

BOARD of SUPERVISORS



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MEMORANDUM

TO: Carla Short, Interim Director, Public Works

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

DATE: February 9, 2022

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Melgar on February 1, 2022:

File No. 220130

Ordinance amending the Planning Code to allow the signatures of Verified Tenants to count towards the threshold needed to permit an appeal of a Conditional Use authorization; clarifying timelines applicable to appeals of Conditional Use authorizations; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of public convenience, necessity, 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: erica.major@sfgov.org.

cc: David Steinberg, Public Works
Bryan Dahl, Public Works
John Thomas, Public Works
Lena Liu, Public Works

1 [Planning Code - Conditional Use Appeals]

2

3 **Ordinance amending the Planning Code to allow the signatures of Verified Tenants to**
4 **count towards the threshold needed to permit an appeal of a Conditional Use**
5 **authorization; clarifying timelines applicable to appeals of Conditional Use**
6 **authorizations; affirming the Planning Department’s determination under the California**
7 **Environmental Quality Act; and making findings of public convenience, necessity, and**
8 **welfare under Planning Code, Section 302.**

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

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

17

18 Section 1. Environmental and Land Use Findings.

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

24 (b) Pursuant to Planning Code Section 302, the Board of Supervisors find
25 that this ordinance will serve the public necessity, convenience, and welfare for the reasons
set forth in Planning Commission Resolution No. _____, and incorporates such reasons
by this reference thereto. A copy of said resolution is on file with the Clerk of the Board of

1 Supervisors in File No. _____.

2
3 Section 2. The Planning Code is hereby amended by revising Section 308.1, to read
4 as follows:

5 **SEC. 308.1. APPEALS: AMENDMENTS TO THE PLANNING CODE AND**
6 **CONDITIONAL USES.**

7 (a) **Right of Appeal.** The action of the Planning Commission, in disapproving in
8 whole or in part an amendment to the Planning Code initiated by application as described in
9 Section 302 and Sections 306 through 306.5, or in approving or disapproving in whole or in
10 part an application for Conditional Use authorization as described in Sections 303 and 304
11 and Sections 306 through 306.5 ~~of this Code~~, shall be subject to appeal to the Board of
12 Supervisors in accordance with this Section 308.1. An action of the Commission so appealed
13 from shall not become effective unless and until approved by the Board of Supervisors in
14 accordance with this Section 308.1.

15 (b) **Notice of Appeal.** Any appeal under this Section 308.1 shall be taken by filing
16 written notice of appeal with the Board of Supervisors within 30 days after the date of action
17 by the Planning Commission. The notice of appeal shall be subscribed by either (i) the owners
18 or Verified Tenants of at least 20% of the property affected by the proposed amendment or
19 Conditional Use or (ii) five members of the Board of Supervisors. The signature on the appeal
20 of members of the Board shall not be deemed to be any indication of their position on the
21 merits of the appeal but rather shall indicate only that they believe there is sufficient public
22 interest and concern in the matter to warrant a hearing by the Board of Supervisors. For the
23 purposes of this Section 308.1, the property affected, and the determination of the 20% threshold
24 of the property referenced above, shall be calculated as follows:

1 (1) When a proposed amendment or Conditional Use has been disapproved by
2 the Planning Commission, the property affected shall be deemed to be all property within the
3 area that is the subject of the application for amendment or Conditional Use, and within 300
4 feet of all exterior boundaries of the property that is the subject of the application;

5 (2) When a proposed Conditional Use has been approved by the Planning
6 Commission, the property affected shall be deemed to be all property within 300 feet of all
7 exterior boundaries of the property for which the Conditional Use has been approved by the
8 Planning Commission, excluding the property for which the approval has been given;

9 (3) In either of the above cases, when any property is owned by the City and
10 County of San Francisco, the United States Government or the State of California, or any
11 department or agency thereof, or by any special district, and is located within 300 feet of the
12 area that is the subject of the application for amendment or Conditional Use, such property
13 shall be excluded in determining the property affected unless such owner shall itself be a
14 subscriber of the notice of appeal; and

15 (4) Wherever a property is held in joint ownership, the signatures of joint
16 owners shall be calculated as representing affected property in direct proportion to the amount
17 of the total ownership of that property attributable to the joint owner or owners subscribing to
18 the notice of appeal. For the purposes of this calculation, the term "joint ownership" shall
19 include joint tenancies, interests in common, community property, partnerships, stock
20 cooperatives, condominiums, community apartments and planned unit developments. Where
21 each owner has exclusive rights to a portion of the property, the proportion of the total
22 ownership attributable to that owner shall be calculated in terms of a ratio of the floor area and
23 land area in which that owner has exclusive, joint, and common rights to the total floor area
24 and land area of that property. Under these calculations, the land area of an affected property
25 in joint ownership shall be given the same weight as the land area of an affected property not

1 in joint ownership, in determining whether 20% of the property affected is represented by
2 signatures to the notice of appeal.

