



June 26, 2025

Ms. Angela Calvillo, Clerk
Honorable Supervisor Engardio
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: **Transmittal of Planning Department Case Number 2025-002733PCA:**
Noncomplying and Accessory Structures
Board File No. 250284

Planning Commission Recommendation:	Approval with Modifications
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Dear Ms. Calvillo and Supervisor Engardio,

On June 26, 2025, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Engardio that would amend the Planning Code to provide conditions for repair and relocation of existing noncomplying structures within required side and rear yards, grant unpermitted residential structures within side and rear yards that were constructed before 2003 noncomplying status, and allow accessory structures up to 10 feet in height and 120 square feet within required side and rear yards. At the hearing the Planning Commission adopted a recommendation for approval with modifications.

The Commission's proposed modifications were as follows:

1. Amend Section 136(c)(23) to clarify that detached structures allowed in yards may not contain sleeping quarters. The Section would read as follows:

*(23) One or more detached structures, **which may not include sleeping quarters, full bathrooms, or full kitchens, but may include wetbars and half bathrooms, if no more than 10 feet in height above grade, as measured to the top of the structure, and covering no more than a combined 120 square feet as measured at grade. An additional 1 foot of roof eave may be permitted beyond the 120 square feet maximum;***

2. Allow noncomplying structures that are relocated per Building Code requirements to be relocated at the same distance from property lines as the existing structure's location. Additionally, exempt firewalls from this provision by allowing the addition of new, solid, fire-rated walls, as they are required by the Building Code, without a Variance.
3. Do not issue refunds for previously sought Variances.

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission.

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information, please do not hesitate to contact me.

Sincerely,



Aaron D. Starr
Manager of Legislative Affairs

cc: Robb Kapla, Deputy City Attorney
Jonathan Goldberg, Aide to Supervisor Engardio
John Carroll, Office of the Clerk of the Board

ATTACHMENTS :

Planning Commission Resolution
Planning Department Executive Summary



PLANNING COMMISSION RESOLUTION NO. 21757

HEARING DATE: June 26, 2025

Project Name: Noncomplying and Accessory Structures
Case Number: 2025-002733PCA [Board File No. 250284]
Initiated by: Supervisor Engardio
Staff Contact: Audrey Merlone, Legislative Affairs
Introduced March 25, 2025 / Substituted June 10, 2025
Audrey.Merlone@sfgov.org, 628-652-7534
Reviewed by: Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 628-652-7533

RESOLUTION ADOPTING A RECOMMENDATION FOR APPROVAL OF A PROPOSED ORDINANCE THAT WOULD AMEND 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.

WHEREAS, on June 10, 2025, Supervisor Engardio substituted a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 250284, which would amend 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;

WHEREAS, the Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on June 26, 2025; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15378 and 15060(c)(2); and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the Custodian of Records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby adopts a **recommendation for approval with modifications** of the proposed ordinance. The Commission's proposed recommendations are as follows:

1. Amend Section 136(c)(23) to clarify that detached structures allowed in yards may not contain sleeping quarters. The Section would read as follows:

*(23) One or more detached structures, **which may not include sleeping quarters, full bathrooms, or full kitchens, but may include wetbars and half bathrooms, if no more than 10 feet in height above grade, as measured to the top of the structure, and covering no more than a combined 120 square feet as measured at grade. An additional 1 foot of roof eave may be permitted beyond the 120 square feet maximum;***
2. Allow noncomplying structures that are relocated per Building Code requirements to be relocated at the same distance from property lines as the existing structure's location. Additionally, exempt firewalls from this provision by allowing the addition of new, solid, fire-rated walls, as they are required by the Building Code, without a Variance.
3. Do not issue refunds for previously sought Variances.

Findings

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

The Planning Commission supports the proposed ordinance because it streamlines permitting for existing accessory residential structures and facilitates necessary repairs without compromising safety or the use and enjoyment of nearby properties. The cumulative effect of complex entitlement and post-entitlement permitting makes the process of property repairs uncertain and expensive. This is especially so for accessory residential structures. Existing noncomplying and long-standing unpermitted structures have been in place for many years, meaning any minor alterations needed to retain the structure are unlikely to

have an impact on adjacent properties. Structures that were nuisances have likely already faced enforcement and been corrected. The rear yard residential structures that are the subject of the proposed Ordinance are functional elements that increase livability for their occupants in a city where space is limited and housing is expensive. Additionally, some noncomplying structures like exterior stairs are required for life/safety. The proposed Ordinance reduces complicated permit processes and equalizes enforcement; making it easier for residents to repair, replace, and bring these structures up to Building Code standards to extend their lifespan.

General Plan Compliance

The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

POLICY 26

STREAMLINE AND SIMPLIFY PERMIT PROCESSES TO PROVIDE MORE EQUITABLE ACCESS TO THE APPLICATION PROCESS, IMPROVE CERTAINTY OF OUTCOMES, AND ENSURE MEETING STATE- AND LOCAL-REQUIRED TIMELINES, ESPECIALLY FOR 100% AFFORDABLE HOUSING AND SHELTER PROJECTS.

POLICY 39

SUPPORT THE REPAIR AND REHABILITATION OF HOUSING TO ENSURE LIFE SAFETY, HEALTH, AND WELL-BEING OF RESIDENTS, ESPECIALLY IN ENVIRONMENTAL JUSTICE COMMUNITIES, AND TO SUPPORT SUSTAINABLE BUILDING PRACTICES.

Objective 1.A

Ensure housing stability and health homes.

The proposed Ordinance, with recommended modifications, will allow homeowners to not only retain long-standing accessory structures but also make the necessary improvements to ensure they are safe. This approach supports housing stability by streamlining permits, increasing process certainty, and promoting the preservation of existing affordable housing.

Planning Code Section 101 Findings

The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of

neighborhood-serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing or neighborhood character.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

Planning Code Section 302 Findings.

The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby ADOPTS A RECOMMENDATION FOR APPROVAL WITH MODIFICATIONS the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on June 26, 2025.



Jonas P. Ionin
Commission Secretary

Jonas P Ionin

Digitally signed by Jonas P Ionin
Date: 2025.06.26 16:24:18 -07'00'

AYES: Campbell, Williams, Braun, Imperial, So
NOES: Moore
ABSENT: McGarry
ADOPTED: June 26, 2025



EXECUTIVE SUMMARY

PLANNING CODE TEXT AMENDMENT

HEARING DATE: June 26, 2025

90-Day Deadline: September 8, 2025

Project Name: Noncomplying and Accessory Structures
Case Number: 2025-002733PCA [Board File No. 250284]
Initiated by: Supervisor Engardio
Introduced March 25, 2025 / Substituted June 10, 2025
Staff Contact: Audrey Merlone, Legislative Affairs
Audrey.Merlone@sfgov.org, 628-652-7534
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 628-652-7533
Environmental Review: Not a Project Under CEQA

RECOMMENDATION: Adopt a Recommendation for Approval with Modifications

Planning Code Amendment

The proposed Ordinance would amend the Planning Code to provide conditions for repair and relocation of existing noncomplying structures within required side and rear yards, grant unpermitted residential structures within side and rear yards that were constructed before 2003 noncomplying status, and allow accessory structures up to 10 feet in height and 120 square feet within required side and rear yards.

The Way It Is Now & The Way It Would Be:

The Way It Is	The Way It Would Be
One or more accessory structures (garden/tool sheds) are allowed within the required yards* if they are no larger than 100sqft and no taller than 8ft. These types of structures may include a half bath.	Accessory structures would be allowed in the required yard, with a maximum size of no more than 120sqft and no more than 10ft tall, with a maximum 1ft roof eave for structures at the maximum size. The types of structures that qualify under this permitted obstruction would be expanded to include those containing wetbars and bathrooms, while clarifying that full kitchens are not permitted. Note: <i>This provision does not exempt such structures from obtaining any required Department of Building Inspection permits.</i>
Existing noncomplying structures may be repaired, altered, relocated or enlarged—but not replaced—provided that the extent of noncompliance with the Planning Code is not intensified.	Existing, noncomplying structures located in the required yard may be repaired, altered, relocated or enlarged, even if the alterations increase the intensity of the nonconformity , if necessary to comply with current Building Code standards. If the structure is relocated, it must relocate further setback from property lines than the original location. Interior alterations, including the noncomplying structure’s change of use, would not be considered an intensification. Lastly, the Code would clarify that: 1. In cases where only portions of the structure are noncomplying, these rules shall only apply to the noncomplying portion, and; 2. This does not exempt the structure from any other Planning Code requirements (for example Sec. 317).
Residential structures that do not meet the requirements of Section 136(c) to be considered a permitted obstruction must seek a Variance.	Residential structures in the required yard within RH, RM, and RTO districts that were constructed before January 1, 2003, would be considered noncomplying and may be altered, relocated, or replaced in-kind without the need for a Variance. To qualify, the structure’s dimensions may not deviate from the conditions as they existed prior to January 1, 2003, unless the deviation is required to comply with the Building Code. The structure may not relocate any closer to property lines.
There is no fee waiver/refund for pre-existing non-complying structures that seek/sought in-kind replacement permits or Variances.	Applicants who previously paid permit fees for a Variance from yard requirements due to a structure exceeding 100sqft and/or 8ft in height would be eligible for a refund, provided the structure is no larger than 120sqft, no taller than 10ft, and was originally constructed before 2003. To qualify, the Variance must have been sought after January 1, 2021.

* “Yard” is the required open space along the side and in the rear of a lot.



The proposed Ordinance would allow a 10-foot tall, 120 square foot structure (left). The Current Code allows an 8-foot tall, 100 square foot structure (right).

Issues and Considerations

PermitSF

In February of 2025, Mayor Lurie announced a new initiative to develop, prioritize, and implement bold, systematic changes to the City's permitting processes. PermitSF is a citywide initiative with the goal of making permitting faster, more predictable, and more transparent; helping support economic recovery and growth. The initiative focuses on cutting unnecessary processes and making it easier for small businesses, homeowners, and developers to get the permits they need. PermitSF is comprised of multiple city departments who are working together on legislative reforms and engaging stakeholders. It aims to boost downtown revitalization, support nightlife, and simplify property maintenance across the city. The proposed Ordinance, sponsored by Supervisor Engardio, is one such effort that aims to fulfill PermitSF's goal of reforming processes that have increased the time, stress, and cost of living in San Francisco.

Permitted Obstructions

Section 136 of the Planning Code lists building elements and structures that are allowed within required streets, alleys, yards, setbacks and/or usable open space. It regulates the maximum dimensions and other

characteristics each permitted obstruction must meet to be allowed to encroach into these spaces. The Section also regulates which of the listed spaces it may encroach into. For example, a railing is allowed to encroach into a street, alley, setback, yard, or usable open space, but only if it is no more than 3'6" high above the step, porch, or balcony it is attached to.

Section 136 currently allows the following features to encroach into the required "yard" (meaning side or rear yard)¹:

- **Architectural projections** like cornices, eaves, and sunshades that project no more than 4' into the required yard
- **Bay windows** that project no more than 3', as well as meeting other specified requirements
- **Fire escapes** under a certain length and projection, as measured in conjunction with other permitted obstructions
- **Chimneys** that extend no more than 3' into the yard or are less than the maximum proportion of buildable width of the lot along the rear building wall, as measured in conjunction with other permitted obstructions
- Certain **retaining walls**
- **Steps** no more than 3' high
- **Uncovered stairways and landings** that do not extend higher than the floor of the adjacent first floor of occupancy above the ground story. Any portion of the stair that is higher than 3' above grade cannot extend more than 6' into the required yard, and all stairs must be less than the maximum proportion of buildable width of the lot along the rear building wall, as measured in conjunction with other permitted obstructions
- **Railings** no more than 3'6" high above the step, porch, or balcony they are attached to
- **Decorative railings or grillwork** that are at least 75% open and no taller than 6'
- **Fences** no more than 10' high
- **Outdoor recreational and household equipment** like play structures and clotheslines
- **Landscaping and gardening furniture**
- **Gardening structures** that are no more than 50% enclosed, no taller than 8' and no larger than 60sqft
- **Other structures used in gardening activities** like greenhouses and sheds that are no taller than 8' and no larger than 100sqft
- **Decks** at or below the first floor of occupancy
- **Garages** either below ground or under decks that do not occupy any area within the deepest 15' of the lot
- **Driveways**
- **Minor additions ("pop outs")** that generally extend no more than 12' into the yard, do not occupy the deepest 25% of the lot, and are no more than two stories high
- Certain **Accessory Dwelling Units (ADUs)**

Obstructions that do not meet the qualifications of Sec. 136 must seek a Variance from the Planning Code.

The current State Building Code exempts certain gardening structures from obtaining a Building Permit Application so long as they do not exceed 120 square feet in size and are unfinished spaces (e.g. storage

¹For a comprehensive list, including additional permitted obstructions allowed in C-3 Districts, see [Sec. 136](#).

sheds and playhouses). The proposed Ordinance would increase the allowed size of gardening structures in the Planning Code to match what is permitted by the Building Code. The proposed increase from eight to ten feet ensures the structure remains within the maximum allowable fence height. It is important to note that although these changes would allow more intensive uses within these accessory structures, elements like plumbing and electrical installations may still require permit approval from the Department of Building Inspection.

Currently, both noncomplying and unpermitted structures may not increase their nonconformity with the Planning Code without special permission through a Variance.

Noncomplying versus Unpermitted Structures

A "noncomplying structure" is a building or part of a building that was legally constructed with the required permits but no longer meets current Planning Code standards. An "unpermitted structure", on the other hand, was built without the necessary approvals or permits. The Planning Code encourages bringing both types of structures into compliance with current regulations. However, it allows noncomplying structures to remain and undergo minor repairs or alterations, supporting their continued use over their natural lifespan. In contrast, unpermitted structures must be brought into full compliance, or removed, as soon as they are identified.

Currently, both noncomplying and unpermitted structures may not increase their nonconformity with the Planning Code without obtaining a Variance. The Department has seen many Variance requests over the years due to long-existing unpermitted residential structures that either: 1) Need full replacement due to the end of the natural lifespan of the structure, and or; 2) Require alterations that increase its nonconformity with the Planning Code to meet required Building Code standards. These situations put two City codes into direct conflict with each other from the perspective of the applicant. The Department of Building Inspection may require changes for life-safety reasons that would expand a structure; however, the Planning Code will not allow those changes to be made without a Variance.

Long-standing, unpermitted rear yard structures are common across the city.

Rear Yard Structures

The proposed Ordinance would allow certain unpermitted residential structures to be considered legal, noncomplying structures. Residential structures are most often the same types of building features that are listed in Section 136. In this case, these building elements do not meet the limitations of the Section to be considered "permitted". Examples include decks that are built off the second story, stairs that extend more than 6' into the required backyard, or residential additions that extend into the last 25% of the rear yard or are more than two stories tall. The proposed Ordinance would allow these types of unpermitted structures to not only remain in place, but also be repaired, altered and replaced so long as they have existed since at least January 1, 2003. It would not allow a structure to further expand or increase its nonconformity with the

Planning Code from how it existed in 2003, unless it is deemed necessary to meet Building Code requirements.

EagleView

The Department uses a program that has high resolution satellite imagery from both bird’s eye and angled positions that make it possible for staff to understand the built conditions on individual lots in the city. The satellite images go back to 2002. These images from 2002, compared with the most recent conditions on the lot, allows the Department to determine not only if a rear yard structure existed as of January 1, 2003, but also the general dimensions and placement of the structure on the lot as of January 1, 2003.



Two EagleView images of a lot in the Sunset District with a rear yard structure. The structure is approximately 325 square feet and therefore would not be allowed without a Variance. Under the proposed Ordinance, because this structure has existed with the same dimensions since at least January 1, 2003, it would be allowed to be repaired and/or replaced. The structure could also be expanded or relocated to the extent needed to comply with the Building Code.

Equalizing Enforcement

The Department has found that these types of long-standing, but unpermitted rear yard structures are common across the city. They are largely innocuous building elements or accessory structures that were constructed by previous owners; often with the current owners unaware that they are unpermitted. They are part of a legacy of many structures that comprise the fabric of San Francisco, yet would not be allowed under today’s Code: from buildings that are too tall, to those with too many units, or those that extend into a required setback.

The Department’s enforcement program is based on complaints, meaning action is often triggered by a single report. This can result in enforcement against one structure, while similar unpermitted ones nearby remain untouched. In extreme cases, complaints are filed not because the structure is creating a nuisance, but as a retaliatory measure in a personal dispute. The proposed Ordinance would ensure that all residential accessory structures are given equal treatment by reclassifying eligible, long-standing unpermitted

structures as noncomplying, meaning they would not need to be rebuilt to meet current Planning Code standards.

General Plan Compliance

Policy 26 of the Housing Element is to: “Streamline and simplify permit processes to provide more equitable access to the application process, improve certainty of outcomes, and ensure meeting State- and local-required timelines, especially for 100% affordable housing and shelter projects.” Further, Policy 39 directs the Department to: “Support the repair and rehabilitation of housing to ensure life safety, health, and wellbeing of residents, especially in Environmental Justice Communities, and to support sustainable building practices.” The proposed Ordinance, with recommended modifications, will allow homeowners to not only retain long-standing accessory structures but also make the necessary improvements to ensure they are safe. This approach supports housing stability by streamlining permits, increasing process certainty, and promoting the preservation of existing affordable housing.

Racial and Social Equity Analysis

The Planning Code amendments in the proposed Ordinance support racial and social equity by preserving affordable housing and preventing displacement. Many unpermitted residential structures exist in marginalized communities, where permitting was historically inaccessible or unaffordable. Allowing repairs without full Planning Code compliance acknowledges these past inequities and helps families stay in place. It supports community stability and offers a path to legalization without forcing costly upgrades that many cannot afford.

Prioritizing life-safety upgrades over Planning Code compliance ensures vulnerable communities are not forced into lower-quality housing.

Additionally, allowing nonconforming structures to be altered to meet Building Code requirements even if the alterations would increase Planning Code nonconformity also ensures these structures are not lacking safety features, exposing residents—often BIPOC or low-income—to avoidable risks. Prioritizing life-safety upgrades over Planning Code compliance ensures vulnerable communities are not forced into lower-quality housing.

Implementation

The Department has determined that this Ordinance will impact our current implementation procedures; however, the proposed changes can be implemented without increasing permit costs or review time.

Recommendation

The Department recommends that the Commission **adopt a recommendation for approval with modifications** of the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. Amend Section 136(c)(23) to clarify that detached structures allowed in yards may not contain sleeping quarters. The Section would read as follows:

*(23) One or more detached structures, **which may not include sleeping quarters, full bathrooms, or full kitchens, but may include wetbars and half bathrooms, if no more than 10 feet in height above grade, as measured to the top of the structure, and covering no more than a combined 120 square feet as measured at grade. An additional 1 foot of roof eave may be permitted beyond the 120 square feet maximum;***

2. Allow noncomplying structures that are relocated per Building Code requirements to be relocated at the same distance from property lines as the existing structure's location. Additionally, exempt firewalls from this provision by allowing the addition of new, solid, fire-rated walls, as they are required by the Building Code, without a Variance.
3. Do not issue refunds for previously sought Variances.

Basis for Recommendation

The Planning Department supports the proposed ordinance because it streamlines permitting for existing accessory residential structures and facilitates necessary repairs without compromising safety or the use and enjoyment of nearby properties. The cumulative effect of complex entitlement and post-entitlement permitting makes the process of property repairs uncertain and expensive. This is especially so for accessory residential structures. Existing noncomplying and long-standing unpermitted structures have been in place for many years, meaning any minor alterations needed to retain the structure are unlikely to have an impact on adjacent properties. Structures that were nuisances have likely already faced enforcement and been corrected. The rear yard residential structures that are the subject of the proposed Ordinance are functional elements that increase livability for their occupants in a city where space is limited and housing is expensive. Additionally, some noncomplying structures like exterior stairs are required for life/safety. The proposed Ordinance reduces complicated permit processes and equalizes enforcement; making it easier for residents to repair, replace, and bring these structures up to Building Code standards to extend their lifespan.

Recommendation 1: Amend Section 136(c)(23) to clarify that detached structures allowed in yards may not contain sleeping quarters. As currently drafted, this permitted obstruction's description lacks clarity on whether sleeping space is included, and as such would require a Zoning Administrator interpretation. Further, if sleeping space or full bathrooms are included, it may incentivize the creation of Unpermitted Dwelling Units (UDUs) that cannot be legalized due to size constraints, potentially leading to enforcement actions and required removals. To address this issue, it is recommended that the description clearly states that neither sleeping spaces nor full bathrooms are allowed.

Recommendation 2: Allow noncomplying structures that are relocated per Building Code requirements to be relocated at the same distance from property lines as the existing structure's location.

Additionally, exempt firewalls from this provision by allowing the addition of new, solid, fire-rated walls, as they are required by the Building Code, without a Variance. The proposed Ordinance currently requires that such structures, when located in the rear yard and relocated due to Building Code compliance, be moved further away from the property lines. However, this language does not permit relocation that maintains the existing setback. To address this, the Ordinance should be amended to explicitly permit relocated structures to retain their original setback distance rather than requiring a greater one. Additionally, the Ordinance as currently drafted would prevent the installation of new fire-rated walls without a Variance, as they are usually at or directly adjacent to, property lines. The Ordinance should exempt fire-rated walls that are required per Building Code from this provision, to ensure they can be installed along or directly adjacent to property lines when required for fire safety.

Recommendation 3: Do not issue refunds for previously sought Variances. Unlike other recent refund programs for permit fees, the proposed Variance refunds seek exemption from the rules that applied at the time of application. Staff reviewed these applications correctly, using the Code as it existed when the requests were made. The Department did not make an error in issuing or denying any Variance. Approving these refunds would set a precedent that Code changes justify refunds for past applications that now meet updated rules but did not meet the Code standards at the time.

Required Commission Action

The proposed Ordinance is before the Commission so that it may adopt a recommendation of approval, disapproval, or approval with modifications.

Environmental Review

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c)(2) and 15378 because they do not result in a physical change in the environment.

Public Comment

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

ATTACHMENTS:

Exhibit A: Draft Planning Commission Resolution
Exhibit B: Board of Supervisors File No. 250284