

BOARD of SUPERVISORS



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MEMORANDUM

TO: Tom Hui, Director, Department of Building Inspection
Olson Lee, Director, Mayor's Office of Housing and Community
Development
Robert Collins, Acting Executive Director, Rent Board
Mohammed Nuru, Director, Public Works

FROM: *el*
fn Alisa Somera, Legislative Deputy Director
Land Use and Transportation Committee

DATE: January 10, 2017

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Avalos on December 13, 2016:

File No. 161347

Ordinance amending the Planning Code by revising Section 207.3 to delete the limits on the number of illegal dwelling units allowed to be legalized on a single lot, to provide that the exceptions to Code requirements require a discretionary waiver by the Zoning Administrator if more than one dwelling unit on a single lot is being legalized, and to delete the prohibition on legalization of dwelling units in buildings with an eviction history; by revising Section 317 to clarify that the demolition of a single-family home determined to be unsound is exempt from the Conditional Use authorization requirement; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code Section 101.1; and making a finding of public necessity, convenience, and welfare under Planning Code, Section 302.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: alisa.somera@sfgov.org.

c: William Strawn, Department of Building Inspection
Carolyn Jayin, Department of Building Inspection
Eugene Flannery, Mayor's Office of Housing and Community Development
Kate Hartley, Mayor's Office of Housing and Community Development
Frank Lee, Public Works
John Thomas, Public Works
Lena Liu, Public Works

[Planning Code - Illegal and Unauthorized Dwelling Units; Demolition of Single-Family Homes]

Ordinance amending the Planning Code by revising Section 207.3 to delete the limits on the number of illegal dwelling units allowed to be legalized on a single lot, to provide that the exceptions to Code requirements require a discretionary waiver by the Zoning Administrator if more than one dwelling unit on a single lot is being legalized, and to delete the prohibition on legalization of dwelling units in buildings with an eviction history; by revising Section 317 to clarify that the demolition of a single-family home determined to be unsound is exempt from the Conditional Use authorization requirement; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code Section 101.1; and making a finding of public necessity, convenience, and welfare under Planning Code, Section 302.

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

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

Section 1. Findings.

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No.160185. The Board affirms this determination.

1 (b) On April 10, 2016, an ordinance sponsored by Supervisor Avalos (Board of
2 Supervisors File No. 160185) became effective. Among other things, it amended Planning
3 Code Section 317 to require Conditional Use authorization to remove any residential unit,
4 whether legal or illegal. On February 22, 2016, the original ordinance was duplicated and an
5 additional amendment was proposed by Supervisor Wiener to require Mandatory
6 Discretionary Review instead of a Conditional Use authorization to remove an Unauthorized
7 Unit in a single-family home.

8 (c) At a hearing held on June 9, 2016, the Planning Commission considered
9 Supervisor Wiener's proposed amendment and, in Commission Resolution No. 19660,
10 recommended retaining the Conditional Use requirement for the removal of an Unauthorized
11 Unit from a single-family home and proposed additional changes to the Planning Code.

12 (d) In Resolution No. 19660, the Commission adopted findings that the actions
13 contemplated in this ordinance are consistent with the City's General Plan and the eight
14 priority policies of Planning Code Section 101.1. The Board adopts these findings as its own.
15 A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No.
16 160185, and is incorporated herein by reference.

17 (e) Pursuant to Planning Code Section 302, this Board finds that these Planning
18 Code amendments will serve the public necessity, convenience, and welfare for the reasons
19 set forth in Planning Commission Resolution No. 19660 and the Board incorporates such
20 reasons herein by reference.

21
22 Section 2. The Planning Code is hereby amended by revising Sections 207.3, 307,
23 and 317, to read as follows:
24
25

1 **SEC. 207.3. AUTHORIZATION OF DWELLING UNITS CONSTRUCTED WITHOUT A**
2 **PERMIT IN AN EXISTING BUILDING ZONED FOR RESIDENTIAL USE.**

3 Notwithstanding ~~Section 207.2 or~~ any other provision of this Code, certain dwelling units
4 that were constructed without benefit of permit in an existing residential building or in an
5 ancillary structure located on the same lot may be granted legal status subject to the
6 conditions and procedures set forth below. For purposes of this Section 207.3, a dwelling unit
7 shall not include ~~s~~Single ~~r~~Room ~~o~~Occupancy ~~u~~Units.

