

BOARD of SUPERVISORS



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MEMORANDUM

TO: Robert Collins, Executive Director, Rent Board

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

DATE: June 22, 2021

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Mandelman on June 15, 2021:

File No. 210699

Ordinance amending the Planning Code to clarify the requirements for applications to construct Accessory Dwelling Units under the City's local Accessory Dwelling Unit approval process; amending the Administrative Code to clarify that landlords may not remove tenant housing services without just cause and that issuance of a building permit does not constitute just cause; making findings as required by the Tenant Protection Act of 2019; 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.

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: erica.major@sfgov.org.

1 [Planning, Administrative Codes - Accessory Dwelling Units]

2

3 **Ordinance amending the Planning Code to clarify the requirements for applications to**
 4 **construct Accessory Dwelling Units under the City's local Accessory Dwelling Unit**
 5 **approval process; amending the Administrative Code to clarify that landlords may not**
 6 **remove tenant housing services without just cause and that issuance of a building**
 7 **permit does not constitute just cause; making findings as required by the Tenant**
 8 **Protection Act of 2019; affirming the Planning Department's determination under the**
 9 **California Environmental Quality Act; and making findings of consistency with the**
 10 **General Plan, and the eight priority policies of Planning Code, Section 101.1.**

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

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

19 Section 1. Findings.

20 (a) The Planning Department has determined that the actions contemplated in this
 21 ordinance comply with the California Environmental Quality Act (California Public Resources
 22 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
 23 Supervisors in File No. ____ and is incorporated herein by reference. The Board affirms this
 24 determination.

25 (b) On _____, the Planning Commission, in Resolution No. _____,
 adopted findings that the actions contemplated in this ordinance are consistent, on balance,

1 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
2 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
3 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

4 (c) This ordinance is intended in part to clarify the existing rules in the Rent Ordinance
5 as to housing services. The term housing services refers to services provided by the landlord
6 connected with the use or occupancy of a rental unit including, but not limited to, access to
7 areas such as garages, driveways, storage spaces, laundry rooms, decks, patios, gardens on
8 the same lot, and kitchen facilities or lobbies in single room occupancy (SRO) hotels. This
9 ordinance clarifies that landlords may not sever, remove, or reduce housing services without
10 just cause, and that this rule applies equally to landlords who intend to construct Accessory
11 Dwelling Units. These landlords must comply with just cause rules, and being in possession
12 of a building permit does not, in and of itself, confer just cause to sever a housing service. By
13 clarifying that the just cause rules in the Rent Ordinance apply, this ordinance is more
14 protective than the Tenant Protection Act of 2019 (Cal. Civ. Code § 1946.2), as the Rent
15 Ordinance further limits the reasons for termination of a residential tenancy, provides for
16 higher relocation assistance amounts, and provides additional tenant protections.

17
18 Section 2. Article 2 of the Planning Code is hereby amended by revising Section 207,
19 to read as follows:

20 **SEC. 207. DWELLING UNIT DENSITY LIMITS.**

21 * * * *

22 (c) **Exceptions to Dwelling Unit Density Limits.** An exception to the calculations
23 under this Section 207 shall be made in the following circumstances:

24 * * * *

1 (4) Local Accessory Dwelling Unit Program: Accessory Dwelling Units
2 in Multifamily Buildings; Accessory Dwelling Units in Single-Family Homes That Do Not
3 Strictly Meet the Requirements in subsection (c)(6).

4 * * * *

5 (C) Controls on Construction. An Accessory Dwelling Unit regulated
6 by this subsection (c)(4) is permitted to be constructed in an existing or proposed building
7 under the following conditions:

8 (i) For lots that have four existing Dwelling Units or fewer or
9 where the zoning would permit the construction of four or fewer Dwelling Units, one ADU is
10 permitted; for lots that have more than four existing Dwelling Units or are undergoing seismic
11 retrofitting under subsection (c)(4)(F) below, or where the zoning would permit the
12 construction of more than four Dwelling Units, there is no limit on the number of ADUs
13 permitted, ~~provided, however, that~~

