

BOARD of SUPERVISORS



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MEMORANDUM

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

FROM: John Carroll, Assistant Clerk
Land Use and Transportation Committee

DATE: June 20, 2025

SUBJECT: SUBSTITUTE LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, introduced as a substitute by Supervisor Engardio on June 10, 2025:

File No. 250284-2

Ordinance amending the Planning Code to provide conditions for repair and relocation of existing noncomplying structures within required yards, grant unpermitted residential structures within yards that were constructed before 2003 noncomplying status, and allow accessory structures up to 10 feet in height and 120 square feet within required yards; amending the Building Code to exempt accessory structures up to 120 square feet from building permits; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and making findings of public necessity, convenience, and welfare under Planning Code, Section 302.

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: john.carroll@sfgov.org.

c:
Offices of Chair Melgar and Supervisor Engardio
Tate Hanna, Department of Building Inspection
Patty Lee, Department of Building Inspection

[Planning, Building Codes - Noncomplying, Unpermitted, and Accessory Structures]

Ordinance amending the Planning Code to provide conditions for repair and relocation of existing noncomplying structures within required yards, grant unpermitted residential structures within yards that were constructed before 2003 noncomplying status, and allow accessory structures up to 10 feet in height and 120 square feet within required yards; amending the Building Code to exempt accessory structures up to 120 square feet from building permits; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and making findings 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 ~~strikethrough 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. Environmental, Land Use, and General 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. ____ and is incorporated herein by reference. The Board affirms this determination.

1 (b) On _____, the Planning Commission, in Resolution No. _____,
2 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
3 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
4 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
5 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

6 (c) Pursuant to Planning Code Section 302, this Board finds that these Planning Code
7 amendments will serve the public necessity, convenience, and welfare for the reasons set
8 forth in Planning Commission Resolution No. _____ and the Board incorporates such reasons
9 herein by reference. A copy of Planning Commission Resolution No. _____ is on file with the
10 Clerk of the Board of Supervisors in File No. _____.

11 (d) On _____, at a duly noticed public hearing, the Building Inspection Commission
12 considered this ordinance in accordance with Charter Section 4.121 and Building Code
13 Section 104A.2.11.1.1. A copy of a letter from the Secretary of the Building Inspection
14 Commission regarding the Commission's recommendation is on file with the Clerk of the
15 Board of Supervisors in File No. _____.

16 (e) No local findings are required under California Health and Safety Code Section
17 17958.7 because the amendments to the Building Code contained in this ordinance do not
18 regulate materials or manner of construction or repair, and instead relate in their entirety to
19 administrative procedures for implementing the code, which are expressly excluded from the
20 definition of a "building standard" by California Health and Safety Code Section 18909(c).

21
22 Section 2. Articles 1.2 and 1.7 of the Planning Code are hereby amended by revising
23 Sections 136 and 188, and adding Section 188.1, to read as follows:

24 **SEC. 136. OBSTRUCTIONS OVER STREETS AND ALLEYS AND IN REQUIRED**
25 **SETBACKS, YARDS, AND USABLE OPEN SPACE.**

Streets and Alleys	Set- backs	Yards	Usable Open Space	
* * * *				
			(c) The permitted obstructions shall be as follows:	
* * * *				
		X		(23) <u>One or more detached Other structures, which may include bathrooms and wetbars but not full kitchens, commonly used in gardening activities, such as greenhouses and sheds for storage of garden tools, if no more than 10eight feet in height above grade, as measured to the top of the structure, and covering no more than a combined 120100 square feet as measured at grade. An additional 1 foot of roof eave may be permitted beyond the 120 square feet maximumof land;</u>
* * * *				

SEC. 188. NONCOMPLYING STRUCTURES: ENLARGEMENTS, ALTERATIONS, AND RECONSTRUCTION.

