22 Arbitration Ordinance (Chapter 37 of the Administrative Code), the property owner shall  
23 submit to the Department (i) a proposed agreement demonstrating that the new units are not  
24 subject to the Costa Hawkins Rental Housing Act (California Civil Code Section 1954.50)  
25 because, under Section 1954.52(b), the owner has entered into this agreement with the City

1 in consideration for a direct financial contribution or any other form of assistance specified in  
2 California Government Code Sections 65915 et seq. ("Agreement") and (ii) if the Planning  
3 Director determines necessary, an Affidavit containing information about the direct financial  
4 contribution or other form of assistance provided to the property owner. The property owner  
5 and the Planning Director (or his designee), on behalf of the City, will execute the Agreement,  
6 which shall be reviewed and approved by the City Attorney's Office. The Agreement shall be  
7 approved prior to the City's issuance of the First Construction Document, as defined in  
8 Section 107A.13.1 of the San Francisco Building Code.

9 \_\_\_\_\_ (C) **Exceptions Permitted.** Dwelling Units meeting all of the criteria of  
10 Subsection 207(c)(5) above are exempt from the density limits, parking, rear yard exposure,  
11 or open space standards of this Code.

12 ***SEC. 207.4. DENSITY OF DWELLING UNITS IN NEIGHBORHOOD COMMERCIAL***  
13 ***DISTRICTS.***

14 *The density of dwelling units in Neighborhood Commercial Districts shall be as stated in the*  
15 *following subsections:*

16 *(a) The rules for calculation of dwelling unit densities set forth in Section 207.1 of this Code*  
17 *shall apply in Neighborhood Commercial Districts, except that any remaining fraction of 1/2 or more of*  
18 *the minimum amount of lot area per dwelling unit shall be adjusted upward to the next higher whole*  
19 *number of dwelling units.*

20 *(b) The dwelling unit density in Neighborhood Commercial Districts shall be at a density ratio*  
21 *not exceeding the number of dwelling units permitted in the nearest Residential District, provided that*  
22 *the maximum density ratio shall in no case be less than the amount set forth in the zoning control*  
23 *table for the district. The distance to each Residential District shall be measured from the midpoint of*  
24 *the front lot line or from a point directly across the street therefrom, whichever permits the greater*  
5 *density.*

1            ~~The dwelling unit density for dwellings specifically designed for and occupied by senior citizens~~  
2 ~~or persons with physical disabilities shall be at a density ratio not exceeding twice the number of~~  
3 ~~dwelling units permitted by the limits set forth in Subsection (a).~~

4            ~~(e) The dwelling unit density in the RCD District and NCT Districts, as listed in Section~~  
5 ~~702.1(b), shall not be limited by lot area, but by the applicable requirements and limitations elsewhere~~  
6 ~~in this Code, including but not limited to height, bulk, setbacks, open space, exposure, and unit mix, as~~  
7 ~~well as by applicable design guidelines, applicable elements and area plans of the General Plan, and~~  
8 ~~design review by the Planning Department.~~

9            **SEC. 208. DENSITY LIMITS LIMITATIONS FOR GROUP HOUSING.**

10            \* \* \* \*

11            (c) The rules for ~~calculating calculation of~~ dwelling unit ~~density densities~~ set forth in  
12 Section 207.1 shall also apply in ~~calculating calculation of~~ the density ~~limits limitations~~ for Group  
13 Housing, ~~except that in NC Districts, any remaining fraction of one half or more of the maximum~~  
14 ~~amount of lot area per Bedroom shall be adjusted upward to the next higher whole number of~~  
15 ~~Bedrooms.~~

16            \* \* \* \*

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

18            In addition to those specified in Sections 302 through 306, and Sections 316 through  
19 316.6 of this Code, the Zoning Administrator shall have the following powers and duties in  
20 administration and enforcement of this Code. The duties described in this Section shall be  
21 performed under the general supervision of the Director of Planning, who shall be kept  
22 informed of the actions of the Zoning Administrator.

23            \* \* \* \*

24            ~~(l) Exceptions from Certain Specific Code Standards through Administrative~~  
25 ~~Review in the Castro Street Neighborhood Commercial District and within 1,750 feet of~~

1 ~~the District boundaries, excluding any lot within 500 feet of Block 2623, Lots 116~~  
2 ~~through 154 for Accessory Dwelling Units from Certain Specific Code Standards~~  
3 ~~through Administrative Review.~~

4 The Zoning Administrator may allow complete or partial relief from the density limits  
5 and from the parking, rear yard, exposure, or open space requirements of this Code when  
6 modification of the requirement would facilitate the construction of an ~~In-Law~~ Accessory  
7 Dwelling Unit, as defined in Section ~~207(c)(4) 715.1~~ of this Code, ~~or an additional Dwelling Unit~~  
8 ~~in a building undergoing seismic retrofitting pursuant to Section 207(c)(5) of this Code.~~ The  
9 exposure requirements of Section 140 apply, except that subsection (a)(2) may be satisfied  
10 through windows facing an open area that is at least 15 feet in every horizontal direction that  
11 is not required to expand on subsequent floors. In considering any request for complete or  
12 partial relief from these Code requirements, the Zoning Administrator shall facilitate the  
13 construction of such ~~In-Law~~ Accessory Dwelling Units to the extent feasible and shall consider  
14 any criteria elsewhere in this Section 307 that he or she determines to be applicable.

15  
16 Section 3. The Planning Code is hereby amended by revising Section 715.1 and the  
17 accompanying Zoning Control Table, to read as follows:

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

19 (a) **The Castro Street District.** The Castro Street District is situated in Eureka Valley,  
20 close to the geographic center of San Francisco between the Mission District, Twin Peaks,  
21 and Upper Market Street. The physical form of the district is a crossing at Castro and 18th  
22 Streets, the arms of which contain many small, but intensely active commercial businesses.  
23 The multi-purpose commercial district provides both convenience goods to its immediate  
24 neighborhood as well as comparison shopping goods and services on a specialized basis to a  
5 wider trade area. Commercial businesses are active both in the daytime and late into the

1 evening and include a number of gay-oriented bars and restaurants, as well as several  
2 specialty clothing and gift stores. The district also supports a number of offices in converted  
3 residential buildings.

4 (b) **Intent of Controls.** The Castro Street District controls are designed to maintain  
5 existing small-scale development and promote a balanced mix of uses. Building standards  
6 permit small-scale buildings and uses and protect rear yards above the ground story and at  
7 residential levels. In new buildings, most commercial uses are permitted at the ground and  
8 second stories. Special controls are necessary to preserve the existing equilibrium of  
9 neighborhood-serving convenience and specialty commercial uses. In order to maintain  
10 convenience stores and protect adjacent residential livability, controls authorize some  
11 additional eating and drinking establishments with a conditional use, permit self-service  
12 specialty food establishments, and permit with certain limitations new late-night uses, adult  
13 and other entertainment, and financial service uses. The continuous retail frontage is  
14 maintained by prohibiting most automobile and drive-up uses.

15 Housing development in new buildings is encouraged above the second story. Existing  
16 housing units are protected by limitations on demolitions and upper-story conversions. In-Law  
17 Accessory Dwelling Units are permitted within the district pursuant to Subsection 207(c)(4) of this  
18 Code.

19 (e) ~~"In-Law Units." "In-Law Units," which are also known as Secondary Units or Accessory  
20 Dwelling Units, are allowed in the Castro Street Neighborhood Commercial District and on a lot  
21 within 1,750 feet of the District boundaries, excluding any lot within an RH-1(D) zoning district or any  
22 lot within 500 feet of Block 2623, Lots 116 through 154. For purposes of this Section, an In-Law Unit is  
23 defined as an additional dwelling unit that (1) is permitted to be constructed entirely within the existing  
24 built envelope, as it existed three (3) years prior to the time of the application, of an existing building  
25 zoned for residential use or within the envelope of an existing auxiliary structure on the same lot and~~

1 ~~(2) will be constructed with a complete or partial waiver from the Zoning Administrator of the density~~  
2 ~~limits and/or the parking, rear yard, exposure, or open space standards of this Code pursuant to the~~  
3 ~~Special Provisions in Table 715 and Section 307(1).~~

