

The City Has Decided that Projects Within the Pool of 375 Efficiency Dwelling Units To Be Approved Will Not Be Decided by Lottery

As previously reported, the City recently adopted a new law that reduced the minimum size of an Efficiency Dwelling Unit. The intent was to allow more units to be built per lot in certain districts, making development of certain smaller lots more feasible. Because the units are smaller than the previous law's minimum of 350 square feet, the units would be cheaper to rent or own. The smaller size would make them "affordable by design" (unlike units made affordable because the developer must subsidize construction as a Condition of Approval of a market rate project by the Planning Department). Under the new law, an Efficiency Dwelling Unit may have a main living space of as little as 150 square feet and the total area of the unit may be as little as 220 square feet, including closets, kitchens, bathrooms, living and sleeping areas. When certain affordable housing advocates objected to the unit size, the City put a 375 unit cap on the number of Efficiency Dwelling Units that could be approved.

The Planning Department is charged with monitoring the number of Efficiency Dwelling Units that are approved by the City so that the cap is not exceeded. We have been asked by clients whether the small number of units allowed will be subject to a lottery or some form of discretionary decision sometimes known as a Planning Department "beauty contest." In fact, the San Francisco Planning Department has decided to process projects seeking to build Efficiency Dwelling Units on a first come, first serve basis. The proposed units will count against the cap once the project receives its first discretionary approval, which generally is a Planning Commission decision to entitle a project.

Efficiency dwelling units can be created through new construction only and cannot be created by rehabilitation of a building.

However, smaller living spaces can be created if a living space is part of a non-living space (and this is known as "accessory living space").

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