(a) Within the limitations of this Article 1.7, and especially Sections 172 and 180 hereof, and notwithstanding Sections 188(a)(1) and 188.1, a noncomplying structure as defined in Section 180 may be enlarged, altered, or relocated, or undergo a change or intensification of

1 use in conformity with the use limitations of this Code, provided that with respect to such
2 structure there is no increase in any discrepancy, or any new discrepancy, at any level of the
3 structure, between existing conditions on the lot and the required standards for new
4 construction set forth in this Code, and provided the remaining requirements of this Code are
5 met.

6 (1) Existing Yard Structures. A noncomplying structure that is located within a
7 required yard may be enlarged, altered, or replaced provided that any above-grade enlargement of
8 such structure is only to the degree necessary to conform to current Building Code requirements. A
9 noncomplying structure that is located within a required yard may be relocated within the yard only if
10 the new location is further set back from property lines than the original location. Interior alterations,
11 including the structure's use for different purposes, shall not constitute an intensification for the
12 purposes of this subsection (a)(1). Additionally, for any partially noncomplying structure that is
13 located within a required yard, the rules set forth in this subsection (a)(1) shall apply only to the
14 portions of the structure that are noncomplying; portions of the structure within the buildable area
15 shall be subject to rules elsewhere in this Code governing building within the buildable area of the lot.

16 (2) Nothing in this Section 188 shall exempt noncomplying structures from the Planning
17 Code controls other than those for required yards.

18 * * * *

19
20 **SEC. 188.1. NONCOMPLYING STRUCTURE STATUS FOR CERTAIN PRE-EXISTING**
21 **RESIDENTIAL STRUCTURES IN RH, RM, AND RTO DISTRICTS.**

22 (a) Within a required yard, residential structures that were constructed without the benefit of a
23 permit prior to January 1, 2003, shall be considered Noncomplying Structures and may be altered,
24 relocated, or replaced in-kind with the same dimensions as they existed prior to 2003. Alterations,
25

1 relocations, and in-kind or smaller replacements may deviate from the original structure's dimensions
2 only in keeping with the requirements of Section 188(a) of this Code.

3 (b) Nothing in this Section 188.1 shall exempt structures from the Planning Code controls other
4 than those for required yards.

5 (c) The City shall refund any permit fees incurred by applicants who sought a Variance
6 determination from Sections 133 or 134 to repair or replace structures that exceeded 100 square feet
7 and/or 8 feet in height, after January 1, 2021, only if: the structures subject to the Variance are no
8 more than 10 feet in height and no more than 120 square feet total; and were originally constructed
9 and completed prior to 2003.

10
11 Section 3. Chapter 1A of the Building Code is hereby amended by revising Section
12 106A.2, to read as follows:

13 **106A.2 Work exempt from permit.** [Section 105.2 of the California Building Code.]

14 Exemptions from the permit requirements of this code shall not be deemed to grant
15 authorization for any work to be done in any manner in violation of the provisions of this code
16 or any other laws or ordinances of this jurisdiction. A building permit shall not be required for
17 the following:

18 1. One-story detached accessory buildings or structures used as tool and storage
19 sheds, playhouses, and similar uses, provided the floor projected roof area does not exceed
20 120400 square feet (11.159.29 m²). It is permissible that these structures still be regulated by Section
21 710A, despite exemption from permit.

22 * * * *

23
24 Section 4. Effective Date. This ordinance shall become effective 30 days after
25 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

1 ordinance unsigned or does not sign the ordinance within 10 days of receiving it, or the Board
2 of Supervisors overrides the Mayor's veto of the ordinance.

3 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
4 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
5 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
6 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
7 additions, and Board amendment deletions in accordance with the "Note" that appears under
8 the official title of the ordinance.

