

BOARD of SUPERVISORS



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

MEMORANDUM

TO: Patrick O'Riordan, Director, Department of Building Inspection
Sonya Harris, Commission Secretary, Building Inspection Commission

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

DATE: January 15, 2021

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, introduced by Supervisor Mar on January 12, 2021:

File No. 210030

Ordinance amending the Building Code to waive specified fees for certain accessory dwelling unit projects through June 30, 2023; requiring the Department of Building Inspection to annually report on such waivers; and affirming the Planning Department's determination under the California Environmental Quality Act.

The proposed ordinance is being transmitted pursuant to Charter, Section D3.750-5, for public hearing and recommendation. It is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Please forward me the Commission's recommendation and reports at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: Erica.Major@sfgov.org.

c: John Murray, Department of Building Inspection
Patty Lee, Department of Building Inspection

1 [Building Code - Fee Waiver for Accessory Dwelling Units]

2

3 **Ordinance amending the Building Code to waive specified fees for certain accessory**
 4 **dwelling unit projects through June 30, 2023; requiring the Department of Building**
 5 **Inspection to annually report on such waivers; and affirming the Planning**
 6 **Department's determination under the California Environmental Quality Act.**

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

11

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

13

14 Section 1. Background and Findings.

15 (a) The Planning Department has determined that the actions contemplated in this
 16 ordinance comply with the California Environmental Quality Act (California Public Resources
 17 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
 18 Supervisors in File No. _____ and is incorporated herein by reference. The Board affirms
 19 this determination.

20 (b) On _____, 20__, at a duly noticed public hearing, the Building Inspection
 21 Commission considered this ordinance in accordance with Charter Section D3.750-5 and
 22 Building Code Section 104A.2.11.1.1. A copy of a letter from the Secretary of the Building
 23 Inspection Commission regarding the Commission's recommendation is on file with the Clerk
 24 of the Board of Supervisors in File No. _____, and is incorporated herein by reference.

25

1 (c) The State of California recognizes that construction of accessory dwelling units is
2 part of a suite of strategies to address housing challenges in the state. In 2019, state
3 legislators passed Senate Bill 13, Assembly Bill 68, Assembly Bill 881, and Assembly Bill 671
4 among several bills designed to facilitate the construction of accessory dwelling units, clarify
5 their contribution toward Regional Housing Needs Assessments allocations for local agencies,
6 and require that local agencies' General Plan Housing Elements incentivize construction of
7 accessory dwelling units as affordable units for tenants with very low, low, and moderate
8 incomes.

9 (d) San Francisco's housing affordability crisis impacts tenants with very low, low, and
10 moderate incomes. These tenants could benefit from the addition of accessory dwelling units
11 to the City's affordable housing stock. In districts containing a greater proportion of single-
12 family homes, accessory dwelling units can increase housing density within the current zoning
13 limits. Property owners have described a number of reasons for constructing accessory
14 dwelling units, including creating space for multigenerational living, addressing mobility issues
15 for seniors, and adding rental income streams. For some single-family homeowners of limited
16 or modest means that lack access to significant capital, the cost of constructing accessory
17 dwelling units, including Building Code fees, can be a barrier to construction of accessory
18 dwelling units.

19
20 Section 2. The San Francisco Building Code is hereby amended by deleting existing
21 Section 107A.15, and adding new Section 107A.15, to read as follows:

22
23 ~~**107A.15 Building Code fee waivers for 100% affordable housing projects and accessory**~~
24 ~~**dwelling unit projects. Notwithstanding any fee provision of the Building Code to the contrary, the**~~
25 ~~**following provisions shall apply to 100% affordable housing projects and accessory dwelling unit**~~

1 ~~projects where the subject accessory dwelling unit property is: (1) within a building or on a property~~
2 ~~containing four or fewer dwelling units or (2) located on a nonprofit charitable organization's~~
3 ~~residential project.~~

4 ~~(a) Building inspection fees, plan review fees, records retention fees, and site surcharge fees~~
5 ~~shall be waived. For purposes of this subsection (a), building inspection fees do not include electrical~~
6 ~~and plumbing fees.~~

7 ~~(b) For purposes of this Section 107A.15, affordable housing shall mean a multi-family~~
8 ~~residential building, including any ancillary commercial space, where 100% of the residential units~~
9 ~~(not including a manager's unit) will be subject to a recorded regulatory restriction to ensure~~
10 ~~affordability based on income, or where 100% of the residential units (not including a manager's unit)~~
11 ~~are funded by a nonprofit charitable organization and will provide permanent housing for homeless or~~
12 ~~formerly homeless persons.~~

13 ~~(c) For purposes of this Section 107A.15, accessory dwelling unit shall have the meaning set~~
14 ~~forth in Planning Code Section 102. The applicant for the accessory dwelling unit is eligible for a fee~~
15 ~~waiver (or proportionate fee waiver) solely for the establishment or modification of the accessory~~
16 ~~dwelling unit and no other work on the applicant's property that is subject to the Building Code.~~