4 ~~(1) **Monitoring of Affordability.** The Department shall establish a system to monitor~~  
5 ~~the affordability of the In-Law Units authorized to be constructed in the Castro Street Neighborhood~~  
6 ~~Commercial District by this Section 715.1. Property owners shall provide the Department with rent~~  
7 ~~information as requested by the Department. The Board of Supervisors recognizes that property owners~~  
8 ~~and tenants generally consider rental information sensitive and do not want it publicly disclosed. The~~  
9 ~~intent of the Board is for the Department to obtain the information so that it can be used by the~~  
10 ~~Department in aggregate form, not in a manner that would be linked to specific individuals or units.~~  
11 ~~The Department shall only request rental information from property owners if the notice includes the~~  
12 ~~statement that the Department is acquiring it in confidence and will publicly disclose it only in~~  
13 ~~aggregate form. The Department shall not ask property owners to provide rental information if it~~  
14 ~~determines, after consulting with the City Attorney's Office, that the information would be publicly~~  
15 ~~disclosable under federal, state, or local law in nonaggregated form.~~

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

23  
24 **SEC. Table 715. CASTRO STREET NEIGHBORHOOD COMMERCIAL DISTRICT**  
5 **ZONING CONTROL TABLE**

No.	Zoning Category	§ References	Castro Street		
			Controls		

**BUILDING STANDARDS**

*** 715.12 ****	Rear Yard	§§ 130, 134, 136	Required at the second story and above and at all residential levels § 134(a) (e) #		
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No.	Zoning Category	§ References	Castro Street		
			Controls by Story		
		§ 790.118	1st	2nd	3rd+

\*\*\*\*

**Retail Sales and Services**

**** 715.54 ****	Massage Establishment	§ 790.60, § <del>1900</del> 29.1 - 29.32 Health Code	C#	C#	
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**RESIDENTIAL STANDARDS AND USES**

715.90	Residential Use	§ 790.88	P	P	P
715.91	<i>Residential Dwelling Unit</i> <i>Density, Dwelling Units</i>	§§ 207, 207.1, 790.88(a)	Generally, <u>up to</u> 1 unit per 800 sq. ft. lot area. <u>Certain exceptions permitted by § 207(c)#.</u> § 207.4#		



1	715.92	Residential Density, Group	§§ <del>207, 207.1,</del>	Generally, <i>up to</i> 1 bedroom per 275
2	****	Housing	<del>208, 790.88(b)</del>	sq. ft. lot area
3				§ <del>208</del>

4 \*\*\*\*

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

7 Article 7 Code Section	Other Code Section	Zoning Controls
8 ****		
9		<b><u>IN-LAW ACCESSORY DWELLING UNITS</u></b>
10		<b>Boundaries:</b> The Castro Street NCD and on a lot
11		within 1,750 feet of the District boundaries,
12		excluding any lot within 500 feet of Block 2623,
13		Lots 116 through 154.
14		<b>Controls:</b> An " <u>In-Law Accessory Dwelling Unit</u> ,"
15		as defined in <i>and meeting the requirements of</i>
16	§	Section <u>207(c)(4) 715</u> , is permitted to be
17	<u>207(c)(4)</u>	constructed within an existing building zoned for
18		residential use or within an existing and
19		authorized auxiliary structure on the same lot
20		<i>under the following conditions:</i>
21		<i>(1) An In-Law Unit shall not be permitted in any RH-</i>
22		<i>1(D) zoning district.</i>
23		<i>(2) An In-Law Unit shall be constructed entirely within</i>
24		<i>the existing building envelope.</i>
5		<i>(3) For buildings that have no more than 10 existing</i>

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	<p><del>dwelling units, one In-Law Unit is permitted; for buildings that have more than 10 existing dwelling units, two In-Law Units are permitted.</del></p> <p><del>(4) An In-Law Unit shall not exceed 750 square feet of habitable space.</del></p> <p><del>(5) An In-Law Unit shall not be constructed using space from an existing dwelling unit.</del></p> <p><del>(6) Pursuant to the provisions of Section 307(l) of this Code, and In-Law Unit may receive a waiver of the density limits and parking, rear yard, exposure, or open space standards of this Code from the Zoning Administrator; provided, however, that if the existing building or any existing dwelling unit within the building is subject to the provisions of the San Francisco Residential Rent Stabilization and Arbitration Ordinance (Chapter 37 of the San Francisco Administrative Code), the property owner shall submit to the Department (i) a proposed agreement demonstrating that the In-Law Unit(s) are not subject to the Costa Hawkins Rental Housing Act (California Civil Code Section 1954.50) because, under Section 1954.52(b), the owner has entered into this agreement with the City in consideration for a direct financial contribution or any other form of assistance specified in California Government Code</del></p>
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*Sections 65915 et seq. ("Agreement") and (ii) if the Planning Director determines necessary, an Affidavit containing information about the direct financial contribution or other form of assistance provided to the property owner. The property owner and the Planning Director (or his designee), on behalf of the City, will execute the Agreement, which shall be reviewed and approved by the City Attorney's Office. The Agreement shall be approved prior to the City's issuance of the First Construction Document, as defined in Section 107A.13.1 of the San Francisco Building Code.*

Section 4. The Planning Code is hereby amended by revising Section 790.60, to read as follows:

**SEC. 790.60. MESSAGE ESTABLISHMENT.**

(a) **Definition.** Massage establishments are defined by Sections ~~1900~~ 29.1 - 29.32 of the San Francisco Health Code. The massage establishment shall first obtain a permit from the Department of Public Health pursuant to Section 29.10 ~~1908~~ of the San Francisco Health Code.

\* \* \* \*

Section 5. The Planning Code is hereby amended by revising Section 710.1 and the accompanying Zoning Control Table, to read as follows:

**SEC. 710.1. NC-1 – NEIGHBORHOOD COMMERCIAL CLUSTER DISTRICT.**

\*\*\*\*

**Table SEC. 710. NEIGHBORHOOD COMMERCIAL CLUSTER DISTRICT NC-1  
ZONING CONTROL TABLE**

\*\*\*\*

No.	Zoning Category	§ References	NC-1		
			Controls by Story		
		§ 790.118	1st	2nd	3rd+
<b>Retail Sales and Services</b>					
****		§ 790.60 § <del>1900</del> <u>29.1</u> <u>- 29.32</u>			
710.54	Massage Establishment				
****					
<b>RESIDENTIAL STANDARDS AND USES</b>					
710.90	Residential Use	§ 790.88	P	P	P
710.91	<del>Residential Dwelling Unit</del> Density, <del>Dwelling Units</del>	§§ 207, <del>207.1,</del> <del>790.88(a)</del>	Generally, <u>up to</u> 1 unit per 800 sq. ft. lot area § <u>207(c)</u>		
710.92	Residential Density, Group Housing	§§ <del>207 207.1,</del> <del>208, 790.88(b)</del>	Generally, <u>up to</u> 1 bedroom per 275 sq. ft. lot area § 208		

\*\*\*\*

1 Section 6. The Planning Code is hereby amended to revise the following Sections by  
2 revising the Section headings and Subsections .54, .90, .91, and .92 of the accompanying  
3 Zoning Control Tables to correspond to the revisions to Section 710.1 and the Zoning Control  
4 Table in Section 710 shown in Section 5 of this ordinance.

5 Section 711.1. NC-2 – Small-Scale Neighborhood Commercial District

6 Section 712.1. NC-3 – Moderate-Scale Neighborhood Commercial District.

7 Section 713.1. NC-S – Neighborhood Commercial Shopping Center District.

8 Section 714.1. Broadway Neighborhood Commercial District.

9 Section 716.1. Inner Clement Street Neighborhood Commercial District.

10 Section 717.1. Outer Clement Street Neighborhood Commercial District.

11 Section 718.1. Upper Fillmore Street Neighborhood Commercial District.

12 Section 719.1. Haight Street Neighborhood Commercial District.

13 Section 720.1. Hayes-Gough Neighborhood Commercial District.

14 Section 721.1. Upper Market Street Neighborhood Commercial District.

15 Section 722.1. North Beach Neighborhood Commercial District.

16 Section 723.1. Polk Steet Neighborhood Commercial District.

17 Section 724.1. Sacramento Street Neighborhood Commercial District.

18 Section 725.1. Union Street Neighborhood Commercial District.

19 Section 726.1. Valencia Street Neighborhood Commercial District.

20 Section 727.1. 24th Street – Mission Neighborhood Commercial District.

21 Section 728.1. 24th Street – Noe Valley Neighborhood Commercial District.

22 Section 729.1. West Portal Neighborhood Commercial District.

23 Section 730.1. Inner Sunset Neighborhood Commercial District.

24 Section 731.1. NCT-3. Moderate-Scale Neighborhood Commercial Transit District.

5 Section 732.1. Pacific Avenue Neighborhood Commercial District.

1 Section 733.1. Upper Market Street Neighborhood Commercial Transit District.

2 Section 733A. NCT-1 – Neighborhood Commercial Transit Cluster District.

3 Section 734.1. NCT-2 – Small-Scale Neighborhood Commercial Transit District.

4 Section 735.1. SOMA Neighborhood Commercial Transit District.

5 Section 736.1. Mission Street Neighborhood Commercial Transit District.

6 Section 737.1. Ocean Avenue Neighborhood Commercial Transit District.

7 Section 738.1. Glen Park Neighborhood Commercial Transit District.

8 Section 739.1. Noriega Street Neighborhood Commercial District.

9 Section 740.1. Irving Street Neighborhood Commercial District.

10 Section 741.1. Taraval Street Neighborhood Commercial District.

11 Section 742.1. Judah Street Neighborhood Commercial District.

12 Section 743.1. Folsom Street Neighborhood Commercial Transit District.

13 Section 744.1. Regional Commercial District.

14 Section 745.1. Excelsior Outer Mission Street Neighborhood Commercial District.

15 The City Attorney shall prepare the revisions and confirm that the San Francisco Code  
16 Publisher has made the correct changes to the text of the Planning Code. No other additions  
17 or deletions to the Code are authorized by this Section.