9
10 APPROVED AS TO FORM:
11 DAVID CHIU, City Attorney

12 By: /s/ Robb Kapla
13 ROBB KAPLA
14 Deputy City Attorney

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REVISED LEGISLATIVE DIGEST

(Substituted, 6/10/2025)

[Planning, Building Codes - Noncomplying, Unpermitted, and Accessory Structures]

Ordinance amending the Planning Code to provide conditions for repair and relocation of existing noncomplying structures within required yards, grant unpermitted residential structures within yards that were constructed before 2003 noncomplying status, and allow accessory structures up to 10 feet in height and 120 square feet within required yards; amending the Building Code to exempt accessory structures up to 120 square feet from building permits; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and making findings of public necessity, convenience, and welfare under Planning Code, Section 302.

Existing Law

The Planning Code allows small structures shorter than 8 feet in height and less than 100 square feet to be located in required yards. The Planning Code allows existing noncomplying structures—structures that were permitted when constructed, but do not comply with current Planning Code provisions—to be repaired, altered, relocated, or enlarged—but not replaced—provided that the extent of noncompliance is not intensified. Property owners seeking to repair, alter, or replace an unpermitted structure located within the required yard area must obtain a Variance determination to exempt the structure from Planning Code requirements.

The San Francisco Building Code requires building permits for accessory structures larger than 100 square feet.

Amendments to Current Law

The Proposed Legislation amends the Planning Code to increase the size of detached structures allowed to be located in required yards to up to 10 feet in height and/or 120 square feet. It also allows existing noncomplying structures of any size in yards to be altered, repaired, enlarged, or relocated within the yard provided that any increase in the structure's dimensions is required solely to comply with the Building Code and, if relocated, the structure is further set back from property lines. The Proposed Legislation would also provide a pathway for property owners in the RH, RM, and RTO districts to repair, alter, or replace unpermitted residential structures that were constructed before 2003 within the required yard area without the need for a Variance by granting these pre-2003 structures noncomplying status. The legislation also includes a permit fee refund for owners that sought Variance

determinations after January 1, 2021 to repair or replace yard structures that were under 10 feet in height and less than 120 square feet.

The Proposed Legislation amends the Building Code to harmonize with the California Building Code by exempting accessory structures up to 120 square feet from needing a building permit.

Background Information

This is a Substitute Ordinance that clarifies the original ordinance's provisions regarding permitted detached structures, repairing noncomplying yard structures, and replacing pre-2003 unpermitted yard structures. This Substitute Ordinance adds a new provision granting noncomplying status to pre-2003 unpermitted residential structures within yard areas, which would allow repairing, altering, and relocating such structures in addition to replacing in-kind.

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Introduction Form

(by a Member of the Board of Supervisors or the Mayor)

I hereby submit the following item for introduction (select only one):

- ☐ 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- ☐ 2. Request for next printed agenda (For Adoption Without Committee Reference)
(Routine, non-controversial and/or commendatory matters only)
- ☐ 3. Request for Hearing on a subject matter at Committee
- ☐ 4. Request for Letter beginning with "Supervisor _____ inquires..."
- ☐ 5. City Attorney Request
- ☐ 6. Call File No. _____ from Committee.
- ☐ 7. Budget and Legislative Analyst Request (attached written Motion)
- ☒ 8. Substitute Legislation File No. 250284
- ☐ 9. Reactivate File No. _____
- ☐ 10. Topic submitted for Mayoral Appearance before the Board on _____

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- ☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission
- ☒ Planning Commission ☒ Building Inspection Commission ☐ Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- ☐ Yes ☐ No

(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)

Sponsor(s):

Engardio

Subject:

Planning, Building Codes - Noncomplying, Unpermitted, and Accessory Structures

Long Title or text listed:

Ordinance amending the Planning Code to provide conditions for repair and relocation of existing noncomplying structures within required yards, grant unpermitted residential structures within yards that were constructed before 2003 noncomplying status, and allow accessory structures up to 10 feet in height and 120 square feet within required yards; amending the Building Code to exempt accessory structures up to 120 square feet from building permits; affirming the Planning Department's determination under the California Environmental Quality Act, making findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1, and making findings of public necessity, convenience, and welfare under Planning Code, Section 302.

Signature of Sponsoring Supervisor: _____