17 ~~(d) Upon the effective date of the ordinance establishing Section 107A.15, which is on file with~~
18 ~~the Clerk of the Board of Supervisors in File No. 190214, the fee waiver shall apply as of the date of~~
19 ~~retroactivity stated in the ordinance establishing this Section.~~

20 ~~(e) The fee waiver provisions also shall apply to 100% affordable housing projects and~~
21 ~~accessory dwelling unit projects that have applied for building permits on or before the date of~~
22 ~~retroactivity as stated in the ordinance identified in subsection (d) but have yet to receive a final~~
23 ~~certificate of occupancy on the date of retroactivity; provided however, that the fee waiver shall apply~~
24 ~~only to applicable Building Code fees that have not been paid as of the date of retroactivity. The~~
25

1 *Department of Building Inspection shall not refund any fees paid for such projects prior to the date of*
2 *retroactivity.*

3 ~~*(f) Subject to the exception in subsection (g), the fee waiver provisions shall apply for one year*~~
4 ~~*from the effective date of the ordinance on file with the Clerk of the Board of Supervisors in File No.*~~
5 ~~*190214. One year from the effective date of the aforementioned ordinance, this Section 107A.15 shall*~~
6 ~~*expire by operation of law, except as stated in subsection (g).*~~

7 ~~*(g) Any 100% affordable housing projects and accessory dwelling unit projects that apply for*~~
8 ~~*a building permit on or after the date of retroactivity as stated in the ordinance identified in subsection*~~
9 ~~*(d) are eligible for all applicable fee waivers even if such fees are due after this Section 107A.15*~~
10 ~~*expires as set forth in subsection (f).*~~

11 ~~*(h) To the extent the Department is aware that a project qualifies for a fee waiver under this*~~
12 ~~*Section 107A.15, the Department shall inform the applicant about the fee waiver. The Department also*~~
13 ~~*shall post notice of the fee waiver program on its website and at various locations in its offices where*~~
14 ~~*the notice will be visible to applicants.*~~

15
16 **107A.15 Building Code fee waivers for accessory dwelling unit projects on lots containing**
17 **single-family homes. Notwithstanding any fee provision of the Building Code to the contrary, the**
18 **following provisions shall apply to accessory dwelling unit projects located on a lot containing a**
19 **single-family home.**

20 *(a) Building inspection fees, plan review fees, records retention fees, and site surcharge fees*
21 *shall be waived. For purposes of this subsection (a), building inspection fees do not include electrical*
22 *and plumbing fees.*

23 *(b) For purposes of this Section 107A.15, “accessory dwelling unit” shall have the meaning*
24 *set forth in Planning Code Section 102, as amended from time to time. The applicant for the accessory*
25 *dwelling unit is eligible under subsection (a) for fee waivers or proportionate fee waivers, if applicable*

1 (collectively, “fee waivers”) solely for the establishment or modification of the accessory dwelling unit,
2 and not for any other work on the applicant’s property that is subject to the Building Code.

3 (c) Upon the operative date of the ordinance establishing this Section 107A.15 to provide fee
4 waivers for certain accessory dwelling unit projects, which is on file with the Clerk of the Board of
5 Supervisors in File No. _____, the fee waivers provided for under subsection (a) shall apply
6 retroactively as of January 1, 2021. The Department of Building Inspection shall refund any applicable
7 fees paid after January 1, 2021 for projects eligible under subsection (a) for fee waivers or
8 proportionate fee waivers. The fee waivers also shall apply to accessory dwelling unit projects that
9 applied for building permits on or before January 1, 2021 but did not receive a final certificate of
10 occupancy by January 1, 2021; provided, however, that the fee waivers shall apply only to applicable
11 Building Code fees that have not been paid as of January 1, 2021. The Department of Building
12 Inspection shall not refund any fees paid for such projects prior to January 1, 2021.

13 (d) Subject to the exception in subsection (e), this Section 107A.15 shall expire by operation of
14 law on either (1) July 1, 2023, or (2) the first day of any fiscal year for which the Board of Supervisors
15 has not appropriated monies or authorized expenditures necessary to fund the fee waivers established
16 by this Section 107A.15, whichever is earlier. Upon its expiration, the City Attorney shall cause this
17 Section 107A.15 to be removed from the Building Code.

18 (e) Any accessory dwelling unit projects that apply for a building permit during the period
19 beginning on January 1, 2021 and ending on the date that this Section 107A.15 expires are eligible for
20 all applicable fee waivers, even if such fees are due after this Section 107A.15 expires as set forth in
21 subsection (d).

22 (f) To the extent the Department is aware that a project qualifies for a fee waiver under this
23 Section 107A.15, the Department shall individually inform the applicant about the fee waiver. The
24 Department also shall post notice, on its website and at various locations in its offices where the notice
25 will be visible to applicants, of the fee waivers available under this Section 107A.15.

