BOARD of SUPERVISORS



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MEMORANDUM

TO: Daniel Adams, Director, Mayor's Office of Housing and Community

Development

Christina Varner, Executive Director, Residential Rent Stabilization and

Arbitration Board

FROM: John Carroll, Assistant Clerk, Land Use and Transportation Committee

DATE: August 7, 2024

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Melgar on July 30, 2024.

File No. 240803

Ordinance amending the Planning Code to require the Planning Department to investigate the presence and number of Unauthorized Dwelling Units at properties subject to a Development Application; refer design professionals that fail to disclose the presence of Unauthorized Dwelling Units to any applicable licensing board or regulatory agency; post online whether a property is subject to a regulatory agreement subjecting any units on the property to the San Francisco Residential Rent Stabilization and Arbitration Ordinance; and inspect properties prior to recommending approval of any loss of a Residential Unit or Unauthorized Dwelling Unit; affirming the Planning Department's determination under the California Environmental Quality Act, and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

If you have 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 or by email at: john.carroll@sfgov.org.

CC:

Office of Chair Melgar

Lydia Ely, Mayor's Office of Housing and Community Development Brian Cheu, Mayor's Office of Housing and Community Development Maria Benjamin, Mayor's Office of Housing and Community Development Sheila Nickolopoulos, Mayor's Office of Housing and Community Development Kyra Geithman, Mayor's Office of Housing and Community Development

1	[Planning Code	- Unauthorized and Rent-Controlled Dwelling Units]
2		
3	Ordinance am	ending the Planning Code to require the Planning Department to
4	investigate the	presence and number of Unauthorized Dwelling Units at properties
5	subject to a De	evelopment Application; refer design professionals that fail to disclose
6	the presence of	of Unauthorized Dwelling Units to any applicable licensing board or
7	regulatory age	ncy; post online whether a property is subject to a regulatory agreement
8	subjecting any	units on the property to the San Francisco Residential Rent
9	Stabilization a	nd Arbitration Ordinance; and inspect properties prior to recommending
10	approval of an	y loss of a Residential Unit or Unauthorized Dwelling Unit; affirming the
11	Planning Depa	ertment's determination under the California Environmental Quality Act,
12	and making fir	ndings of consistency with the General Plan, and the eight priority
13	policies of Pla	nning Code, Section 101.1.
14 15	NOTE:	Unchanged Code text and uncodified text are in plain Arial font. Additions to Codes are in <u>single-underline italics Times New Roman font</u> . Deletions to Codes are in <u>strikethrough italics Times New Roman font</u> .
16		Board amendment additions are in double-underlined Arial font. Board amendment deletions are in strikethrough Arial font.
17		Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.
18		
19	Be it ord	ained by the People of the City and County of San Francisco:
20		
21	Section	Environmental and Land Use Findings.
22	(a) The	Planning Department has determined that the actions contemplated in this
23	ordinance comply with the California Environmental Quality Act (California Public Resources	
24	Code Sections	21000 et seq.). Said determination is on file with the Clerk of the Board of
25		

1	Supervisors in File No and is incorporated herein by reference. The Board affirms this
2	determination.
3	(b) On, the Planning Commission, in Resolution No,
4	adopted findings that the actions contemplated in this ordinance are consistent, on balance,
5	with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
6	Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
7	the Board of Supervisors in File No, and is incorporated herein by reference.
8	
9	Section 2. The Planning Code is hereby amended by revising Sections 175, 176,
10	206.3, 206.5, 206.6, 207, 207.1, 249.94, 306.1, and 317, to read as follows:
11	SEC. 175. APPROVAL OF PERMITS <u>OR DEVELOPMENT APPLICATIONS</u> .
12	(a) No application for a building permit, <u>Development Application</u> , or other permit or
13	license, or for a permit of Occupancy, shall be approved by the Planning Department, and no
14	permit or license shall be issued by any City department, which would authorize a new use, a
15	change of use or maintenance of an existing use of any land or structure contrary to the
16	provisions of this Code.
17	* * * *
18	(f) Whenever this Code requires a property owner to enter into a regulatory agreement with
19	the City subjecting any dwelling units to the San Francisco Residential Rent Stabilization and
20	Arbitration Ordinance (Chapter 37 of the Administrative Code), the Planning Department shall note
21	the existence of the recorded regulatory agreement on the Property Information Map entry for the
22	subject property or other similar, publicly-accessible website.
23	SEC. 176. ENFORCEMENT AGAINST VIOLATIONS.
24	* * * *
25	(c) Penalties.