18  
19 Section 7. The Planning Code is hereby amended to revise the following Sections by  
20 revising Subsection .54 of the accompanying Zoning Control Tables to substitute a cross-  
21 reference to Sections 29.1-29.32 of the Health Code for the existing cross-reference to  
22 Section 1900 of the Health Code.

23 Section 711. Small-Scale Neighborhood Commercial District NC-2.

24 Section 712. Moderate-Scale Neighborhood Commercial District NC-3.

25 Section 713. Neighborhood Commercial Shopping Center District NC-S.

- 1 Section 714. Broadway Neighborhood Commercial District.
- 2 Section 716. Inner Clement Street Neighborhood Commercial District.
- 3 Section 718. Upper Fillmore Street Neighborhood Commercial District.
- 4 Section 719. Haight Street Neighborhood Commercial District.
- 5 Section 720. Hayes-Gough Neighborhood Commercial District.
- 6 Section 721. Upper Market Street Neighborhood Commercial District.
- 7 Section 722. North Beach Neighborhood Commercial District.
- 8 Section 723. Polk Steet Neighborhood Commercial District.
- 9 Section 724. Sacramento Street Neighborhood Commercial District.
- 10 Section 726.1. Valencia Street Neighborhood Commercial District.
- 11 Section 727. 24th Street – Mission Neighborhood Commercial District.
- 12 Section 728. 24th Street – Noe Valley Neighborhood Commercial District.
- 13 Section 730. Inner Sunset Neighborhood Commercial District.
- 14 Section 731. Moderate-Scale Neighborhood Commercial Transit District NCT-3.
- 15 Section 733. Upper Market Street Neighborhood Commercial Transit District.
- 16 Section 734. Small-Scale Neighorhood Commercial Transit District NCT-2.
- 17 Section 735. SOMA Neighorhood Commercial Transit District.
- 18 Section 736. Mission Street Neighorhood Commercial Transit District.
- 19 Section 737. Ocean Avenue Neighorhood Commercial Transit District.
- 20 Section 738. Glen Park Neighorhood Commercial Transit District.
- 21 Section 739. Noriega Street Neighborhood Commercial District.

22 The City Attorney shall prepare the revisions and confirm that the San Francisco Code  
23 Publisher has made the correct changes to the text of the Planning Code. No other additions  
24 or deletions to the Code are authorized by this Section.

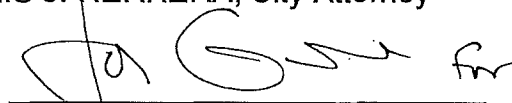
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1 Section 8. Effective Date. This ordinance shall become effective 30 days after  
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
3 ordinance unsigned or does not sign the ordinance within ten days of receiving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

5  
6 Section 9. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
7 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
8 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
9 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
10 additions, and Board amendment deletions in accordance with the "Note" that appears under  
11 the official title of the ordinance.

12  
13 APPROVED AS TO FORM:  
14 DENNIS J. HERRERA, City Attorney

15 By:



16 JUDITH A. BOYAJIAN  
17 Deputy City Attorney

18 n:\egana\as2014\1500111\00992609.doc



**LEGISLATIVE DIGEST**

[Planning Code - Exceptions from Dwelling Unit Density Limits and from Other Specified Code Requirements]

**Ordinance amending the Planning Code to permit exceptions from dwelling unit density limits and other requirements of the Code when adding Dwelling Units to existing buildings undergoing seismic retrofitting, deleting the requirement that a new In-Law Unit constructed in and near the Castro Street Neighborhood Commercial District be limited to 750 square feet, correcting outdated cross-references and Code language, affirming the Planning Department's California Environmental Quality Act determination; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

Existing Law

For the various zoning districts of the City, the Planning Code limits the number of Dwelling Units permitted on a given lot. Dwelling unit density may be limited to 1, 2, or 3 units per lot, or limited by a ratio of Dwelling Units to lot area. Certain exceptions are permitted – double density for Senior Housing in various zoning districts, and density exceptions and waivers of certain other Code requirements for new In-Law Units within and adjacent to the Castro Street Neighborhood Commercial District. Exceptions other than those specified are not permitted, and may be approved only with a zoning variance. In Districts where no Residential Density Limit is specified, dwelling unit density is limited by the applicable requirements and limitations elsewhere in the Planning Code, including but not limited to height, bulk, setbacks, open space, exposure, and unit mix, as well as by applicable design guidelines, applicable elements and area plans of the General Plan, and design review by the Planning Department.

In 2013, the City adopted Section 34B of the Building Code, which established a mandatory program for the seismic retrofit of defined "soft-story" buildings. Prior to that, retrofit standards and permit processing for voluntary seismic retrofits of soft-story buildings were established in the Department of Building Inspection's Administrative Bulletin AB-094.

Amendments to Current Law

This ordinance would permit exceptions from Residential density limits, as well as parking, private open space, and rear yard exposure, when adding new Dwelling Units to existing buildings that are undergoing earthquake safety retrofit under the Building Code. Units created under this exception must be in an area zoned for residential use, be entirely within the existing building or an existing authorized ancillary building on the same lot, not in an RH-1 or RH-1(D) district, and not constructed using space from an existing unit. The ordinance would also delete the 750 square foot maximum size for new In-Law Units currently permitted



within existing buildings in and adjacent to the Castro Street Neighborhood Commercial District.

In addition to the substantive amendments described above, the ordinance consolidates all the density exceptions into Section 207 of the Planning Code and thus relocates the existing density exceptions for Senior Housing and In-Law Units from other sections of the Code. The ordinance also corrects some outdated Code language and incorrect cross-references in the Article 7 Zoning Control Tables and related Code sections.

#### Background Information

Allowing density exceptions for buildings undergoing seismic retrofits in order to encourage the addition of new Dwelling Units to existing buildings continues the City's attempts to address the problem of San Francisco's housing shortage. The permitted exceptions are similar to those authorized for new In-Law Units in the Castro Street Neighborhood Commercial District and adjacent area that were enacted in 2014. Removing the 750 square foot limit for new Dwelling Units ensures that all available space can be fully utilized.

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# SAN FRANCISCO PLANNING DEPARTMENT

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February 19, 2015

Ms. Angela Calvillo, Clerk  
Honorable  
Supervisor Scott Weiner  
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  
Information:  
**415.558.6377**

Re: **Transmittal of Planning Department Case Number 2014.1501PCA:  
Exceptions from Dwelling Unit Density Limits and from Other Specified Code  
Requirements in Seismic Retrofit Buildings  
Board File No. 14-0954  
Planning Commission Recommendation: *Approval with Modification***

Dear Ms. Calvillo and Supervisor Weiner,

On February 12, 2015, the San Francisco Planning Commission conducted duly noticed public hearing at a regularly scheduled meeting to consider the proposed amendments to the Planning Code introduced by Supervisor Weiner. At the hearing, the Planning Commission unanimously recommended approval with modification of this Ordinance.

The proposed amendments have been determined to be exempt from environmental review under the General Rule Exclusion (GRE), pursuant to CEQA Guidelines Section 15061(b)(3).

Please find attached documents relating to the actions by 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", with a horizontal line extending to the right.

