



SAN FRANCISCO PLANNING DEPARTMENT

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

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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", written over a horizontal line.

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



SAN FRANCISCO PLANNING DEPARTMENT

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

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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 York¹. 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 unit². 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

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

² Trulia, San Francisco Real Estate Overview, Retrieved at 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^{3,4}. 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.

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

⁴ 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

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

NOES:

ABSENT:

ADOPTED:



SAN FRANCISCO PLANNING DEPARTMENT

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, 415-575-9068
Reviewed by: Aaron Starr, Manager Legislative Affairs
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 units¹ in single-family or multifamily residential units. Currently, San Francisco allows accessory dwelling units in these instances (See Map 2):

¹ 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 repairable². These buildings have a condition known as "soft story" which makes the building vulnerable to earthquake. Soft story is a

² 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 above³.

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 earthquake⁴.

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

³ 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

⁴ *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 units⁵.

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 CONERNS

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 \$130K⁶, depending on the

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

⁶ 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 achieved⁷. 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 \$50K⁸ 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 jurisdictions⁹ 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 income¹⁰.

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 households¹¹. A

⁷Applied 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

⁸ Including interior finishes, HVAC, plumbing, electrical upgrades, insulation, doors & windows, etc.

⁹ Examples are Santa Cruz, Berkeley, Los Angeles, San Luis Obispo.

¹⁰ 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 retrieved on January 29, 2014.

¹¹ "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 apartments¹², 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 York¹³. 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 unit¹⁴.

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^{15,16}. 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 Ordinance¹⁷ (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,

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.

¹² This is out of over 25,000 listings of apartment rental since November 2013

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

¹⁴ Trulia, San Francisco Real Estate Overview, Retrieved at http://www.trulia.com/real_estate/San_Francisco-California/ on January 27, 2015

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

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

¹⁷ 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 majority¹⁸ 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 Control¹⁹. 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.

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

¹⁹ 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 space²⁰. 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

²⁰ 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 resolution²¹ 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.

²¹ 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 (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.

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

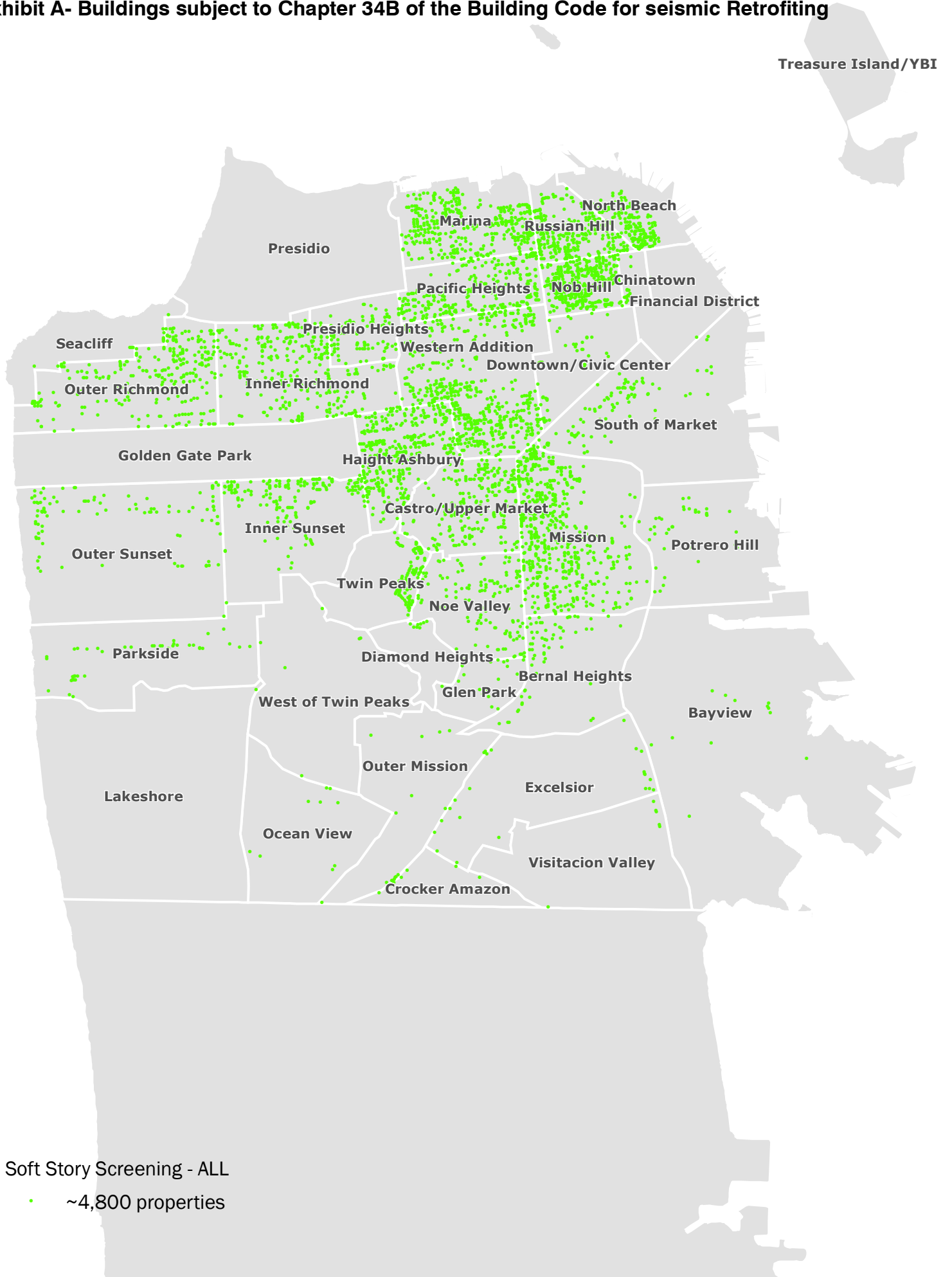
As of the date of this report, the Planning Department has not received any comments about this Ordinance.

RECOMMENDATION:	Recommendation of Approval with Modification
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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



Soft Story Screening - ALL

• ~4,800 properties

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