3 (5) For purposes of this Section 308.1, a “Verified Tenant” is a residential or
4 commercial tenant of a property who declares, under penalty of perjury of the laws of the State of
5 California, that the tenant occupies the entire property or at least one separate unit on the property
6 pursuant to a lease with a term exceeding 32 days. Each Verified Tenant who signs an appeal pursuant
7 to this Section 308.1 must maintain proof of tenancy including either an executed lease reflecting a
8 term of more than 32 days, or at least one of the following forms of records reflecting that the tenant
9 has occupied the property for more than 32 consecutive days as of the date of signature: (a) state or
10 federal income tax records, (b) department of motor vehicle records including license, registration or
11 California identification, or (c) utility bills. A Verified Tenant who signs an appeal pursuant to this
12 Section may be required by Public Works to provide such proof of tenancy. A “Verified Tenant” shall
13 not include occupants of property who rent the property for less than 32 consecutive days, or for
14 Tourist or Transient Use, or as a Short-Term Residential Rental, as those terms are defined in Section
15 41A.4 of the Administrative Code.

16 (6) Where a property contains more than one rental unit, the signatures of Verified
17 Tenants shall be calculated as representing the percentage of affected property in the same proportion
18 of the number of rental units on the property represented by the Verified Tenants subscribing to the
19 appeal to the total number of rental units in that property. Only one Verified Tenant for each
20 Residential Unit or commercial unit shall be counted for each such unit; if more than one Verified
21 Tenant occupying a single rental unit subscribes to the appeal, that unit will only be given the weight of
22 a single unit in the property. Under these calculations, an affected property rented by multiple Verified
23 Tenants shall be given the same weight as an affected property owned by a single owner or occupied by
24 a single tenant, in determining whether 20% of the property affected is represented by signatures to the
25 notice of appeal.

1 (7) If an owner of 100% of a tenant-occupied property and one or more Verified
2 Tenants of the same property subscribe to the appeal, the land area of the affected property shall be
3 given the same weight as the land area of an affected property owned by a single owner in determining
4 whether 20% of the property affected is represented by signatures to the appeal. If a joint owner of
5 land held in joint ownership property and one or more Verified Tenants of the same property subscribe
6 to the appeal, the total land area of the affected property shall be calculated by adding the land areas
7 calculated pursuant to subsections (3) through (6), above, and may total, but not exceed 100% of the
8 land area of the property in determining whether 20% of the property affected is represented by
9 signatures to the appeal.

10 (c) **Hearing.** Upon the filing of such written notice of appeal so subscribed, the
11 Board of Supervisors or the Clerk thereof shall set a time and place for hearing such appeal,
12 which shall be not less than ~~10~~20 nor more than ~~30~~40 days after such filing. If there is not a
13 Board meeting scheduled during that time, the Clerk shall schedule the hearing at the next regularly
14 scheduled Board meeting more than 40 days after the filing. In no event shall the hearing be held more
15 than 60 days from the date of filing, unless the parties consent to a later date. Provided, that if the
16 Board of Supervisors does not conduct at least three regular Board meetings during the 30 day period
17 referred to in the previous sentence, the Board of Supervisors or the Clerk shall schedule the appeal
18 not more than 40 days (rather than 30 days) after the filing of such written notice of appeal.

19 (d) **Decision.** The Board of Supervisors ~~must~~ shall hear and decide the appeal within 90
20 days of the filing of the written notice of appeal, unless the parties consent to a later date. The Board's
21 decision on the appeal is final upon the close of the hearing at which the Board votes to approve or
22 deny such appeal. ~~such appeal within 30 days of the time set for the hearing thereon, provided that, if~~
23 the full membership of the Board is not present on the last day on which said appeal is set or continued
24 for hearing within said period, the Board may postpone said hearing and decision thereon until, but not
25 later than, the full membership of the Board is present; provided further, that the latest date to which

1 ~~said hearing and decision may be so postponed shall be not more than 90 days from the date of filing of~~
2 ~~the appeal. Provided, that if the Board of Supervisors does not conduct at least three regular Board~~
3 ~~meetings during the 30-day period referred to in the previous sentence, the Board of Supervisors 40~~
4 ~~days (rather than 30 days) of the time set for the hearing thereon~~ Failure of the Board of
5 Supervisors to act within such time limit shall be deemed to constitute approval by the Board
6 of the action of the Planning Commission.

7 (e) Findings. The Board of Supervisors shall approve findings supporting its decision to
8 uphold or deny an appeal under this Section 308.1 within 50 days after making its decision on the
9 appeal. Notwithstanding the foregoing sentence, failure of the Board to approve findings within the
10 time specified will not affect the finality of the Board's decision on the appeal.

11 (f) Continuances. Any continuance of the time periods specified in this section 308.1 shall
12 require a written request from the party or parties seeking continuance on such form as may be
13 provided by the Board of Supervisors.