Aaron D. Starr  
Manager of Legislative Affairs

cc:  
Supervisor Scott Wiener  
Jon Givner, City Attorney  
Judith Boyajian  
Andres Power

Attachments (two hard copies of the following):

[www.sfplanning.org](http://www.sfplanning.org)



# SAN FRANCISCO PLANNING DEPARTMENT

## Planning Commission Resolution No. R-19322 Planning Code Text Change HEARING DATE: FEBRUARY 12TH, 2015

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

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

*Project Name:* Addition of Dwelling Unit in Seismic Retrofit Buildings  
*Case Number:* 2014.1501PCA [Board File No. 14-0954]  
*Initiated by:* Supervisor Weiner and Supervisor Breed / Introduced September 9, 2014  
*Staff Contact:* Kimia Haddadan, Legislative Affairs  
Kimia.haddadan@sfgov.org ; 415-575-9068  
*Reviewed by:* Aaron Starr, Manager Legislative Affairs  
aaron.starr@sfgov.org, 415-558-6362  
*Recommendation:* Recommend Approval with Modification

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE WITH MODIFICATIONS AS RECOMMENDED BY THE PLANNING COMMISSION THAT WOULD AMEND THE PLANNING CODE TO PERMIT EXCEPTIONS FROM DWELLING UNIT DENSITY LIMITS AND OTHER REQUIREMENTS OF THE CODE WHEN ADDING DWELLING UNITS TO EXISTING BUILDINGS UNDERGOING SEISMIC RETROFITTING; DELETING THE REQUIREMENT THAT A NEW IN-LAW UNIT CONSTRUCTED IN AND NEAR THE CASTRO STREET NEIGHBORHOOD COMMERCIAL DISTRICT BE LIMITED TO 750 SQUARE FEET; CORRECTING OUTDATED CROSS-REFERENCES AND CODE LANGUAGE; AFFIRMING THE PLANNING DEPARTMENT'S CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION; AND MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1.

WHEREAS, on September 9, 2014, Supervisors Weiner introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 140954, which would amend the Planning Code to allow additional units beyond density limits to be permitted in buildings undergoing the Mandatory Retrofit Program established in Chapter 34 (B) of the Building Code;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on February 12, 2015; and,

WHEREAS, the proposed Ordinance has been determined to be exempt from environmental review under the General Rule Exclusion (GRE), pursuant to CEQA Guidelines Section 15061(b)(3); and

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

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

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

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

- **Apply the Castro ADU affordability monitoring system to the proposed ADUs.** The recent Castro ADU legislation established an affordability monitoring program through which the Code allows the Department to reach out to the owners and occupants of these units to obtain the rental rates. This information would help the City to evaluate the affordable by design strategy employed in this Ordinance and would inform later policies and decisions regarding affordability of ADUs. Expanding this program to the ADUs in the buildings undergoing seismic retrofitting would allow the City to expand this database to better inform future housing policies.
- **Establish a minimum size for open areas onto which windows in ADUs could face.** The proposed Ordinance would exempt ADUs from the exposure requirements of the Planning Code. The recent Castro ADU legislation provided similar exemption but maintained a minimum size for the open areas where the windows would face (15' by 15' at all levels). This recommendation would ensure sufficient light exposure for ADUs to maintain standard habitability and quality of life.
- **Modify the Ordinance so that there is one set of controls for Castro ADUs and Seismic Retrofit ADUs.** This recommendation is intended to improve the organization of the Planning Code, and to prevent inconsistencies and discrepancies of City policy for ADUs in different areas of the city. Staff recommends merging Sections 207(c)(4) and 207(c) (5) as follows:

- Section 207 (c) (4) - Accessory Dwelling Units

- a) Definition
- b) Applicability:
  - i. Castro NCD and the buffer
  - ii. Buildings Undergoing Seismic Retrofit
- c) Controls: Merge the controls currently spread in 207(c)(4) (C) and 207(c) (5) (B) &(C)
- d) Monitoring Programs: Apply to both Castro and Seismic ADUs

Also, staff recommends amending Section 307 (l) of the Planning Code to reflect the proposals of this Ordinance and to create consistency for the controls of all ADUs whether in the Castro or in buildings undergoing seismic retrofitting.

## 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 proposed Ordinance could encourage property owners to undertake the seismic retrofitting of their building, because it would allow them to add additional units to their building generating additional revenue. This revenue could recoup the costs of the seismic upgrade in the first few years and provide increased revenue for the property owner once the initial costs have been covered. Historically, when the City allows higher densities on a lot, certain value recapture mechanisms are introduced to ensure that the City and the general public also benefit. Examples are impact fees in Market-Octavia or Eastern Neighborhood Area Plans. In this case, the value added by increasing density will be recaptured by reaching a more expeditious earthquake resiliency in San Francisco, saving lives in the likely event of an earthquake and potential post-earthquake repair costs for the city as a whole.
2. The ADUs that will result from this Ordinance will differ physically from the new units that are currently being developed in City. These ADUs will be located on the ground floor in space that was previously used for parking or storage, and as a result will have lower ceilings heights. These units will also likely have lower light exposure due to small windows or windows facing smaller open areas, and side entrances due to location of the unit on the lot. Such subordinate characteristics of ADUs would result in lower rents compared to the rental rates of a unit in a new developed. Further, the lower rents would attract the population in the City that is currently poorly served by the market: younger households, small families, senior and elderly individuals and so forth. San Francisco is in dire need of a variety of housing options across different lifestyles. ADUs could potentially fill the gap for a more affordable housing option without the need for formal affordable housing government subsidies.
3. California Code Section 65852.2 regulates provisions that jurisdictions would employ to allow new ADUs. This State Law allows local jurisdictions to regulate unit size, parking requirements and fees related to ADUs. The proposed Ordinance controls the size of ADUs with a maximum limit of 750 sq. ft. It also prohibits using habitable space from existing residential units in developing an ADU. Through these constraints, this Ordinance uses an "affordable by design strategy" to seek affordability of the new ADUs.
4. Today, San Francisco is in dire need for housing affordable to low or middle income households. Despite the boom in development with over 6000 units currently under construction, the city's rental market is among the priciest in the nation. Trulia trend reports puts San Francisco rents as the highest in the nation, easily out pricing New York<sup>1</sup>. Trulia also publishes a map of median asking rents in recent listings by neighborhoods, which ranges up to about \$3,750 per bedroom, with an average of \$3,600 for a two bedroom unit<sup>2</sup>. Based on a conservatively high assumption, staff estimates an average of \$2,500 rent for a new one-bedroom ADU; This rent would be affordable to a

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<sup>1</sup> Kolko, Jed; Chief Economist; Trulia trends, January 8<sup>th</sup>, 2015. Retrieved from <http://www.trulia.com/trends/category/price-rent-monitors/> on January 8, 2015.

<sup>2</sup> Trulia, San Francisco Real Estate Overview, Retrieved at [http://www.trulia.com/real\\_estate/San\\_Francisco-California/](http://www.trulia.com/real_estate/San_Francisco-California/) on January 27, 2015

two-person household with a combined income of \$104,900 equivalent to 135% of AMI<sup>3</sup>. This income level represents working class households: middle-income households whom are today more than ever under pressure and have been leaving the city for lower-rental markets in the Bay Area. ADUs therefore can serve these sections of the population whom currently are poorly served by the new development.

5. The proposed Ordinance aims to introduce more affordable housing to the current unaffordable market of housing in San Francisco. If such ADUs provide affordable housing, due to their physical design constraints, the value recapture mechanism would be inherent in the provision: the value of density waivers would be recaptured by an increase in stock of affordable housing. If, however, these ADUs would prove unaffordable to the middle or low income households, the City should revisit and modify the regulations in order to capture the public value of density limit and other Planning Code exceptions.
6. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the Objectives and Policies of the General Plan:

#### OBJECTIVE 1

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

#### POLICY 1.5

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

*The proposed Ordinance would allow Accessory Dwelling units in buildings undergoing seismic retrofitting, and aims to maintain these units affordable through affordability by design strategies, such as only allowing the new units to be constructed within the existing building envelope. This change in land use controls is not part of a community planning effort led by the Planning Department. However, the Commission listened to the public comment and considered the outreach completed by the Board Member and finds that there is sufficient community support and potential to achieve goals in the public interest of the neighborhood, to warrant the undertaking of this change in these areas; especially with the recommended modification that the level of affordability is monitored and that the ordinance be modified in the future if affordability goals are not achieved.*

#### OBJECTIVE 2

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

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<sup>3</sup> Area Median Income (AMI) is the dollar amount where half the population earns less and half earns more.