8 * * * *

9 **(b) Scope.**

10 ~~(1) — Except as provided in subsection (2) below, t~~This Section 207.3 shall apply to
11 an existing building or an ancillary structure on the same lot, that is located in a district where
12 residential use is principally permitted, and that has one or more dwelling units that were
13 constructed prior to January 1, 2013 without benefit of permit and used as residential space.
14 ~~One of the unauthorized dwelling units per lot meeting this threshold requirement may be granted legal~~
15 ~~status under this Section, regardless of the density limits of the zoning district.~~

16 ~~(2) — No-fault Eviction. The Department shall not approve an application for~~
17 ~~legalization if any tenant has been evicted from the unit pursuant to Administrative Code Sections~~
18 ~~37.9(a)(9) through (a)(14) where the tenant was served with the notice of eviction after March 13, 2014~~
19 ~~if the notice was served within ten (10) years prior to filing the application for legalization.~~
20 ~~Additionally, the Department shall not approve an application for legalization of the unit if any tenant~~
21 ~~has been evicted pursuant to Administrative Code Section 37.9(a)(8) where the tenant was served with~~
22 ~~a notice of eviction after March 13, 2014 if the notice was served within five (5) years prior to filing the~~
23 ~~application for legalization. The Department shall verify with the Rent Board that no no-fault eviction~~
24 ~~had been filed. This subsection (b)(2) shall not apply if the tenant was evicted under Administrative~~
25 ~~Code Section 37.9(a)(11) and the applicant(s) have either: (A) certified that the original tenant~~

1 ~~reoccupied the unit after the temporary eviction or (B) submitted to the Department a declaration from~~
2 ~~the property owner or the tenant certifying that the property owner or the Rent Board has notified the~~
3 ~~tenant of the tenant's right to reoccupy the unit after the temporary eviction and the tenant chose not to~~
4 ~~reoccupy it.~~

5 * * * *

6 (d) **Legalization Application.**

7 (1) If the applicant is requesting the legalization of only one existing dwelling unit
8 on the subject lot, ~~The~~ Department shall approve ~~an~~ the application to legalize ~~an~~ the existing
9 dwelling unit if (A) the unit complies with Planning Code requirements as specified in
10 subsection (e) below, ~~and (B) the unit complies~~ with other City codes as specified in subsection
11 (f) below, ~~if the Rent Board verifies that no no-fault eviction was filed pursuant to subsection (b)(2)~~
12 ~~above,~~ and if (C) the permit application is completed at and plans approved by the Department
13 of Building Inspection. In compliance with the State's Second Unit Law (California
14 Government Code Section 65852.2), the Department shall exercise ministerial approval of the
15 application if the dwelling unit is in a single-family home and thus within the scope of the
16 State's Second Unit Law.

17 (2) If the applicant is requesting legalization of more than one existing dwelling unit
18 on the subject lot, in addition to compliance with the requirements of (B) and (C) in subsection (d)(1), if
19 an exemption from one or more of the Code requirements specified in subsection (e)(1) is required in
20 order to legalize the dwelling unit, the applicant must seek and obtain from the Zoning Administrator a
21 waiver of the requirement pursuant to subsection (e)(2) before legalization of the dwelling can be
22 approved.

23 (e) **Compliance with Planning Code Requirements; Exceptions or Waivers by the**
24 **Zoning Administrator.**

1 (1) A dwelling unit authorized under this Section 207.3 must satisfy all
2 applicable requirements of this Code except for the applicable density limits, the rear yard
3 requirements set forth in Section 134, the usable open space requirements set forth in Section
4 135, and the light and air requirements set forth in Section 140, ~~and except as otherwise provided~~
5 ~~in this Section 207.3. Off-street parking requirements may be reduced to the extent necessary to retain~~
6 ~~the dwelling unit without requiring compliance with Sections 305, 161(j), or 307(g) or (i).~~

7 (2) If more than one dwelling unit on a single lot is being legalized, a complete or
8 partial waiver of the Code requirements specified in subsection (1) above by the Zoning Administrator
9 is required pursuant to the provisions of Section 307(i) of this Code.

10 (2) ~~One such dwelling unit on the lot is allowed to exceed the permitted density~~
11 ~~authorized for that zoning district provided that a residential use is principally permitted in that zoning~~
12 ~~district. Authorization of an additional unit over the density limits will not change the official zoning~~
13 ~~classification of the lot; provided, however, that the additional dwelling unit shall count towards the~~
14 ~~density limits if the parcel is under its density limit capacity.~~

15 (3) ~~Off-street parking requirements may be reduced to the extent necessary to retain~~
16 ~~dwelling units authorized under this Section 207.3, without requiring compliance with Sections 305,~~
17 ~~161(j) or 307(g) or (i) of this Code.~~

18 * * * *

19 SEC. 307. OTHER POWERS AND DUTIES OF THE ZONING ADMINISTRATOR.

20 In addition to those specified in Sections 302 through 306, and Sections 316 through
21 316.6 of this Code, the Zoning Administrator shall have the following powers and duties in
22 administration and enforcement of this Code.