1 (g) Department of Building Inspection Reports. On March 1, 2022, the Department of Building
2 Inspection shall submit a report to the Board of Supervisors and the Building Inspection Commission
3 on the operation of the fee waiver program established by this Section 107A.15 for the period of
4 calendar year 2021. On March 1, 2023, the Department of Building Inspection shall submit a report to
5 the Board of Supervisors and the Building Inspection Commission on the operation of the fee waiver
6 program established by this Section 107A.15 for the period of calendar year 2022. The reports shall
7 include, but need not be limited to, the number of projects taking advantage of one or more fee waivers,
8 the type and location of such projects, the total amount of fees waived or projected to be waived during
9 the term of this Section 107A.15, and any administrative impacts associated with the Department’s
10 processing of such waivers. The report also shall include the following information in regard to an
11 ADU: (a) the length of time the applicant has owned the property; (b) whether the applicant is an
12 individual or a business; (c) whether the applicant intends to rent the ADU, and if so, whether the
13 applicant has under consideration a price range for rent; (d) whether the applicant has submitted
14 building permit applications for other residential properties in the City within the last 10 years; and (e)
15 whether the applicant owns, in whole or in part, any other residential property in San Francisco either
16 as an individual or as part of a partnership or corporation. The Director of the Department of Building
17 Inspection shall decide how best to obtain the information required by this subsection (g), which may
18 include self-reporting by applicants.

19
20 Section 3. Expiration by Law of Prior Fee Waiver Pilot Program. On September 13,
21 2019, the City enacted Ordinance No. 207-19, which added Building Code Section 107A.15 to
22 establish an approximately one-year pilot program to waive specified fees for 100% affordable
23 housing projects and certain accessory dwelling units (“Fee Waiver Pilot Program”).
24 Ordinance No. 207-19 is available in Clerk of the Board of Supervisors File No. 190214. The
25 Fee Waiver Pilot Program expired by operation of law on October 14, 2020. However, any

1 100% affordable housing projects and accessory dwelling unit projects that applied for a
2 building permit on or after June 1, 2019 and before October 14, 2020 remain eligible for all
3 applicable fee waivers under the Fee Waiver Pilot Program, even if such fees are due after
4 expiration of the Fee Waiver Pilot Program. Notwithstanding that the Building Code Section
5 107A.15 set forth in Ordinance No. 207-19, is being deleted and replaced by a new Section
6 107A.15, the fee waivers under Ordinance No. 207-19 shall remain available to applicants for
7 building permits in the June 1, 2019 through October 13, 2020 time frame, according to the
8 terms of Ordinance No. 207-19, until there are no more eligible projects that qualify for a fee
9 waiver under Ordinance No. 207-19.

10
11 Section 4. Effective and Operative Dates.

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

16 (b) Operative Date. This ordinance shall become operative on the date that the
17 Controller certifies, in writing, to the Director of the Department of Building Inspection that
18 either (1) the Board of Supervisors has enacted an ordinance appropriating monies necessary
19 to fund the fee waivers established by this ordinance, (2) the Board of Supervisors has
20 authorized expenditures under Article XIII of Administrative Code Chapter 10 necessary to
21 fund such fee waivers, or a combination of options (1) and (2).

22
23 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
24 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
25 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal

1 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
2 additions, and Board amendment deletions in accordance with the “Note” that appears under
3 the official title of the ordinance.

4

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

7 By: /s/ Peter R. Miljanich
8 PETER R. MILJANICH
9 Deputy City Attorney

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LEGISLATIVE DIGEST

[Building Code - Fee Waiver for Accessory Dwelling Units]

Ordinance amending the Building Code to waive specified fees for certain accessory dwelling unit projects through June 30, 2023; requiring the Department of Building Inspection to annually report on such waivers; and affirming the Planning Department's determination under the California Environmental Quality Act

Existing Law

The Building Code establishes a variety of fees for building permit applications, inspections, and other actions under the Building Code.

Amendments to Current Law

This ordinance would waive certain Building Code fees for certain accessory dwelling unit projects, as defined in the legislation, beginning on January 1, 2021. The fee waiver program established by this ordinance would expire on either (1) June 30, 2023, or (2) the first day of any fiscal year for which the Board of Supervisors has not appropriated monies or authorized expenditures necessary to fund the fee waiver program, whichever is earlier. The ordinance would require that the subject accessory dwelling unit be located on a lot containing a single-family home. The fee waiver program would apply to building inspection, plan review, records retention, and site surcharge fees. The ordinance would require the Department of Building Inspection to report annually on the fee waiver program. The ordinance also would make environmental findings.

Background Information

The City previously enacted a one-year pilot program to waive certain Building Code fees for 100% affordable housing projects and accessory dwelling unit projects, beginning on June 1, 2019. That pilot program expired on October 14, 2020.