(1) Administrative Penalties.

(A) General Violations. The Zoning Administrator, by issuance of the NOV,
may assess upon the Responsible Party an administrative penalty for each violation in an
amount up to \$1,000 for each day the violation continues unabated. For purposes of this
subsection (c)(1)(A), each real property address, and each commercial or dwelling unit within
a multi-unit real property address, affected by a violation is a distinct violation for calculation of
applicable administrative penalties. Notwithstanding the foregoing, a violation of this Code that
affects a common area, feature, or shared detached feature of a multi-unit structure may be
treated as a distinct violation of this Code, at the reasonable discretion of the Zoning
Administrator. Misrepresentations made on any Applications or plans submitted to the Planning
Department shall also constitute a violation of this Code for the purposes of this Section 176. The
NOV may be appealed in the manner provided in subsection (c)(1)(E).

* * * *

(C) Penalties for Specified Violations.

Application. For any misrepresentation of material information within any Development Application or Building Permit, including failure to disclose or misrepresentation of tenant history at a site, the

Responsible Party shall be liable for a penalty of up to \$250,000 upon issuance of an NOV. Within 12

months of the effective date of the ordinance in Board File No. _____ amending this Section 176, the

(iii) Misrepresentation of Material Information on Development

Planning Commission shall adopt factors and criteria for consideration, to be updated from time to

time, to provide guidance to the Zoning Administrator when determining the appropriate penalty

amount for violations subject to this subsection (c)(1)(C)(iii).

1	SEC. 206.3. HOUSING OPPORTUNITIES MEAN EQUITY - SAN FRANCISCO
2	PROGRAM.
3	* * * *
4	(e) Implementation.
5	* * * *
6	(5) Regulatory Agreements. Recipients of development bonuses under this
7	Section 206.3 shall enter into a Regulatory Agreement with the City, as follows.
8	(A) The terms of the agreement shall be acceptable in form and content
9	to the Planning Director, the Director of MOHCD, and the City Attorney. The Planning Director
10	shall have the authority to execute such agreements.
11	(B) Following execution of the agreement by all parties, the completed
12	Regulatory Agreement, or memorandum thereof, shall be recorded and the conditions filed
13	and recorded on the Housing Project. The Planning Department shall note the existence of any
14	recorded Regulatory Agreement applicable to the Housing Project on the Property Information Map or
15	other similar, publicly-accessible website.
16	* * *
17	SEC. 206.5. STATE RESIDENTIAL DENSITY BONUS PROGRAM: ANALYZED.
18	* * *
19	(f) Regulatory Agreements. Recipients of a Density Bonus, Incentive, Concession,
20	waiver, or modification shall enter into a Regulatory Agreement with the City, as follows.
21	(1) The terms of the agreement shall be acceptable in form and content to the
22	Planning Director, the Director of MOHCD, and the City Attorney. The Planning Director shall
23	have the authority to execute such agreements.
24	(2) Following execution of the agreement by all parties, the completed Density

Bonus Regulatory Agreement, or memorandum thereof, shall be recorded and the conditions

