

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

2

3 **Ordinance amending 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 Development Application; refer design professionals that fail to disclose**
6 **the presence of Unauthorized Dwelling Units to any applicable licensing board or**
7 **regulatory agency; 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 and Arbitration Ordinance; and inspect properties prior to recommending**
10 **approval of any loss of a Residential Unit or Unauthorized Dwelling Unit; affirming the**
11 **Planning Department's determination under the California Environmental Quality Act,**
12 **and making findings of consistency with the General Plan, and the eight priority**
13 **policies of Planning Code, Section 101.1.**

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

18

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

20

21 Section 1. 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. 240803 and is incorporated herein by reference. The Board affirms
2 this 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 OR DEVELOPMENT APPLICATIONS.**

12 (a) No application for a building permit, Development Application, 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 **(1) Administrative Penalties.**

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

13 * * * *

14 **(C) Penalties for Specified Violations.**

15 * * * * (iii) Misrepresentation of Material Information on Development
16 Application. For any misrepresentation of material information within any Development Application or
17 Building Permit, including failure to disclose or misrepresentation of tenant history at a site, the
18 Responsible Party shall be liable for a penalty of up to \$250,000 upon issuance of an NOV. Within 12
19 months of the effective date of the ordinance in Board File No. 240803 amending this Section 176, the
20 Planning Commission shall adopt factors and criteria for consideration, to be updated from time to
21 time, to provide guidance to the Zoning Administrator when determining the appropriate penalty
22 amount for violations subject to this subsection (c)(1)(C)(iii).

23 * * * *

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

1 filed and recorded on the Housing Project. The Planning Department shall note the existence of
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 * * * *

1 (E) **Applicability of Rent Ordinance; Regulatory Agreements.** Project
2 sponsors of projects utilizing the density exception of this subsection (c)(8) shall enter into a
3 regulatory agreement with the City, subjecting the new units or Group Housing rooms created
4 pursuant to the exception to the San Francisco Residential Rent Stabilization and Arbitration
5 Ordinance (Chapter 37 of the Administrative Code), as a condition of approval of the density
6 exception (“Regulatory Agreement”). At a minimum, the Regulatory Agreement shall contain
7 the following: (i) a statement that the new units created pursuant to the density exception are
8 not subject to the Costa-Hawkins Rental Housing Act (California Civil Code Sections 1954.50
9 et seq.) because, under Section 1954.52(b), the property owner has entered into and agreed
10 to the terms of this agreement with the City in consideration of an exception from residential
11 density limits of up to four dwelling units per lot, or up to six units per lot in Corner Lots, or
12 other direct financial contribution or other form of assistance specified in California
13 Government Code Sections 65915 et seq.; (ii) a description of the exception of residential
14 density or other direct financial contribution or form of assistance provided to the property
15 owner; and (iii) a description of the remedies for breach of the agreement and other provisions
16 to ensure implementation and compliance with the agreement. The property owner and the
17 Planning Director (or the Director’s designee), on behalf of the City, will execute the
18 Regulatory Agreement, which shall be reviewed and approved by the City Attorney’s Office.
19 The Regulatory Agreement shall be executed prior to the City’s issuance of the First
20 Construction Document for the project, as defined in Section 107A.13.1 of the San Francisco
21 Building Code. Following execution of the Regulatory Agreement by all parties and approval
22 by the City Attorney, the Regulatory Agreement or a memorandum thereof shall be recorded
23 to the title records in the Office of the Assessor-Recorder against the property and shall be
24 binding on all future owners and successors in interest. The Planning Department shall note the
25

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”).

1 (2) The property owner and the Planning Director, or the Director's designee,
2 on behalf of the City, will execute the Regulatory Agreement, which is subject to review and
3 approval by the City Attorney's Office. The Regulatory Agreement shall be executed prior to
4 the City's issuance of the First Construction Document for the project, as defined in Section
5 107A.13.1 of the Building Code. Following execution of the Regulatory Agreement by all
6 parties and approval by the City Attorney, the Regulatory Agreement or a memorandum
7 thereof shall be recorded in the title records in the Office of the Assessor-Recorder against the
8 property and shall be binding on all future owners and successors in interest. The Planning
9 Department shall note the existence of any recorded Regulatory Agreement applicable to the new units
10 on the Property Information Map or other similar, publicly-accessible website.

11 * * * *

12 **SEC. 306.1. APPLICATIONS AND FILING FEES.**

13 * * * *

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

1 knowledge, and shall consist of direct evidence including but not limited to a contract of sale,
2 lease, or rental, or letter of intent or agreement, between the applicant and a commercial
3 entity. If the business name becomes known to the applicant during the conditional use permit
4 or variance processing period, the applicant promptly shall amend the application to disclose
5 such business name.

6 (d) **Verification.** Each application filed by or on behalf of one or more property
7 owners shall be verified by at least one such owner or ~~his~~ their authorized agent attesting to
8 the truth and correctness of all facts, statements and information presented. All applications
9 shall include the following statement: "The information contained in this application is true and
10 complete to the best of my knowledge, based upon diligent inquiry. This application is signed
11 under penalty of perjury. I understand that willful or material misstatement(s) or omissions in
12 the application may result in the ~~rejection~~ cancellation of the application and a lapse of time
13 before the application may be resubmitted." The Zoning Administrator may ~~reject a conditional~~
14 ~~use or variance~~ cancel any Development Application as inaccurate and may require the applicant
15 to re-file the application where the Zoning Administrator determines that the application
16 includes material misstatements or omissions. The Zoning Administrator shall cancel any
17 development application as inaccurate and shall require the applicant to re-file the application where
18 the Zoning Administrator determines that the application includes material misstatements or omissions
19 regarding the presence or number of Unauthorized Dwelling Units or tenants on the property. Such
20 ~~rejection~~ cancellation shall not be considered to be a denial of the application on its merits.
21 Where the Zoning Administrator determines that such material misstatements or omissions
22 were made willfully, the Zoning Administrator may require that the applicant wait up to six
23 months before re-filing an application for substantially the same project. The Zoning
24 Administrator's action in this regard may be appealed to the Board of Appeals pursuant to
25 Section 308.2 of this Code.

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.

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
24 Deputy City Attorney

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