<sup>4</sup> San Francisco Mayor's Office of Housing, *Maximum Rent by Unit Type: 2014*, <http://sf-moh.org/modules/showdocument.aspx?documentid=7572>



**POLICY 2.5**

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

*The proposed Ordinance encourages and supports seismic retrofitting of existing housing stock by providing an incentive for property owners to add units to the existing building: the rental revenue generated from these new units that would help offset the retrofit costs and create an additional source of income.*

**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.**

*The proposed Ordinance aims to support housing for middle income households through affordable by design strategies, such as only allowing the new units to be constructed within the existing building envelope.*

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 affordable units through affordability by design strategies, such as only allowing the new units to be constructed within the existing building envelope. 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 February 12, 2015.

Jonas P. Ionin  
Commission Secretary

Executive Summary  
Hearing Date: February 12th, 2015

CASE NO. 2014.1501PCA  
Addition of Dwelling Unit in Seismic Retrofit Buildings

AYES: Antonini, Fong, Hillis, Johnson, Moore, Richards, Wu

NOES:

ABSENT:

ADOPTED:



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Planning Code Text Change HEARING DATE: FEBRUARY 12TH, 2015

*Project Name:* Addition of Dwelling Unit in Seismic Retrofit Buildings  
*Case Number:* 2014.1501PCA [Board File No. 14-0954]  
*Initiated by:* Supervisor Weiner and Supervisor Breed / Introduced September 9, 2014  
*Staff Contact:* Kimia Haddadan, Legislative Affairs  
[Kimia.haddadan@sfgov.org](mailto:Kimia.haddadan@sfgov.org), 415-575-9068  
*Reviewed by:* Aaron Starr, Manager Legislative Affairs  
[aaron.starr@sfgov.org](mailto:aaron.starr@sfgov.org), 415-558-6362  
*Recommendation:* **Recommend Approval with Modification**

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### PLANNING & ADMINISTRATIVE CODE AMENDMENTS

The proposed Ordinance would amend the Planning Code to permit exceptions from dwelling unit density limits and other requirements of the Code when adding Dwelling Units to existing buildings undergoing seismic retrofitting; deleting the requirement that a new In-Law Unit constructed in and near the Castro Street Neighborhood Commercial District be limited to 750 square feet; correcting outdated cross-references and Code language; affirming the Planning Department's California Environmental Quality Act determination; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

#### The Way It Is Now:

Chapter 34(B) of the Building Code requires buildings with a soft story condition to upgrade and comply with earthquake safety standards (Mandatory Retrofit Program). This law took effect in 2013, after which subject properties were identified through a screening process (See Map 1). The City maintains some financial incentives to help these property owners with the retrofit costs.

California Government Code 65852.2 allows local governments to adopt an Ordinance that allows secondary units<sup>1</sup> in single-family or multifamily residential units. Currently, San Francisco allows accessory dwelling units in these instances (See Map 2):

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<sup>1</sup> The State law defines secondary units as "an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel", which are added to a single family dwelling unit located on a single family or multi-family zoned parcel.

1. RH-1(S) district
2. The Castro NCD zoning district and its surrounding area (1,750 ft buffer)
3. Within zoning districts where density is not limited by square footage
4. Any parcel where the existing number of units are below the maximum allowable density

### The Way It Would Be:

The proposed Ordinance would allow development of an accessory dwelling unit (ADU) beyond the density limits in buildings undergoing the Mandatory Retrofit Program in compliance with Chapter 34B of the Building Code. It would also allow an ADU in buildings undergoing the voluntary seismic retrofitting in compliance with the San Francisco Department of Building Inspections' Administrative Bulletin 094. The proposed Ordinance includes certain constraints as well as exemptions for the added units:

- ADUs would only be built within an existing building.
- The new units, if on a lot where the original building is subject to the Rent Control law, would also be subject to the Rent Control law.
- The new units would be exempt from certain provisions of the Planning Code such as rear yard, open space, parking, and exposure through an administrative waiver.
- Existing required parking spaces can be removed to provide space to create ADUs.

In addition, the proposed Ordinance would amend the Castro ADU legislation to remove the 750 sq. ft. size limit for ADUs in the Castro.

## BACKGROUND

### What is the Mandatory Retrofit Program?

In early 2000s, San Francisco Department of Building Inspection (DBI) launched the Community Action Plan for Seismic Safety (CAPSS) to develop a plan of action to reduce earthquake risks in existing, privately owned buildings; and to develop repair and rebuilding guidelines. The policy recommendation of the CAPSS report described a path towards earthquake resilience in San Francisco, started by an Ordinance in 2013 known as the Mandatory Retrofit Program. This program applies to existing wood-frame (Type V) buildings that:

- Include three or more stories or two stories over a basement, and
- Include five or more dwelling units; and
- were constructed before January 1, 1978.

It aims to improve buildings performance by reducing the risk of collapse and advance the goal that upgraded building continue to be habitable or repairable<sup>2</sup>. These buildings have a condition known as "soft story" which makes the building vulnerable to earthquake. Soft story is a

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<sup>2</sup> SF DBI, Administrative Bulletin 106- Procedures for Implementation of SFBC Chapter 34B

structural weakness in a multi-story building caused by large openings at the ground floor in their perimeter wall and lack of interior partition walls. Soft story describes the ground floor space in these buildings and is usually used as garage, storage, or retail. The wide openings for garage doors or large windows for retail create this open condition, making the ground floor significantly weaker and more flexible than the floors above<sup>3</sup>.

Once this program was established in 2013, SF DBI notified a pool of properties meeting the criteria specified above. These property owners then went through a screening process to establish whether or not their building required seismic retrofitting. Subsequent to this screening process, 4,800 properties in San Francisco were identified and required to upgrade their buildings to comply with the Mandatory Seismic Retrofit Program in Chapter 34(B) of the Building Code (See Map 1).

The CAPSS project studied four earthquake scenarios and estimated that collectively building owners would save between \$400 million and \$1.5 billion due to retrofitting. This amount depends on the level of retrofitting covering the reduced damage to building structure and contents. This cost saving is significant compared to cost of all retrofits citywide estimated about \$260 million. At this price, the level of retrofit achieved would allow most residents to remain in their damaged but safe homes after an earthquake<sup>4</sup>.

SF DBI also encourages property owners to voluntarily retrofit their buildings, even if they are not subject to the Mandatory Program. DBI's Administrative Bulletin 094 explains the conditions and incentives for this program.

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

Accessory Dwelling Units are residential units that are subordinate to the other residential units in the same lot, due to their smaller size, location on the lot, or 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 unused spaces within a lot, whether a garage, storage, rear yard, or an attic. However, these units are wholly independent from the primary unit or units, with independent kitchen, bathroom, sleeping facilities, and access to the street; they may share laundry facilities, yards, and other traditional types of common spaces with the primary unit(s).

### **Accessory Dwelling Units in San Francisco**

Many residential properties in the city include fewer units than the zoning controls already allow. Property owners of these lots can simply apply for a permit to add a unit. Since these units are added to an existing building, it is likely that they were created as an infill of an existing unused space and therefore characterized as what we define as an ADU: smaller in size, subordinate location on the lot, potential lower ceiling. Many of these ADUs seek variances from

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<sup>3</sup> Applied Technology Council, Prepared for San Francisco Department of Building Inspection. Here Today - Here Tomorrow: The Road to Earthquake Resilience In San Francisco, Earthquake Safety for Soft-Story Buildings, 2009

<sup>4</sup> *Ibid.*

some Planning Code requirements such as open space, rear yard, and exposure. In the past five years, about 300 units were added through such one unit additions.

ADUs also exists as illegal units: units built without the benefit of permit and may be in excess of density limits. The Asian Law Caucus carried out a report on secondary units in the Excelsior Neighborhood in San Francisco. This report suggests that "secondary units are home to tens of thousands of San Francisco residents", while acknowledging the uncertainty of this statement due to the hidden nature of the units as illegal units<sup>5</sup>.

In addition to units added to underbuilt properties and illegal units, the Planning Code also allows ADUs in some single-family homes. In 1978, the City created a new zoning district, RH-1(S), to allow secondary units limited to 600 square feet in single-family homes; however, only about 40 parcels fall under this zoning category.

Also, 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, and open space, rear yard, and 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.