1	filed and recorded on the Housing Project. <u>The Planning Department shall note the existence of</u>
2	any recorded Regulatory Agreement applicable to the Housing Project on the Property Information
3	Map or other similar, publicly-accessible website.
4	* * * *
5	SEC. 206.6. STATE DENSITY BONUS PROGRAM: INDIVIDUALLY REQUESTED.
6	* * * *
7	(f) Regulatory Agreements. Recipients of a Density Bonus, Incentive, Concession,
8	waiver, or modification shall enter into a Regulatory Agreement with the City, as follows.
9	(1) The terms of the agreement shall be acceptable in form and content to the
10	Planning Director, the Director of MOHCD, and the City Attorney. The Planning Director shall
11	have the authority to execute such agreements.
12	(2) Following execution of the agreement by all parties, the completed Density
13	Bonus Regulatory Agreement, or memorandum thereof, shall be recorded and the conditions
14	filed and recorded on the Housing Project. The Planning Department shall note the existence of
15	any recorded Regulatory Agreement applicable to the Housing Project on the Property Information
16	Map or other similar, publicly-accessible website.
17	* * * *
18	SEC. 207. DWELLING UNIT DENSITY LIMITS.
19	* * * *
20	(c) Exceptions to Dwelling Unit Density Limits. An exception to the calculations
21	under this Section 207 shall be made in the following circumstances:
22	* * * *
23	(8) Residential Density Exception in RH Districts.
24	* * * *

(E) Applicability of Rent Ordinance; Regulatory Agreements. Project
sponsors of projects utilizing the density exception of this subsection (c)(8) shall enter into a
regulatory agreement with the City, subjecting the new units or Group Housing rooms created
pursuant to the exception to the San Francisco Residential Rent Stabilization and Arbitration
Ordinance (Chapter 37 of the Administrative Code), as a condition of approval of the density
exception ("Regulatory Agreement"). At a minimum, the Regulatory Agreement shall contain
the following: (i) a statement that the new units created pursuant to the density exception are
not subject to the Costa-Hawkins Rental Housing Act (California Civil Code Sections 1954.50
et seq.) because, under Section 1954.52(b), the property owner has entered into and agreed
to the terms of this agreement with the City in consideration of an exception from residential
density limits of up to four dwelling units per lot, or up to six units per lot in Corner Lots, or
other direct financial contribution or other form of assistance specified in California
Government Code Sections 65915 et seq.; (ii) a description of the exception of residential
density or other direct financial contribution or form of assistance provided to the property
owner; and (iii) a description of the remedies for breach of the agreement and other provisions
to ensure implementation and compliance with the agreement. The property owner and the
Planning Director (or the Director's designee), on behalf of the City, will execute the
Regulatory Agreement, which shall be reviewed and approved by the City Attorney's Office.
The Regulatory Agreement shall be executed prior to the City's issuance of the First
Construction Document for the project, as defined in Section 107A.13.1 of the San Francisco
Building Code. Following execution of the Regulatory Agreement by all parties and approval
by the City Attorney, the Regulatory Agreement or a memorandum thereof shall be recorded
to the title records in the Office of the Assessor-Recorder against the property and shall be
binding on all future owners and successors in interest. The Planning Department shall note the

1	existence of any recorded Regulatory Agreement applicable to the new units on the Property
2	Information Map or other similar, publicly-accessible website.
3	* * * *
4	SEC. 207.1. LOCAL ACCESSORY DWELLING UNIT PROGRAM.
5	* * * *
6	(h) Regulatory Agreements. A Regulatory Agreement required by subsection
7	207.1(g) as a condition of approval of an Accessory Dwelling Unit shall contain the following:
8	* * * *
9	(5) Following execution of the Regulatory Agreement by all parties and
10	approval by the City Attorney, the Regulatory Agreement or a memorandum thereof shall be
11	recorded against the property and shall be binding on all future owners and successors in
12	interest. The Planning Department shall note the existence of any recorded Regulatory Agreement
13	applicable to the ADU on the Property Information Map or other similar, publicly-accessible website.
14	* * * *
15	SEC. 249.94. FAMILY AND SENIOR HOUSING OPPORTUNITY SPECIAL USE
16	DISTRICT.
17	* * * *
18	(e) Applicability of Rent Ordinance; Regulatory Agreements.
19	(1) Sponsors of projects utilizing any of the density exceptions above the base
20	density up to the limits in subsection (d)(1) of this Section 249.94 shall enter into a regulatory
21	agreement with the City subjecting the new units created pursuant to such density exception,
22	except for any required Affordable Units as defined in Planning Code Section 401, to the
23	Residential Rent Stabilization and Arbitration Ordinance (Chapter 37 of the Administrative
24	Code), as a condition of approval of the density exception ("Regulatory Agreement").