14 (ii) ~~The~~ Department shall not approve an application for
15 construction of an ADU where a tenant on the lot has been evicted pursuant to Administrative
16 Code Sections 37.9(a)(9) through (a)(12) and 37.9(a)(14) under a notice of eviction served
17 within 10 years prior to filing the application for a building permit to construct the ADU or
18 where a tenant has been evicted pursuant to Administrative Code Section 37.9(a)(8) under a
19 notice of eviction served within five years prior to filing the application for a building permit to
20 construct the ADU. This ~~provision~~ subsection (c)(4)(C)(ii) shall not apply if the tenant was evicted
21 under Section 37.9(a)(11) or 37.9(a)(14) and the applicant(s) either (A) have certified that the
22 original tenant reoccupied the unit after the temporary eviction or (B) have submitted to the
23 Department and to the Residential Rent Stabilization and Arbitration Board (Rent Board) a
24 declaration from the property owner or the tenant certifying that the property owner notified
25 the tenant of the tenant’s right to reoccupy the unit and the tenant chose not to reoccupy it.

1 (iii) Prior to submitting an application to construct an ADU under this
2 subsection (c)(4), the property owner shall submit a written declaration, signed under penalty of
3 perjury, to the Rent Board that the project will comply with the requirements of Administrative Code
4 Sections 37.2(r) and 37.9 relating to severance, reduction, or removal of a housing service. The Rent
5 Board shall determine the form and content of said declaration, which shall include the following
6 information: (1) a description of any housing services supplied in connection with the use or occupancy
7 of any units on the subject property that are located in the area of the property or building where the
8 ADU would be constructed; (2) whether construction of the ADU would result in the severance,
9 reduction, or removal of any such housing services; and (3) the just cause for the severance, reduction,
10 or removal of said housing services. The Rent Board shall transmit the declaration to the Planning
11 Department within 30 days of receiving it. The Department shall not approve an application to
12 construct an ADU under this subsection (c)(4) unless the Department has received the declaration from
13 the Rent Board. The Department shall not approve an application to construct an ADU under this
14 subsection (c)(4) if the declaration indicates that construction of the ADU would result in severance,
15 reduction, or removal of any tenant housing service that is supplied in the area of the property or
16 building where the ADU would be constructed without just cause.

17 (iv) Except as provided in subsections (iii) and (v) below, an
18 Accessory Dwelling Unit shall be constructed entirely within the buildable area of an existing
19 lot, provided that the ADU does not exceed the existing height of an existing building, or within
20 the built envelope of an existing and authorized stand-alone garage, storage structure, or
21 other auxiliary structure on the same lot, as the built envelope existed three years prior to the
22 time the application was filed for a building permit to construct the ADU. For purposes of this
23 ~~provision~~ subsection (c)(4)(C)(iv), the “built envelope” shall include the open area under a
24 cantilevered room or room built on columns; decks, except for decks that are supported by
25 columns or walls other than the building wall to which they are attached and are multi-level or

1 more than 10 feet above grade; and lightwell infills provided that the infill will be against a
2 blank neighboring wall at the property line and not visible from any off-site location; as these
3 spaces exist~~ed~~ as of July 11, 2016. An ADU constructed entirely within the existing built
4 envelope, as defined in this subsection~~(ii)~~, along with permitted obstructions allowed in
5 Section 136(c)(32), of an existing building or authorized auxiliary structure on the same lot, or
6 where an existing stand-alone garage or storage structure has been expanded to add
7 dormers, is exempt from the notification requirements of Section 311 of this Code unless the
8 existing building or authorized auxiliary structure on the same lot is in an Article 10 or Article
9 11 District, in which case the notification requirements will apply. If an ADU will be constructed
10 under a cantilevered room or deck that encroaches into the required rear yard, a pre-
11 application meeting between the applicant and adjacent neighbors for all the proposed work is
12 required before the application may be submitted.

13 (iii) When a stand-alone garage, storage, or other auxiliary
14 structure is being converted to an ADU, an expansion to the envelope is allowed to add
15 dormers even if the stand-alone garage, storage structure, or other auxiliary structure is in the
16 required rear yard.

17 (iv) On a corner lot, a legal stand-alone nonconforming garage,
18 storage structure, or other auxiliary structure may be expanded within its existing footprint by
19 up to one additional story in order to create a consistent street wall and improve the continuity
20 of buildings on the block.