In 2014, the City adopted two new programs related to ADUs. The first effort was in the Castro District (BF 131063), where new ADUs are now permitted over the existing density limit. The second program (BF 131148) legalizes existing ADUs built without permits (i.e. illegal units). In less than a year since the start of this voluntary program, the City has received 93 permit applications for the legalization program. These two pieces of legislation signify a turning point in the City's housing policy in embracing ADU policies. In his State of the City speech in early January 2014, Mayor Lee acknowledged a housing shortage and established a seven point plan for housing, one of which focuses on building "more affordable housing, faster". In the midst of this crisis for housing affordable to low or middle income households, a variety of housing policies are needed to achieve the City's housing goals.

## ISSUES AND CONCERNS

### ADUs: An Incentive for the Mandatory Retrofit Program

The Mandatory Retrofit Program requires property owners to upgrade their buildings and comply with earthquake safety standards. It is estimated that the costs for the construction work to upgrade a building for seismic safety would range from \$60k to \$130K<sup>6</sup>, depending on the

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<sup>5</sup> Asian Law Caucus, *Our Hidden Communities: Secondary unit households in the Excelsior Neighborhood of San Francisco*, March 22, 2013.

<sup>6</sup> Based on four buildings types identified: two corner buildings and two mid-block buildings, ranging from 4 to 8 units and three schemes of retrofit with different levels of performance. This also only includes direct construction costs without additional potential costs such as Title 24 ADA compliance costs.

level of work needed or level of safety achieved<sup>7</sup>. Some financial incentives already help alleviate this cost burden on property owners. For example, many banks and financial institutions are participating in this program providing financing and long term loans for seismic improvements. Also, per the Rent Stabilization Ordinance, 100% of the retrofit costs can be passed on to tenants at an up to a 10% annual rent increase, amortized for over 20 years.

The proposed Ordinance would create another financial incentive for property owners to retrofit their building, allowing an additional unit to be built within the building's soft story. Property owners would leverage the costs of retrofitting to generate revenue in the future: once the ADU is built, the revenues generated from rent can pay towards either the equity spent on the upgrade costs or the loan payments. Staff estimates that approximately \$50K<sup>8</sup> in additional funds is necessary to build an ADU as a part of a soft story upgrade. The total costs of retrofitting and building the ADU could be offset in a few years. Subsequently, the unit serves as an additional source of net income gain in perpetuity over the life of their ownership.

### ADUs as Affordable Housing

Accessory Dwelling Units within existing residential buildings have been an idea promoted by the State and employed by many local jurisdictions<sup>9</sup> in California to meet affordable housing needs. Academic research and published reports have identified the benefits of ADUs for more than two decades. Allowing ADUs within existing residential buildings signifies a pragmatic infill strategy to create more housing, without increasing building heights or altering the built form. The California Department of Housing and Community Development identifies multiple potential benefits that ADUs can offer to communities, including: an important source of affordable housing, easing a rental housing deficit, maximizing limited land resources and existing infrastructure, and assisting low and moderate-income homeowners with supplemental income<sup>10</sup>.

As discussed previously, ADUs maintain a subordinate nature: being located at the back or basement of the buildings, side entrances, low ceiling heights, less light exposure, and so forth. Based on these characteristics, ADUs are typically "affordable by design": the physical and design constraints result in lower rents compared to the regular new units currently being built. Many reports testify the lower rents for these types of units. The Center for Community Innovation completed a study of secondary units in the East Bay region that found that the existing illegal secondary unit stock is affordable to very low and low income households<sup>11</sup>. A

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<sup>7</sup>Applied Technology Council, Prepared for San Francisco Department of Building Inspection. Here Today - Here Tomorrow: The Road to Earthquake Resilience In San Francisco, Earthquake Safety for Soft-Story Buildings, 2009

<sup>8</sup> Including interior finishes, HVAC, plumbing, electrical upgrades, insulation, doors & windows, etc.

<sup>9</sup> Examples are Santa Cruz, Berkeley, Los Angeles, San Luis Obispo.

<sup>10</sup> California Department of Housing and Community Development, Memorandum for Planning Directors and Interested Parties, August 6, 2003; [http://www.hcd.ca.gov/hpd/hpd\\_memo\\_ab1866.pdf](http://www.hcd.ca.gov/hpd/hpd_memo_ab1866.pdf) retrieved on January 29, 2014.

<sup>11</sup> "30% of secondary units are affordable to households in the Very Low-Income category (30% to just under 50% of AMI), and that 49% lie within the Low-Income category (50% to just under 80% of AMI)." Karen Chapple, Jake Wegmann,



quick scan of the word “in-law” units in San Francisco Craigslist listings – a website where rental units are posted – also indicates a lower than average rent for these units as well. About 150 listings were found in the past year as in-law apartments<sup>12</sup>, with an average rent of \$1,550 for one bedroom units and \$1,990 for two bedrooms. Staff understands the small size of this database cannot result in a conclusive argument about affordability of ADUs. Most of these units were located in the outer neighborhoods where rent is inherently cheaper. Also, many of the units may have older finishing. Despite all this, based on many reports and surveys of these types of units, one could make a safe assumption that new ADUs would comparably rent at a lower rate than the units developed in newly constructed buildings.

Today, San Francisco is in dire need for housing affordable to low or middle income households. Despite the boom in development with over 6,700 units currently under construction, the city’s rental market is among the priciest in the nation. Trulia trend reports puts San Francisco rents as the highest in the nation, easily out pricing New York<sup>13</sup>. Trulia also publishes a map of median asking rents in recent listings by neighborhoods, which ranges up to about \$3,750 per bedroom, with an *average* of \$3,600 for a two bedroom unit<sup>14</sup>.

Based on a conservatively high assumption, staff estimates an average of \$2,500 rent for a new one-bedroom ADU; This rent would be affordable to a two-person household with a combined income of \$104,900 equivalent to 135% of AMI<sup>15,16</sup>. This income level represents working class households: middle-income households whom are today more than ever under pressure and have been leaving the city for lower-rental markets in the Bay Area. ADUs therefore can serve these sections of the population whom currently are poorly served by the new development.

### Application of Rent Control Regulations

San Francisco Residential Rent Stabilization and Arbitration Ordinance<sup>17</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 evictions; restricting evictions of these tenants to only fourteen specified just causes. Until recently, this law did not apply to residential units built after 1979, and therefore such units were not subject to rent restrictions or just cause evictions. In 2014,

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Alison Nemirow, Colin Dentel-Post; *Yes to My Back Yard, Mobilizing the Market for Secondary Units*; Center for Community Innovation at the Institute of Urban and Regional Development, June 2012.

<sup>12</sup> This is out of over 25,000 listings of apartment rental since November 2013

<sup>13</sup> Kolko, Jed; Chief Economist; Trulia trends, January 8<sup>th</sup>, 2015 Retrieved from <http://www.trulia.com/trends/category/price-rent-monitors/> on January 8, 2015.

<sup>14</sup> Trulia, San Francisco Real Estate Overview, Retrieved at [http://www.trulia.com/real\\_estate/San\\_Francisco-California/](http://www.trulia.com/real_estate/San_Francisco-California/) on January 27, 2015

<sup>15</sup> Area Median Income (AMI) is the dollar amount where half the population earns less and half earns more.

<sup>16</sup> San Francisco Mayor’s Office of Housing, *Maximum Rent by Unit Type: 2014*, <http://sf-moh.org/modules/showdocument.aspx?documentid=7572>

<sup>17</sup> Chapter 37 of the Administrative Code

the new ADU program created an exception in that the ADUs in the Castro are subject to the Rent Control Law, if the existing building is already subject to this law. The proposed Ordinance would expand this requirement to ADUs created as a result of the Mandatory Retrofit Program. Given that the buildings subject to this Program are all built before 1978, it is safe to assume that the overwhelming majority<sup>18</sup> of these buildings are subject to the Rent Control law.

This change would create the opportunity to increase the approximately 170,000 units currently protected under Rent Control<sup>19</sup>. It would apply the annual rent increase limits to these units at a regulated reasonable rate—helping to ensure tenants don'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 (in the Castro area) 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.

### Density Limits Waivers

The proposed Ordinance allows waivers from density limits when adding an ADU to a building undergoing seismic retrofit. The Planning Code imposes density limits in many areas of the city through either an absolute maximum number of units per parcel (RH1-2-3) or limits on square footage per unit (RM1-3, NC1-3, etc). Waivers from density in these areas cannot currently be obtained through any mechanism. In some other areas of the city, the Planning Code does not maintain density limits through such variables (most of the mixed use districts in the Mission, SoMA, Potrero Hill, etc). Instead the number of units per lot is controlled by height, FAR, rear yard and open space requirements. Lastly, the most recent Ordinance allowing ADUs in the Castro, exempted new ADUs density limits (only up to two units). The proposed Ordinance also would exempt ADUs in buildings undergoing seismic retrofitting from density limits. The new ADUs would not affect the physical character of the neighborhood, as the units would be within the existing building footprint.