(2) The property owner and the Planning Director, or the Director's designee, on behalf of the City, will execute the Regulatory Agreement, which is subject to review and approval by the City Attorney's Office. The Regulatory Agreement shall be executed prior to the City's issuance of the First Construction Document for the project, as defined in Section 107A.13.1 of the Building Code. Following execution of the Regulatory Agreement by all parties and approval by the City Attorney, the Regulatory Agreement or a memorandum thereof shall be recorded in the title records in the Office of the Assessor-Recorder against the property and shall be binding on all future owners and successors in interest. *The Planning Department shall note the existence of any recorded Regulatory Agreement applicable to the new units on the Property Information Map or other similar, publicly-accessible website.*

11 * * *

SEC. 306.1. APPLICATIONS AND FILING FEES.

(c) **Content of Applications.** The content of applications shall be in accordance with the policies, rules and regulations of the Planning Department, Zoning Administrator, and the Planning Commission. All applications shall be upon forms prescribed therefor, and shall contain or be accompanied by all information required to assure the presentation of pertinent facts for proper consideration of the case and for the permanent record. The applicant may be required to file with histheir application the information needed for the preparation and mailing of notices as specified in Section 306.3, and the information required by subsection 317(j). In addition to any other information required by the Planning Department, the Zoning Administrator, and the Planning Commission, an applicant for a conditional use permit or variance who proposes a commercial use for the subject property shall disclose the name under which business will be, or is expected to be, conducted at the subject property, if such name is known at the time of application. The term "known" shall mean actual, not imputed

- knowledge, and shall consist of direct evidence including but not limited to a contract of sale, lease, or rental, or letter of intent or agreement, between the applicant and a commercial entity. If the business name becomes known to the applicant during the conditional use permit or variance processing period, the applicant promptly shall amend the application to disclose such business name.
- (d) **Verification.** Each application filed by or on behalf of one or more property owners shall be verified by at least one such owner or his their authorized agent attesting to the truth and correctness of all facts, statements and information presented. All applications shall include the following statement: "The information contained in this application is true and complete to the best of my knowledge, based upon diligent inquiry. This application is signed under penalty of perjury. I understand that willful or material misstatement(s) or omissions in the application may result in the *rejection* cancellation of the application and a lapse of time before the application may be resubmitted." The Zoning Administrator may reject a conditional use or variance cancel any Development Aapplication as inaccurate and may require the applicant to re-file the application where the Zoning Administrator determines that the application includes material misstatements or omissions. The Zoning Administrator shall cancel any development application as inaccurate and shall require the applicant to re-file the application where the Zoning Administrator determines that the application includes material misstatements or omissions regarding the presence or number of Unauthorized Dwelling Units or tenants on the property. Such *rejection* cancellation shall not be considered to be a denial of the application on its merits. Where the Zoning Administrator determines that such material misstatements or omissions were made willfully, the Zoning Administrator may require that the applicant wait up to 6six months before re-filing an application for substantially the same project. The Zoning Administrator's action in this regard may be appealed to the Board of Appeals pursuant to Section 308.2 of this Code.