23 * * * *

24 (l) **Exceptions from Certain Specific Code Standards Through Administrative**
25 **Review for Accessory Dwelling Units Constructed Pursuant to Section 207(c)(4) of this**

1 **Code and Legalization of Dwelling Units Constructed Without Permit Pursuant to Section 207.3 of**
2 **this Code**. The Zoning Administrator may allow complete or partial relief from the density limits
3 and from the parking, rear yard, exposure, and/or open space requirements of this Code when
4 modification of the requirement would facilitate the construction of an Accessory Dwelling
5 Unit, as defined in Section 102 and meeting the requirements of Section 207(c)(4) of this
6 Code, or legalization of an existing dwelling unit constructed without benefit of permit pursuant to
7 Section 207.3. The exposure requirements of Section 140 apply, except that subsection (a)(2)
8 may be satisfied through windows facing an open area that is at least 15 feet in every
9 horizontal direction that is not required to expand on subsequent floors. In considering any
10 request for complete or partial relief from these Code requirements, the Zoning Administrator
11 shall facilitate the construction of such Accessory Dwelling Units or the legalization of existing
12 dwelling units to the extent feasible and shall consider any criteria elsewhere in this Section
13 307 that he or she determines to be applicable. Nothing in this Section shall be interpreted as
14 allowing for an existing non-conforming use to be deemed conforming.

15 **SEC. 317. LOSS OF RESIDENTIAL AND UNAUTHORIZED UNITS THROUGH**
16 **DEMOLITION, MERGER AND CONVERSION.**

17 * * * *

18 (c) **Applicability; Exemptions.**

19 (1) Any application for a permit that would result in the Removal of one or
20 more Residential Units or Unauthorized Units is required to obtain Conditional Use
21 authorization. The application for a replacement building or alteration permit shall also be
22 subject to Conditional Use requirements.

23 * * * *

1 (5) The Demolition of a ~~S~~single-~~F~~family Residential Building that meets the
2 requirements of ~~S~~subsection (d)(3) below may be approved by the Department without
3 requiring a Conditional Use authorization.

4 (d) **Demolition.**

5 * * * *

6 (3) An application to demolish a ~~S~~single-~~F~~family Residential Building on a site
7 in a RH-1 or RH-1(D) District that is demonstrably not affordable or financially accessible
8 housing, *or is determined to be an unsound structure*, is exempt from the Conditional Use
9 authorization requirement of ~~S~~subsection (c)(1). Specific numerical criteria for such analyses
10 shall be adopted by the Planning Commission in the Code Implementation Document, in
11 accordance with this Section 317, and shall be adjusted periodically by the Zoning
12 Administrator based on established economic real estate and construction indicators.

13 (A) The Planning Commission shall determine a level of affordability or
14 financial accessibility, such that ~~S~~single-~~F~~family Residential Buildings on sites in RH-1 and
15 RH-1(D) Districts that are demonstrably not affordable or financially accessible, that is,
16 housing that has a value greater than at least 80% of the combined land and structure values
17 of single-family homes in San Francisco as determined by a credible appraisal, made within
18 six months of the application to demolish, are not subject to a Conditional Use hearing. The
19 demolition and replacement building applications shall undergo notification as required by
20 other sections of this Code. The Planning Commission, in the Code Implementation
21 Document, may increase the numerical criterion in this ~~S~~subsection (d)(3)(A) by up to 10% of
22 its value should it deem that adjustment is necessary to implement the intent of this Section
23 317, to conserve existing housing and preserve affordable housing.

24 (B) The Planning Commission, in the Code Implementation Document,
25 shall adopt criteria and procedures for determining the soundness of a structure proposed for

demolition, where "soundness" is an economic measure of the feasibility of upgrading a residence that is deficient with respect to habitability and Housing Code requirements, due to its original construction. The "soundness factor" for a structure shall be the ratio of a construction upgrade cost (i.e., an estimate of the cost to repair specific habitability deficiencies) to the replacement cost (i.e., an estimate of the current cost of building a structure the same size as the existing building proposed for demolition), expressed as a percent. A building is unsound if its soundness factor exceeds 50%. A Residential Building that is unsound may be approved for demolition.