It is interesting to note that of the 4,800 properties subject to the Mandatory Retrofit Program, 625 are already within zoning districts with no density limits. These properties can already add an ADU without the provisions of the proposed Ordinance.

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<sup>18</sup> Condominiums and tenancy in Common buildings are ownership units and not subject to the Rent Control Ordinance.

<sup>19</sup> San Francisco Rent Board. <http://www.sfrb.org/index.aspx?page=940> Retrieved on 2/1/14.

### Quality of Life Regulations

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, Planning Code requirements regarding open space, exposure, and parking define the quality of life beyond minimum habitation standards. Historically, applications for adding an ADU in areas that area already allowed (see Map 1) sought variance from some of the Planning Code requirements such as open space, rear yard, exposure, and parking. The recent legislation that allowed ADUs in the Castro allowed exemptions from these requirements in order to streamline and incentivize development of ADUs. Similarly, the proposed Ordinance allows the Zoning Administrator (ZA) to waive open space, rear yard, and parking requirements for these units.

This Ordinance aims to incentivize ADUs especially as a means to facilitate and expedite seismic retrofitting in the City. These exemptions would help advance these goals while ensuring the habitability of these units. Other City policies such as street trees and provision of bicycle parking remain applicable to these units.

**Rear Yard-** The proposed Ordinance would require ADUs to be built within the existing building envelope and therefore the existing rear yard would remain unchanged. In cases where the existing buildings are already non-conforming to the rear yard requirements, this Ordinance would allow the new units to also be exempt from complying with the rear yard requirements as well. The rear yard requirement is intended to preserve midblock open space; therefore, the intent is not compromised by the addition of an ADU in the existing building envelope.

**Exposure-** Exposure requirements contribute significantly to quality of life as they regulate light and air into residential space. While the Building Code regulates the size of windows, the Planning Code requires such windows to face a "code compliant" rear yard. While minimum quality of life standards demand Building Code compliant windows in all residential units, allowing flexibility in the size of the rear yard to which these units should face would not harm livability and may be critical to ensuring these units are built. The most recent Castro ADU legislation allows such rear yard to be 15' by 15'. Through this provision while access to light and air is not compromised, the smaller rear yard to which the windows can face, would help these units to be built in circumstances where "code compliant" rear yard is not in place.

**Parking-** Similar to the most recent Castro ADU legislation, the proposed Ordinance would waive parking requirements in two different circumstances. First, it would allow removing an existing required parking space to provide space for an ADU. Second, new ADUs are not required to provide parking. It's important to note that in most cases, ADUs developed due to this new Ordinance would not require providing off-street parking based on the existing Code: 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>20</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 would still likely render new ADUs as infeasible. Given the goal of streamlining and facilitating earthquake resilience in this Ordinance, parking waivers are appropriate and necessary. San Francisco has advanced a transit first policy that aligns with providing housing without off-street parking.

### 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.

### 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. Apply the Castro ADU affordability monitoring system to the proposed ADUs.
2. Establish a minimum size for open areas onto which windows in ADUs could face.
3. Modify the Ordinance so that there is one set of controls for Castro ADUs and Seismic Retrofit ADUs

### BASIS FOR RECOMMENDATION

The Department supports the recommendations of this Ordinance for the following reasons:

**Facilitate earthquake resilience goals-** This Ordinance could encourage property owners to undertake the seismic retrofitting of their building, because it would allow them to add additional units to their building generating additional revenue. This revenue could recoup the costs of the seismic upgrade in the first few years and provide increased revenue for the property owner once the initial costs have been covered. Historically, when the City allows higher densities on a lot, certain value recapture mechanisms are introduced to ensure that the City and the general public also benefit. Examples are impact fees in Market-Octavia or Eastern Neighborhood Area Plans. In this case, the value added by increasing density will be recaptured by reaching a more expeditious earthquake resiliency in San Francisco, saving lives in the likely event of an earthquake and potential post-earthquake repair costs for the city as a whole.

As discussed above, exempting these ADUs from certain Planning Code requirements would streamline development of these units and help the city to move faster on the path to achieve

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<sup>20</sup> Seifel Consulting Inc, Inclusionary Housing Financial Analysis, December 2012, Report prepared for San Francisco Mayor's Office of Housing, page 15.

earthquake safety. An administrative waiver for certain Planning Code requirements instead of the longer process for a variance would shorten the time as well as reducing the permit costs.

**Provide housing options potentially affordable to low and middle income households-** In addition to being subject to Rent Control, which limits the amount the rent can be increased every year, the Department believes that these units will also be affordable by design. The ADUs that will result from this Ordinance will differ physically from the new units that are currently being developed in City. These ADUs will be located on the ground floor in space that was previously used for parking or storage, and as a result will have lower ceilings heights. These units will also likely have lower light exposure due to small windows or windows facing smaller open areas, and side entrances due to location of the unit on the lot. Such subordinate characteristics of ADUs would result in lower rents compared to the rental rates of a unit in a new developed. Further, the lower rents would attract the population in the City that is currently poorly served by the market: younger households, small families, senior and elderly individuals and so forth. San Francisco is in dire need of a variety of housing options across different lifestyles. ADUs could potentially fill the gap for a more affordable housing option without the need for formal affordable housing government subsidies.

**Removal of 750 sq. ft. Limit-** Lastly, staff also supports the recommendation to remove the 750 sq. ft. size cap on ADUs in the Castro. The Planning Commission had made this recommendation in their resolution<sup>21</sup> adopting the Castro ADU legislation. This specific recommendation however was not incorporated into the final adoption of that Ordinance. The resolution discussed the reasoning for this recommendation:

*"Remove the 750 sq. ft. size cap for ADUs- While 750 square feet represent a reasonable amount of space that might be available within existing buildings, the Commission recommends removing the proposed maximum size limit for ADUs. An arbitrary maximum size limit may only result in oddly shaped left over spaces, in cases where there is more than 750 sq. ft. of space available for an ADU, impeding creating an otherwise larger unit that could potentially include two bedrooms. The Commission, therefore, recommends removal of any maximum size limits for ADUs in order to allow most efficient use of underutilized spaces."*

The Department also recommends some modifications to the proposed Ordinance as stated below:

1. **Apply the Castro ADU affordability monitoring system to the proposed ADUs.** The recent Castro ADU legislation established an affordability monitoring program through which the Code allows the Department to reach out to the owners and occupants of these units to obtain the rental rates. This information would help the City to evaluate the affordable by design strategy employed in this Ordinance and would inform later policies and decisions regarding affordability of ADUs. Expanding this program to the ADUs in the buildings undergoing seismic retrofitting would allow the City to expand this database to better inform future housing policies.

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<sup>21</sup> Resolution No. 19099

2. Establish a minimum size for open areas onto which windows in ADUs could face. The proposed Ordinance would exempt ADUs from the exposure requirements of the Planning Code. The recent Castro ADU legislation provided similar exemption but maintained a minimum size for the open areas where the windows would face (15' by 15' at all levels). This recommendation would ensure sufficient light exposure for ADUs to maintain standard habitability and quality of life.
3. Modify the Ordinance so that there is one set of controls for Castro ADUs and Seismic Retrofit ADUs. This recommendation is intended to improve the organization of the Planning Code, and to prevent inconsistencies and discrepancies of City policy for ADUs in different areas of the city. Staff recommends merging Sections 207(c)(4) and 207(c) (5) as follows:

- Section 207 (c) (4) - Accessory Dwelling Units

- a) Definition
- b) Applicability:
  - i. Castro NCD and the buffer
  - ii. Buildings Undergoing Seismic Retrofit
- c) Controls: Merge the controls currently spread in 207(c)(4) (C) and 207(c) (5) (B) &(C)
- d) Monitoring Programs: Apply to both Castro and Seismic ADUs

Also, staff recommends amending Section 307 (I) of the Planning Code to reflect the proposals of this Ordinance and to create consistency for the controls of all ADUs whether in the Castro or in buildings undergoing seismic retrofitting.

## ENVIRONMENTAL REVIEW

The proposed Ordinance is covered under Case No. 2014.1501E, and is exempt from environmental review under the General Rule Exclusion (GRE), pursuant to CEQA Guidelines Section 15061(b)(3).