21 (v) An Accessory Dwelling Unit shall not be constructed using
22 space from an existing Dwelling Unit except that an ADU may expand into habitable space on
23 the ground or basement floors provided that it does not exceed 25% of the gross square
24 footage of such space. The Zoning Administrator may waive this 25% limitation if ~~(a)~~ the
25 resulting space would not be usable or would be impractical to use for other reasonable uses

1 included but not limited to storage or bicycle parking or (~~b~~2) waiving the limitation would help
2 relieve any negative layout issues for the proposed ADU.

3 (viii) An existing building undergoing seismic retrofitting may be
4 eligible for a height increase pursuant to subsection (c)(4)(F) below.

5 (vix) Notwithstanding any other provision of this Code, an
6 Accessory Dwelling Unit authorized under this ~~Section 207~~subsection (c)(4) may not be merged
7 with an original unit(s).

8 (viii) An Accessory Dwelling Unit shall not be permitted in any
9 building in a Neighborhood Commercial District or in the Chinatown Community Business or
10 Visitor Retail Districts if it would eliminate or reduce a ground-story retail or commercial space,
11 unless the Accessory Dwelling Unit is a Designated Child Care Unit, as defined in Section
12 102, and meets all applicable standards of Planning Code Section 414A.6(e).

13 * * * *

14 (J) **Notification.** Prior to submitting an application to construct an
15 ADU under this subsection (c)(4), the property owner shall cause a notice describing the proposed
16 project to be posted on the subject property for at least 15 days, cause a written notice describing the
17 proposed project to be mailed or delivered to each unit (including unauthorized units) at the subject
18 property at least 15 days prior to submitting an application to construct an ADU, and submit proof of
19 these notices to the Planning Department as part of the application to construct an ADU. These
20 notices shall have a format and content determined by the Zoning Administrator, and shall generally
21 describe the project, including the number and location of the proposed ADU(s), and how to obtain the
22 written declaration required by subsection (c)(4)(C)(iii). These notices shall describe how to obtain
23 additional information regarding the project and shall provide contact information for the Planning
24 Department that complies with the requirements of the Language Access Ordinance, Chapter 91 of the
25 Administrative Code, to provide vital information about the Planning Department’s services or

1 programs in the languages spoken by a Substantial Number of Limited English Speaking Persons, as
2 defined in Chapter 91.

3 * * * *

4
5 Section 3. Chapter 37 of the Administrative Code is hereby amended by revising
6 Sections 37.2 and 37.9, to read as follows:

7 **SEC. 37.2. DEFINITIONS.**

8 * * * *

9 (r) Rental Units. All residential dwelling units in the City and County of San Francisco
10 together with the land and appurtenant buildings thereto, and all housing services, privileges,
11 furnishings, and facilities supplied in connection with the use or occupancy thereof, including
12 garage and parking facilities.

13 Garage facilities, parking facilities, driveways, storage spaces, laundry rooms, decks,
14 patios, or gardens on the same lot, or kitchen facilities or lobbies in single room occupancy
15 (SRO) hotels, supplied in connection with the use or occupancy of a unit, may not be severed
16 from the tenancy by the landlord without just cause as required by Section 37.9(a). Any
17 severance, reduction or removal of a housing service, even if permitted under ~~this Section 37.2(r)~~
18 Section 37.9(a), shall be offset by a corresponding reduction in rent. Either a landlord or a
19 tenant may file a petition with the Rent Board to determine the amount of the rent reduction.
20 For the avoidance of doubt, the issuance of a permit for construction of an Accessory Dwelling Unit
21 does not in and of itself constitute a just cause for the purpose of severing a housing service.

22 * * * *

23 **SEC. 37.9. EVICTIONS.**

24 Notwithstanding Section 37.3, this Section 37.9 shall apply as of August 24, 1980, to
25 all landlords and tenants of rental units as defined in Section 37.2(r).