* * * *

(e) **Conversion to Student Housing.** Except as provided by subsection (g)(4)(A) below, ~~The~~ conversion of Residential Units to Student Housing is prohibited. For the purposes of this subsection (e), Residential Units that have been defined as such by the time a First Certificate of Occupancy has been issued by the Department of Building Inspection for new construction shall not be converted to Student Housing.

(f) **Residential Merger.** The Merger of Residential Units, not otherwise subject to Conditional Use authorization by this Code, shall be prohibited.

(g) **Conditional Use Criteria.**

* * * *

(3) **Residential Conversion.** The Planning Commission shall consider the following criteria in the review of applications for Residential Conversion:

(A) whether conversion of the unit(s) would eliminate only owner occupied housing, and if so, for how long the unit(s) proposed to be removed were owner occupied;

(B) whether Residential Conversion would provide desirable new Non-Residential Use(s) appropriate for the neighborhood and adjoining district(s);

1 (C) in districts where Residential Uses are not permitted, whether
2 Residential Conversion will bring the building closer into conformance with the Uses permitted
3 in the zoning district;

4 (D) whether conversion of the unit(s) will be detrimental to the City's
5 housing stock;

6 (E) whether conversion of the unit(s) is necessary to eliminate design,
7 functional, or habitability deficiencies that cannot otherwise be corrected;

8 (F) whether the Residential Conversion will remove Affordable
9 Housing, or units subject to the Residential Rent Stabilization and Arbitration Ordinance.

10 (4 3) Conversions That Do Not Require Planning Commission Approval.

11 (A) Planning Commission approval shall not be required for the
12 change of use or occupancy of a ~~d~~Dwelling ~~u~~Unit, ~~g~~Group ~~h~~Housing, or SRO to Student
13 Housing if the ~~d~~Dwelling ~~u~~Unit, ~~g~~Group ~~h~~Housing or SRO will be Student Housing owned,
14 operated or otherwise controlled by a not for profit post-secondary Educational Institution and

15 (i) ~~(A)~~ it was built by the post-secondary Educational Institution;
16 (ii) ~~(B)~~ it is in a convent, monastery, or similar religious order
17 facility;

18 (iii) ~~(C)~~ it is on an adjoining lot (i.e., sharing the same lot line) to
19 the post- secondary Educational Institution, so long as the lot has been owned by the post-
20 secondary Educational Institution for at least ten years as of the effective date of Ordinance
21 188-12; or

22 (iv) ~~(D)~~ as of August 10, 2010, it was owned, operated or otherwise
23 controlled by a post-secondary Educational Institution that had an Institutional Master Plan on
24 file with the Planning Commission, and where the occupancy by those other than students at
25 that date was less than 20% of the total occupants. For purposes of determining occupancy,

1 the post- secondary Educational Institution shall present to the Planning Department verified
2 information regarding its rental or lease of units as of that date.

3 ~~(4)~~ (B) Planning Commission approval shall not be required for a
4 Residential Conversion if the Residential Unit was subject to the Residential Hotel Unit
5 Conversion and Demolition Ordinance, *San Francisco* Administrative Code Chapter 41, and
6 obtained a permit to convert in compliance with the requirements set forth therein.

7 (5) **Residential Demolition.** The Planning Commission shall consider the
8 following additional criteria in the review of applications for Residential Demolition:

9 * * * *

10 (6) **Removal of Unauthorized Units.** In addition to the criteria set forth in
11 ~~§~~subsections (g)(1) through (g)~~(5)~~ (4) above, the Planning Commission shall consider the
12 criteria below in the review of applications for removal of Unauthorized Units:

13 (A) whether the Unauthorized Unit or Units are eligible for legalization
14 under Section 207.3 of this Code;

15 (B) whether the costs to legalize the Unauthorized Unit or Units under
16 the Planning, Building, and other applicable Codes is reasonable based on how such cost
17 compares to the average cost of legalization per unit derived from the cost of projects on the
18 Planning Department's Master List of Additional Dwelling Units Approved required by Section
19 207.3(k) of this Code;

20 (C) whether it is financially feasible to legalize the Unauthorized Unit or
21 Units. Such determination will be based on the costs to legalize the Unauthorized Unit(s)
22 under the Planning, Building, and other applicable Codes in comparison to the added value
23 that legalizing said Units would provide to the subject property. The gain in the value of the
24 subject property shall be based on the current value of the property with the Unauthorized
25 Unit(s) compared to the value of the property if the Unauthorized Unit(s) is/are legalized. The

1 calculation of the gain in value shall be conducted and approved by a California licensed
2 property appraiser. Legalization would be deemed financially feasible if gain in the value of
3 the subject property is equal to or greater than the cost to legalize the Unauthorized Unit.