## 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: Properties subject to the Chapter 34(B) and the Proposed Ordinance
- Exhibit B: Areas where ADUs are already allowed
- Exhibit C: Draft Planning Commission Resolution
- Exhibit D: Draft Ordinance [Board of Supervisors File No. 14-0954]

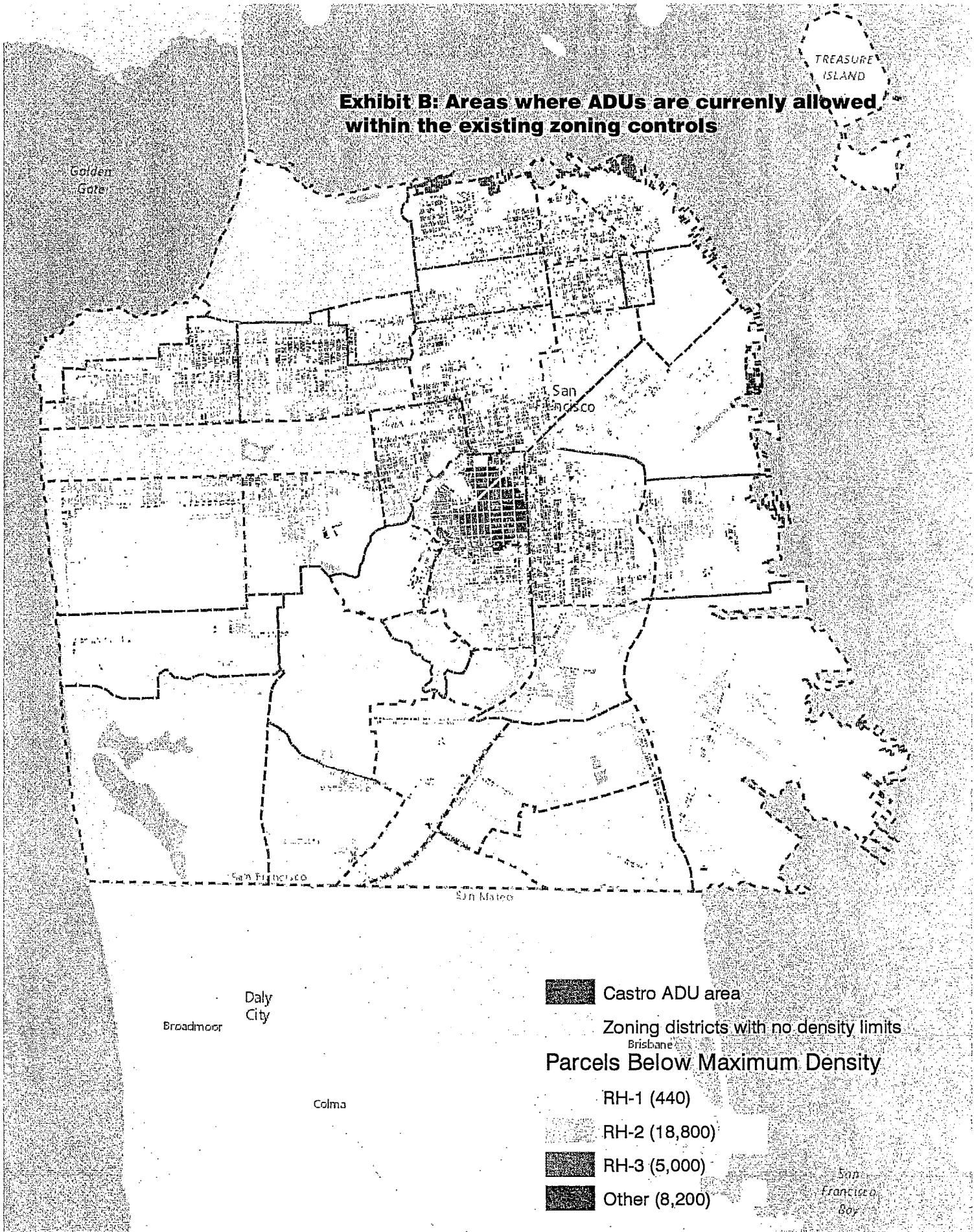
**Exhibit A- Buildings subject to Chapter 34B of the Building Code for seismic Retrofitting**








Treasure Island/YBI



Soft Story Screening - ALL  
• ~4,800 properties

**Exhibit B: Areas where ADUs are currently allowed within the existing zoning controls**



-  Castro ADU area
-  Zoning districts with no density limits
-  Brisbane
- Parcels Below Maximum Density**
-  RH-1 (440)
-  RH-2 (18,800)
-  RH-3 (5,000)
-  Other (8,200)



BOARD of SUPERVISORS



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September 19, 2014

File No. 140954

Sarah Jones  
Environmental Review Officer  
Planning Department  
1650 Mission Street, 4<sup>th</sup> Floor  
San Francisco, CA 94103

Dear Ms. Jones:

On September 9, 2014, Supervisor Wiener introduced the following legislation:

**File No. 140954**

**Ordinance amending the Planning Code to permit exceptions from dwelling unit density limits and other requirements of the Code when adding Dwelling Units to existing buildings undergoing seismic retrofitting; deleting the requirement that a new In-Law Unit constructed in and near the Castro Street Neighborhood Commercial District be limited to 750 square feet; correcting outdated cross-references and Code language; affirming the Planning Department's California Environmental Quality Act determination; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "A. Ausberry".

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

Attachment

c: Joy Navarrete, Environmental Planning  
Jeanie Poling, Environmental Planning

BOARD of SUPERVISORS



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TDD/TTY No. 554-5227

September 19, 2014

Planning Commission  
Attn: Jonas Ionin  
1650 Mission Street, Ste. 400  
San Francisco, CA 94103

Dear Commissioners:

On September 9, 2014, Supervisor Wiener introduced the following legislation:

**File No. 140954**

**Ordinance amending the Planning Code to permit exceptions from dwelling unit density limits and other requirements of the Code when adding Dwelling Units to existing buildings undergoing seismic retrofitting; deleting the requirement that a new In-Law Unit constructed in and near the Castro Street Neighborhood Commercial District be limited to 750 square feet; correcting outdated cross-references and Code language; affirming the Planning Department's California Environmental Quality Act determination; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

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

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "A. Ausberry".

By: Andrea Ausberry, Assistant Clerk  
Land Use and Economic Development Committee

c: John Rahaim, Director of Planning  
Aaron Starr, Acting Manager of Legislative Affairs  
AnMarie Rodgers, Senior Policy Manager  
Scott Sanchez, Zoning Administrator  
Sarah Jones, Chief, Major Environmental Analysis  
Jeanie Poling, Environmental Planning  
Joy Navarrete, Environmental Planning

BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## MEMORANDUM

TO: Olson Lee, Acting Director, Mayor's Office of Housing  
Patrick Otellini, Director of Earthquake Safety, Earthquake Safety Implementation Program

FROM: Andrea Ausberry, Assistant Clerk, Land Use and Economic Development Committee, Board of Supervisors

DATE: September 19, 2014

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Land Use and Economic Development Committee has received the following proposed legislation, introduced by Supervisor Wiener on September 9, 2014:

**File No. 140954**

**Ordinance amending the Planning Code to permit exceptions from dwelling unit density limits and other requirements of the Code when adding Dwelling Units to existing buildings undergoing seismic retrofitting; deleting the requirement that a new In-Law Unit constructed in and near the Castro Street Neighborhood Commercial District be limited to 750 square feet; correcting outdated cross-references and Code language; affirming the Planning Department's California Environmental Quality Act determination; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

If you have any additional comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Eugene Flannery, Mayor's Office of Housing  
Sophie Hayward, Mayor's Office of Housing  
Jeno Wilkinson, Earthquake Safety Implementation Program

# Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee.  
An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [ ] inquires"
- 5. City Attorney request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. [ ]
- 9. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission       Youth Commission       Ethics Commission
- Planning Commission       Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative**

**Sponsor(s):**

Supervisor Wiener

**Subject:**

Planning Code - Exceptions from Dwelling Unit Density Limits and from Other Specified Code Requirements

**The text is listed below or attached:**

Ordinance amending the Planning Code to 1) permit exceptions from dwelling unit density limits and other requirements of the Code when adding Dwelling Units to existing buildings undergoing seismic retrofitting, 2) deleting the requirement that a new In-Law Unit constructed in and near the Castro Street Neighborhood Commercial District be limited to 750 square feet, 3) correcting outdated cross-references and Code language, 4) affirming the Planning Department's California Environmental Quality Act determination; and 5) making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

Signature of Sponsoring Supervisor: Scott Wien

F Clerk's Use Only:

