FILE NO.

LEGISLATIVE DIGEST

[Planning, Building, Administrative Codes - Authorization of Dwelling Installed Without a Permit; Administrative Fees]

Ordinance amending the Planning and Building Codes to provide a process for granting legal status to existing dwelling units constructed without the required permits and establishing a fee for administering the authorization program, amending the Administrative Code to provide that a dwelling unit that was subject to the Rent Ordinance before legalization will remain under the Rent Ordinance and requiring the property owner to provide relocation assistance to displaced tenants, making environmental findings and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1, and directing the Clerk to submit this ordinance to the California Department of Housing and Community Development in accordance with State law.

Existing Law

The Planning and Building Codes contain a number of provisions applicable to the construction of new dwelling units, whether in a newly-constructed or an existing building. A building permit or other entitlements are required in order for a dwelling unit to be legally authorized. Section 207.2 currently precludes second units, as defined in California's Second Unit Law (Government Code Section 65852.2), in RH-1(D) and RH-1 zoned areas with limited exceptions. Section 311 requires notice to be given for specified residential permit applications.

The San Francisco Residential Rent Stabilization and Arbitration Ordinance ("Rent Ordinance") is in Chapter 37 of the Administrative Code. Among other things, the Rent Ordinance regulates rents, evictions, and cost pass-throughs for dwelling units that are covered by its provisions. Dwelling units newly constructed after 1979 are generally exempt from the provisions of the Rent Ordinance.

Amendments to Current Law

The Planning Code is amended to add Section 207.3, which would provide a process for authorizing one existing dwelling unit constructed without the required permits in an existing building or an ancillary structure on the same lot in any zoning district where a residential use is principally permitted. Under the California Second Unit Law, the dwelling unit to be authorized may be above the density limits without changing the official zoning classification of the lot.

The dwelling unit to be authorized must be contained within the envelope of the existing building or structure and is exempt from the Planning Code's open space and light and air requirements. A variance from rear-yard requirements is not required for a dwelling unit in an

ancillary structure. A legalized unit will be considered a lawful nonconforming use. Subdivision and lot splits are prohibited, but units may be re-merged under Planning Code Section 317. Section 311 is amended to provide that a change in the number of dwelling units in a residential building does not require Section 311 notice. Six months from the effective date of this ordinance and every six months for three years thereafter, the Zoning Administrator and the Director of the Department of Building Inspection ("DBI") must issue a joint report on the effectiveness of the dwelling unit authorization program; after three years, the report shall be included in the City's Annual Housing Inventory. The Planning Department must create and maintain a master list of authorized units.

The Building Code is amended to provide for a pre-screening process prior to filing an application for a building or other required permits to allow the owner of the building or the owner's authorized agent to determine in advance whether the dwelling unit to be authorized can comply with the Building Code or other codes administered and enforced by the DBI or whether equivalencies from Code requirements can be obtained. An uncodified section in the ordinance requires the Director of DBI to prepare one or more Administrative Bulletins to define and implement code equivalencies and to coordinate with the Zoning Administrator in the development of any joint bulletins that the Planning and Building Departments determine are necessary or desirable in order to implement the policy and provisions of this ordinance. Any such Administrative Bulletins must be completed within one year.

The Administrative Code's Rent Ordinance is amended to provide that an existing illegal dwelling unit authorized under Planning Code Section 207.3 will be subject to the provisions of the Rent Ordinance if that unit had been subject to the Rent Ordinance prior to authorization. Any costs attributable to legalizing the existing dwelling unit cannot be certified to be passed-through to the tenant. Chapter 73 is added to the Administrative Code to provide for relocation to any tenants displaced due to legalization of existing dwelling units under Planning Code Section 207.3.

Background Information

As the State Legislature declared in Government Code Section 65852.150, second units are a valuable form of housing in California because they "provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods" and "homeowners who create second units benefit from added income, and an increased sense of security."

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. Policy 1.5 of the City's 2009 Housing Element states that secondary units in existing residential buildings represents a simple and cost-effective method of expanding the City's housing supply.

The City has no definitive information on the number of dwelling units that have been added to existing residential buildings without benefit of permit, but unofficial estimates indicate that as many as 30,000 to 40,000 such dwelling units exist as of 2013. Often these illegal units have been built in basements, garages, and attics of existing buildings or in rear-yard structures. While many of these units may not meet existing Planning Code requirements, they constitute a major supply of San Francisco's affordable housing units and often meet life and safety standards. They may require only exceptions from density, open space, and other Planning Code requirements in order to become legal. By providing a mechanism to grant legal status to illegally constructed units in existing buildings zoned for residential use, the City can add legitimate units to the City's supply of affordable housing, ensure that these units are safe and habitable, and properly include them when calculating the City's existing housing supply.

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