1 * * * *

2 (f) Whenever a landlord wrongfully endeavors to recover possession or recovers
3 possession of a rental unit in violation of Sections 37.9 and/or 37.10A as enacted herein, or
4 wrongfully endeavors to sever or severs a housing service supplied in connection with the use or
5 occupancy of a rental unit as set forth in Section 37.2(r), the tenant or Rent Board may institute a
6 civil proceeding for injunctive relief, money damages of not less than three times actual
7 damages (including damages for mental or emotional distress as specified below), and
8 whatever other relief the court deems appropriate. If the landlord has recovered possession
9 pursuant to Section 37.9(a)(8), such action shall be brought no later than five years after (1)
10 the date the landlord files the first statement of occupancy with the Rent Board under Section
11 37.9(a)(8)(vii) or (2) three months after the landlord recovers possession, whichever is earlier.
12 In the case of an award of damages for mental or emotional distress, said award shall only be
13 trebled if the trier of fact finds that the landlord acted in knowing violation of or in reckless
14 disregard of Section 37.9 or 37.10A herein. The prevailing party shall be entitled to
15 reasonable attorney's fees and costs pursuant to order of the court. The remedy available
16 under this Section 37.9(f) shall be in addition to any other existing remedies which may be
17 available to the tenant or the Rent Board.

18 * * * *

19
20 Section 4. Effective Date. This ordinance shall become effective 30 days after
21 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
22 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
23 of Supervisors overrides the Mayor's veto of the ordinance.
24
25

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

7

8 APPROVED AS TO FORM:
9 DENNIS J. HERRERA, City Attorney

10 By: /s/ Peter R. Miljanich
11 PETER R. MILJANICH
12 Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning, Administrative Codes - Accessory Dwelling Units]

Ordinance amending the Planning Code to clarify the requirements for applications to construct Accessory Dwelling Units under the City's local Accessory Dwelling Unit approval process; amending the Administrative Code to clarify that landlords may not remove tenant housing services without just cause and that issuance of a building permit does not constitute just cause; making findings as required by the Tenant Protection Act of 2019; 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.

Existing Law

Planning Code subsection 207(c)(4) sets forth the City's discretionary local approval process for accessory dwelling unit (ADU) projects that are not eligible for state-mandated, ministerial consideration by the City.

Chapter 37 of the Administrative Code (the City's Residential Rent Stabilization and Arbitration Ordinance, or Rent Ordinance) protects tenants in certain rental units from evictions without just cause. Under Rent Ordinance section 37.2(r), a rental unit includes all housing services, privileges, furnishings, and facilities supplied in connection with the use or occupancy thereof, including garage and parking facilities. Such housing services may not be severed from a tenancy without just cause, as required by Rent Ordinance section 37.9. The issuance of a permit for construction of an Accessory Dwelling Unit does not in and of itself constitute a just cause for the purpose of severing, reducing, or removing a housing service.

Amendments to Current Law

This ordinance would require project sponsors seeking to construct an ADU under Planning Code subsection 207(c)(4) to submit a written declaration, signed under penalty of perjury, to the San Francisco Rent Stabilization and Arbitration Board (Rent Board) that the project will comply with the requirements of Administrative Code Sections 37.2(r) and 37.9 relating to severance, reduction, or removal of housing services. This ordinance would require the Rent Board to determine the form and content of the declaration, which shall include, at minimum, the following information:

- (1) A description of any housing services supplied in connection with the use or occupancy of any units on the subject property that are located in the area of the property or building where the ADU would be constructed;

(2) Whether construction of the ADU would result in the severance, reduction, or removal of any such housing services; and

(3) The just cause for the severance, reduction, or removal of such housing services.

The ordinance would require the Rent Board to transmit the declaration to the Planning Department within 30 days of receiving it. The Planning Department would no longer be authorized to approve an application to construct an ADU under subsection (c)(4) unless the Department has received the declaration from the Rent Board. And the Planning Department would no longer be authorized to approve an application to construct an ADU under subsection (c)(4) if the declaration indicates that construction of the ADU would result in severance, reduction, or removal of any tenant housing service that is supplied in the area of the property or building where the ADU would be constructed without just cause.

This ordinance also sets forth additional tenant notification requirements for applications to construct an ADU under subsection 207(c)(4).

This ordinance amends Rent Ordinance sections 37.2(r) and 37.9 to clarify existing law that the issuance of a permit for construction of an ADU does not in and of itself constitute a just cause for the purpose of severing a housing service.

Background Information

San Francisco first enacted a local ADU ordinance in 2015 and has updated its ADU program several times since then, both in response to amendments to State law and also to facilitate the construction of ADUs under the City's local program.

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Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

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

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

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

Sponsor(s):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:

For Clerk's Use Only