

BOARD of SUPERVISORS



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February 12, 2020

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

Dear Commissioners:

On February 4, 2020, Supervisor Mar introduced the following legislation:

**File No. 200113**

**Ordinance amending the Planning and Building Codes to reauthorize the waiver of fees related to granting legal status to existing dwelling units constructed without required permits and extending the waiver through December 31, 2024; requiring annual reports on the fee waiver program; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.**

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

Angela Calvillo, Clerk of the Board

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

By: Erica Major, Assistant Clerk  
Land Use and Transportation Committee

c: John Rahaim, Director  
Scott Sanchez, Zoning Administrator  
Lisa Gibson, Environmental Review Officer  
Devyani Jain, Deputy Environmental Review Officer  
Adam Varat, Acting Director of Citywide Planning  
Aaron Starr, Manager of Legislative Affairs  
Andrea Ruiz-Esquide, Deputy City Attorney  
Joy Navarrete, Major Environmental Analysis

1 [Planning, Building Codes - Reauthorization and Extension of Fee Waiver - Legalization of  
2 Unauthorized Dwelling Units]

3 **Ordinance amending the Planning and Building Codes to reauthorize the waiver of fees**  
4 **related to granting legal status to existing dwelling units constructed without required**  
5 **permits and extending the waiver through December 31, 2024; requiring annual reports**  
6 **on the fee waiver program; and making findings of consistency with the General Plan,**  
7 **and the eight priority policies of Planning Code, Section 101.1, and findings of public**  
8 **necessity, convenience, and welfare under Planning Code, Section 302.**

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

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

17 Section 1. Findings.

18 (a) The Board of Supervisors finds that the actions contemplated in this ordinance  
19 are consistent, on balance, with the City's General Plan and the eight priority policies of  
20 Planning Code Section 101.1 because the fee waiver will encourage owners to maintain and  
21 legalize potential sources of affordable housing.

22 (b) Pursuant to Planning Code Section 302, this Board finds that the actions  
23 contemplated in this ordinance will serve the public necessity, convenience, and welfare  
24 because the fee waiver will encourage owners to maintain and legalize potential sources of  
25 affordable housing and result in little fiscal impact to the City.

(c) In California Government Code Section 65852.150, the Legislature declares that

1 accessory dwelling units are a valuable form of housing in California because they "provide  
2 housing for family members, students, the elderly, in-home health care providers, the  
3 disabled, and others, at below market prices within existing neighborhoods" and that  
4 "homeowners who create accessory dwelling units benefit from added income, and an  
5 increased sense of security."

6 (d) San Francisco has long had a housing shortage, especially of affordable  
7 housing. The housing market continues to be tight and housing costs are beyond the reach of  
8 many households. Objective 3 in the General Plan's 2014 Housing Element directs the City to  
9 protect the affordability of the existing housing stock, especially rental units. Policy 3.4 seeks  
10 to preserve "naturally" affordable housing types, such as smaller and older ownership units.

11 (e) The City has no definitive information on the number of dwelling units that have  
12 been added to existing residential buildings without the benefit of a permit (currently defined in  
13 Planning Code Section 317(b)(13) and hereafter referred to as "unauthorized units"), but  
14 unofficial estimates indicate that as many as 30,000 to 40,000 such dwelling units existed as  
15 of 2013. Often these unauthorized units have been built in the basements, garages, and attics  
16 of existing buildings or in rear-yard structures. While many of these unauthorized units may  
17 not meet existing Planning and Building Code requirements, they constitute a major supply of  
18 San Francisco's affordable housing units, often meet life and safety standards, or could meet  
19 such standards with minor permitted alterations, and may require only exceptions from  
20 density, open space, and other Planning Code requirements in order to become legal units.

21 (f) The City's 2014 Housing Element notes that while 76 unauthorized units were  
22 granted legal status between 2004 and 2013, a much larger number (226 units) were  
23 removed during that same period.  
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1 (g) In 2014, the City enacted Ordinance No. 43-14, which amended the Planning  
2 Code, the Building Code, and the Administrative Code to establish a legalization process for  
3 dwelling units built without a building permit.

4 (h) In 2015, to encourage the legalization of existing unauthorized units, the City  
5 enacted Ordinance No. 146-15, which waived the permit fees related to legalizing existing  
6 unauthorized units for permits issued prior to January 1, 2020.

7 (i) This ordinance would re-authorize and extend the fee waiver enacted by  
8 Ordinance No. 146-15 for an additional five years commencing on January 1, 2020. By  
9 waiving such fees, the City would continue to create incentives for property owners to pursue  
10 legalization of the unauthorized units and would help achieve several public policy objectives.  
11 By encouraging the legalization of these units, the City would add units to the City's official  
12 supply of affordable housing, ensure that these units are safe and habitable, and properly  
13 include these units when calculating the City's existing housing supply.

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15 Section 2. Fee Waivers.

16 (a) Notwithstanding any provision of the Planning Code, including the fee schedule  
17 associated with Section 350, the permit fee related to reviewing permit applications seeking to  
18 legalize existing dwelling units that were constructed without the required permits is hereby  
19 waived for any permit issued for such activities between January 1, 2020 and December 31,  
20 2024, inclusive.

21 (b) Notwithstanding any provision of the Building Code, including the fee schedules  
22 of Tables 1A-A and 1A-E, the Plan Review Fee related to reviewing permit applications, or a  
23 portion of a permit application, seeking to legalize existing dwelling units that were  
24 constructed without the required permits is hereby waived for any permit issued for such  
25 activities between January 1, 2020 and December 31, 2024, inclusive; provided that other

1 fees, including but not limited to fees for applications to undertake structural work or  
2 excavation activities or any fees required by State law, shall not be waived.

3 (c) Only the portion of the permit fees related to legalizing existing units may be  
4 waived. If the permit describes work beyond that required to legalize the unit, the fees related  
5 to any additional work beyond necessary improvements for legalization shall not be waived.

6 (d) In the event the Director of Building Inspection or the Planning Director  
7 determines that the fee waivers provided in this ordinance are no longer feasible, they may  
8 provide information to the Board of Supervisors about said infeasibility and the Board may  
9 consider adopting an ordinance terminating this fee waiver prior to January 1, 2025.

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11 Section 3. Report by Department of Building Inspection. Starting March 2021 and  
12 during each March annually thereafter, concluding with March 2025, the Department of  
13 Building Inspection shall submit a report to the Mayor, the Board of Supervisors, the Building  
14 Inspection Commission, and the Planning Commission on the fee waivers related to permits  
15 granting legal status for unauthorized units. The report shall include, but need not be limited  
16 to, the following information:

17 (a) the total amount of fees waived during the prior calendar year and the amount of  
18 fees projected to be waived during the current calendar year, including those of the Planning  
19 Department, and any administrative costs for the prior calendar year and the current calendar  
20 year associated with the Departments' processing of such waivers;

21 (b) the number of projects that took advantage of the fee waiver program during the  
22 prior calendar year, and the districts or geographical areas of San Francisco in which the  
23 legalized units are located;

24 (c) the number of units in single-family homes and the number in multi-family  
25 buildings, legalized during the prior calendar year;

1 (d) the length of time each fee waiver applicant (“applicant”) who submitted the  
2 application during the prior calendar year has owned the subject property, and if the applicant  
3 is an individual or a business;

4 (e) for each fee waiver applicant who submitted the application during the prior  
5 calendar year, if the applicant owns, in whole or in part, other residential property in the City  
6 as an individual or part of a partnership or corporation; and

7 (f) for each fee waiver applicant who submitted the application during the prior  
8 calendar year, if the applicant has, or had within the past 10 years, building permit  
9 applications for other residential properties in the City;

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11 Section 4. Effective Date; Retroactivity.

12 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs  
13 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not  
14 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the  
15 Mayor’s veto of the ordinance.

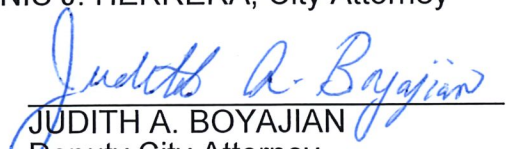
16 (b) Upon its effective date, this ordinance shall be retroactive to January 1, 2020. It is  
17 the intent of the Board of Supervisors that the fee waivers originally provided in Ordinance No.  
18 146-15 and provided in this ordinance be uninterrupted through December 31, 2024. Any  
19 fees waived in this ordinance that are collected between January 1, 2020, and the effective  
20 date of this ordinance shall be promptly reimbursed by the City.

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Section 5. A copy of this ordinance shall be placed in the file for Ordinance No. 146-15 (Board File No. 150571), and the listing of Ordinance No. 146-15 on the Board of Supervisors website shall include a reference to this ordinance.

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

By:   
JUDITH A. BOYAJIAN  
Deputy City Attorney

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## **LEGISLATIVE DIGEST**

[Planning, Building Codes - Re-Authorization and Extension of Fee Waiver - Legalization of Unauthorized Dwelling Units]

**Ordinance amending the Planning and Building Codes to reauthorize the waiver of fees related to granting legal status to existing dwelling units constructed without required permits and extending the waiver through December 31, 2024; requiring annual reports on the fee waiver program; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.**

### Existing Law

The Planning Department and Department of Building Inspection charge certain administrative fees for review of building permit applications, including permit applications that may be submitted to legalize an existing dwelling unit that had been constructed or added without required City permits – currently defined in Planning Code Section 317(b)(13) as “unauthorized units.” Pursuant to Ordinance No. 146-15 (approved on August 6, 2015), the fees of the Planning and Building Inspection Departments related to review of a permit or the portion of a permit related to legalizing an unauthorized unit were waived until January 1, 2020.

### Amendments to Current Law

This ordinance re-authorizes the fee waiver enacted by Ordinance 146-15 and provides that it is extended from January 1, 2020 through December 31, 2024. Only fees related directly to legalization would be waived. If the Director of Building Inspection and the Planning Director determine that the permit application fee waiver is no longer feasible, they could request that the Board of Supervisors consider an ordinance terminating this fee waiver prior to January 1, 2025. A report from the Department of Building Inspection to the Board of Supervisors, Building Inspection Commission, and Planning Commission is required starting March 2021 and annually thereafter.

### Background Information

As stated in the findings, San Francisco has long had a housing shortage, especially of affordable housing. The housing market continues to be tight and housing costs are beyond the reach of many households. The City has no definitive information on the number of dwelling units that have been added to existing residential buildings without the benefit of a permit but unofficial estimates indicate that as many as 30,000 to 40,000 such dwelling units existed as of 2013. Often these unauthorized units have been built in the basements, garages, and attics of existing buildings or in rear-yard structures. While many of these



unauthorized units may not meet existing Planning and Building Code requirements, they constitute a major supply of San Francisco's affordable housing units, often meet life and safety standards, or could meet such standards with minor permitted alterations, and may require only exceptions from density, open space, and other Planning Code requirements in order to become legal units.

The Housing Element of the General Plan directs the City to protect the affordability of the existing housing stock, especially rental units, and to preserve “naturally” affordable housing types such as smaller and older ownership units. This fee waiver will encourage owners to maintain and legalize potential sources of affordable housing and result in a very low fiscal impact to the Planning and Building Departments.

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