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1	* * * * *
2	SEC. 317. LOSS OF RESIDENTIAL AND UNAUTHORIZED UNITS THROUGH
3	DEMOLITION, MERGER, AND CONVERSION.
4	* * * *
5	(j) Disclosure of Unauthorized Units; Referral to Licensing Board or Regulatory Agency.
6	(1) Disclosure Required. All Development Applications shall disclose the presence of
7	any Unauthorized Unit at the subject property. In addition to the verification required by Planning
8	Code subsection 306.1(d), any Development Application that does not identify an Unauthorized Unit at
9	the subject property shall include a declaration, signed under penalty of perjury by the owner(s) or
10	owner's authorized agent, that no Unauthorized Units exist at the property.
11	(2) Application Contents. All Development Applications shall require the applicant to
12	report certain information that may suggest the presence of Unauthorized Units at the property. The
13	Planning Department shall develop, and publish on the Department's website, a list of such
14	information, which shall include, at minimum:
15	(A) The number of dwelling units at the property, and, to the best of the
16	applicant's knowledge, whether any units or bedrooms have been rented in the prior 10 years.
17	(B) For each unit that has been rented, the number of bedrooms in such unit.
18	(C) The number of mailboxes at the property.
19	(D) The number of utility meters at the property.
20	(3) Planning Department Investigation. If the application states that the property does
21	not contain any Unauthorized Unit, but the information contained in the application leads Department
22	staff to reasonably believe that an Unauthorized Unit may exist on the property, Department staff shall
23	investigate whether the property contains any Unauthorized Unit. Such investigation may include
24	research into property and Residential Rent Stabilization and Arbitration Board rental records,
25	interviews with current and former owners, tenants, and neighbors, and inspection of the property.

1	Department staff shall review and consider inspection reports and notices of violation prepared by the
2	Department of Building Inspection and any relevant information contained in the Property Information
3	Map and the Department's annual Housing Inventory, including any supporting data. If, after
4	conducting an investigation, the Department determines that the Development Application failed to
5	disclose any Unauthorized Unit, the Department shall cancel the Development Application as
6	inaccurate and the applicant may re-file the application.
7	(4) Referral to Licensing Board or Regulatory Agency. If, after conducting its
8	investigation, the Department has reason to believe that the Development Application failed to disclose
9	any Unauthorized Unit, the following actions shall be taken:
10	(A) Notification; Summary Report. The Department shall notify any design
11	professional that failed to disclose or represent the Unauthorized Unit in any application materials or
12	plans and request any exculpatory information as to why referral to any applicable licensing board or
13	regulatory agency is not warranted. The Department shall prepare a summary report detailing any
14	failure to disclose or represent the Unauthorized Unit, including exculpatory evidence or arguments, if
15	any, relevant to whether referral is warranted. The summary report shall conclude with a
16	determination regarding whether the design professional should be referred to any applicable licensing
17	board or regulatory agency, and provide written findings supporting that determination.
18	(B) Determination. The Zoning Administrator shall review all determinations
19	made by the Department and shall make a final determination either affirming or overruling the
20	determination. The Zoning Administrator shall either adopt the staff findings or issue the Zoning
21	Administrator's own written findings detailing the basis for the final determination. The Department
22	shall notify the candidate in writing of the Zoning Administrator's final determination.
23	(C) Appeal. Any person may appeal the Zoning Administrator's final
24	determination to the Planning Commission.
25	

1	(k) Department Inspection. Prior to recommending approval of Residential Demolition,	
2	Conversion, or Merger, the Department shall inspect the property. The Department's inspection shall	
3	attempt to establish whether the property contains rental units and whether any rental units are	
4	occupied. The Department shall also request information from the Residential Rent Stabilization and	
5	Arbitration Board that indicates whether any rental units on the property are subject to the Residential	
6	Rent Stabilization and Arbitration ordinance.	
7		
8	Section 3. Effective Date. This ordinance shall become effective 30 days after	
9	enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the	
10	ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board	
11	of Supervisors overrides the Mayor's veto of the ordinance.	
12		
13	Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors	
14	intends to amend only those words, phrases, paragraphs, subsections, sections, articles,	
15	numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal	
16	Code that are explicitly shown in this ordinance as additions, deletions, Board amendment	
17	additions, and Board amendment deletions in accordance with the "Note" that appears under	
18	the official title of the ordinance.	
19		
20	APPROVED AS TO FORM:	
21	DAVID CHIU, City Attorney	
22	By: /s/ Peter R. Miljanich	
23	PETER R. MILJANICH Deputy City Attorney	
24	n:\legana\as2024\2400245\01776310.docx	