4 (D) If no City funds are available to assist the property owner with the
5 cost of legalization, whether the cost would constitute a financial hardship.

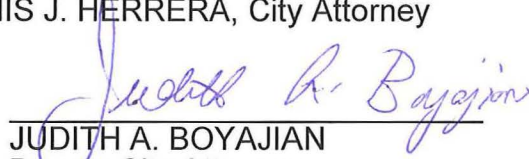
6 * * * *

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 DENNIS J. HERRERA, City Attorney

22 By:


JUDITH A. BOYAJIAN
Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning Code - Illegal and Unauthorized Units; Demolition of Single-Family Homes]

Ordinance amending the Planning Code by revising Section 207.3 to delete the limits on the number of illegal dwelling units allowed to be legalized on a single lot, to provide that the exceptions to Code requirements require a discretionary waiver by the Zoning Administrator if more than one dwelling unit on a single lot is being legalized, and to delete the prohibition on legalization of dwelling units in buildings with an eviction history; by revising Section 317 to clarify that the demolition of a single-family home determined to be unsound is exempt from the Conditional Use authorization requirement; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code Section 101.1; and making a finding of public necessity, convenience, and welfare under Planning Code, Section 302.

Existing Law

Planning Code Section 207.3 authorizes the legalization of existing dwelling units constructed prior to January 1, 2013 without benefit of permit in an existing building that is located in a district where residential use is principally permitted or in an ancillary structure on the same lot. Only one unit is allowed to exceed the permitted density for the lot and only one unit may be legalized per lot regardless of the density limits. However, the unit may not be legalized if any tenant was served with a notice of eviction after March 13, 2014 and within 10 years prior to filing the application for legalization.

Planning Code Section 307(I) authorizes the Zoning Administrator to grant a complete or partial waiver of specified Code requirements in order to facilitate the construction of new Accessory Dwelling Units under Planning Code Section 207(c)(4).

Planning Code Section 317 requires a Conditional Use authorization to remove any "Residential Unit," as those terms are defined, through demolition, merger or conversion whether the Unit is legal or illegal. Demolition of a single-family home on a site in an RH-1 or RH-1(D) District that is demonstrably not affordable or financially accessible housing is exempt from the Conditional Use requirement.

Amendments to Current Law

Planning Code Section 207.3 is amended to delete the provisions that (1) put a cap on the number of illegally constructed units that may be legalized per lot and (2) prohibit legalization of units if a tenant in the building has been served with a notice of eviction. Section 207.3 is amended to provide that if more than one dwelling unit is being legalized on a single lot, the exceptions to the specified Code requirements require a discretionary waiver or partial waiver

by the Zoning Administrator, and 307(l) is amended to add this to the Zoning Administrator's authority. Section 317 is amended to clarify that the demolition of a single-family home determined by the Planning Commission to be "unsound" is also exempt from the requirement to obtain a Conditional Use authorization.

Background

On April 10, 2016, an ordinance sponsored by Supervisor Avalos (Board of Supervisors File No. 160185) became effective. Among other things, it amended the Planning Code to require Conditional Use authorization to remove any residential unit, whether legal or illegal. On February 22, 2016, the original ordinance was duplicated and an additional amendment was proposed by Supervisor Wiener to require Mandatory Discretionary Review instead of a Conditional Use authorization to remove an Unauthorized Unit in a single-family home.

At a hearing held on June 9, 2016, the Planning Commission considered Supervisor Wiener's proposed amendment, recommended retaining the Conditional Use requirement for the removal of an Unauthorized Unit from a single-family home, and proposed the amendments described above for the reasons set forth in Planning Commission Resolution No. 19660.

The City Attorney's Office is currently prosecuting a code enforcement action in which a married couple has illegally converted 10 single-family homes in the Bayview that are zoned RH-1 and RH-2 into properties with a combined total of 39 separate dwelling units. Two other buildings owned by the same couple have an additional five units above the authorized density that were constructed without permits. If the proposed legislation is enacted, the only limits on legalization for the properties currently in litigation, as well as an unknown number of properties owned by others in this area and Citywide, would be: (1) the requirement in Planning Code Section 207.3(b)(1) that the illegal units must have been constructed prior to January 1, 2013 and whatever evidence to that effect the Planning Department finds acceptable, (2) the Zoning Administrator's discretion whether or not to grant a partial or complete waiver of Code requirements for the legalization of more than one dwelling unit on a single lot, and (3) the property's ability to comply with other City codes such as the Building, Electrical, Plumbing, Mechanical, Fire, or other applicable Code.

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