14 ~~(dg)~~ Decision Votes Required. In acting upon an appeal of a Planning Commission
15 determination on a request for reclassification by an interested party, the Board of Supervisors
16 may disapprove the action of the Planning Commission only by a vote of not less than 2/3 of
17 all members of the Board. In acting upon any other appeal of a Planning Commission
18 determination on a Planning Code amendment, the Board of Supervisors may disapprove the
19 action of the Planning Commission by a majority vote of the Board. In both cases, in the event
20 that one or more of the full membership of the Board is disqualified or excused from voting
21 because of an interest prohibited by general law or the San Francisco Charter, any such
22 disapproval shall be by a vote of all members of the Board that are not disqualified or
23 excused; provided, however, that in the event that a quorum of all members of the Board is
24 disqualified or excused from voting because of an interest prohibited by general law or the
25 Charter, the action of the Planning Commission shall be deemed approved. In the event the

1 Board disapproves the action of the Commission when the Commission has disapproved in
2 whole or in part a proposed amendment, the Board shall, not later than its next regularly
3 scheduled meeting, adopt the proposed ordinance. In the event the Board disapproves the
4 action of the Commission when the Commission has disapproved in whole or in part a
5 proposed conditional use, the Board shall prescribe in its ~~resolution~~motion such conditions as
6 are in its opinion necessary to secure the objectives of this Code, in accordance with Section
7 303(d).

8
9 Section 3. Effective Date. This ordinance shall become effective 30 days after
10 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
11 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
12 of Supervisors overrides the Mayor's veto of the ordinance.

13
14 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
15 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
16 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
17 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
18 additions, and Board amendment deletions in accordance with the "Note" that appears under
19 the official title of the ordinance.

20
21 APPROVED AS TO FORM:
22 DAVID CHIU, City Attorney

23 By: /s/ KRISTEN A. JENSEN
24 KRISTEN A. JENSEN
25 Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning Code - Conditional Use Appeals]

Ordinance amending the Planning Code to allow the signatures of Verified Tenants to count towards the threshold needed to permit an appeal of a Conditional Use authorization; clarifying timelines applicable to appeals of Conditional Use authorizations; affirming the Planning Department’s determination under the California Environmental Quality Act; and making findings of public convenience, necessity, and welfare under Planning Code, Section 302.

Existing Law

Planning Code Section 308.1 provides the right of appeal, notice, hearing procedures, and decision requirements for appeals of amendments to the Planning Code and decisions on Conditional Use authorizations to the Board of Supervisors.

Section 308.1 permits appeals where the notice of appeal is subscribed to by either (i) the owners of at least 20% of the property affected by the proposed amendment or Conditional Use or (ii) five members of the Board of Supervisors. Under existing law, tenants of affected properties who do not also own the property may not appeal Conditional Use authorization decisions. Section 308.1 describes how signatures of owners of property held in joint ownership shall be counted for purposes of calculating whether the notice of appeal has been subscribed to by the required percentage of affected property.

Section 308.1 sets time limits for setting and holding hearings on covered appeals, and provides that failure of the Board of Supervisors to act within the prescribed time limit shall be deemed to constitute approval by the Board of the action of the Planning Commission.

Amendments to Current Law

The proposed legislation would permit “Verified Tenants” of affected properties to appeal Conditional Use determinations to the Board of Supervisors. “Verified Tenants” would include residential or commercial tenants of an affected property who declare, under penalty of perjury under the laws of the State of California, that the tenant occupies the entire property or at least one separate unit on the property pursuant to a lease with a term exceeding 32 days. The proposed legislation requires that Verified Tenants maintain proof of tenancy, and specifies the forms of proof that may be used to document qualifying tenancy. Under the proposed legislation, occupants who rent the property for less than 32 consecutive days, or

for Tourist or Transient Use, or as a Short-Term Residential Rental, as those terms are defined in Section 41A.4 of the Administrative Code, may not subscribe to Conditional Use appeals. The legislation provides that the signatures of Verified Tenants will be weighted according to the percentage of the affected property represented by the unit or units they occupy to the total number of rental units in that property, and that only one Verified Tenant for each qualifying unit shall be counted for each such unit. The legislation also provides that the signatures of Verified Tenants and one or more owners of the same affected property may total, but not exceed 100% of the land area of the property in determining whether 20% of the property affected by the Conditional Use is represented by signatures to the appeal.

The proposed legislation also modifies the deadlines for setting hearings on Conditional Use appeals so that such hearings must be held not less than 20 nor more than 40 days after such filing, the Board must hear and decide the appeal within 90 days of the filing of the appeal, and the Board of Supervisors shall approve findings supporting its decision to uphold or deny an appeal within 50 days after making its decision on the appeal. The legislation also clarifies that failure of the Board to approve findings within the time specified will not affect the finality of the Board's decision on the appeal. The legislation requires a written request from the party or parties seeking continuance for any continuance of the time periods specified in Section 308.1.

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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