LEGISLATIVE DIGEST

[Planning Code - Unauthorized and Rent-Controlled Dwelling Units]

Ordinance amending the Planning Code to require the Planning Department to investigate the presence and number of Unauthorized Dwelling Units at properties subject to a Development Application; refer design professionals that fail to disclose the presence of Unauthorized Dwelling Units to any applicable licensing board or regulatory agency; post online whether a property is subject to a regulatory agreement subjecting any units on the property to the San Francisco Residential Rent Stabilization and Arbitration Ordinance; and inspect properties prior to recommending approval of any loss of a Residential Unit or Unauthorized Dwelling Unit; affirming the Planning Department's determination under the California Environmental Quality Act, and making findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1.

Existing Law

Various sections of the Planning Code require a property owner to enter into a regulatory agreement with the City subjecting certain dwelling units to the San Francisco Residential Rent Stabilization and Arbitration Ordinance (Chapter 37 of the Administrative Code) in exchange for waiver of certain Planning Code requirements.

Planning Code Section 176 sets forth the methods of enforcement and penalties for violations of the Planning Code.

Planning Code Section 306.1 sets forth the required contents of development applications, and requires property owners or their agents to verify the truth and correctness of all facts, statements and information presented in the application.

Planning Code Section 317 establishes procedures and controls for the removal of Dwelling Units, including through Demolition, Merger, and Conversion of Dwelling Units.

Amendments to Current Law

This ordinance would require the Planning Department to note the existence of any recorded regulatory agreement on the Property Information Map entry for the subject property or other similar, publicly-accessible website.

This ordinance would amend Planning Code Section 176 to specify that, and to establish specific penalties for any misrepresentation of material information within any Development Application or Building Permit application, including failure to disclose or misrepresentation of tenant history at a site.

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This ordinance would amend Planning Code Section 306.1 to require the Zoning Administrator to cancel any Development Application, and to require the applicant to re-file the application, where the Zoning Administrator determines that the application includes material misstatements or omissions regarding the presence or number of Unauthorized Dwelling Units or tenants on the property.

This ordinance would amend Planning Code Section 317 to require applicants to disclose the presence of any Unauthorized Dwelling Units at the property and to include certain information in any Development Application that may suggest the presence of Unauthorized Units at the property. This ordinance would also require the Planning Department to investigate whether the property contains an Unauthorized Unit if the application states that the property does not contain an Unauthorized Unit, but the information contained in the application leads Department staff to reasonably believe that an Unauthorized Unit may exist on the property. If a Development Application failed to disclose any Unauthorized Unit, this ordinance would also require the Planning Department, in certain circumstances, to refer any design professional that failed to disclose the Unauthorized Unit to the appropriate licensing body or regulatory agency.

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BOARD OF SUPERVISORS Page 2

Introduction Form

(by a Member of the Board of Supervisors or the Mayor)

I here	by subm	it the following item for introduction (select only one):
	1.	For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
	2.	Request for next printed agenda (For Adoption Without Committee Reference) (Routine, non-controversial and/or commendatory matters only)
	3.	Request for Hearing on a subject matter at Committee
	4.	Request for Letter beginning with "Supervisor inquires"
	5.	City Attorney Request
	6.	Call File No. from Committee.
	7.	Budget and Legislative Analyst Request (attached written Motion)
	8.	Substitute Legislation File No.
	9.	Reactivate File No.
	10.	Topic submitted for Mayoral Appearance before the Board on
The p	roposed	legislation should be forwarded to the following (please check all appropriate boxes):
	□ Sn	nall Business Commission Youth Commission Ethics Commission
	□ Pla	nning Commission Building Inspection Commission Human Resources Department
Gene	ral Plan l	Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):
	□ Ye	s
(Note	: For Im	perative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)
Spons	sor(s):	
Subje	ot:	
Subje	C	
I		
Long	Title or	text listed:
<u></u>		
		Signature of Sponsoring Supervisor: