

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

February 19, 2014

File No. 131148

Sarah Jones
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Ms. Jones:

On February 11, 2014, Supervisor Chiu introduced the following substitute legislation:

File No. 131148

Ordinance amending the Planning and Building Codes to provide a process for granting legal status to existing dwelling units constructed without the required permits, and establishing a fee for administering the authorization program; amending the Administrative Code to provide that a dwelling unit that was subject to the Rent Ordinance before legalization will remain under the Rent Ordinance, and requiring the property owner to provide relocation assistance to displaced tenants; making environmental findings, and findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1; and directing the Clerk to submit this Ordinance to the California Department of Housing and Community Development in accordance with state law.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "A. Ausberry".

By: Andrea Ausberry, Committee Clerk
Land Use & Economic Development Committee

Attachment

c: Monica Pereira, Environmental Planning
Nannie Turrell, Environmental Planning

*Not a project under CEQA Guidelines
Sections 15060(c) and 15378
because there is no direct or
indirect physical change in the
environment*
Nannie Turrell
Feb. 19, 2014

1 [Planning, Building, Administrative Codes - Legalization of Dwelling Units Installed Without a
2 Permit]

3 **Ordinance amending the Planning and Building Codes to provide a process for**
4 **granting legal status to existing dwelling units constructed without the required**
5 **permits, temporarily suspending the code enforcement process for units in the process**
6 **of receiving legal status, and prohibiting units from being legalized under the**
7 **provisions of this ordinance if there have been no-fault evictions; amending the**
8 **Administrative Code to prohibit the costs of legalization from being passed through to**
9 **the tenant; affirming the Planning Department’s California Environmental Quality Act**
10 **determination, making findings of consistency with the General Plan, and the eight**
11 **priority policies of Planning Code, Section 101.1, and directing the Clerk of the Board**
12 **of Supervisors to submit this Ordinance to the California Department of Housing and**
13 **Community Development in accordance with State law.**

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

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

20 Section 1. General and Environmental Findings.

21 (a) This ordinance is adopted under the California Second Unit Law (Government Code
22 Section 65852.2).

23 (b) The Planning Department has determined that the actions contemplated in this
24 ordinance comply with the California Environmental Quality Act (California Public Resources
25

1 Code Sections 21000 et seq.). The Board of Supervisors hereby affirms this determination.
2 Said determination is on file with the Clerk of the Board of Supervisors in File No. _____
3 and is incorporated herein by reference

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

9 (d) On _____, in Resolution No. _____, the Planning Commission
10 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
11 with the City's General Plan and the eight priority policies of Planning Code Section 101.1.
12 The Board of Supervisors adopts these findings as its own.

13 Section 2. The Planning Code is hereby amended by adding Section 207.3, to read as
14 follows:

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

17 Notwithstanding Section 207.2 or any other provision of this Code, certain dwelling units that
18 were constructed without benefit of permit in an existing residential building or in an ancillary
19 structure located on the same lot may be granted legal status subject to the conditions and procedures
20 set forth below. For purposes of this Section 207.3, a dwelling unit shall not include single room
21 occupancy units.

22 **(a) Purpose and Findings.**

23 (1) In California Government Code Section 65852.150, the Legislature declared that
24 second units are a valuable form of housing in California because they "provide housing for family
25 members, students, the elderly, in-home health care providers, the disabled, and others, at below

1 market prices within existing neighborhoods” and that “homeowners who create second units benefit
2 from added income, and an increased sense of security.”

3 (2) San Francisco has long had a housing shortage, especially of affordable housing.
4 The housing market continues to be tight and housing costs are beyond the reach of many households.
5 Policy 1.5 of the City’s 2009 Housing Element states that secondary units in existing residential
6 buildings represents a simple and cost-effective method of expanding the City’s housing supply.

7 (3) The City has no definitive information on the number of dwelling units that have
8 been added to existing residential buildings without the benefit of a permit, but unofficial estimates
9 indicate that as many as 30,000 to 40,000 such dwelling units exist as of 2013. Often these illegal units
10 have been built in the basements, garages, and attics of existing buildings or in rear-yard structures.
11 While many of these units may not meet existing Planning Code requirements, they constitute a major
12 supply of San Francisco’s affordable housing units, often meet life and safety standards, and may
13 require only exceptions from density, open space, and other Planning Code requirements in order to
14 become legal.

15 (4) Providing a mechanism to grant legal status to an illegally constructed dwelling
16 unit in an existing building zoned for residential use furthers several public policy objectives. By
17 encouraging the legalization of these units, the City can add legitimate units to the City’s supply of
18 affordable housing, ensure that these units are safe and habitable, and properly include these units
19 when calculating the City’s existing housing supply.

20 (b) Scope.

21 (1) Except as provided in subsection (2) below, this Section 207.3 shall apply to an
22 existing building or an ancillary structure on the same lot, that is located in a district where residential
23 use is principally permitted, and that has one or more dwelling units that were constructed prior to
24 January 1, 2013 without benefit of permit. One of the unauthorized dwelling units per lot meeting this
25

1 threshold requirement may be granted legal status under this Section, regardless of the density limits of
2 the zoning district.

3 (2) No-fault eviction. The Zoning Administrator shall not approve an application for
4 legalization if any tenant has been evicted from the unit pursuant to Administrative Code Sections
5 37.9(a)(9) through (a)(14) where the tenant was served with the notice of eviction after March 13, 2014
6 if the notice was served within ten (10) years prior to filing the application for legalization.
7 Additionally, the Zoning Administrator shall not approve an application for legalization of the unit if
8 any tenant has been evicted pursuant to Administrative Code Section 37.9(a)(8) where the tenant was
9 served with a notice of eviction after March 13, 2014 if the notice was served within five (5) years prior
10 to filing the application for legalization. The Zoning Administrator shall verify with the Rent Board that
11 no no-fault eviction had been filed. This subsection (b)(2) shall not apply if the tenant was evicted
12 under Administrative Code Section 37.9(a)(11) and the applicant(s) have either: (A) certified that the
13 original tenant reoccupied the unit after the temporary eviction or (B) submitted to the Zoning
14 Administrator a declaration from the property owner or the tenant certifying that the property owner or
15 the Rent Board has notified the tenant of the tenant's right to reoccupy the unit after the temporary
16 eviction and the tenant chose not to reoccupy it.

17 (c) Notices of Violation. If the Director or Zoning Administrator has issued a notice of
18 violation for the unauthorized unit for which legalization is being sought and all violations would be
19 corrected by legalization of the unit, the Director or Zoning Administrator shall:

20 (1) temporarily suspend the notice of violation and enforcement action upon initiation
21 of the legalization process by the owner or owner's authorized agent and acceptance of the required
22 applications by the City; and

23 (2) rescind the notice of violation and remove any related liens on the property if
24 legalization of the unit is approved within one year of initiation of the process set forth in subsection
25 (d).

1 **(d) Legalization Application.**

2 (1) The Zoning Administrator shall accept for review an application for legalization of
3 an unauthorized dwelling unit only if the application is accompanied by a DBI Dwelling Unit
4 Legalization Checklist and plans preliminarily approved by the Department of Building Inspection in
5 the screening process described in Section 106A.3.1.3(a) of the Building Code.

6 (2) The Zoning Administrator shall exercise ministerial approval of the application if it
7 complies with Planning Code requirements as specified in subsection (e) below and with other City
8 codes as specified in subsection (f) below, if the Rent Board verifies that no no-fault eviction was filed
9 pursuant to subsection (b)(2) above, and if the permit application is completed at and plans approved
10 by the Department of Building Inspection.

11 **(e) Compliance with Planning Code Requirements; Exceptions.**

12 (1) A dwelling unit authorized under this Section 207.3 must satisfy all applicable
13 requirements of this Code except for the usable open space requirements set forth in Section 135 and
14 the light and air requirements set forth in Section 140 so long as open space requirements are met for
15 the other existing units.

16 (2) A dwelling unit in an ancillary structure on the same lot as the single-family or
17 multi-family building shall not require a variance from the rear yard requirements of Section 134 in
18 order to be granted legal status under this Section 207.3.

19 (3) One such dwelling unit on the lot is allowed to exceed the permitted density
20 authorized for that zoning district provided that a residential use is principally permitted in that zoning
21 district. Authorization of an additional unit over the density limits will not change the official zoning
22 classification of the lot.

23 **(f) Compliance With Other City Codes.** A dwelling unit authorized under this Section
24 207.3 must meet all applicable provisions of other City codes other than the provisions of the Planning
25 Code cited in subsection (e). Any Code equivalencies authorized under the Building Code, Electrical

1 Code, Plumbing Code, Mechanical Code, Fire Code, or other applicable Code shall be considered by
2 the relevant agency.

3 Legalization of a dwelling unit under this Section 207.3 shall not affect whether the dwelling
4 unit is subject to the Residential Rent Stabilization and Arbitration Ordinance (Chapter 37 of the
5 Administrative Code). A dwelling unit that was subject to the Residential Rent Stabilization and
6 Arbitration Ordinance prior to legalization under this Section 207.3 shall remain subject to the
7 Residential Rent Stabilization and Arbitration Ordinance after legalization. Landlords shall pay
8 relocation assistance to tenants who are temporarily displaced due to work required for dwelling unit
9 legalization pursuant to the provisions in Section 37.9C of the Residential Rent Stabilization and
10 Arbitration Ordinance or California Civil Code Section 1947.9 for displacements of less than 20 days.

11 (g) **Additional Dwelling Unit Considered a Lawful Nonconforming Use.** Any dwelling unit
12 authorized under this Section 207.3 shall be considered a lawful nonconforming use subject to the
13 provisions of Planning Code Sections 180 through 189.

14 (h) **Subdivision and Lot Splits Prohibited.** Notwithstanding the provisions of Article 9 of the
15 Subdivision Code, a lot with an additional unit authorized under this Section 207.3 may not be
16 subdivided in a manner that would allow for the additional unit to be sold or separately financed
17 pursuant to any condominium plan, housing cooperative, or similar form of separate ownership.

18 (i) **Merging Secondary and Original Units.** If the property owner wants to merge the
19 secondary and original units, the owner may request merger pursuant to Section 317 of this Code. If
20 the Planning Department or Commission approves the merger, the secondary unit will be removed
21 from the Planning Department's Master List and the Assessor-Recorder's records after the final
22 approval of any required permits.

23 (j) **Reports.** Six months from the effective date of this Section 207.3 and every six months for
24 the first three years after the effective date, the Zoning Administrator and the Director of the
25 Department of Building Inspection shall issue a joint report on the effectiveness of the additional

1 dwelling unit authorization program. After three years, the report will be included in the City's Annual
2 Housing Inventory. The report shall, at a minimum, state the number of screening forms and building
3 permit applications that have been filed pursuant to this Section 207.3. For the first three years, copies
4 of these reports shall be submitted to the Clerk of the Board of Supervisors, the Mayor, and the
5 Controller.

6 ~~(k) **Master List of Additional Dwelling Units Approved.** The Planning Department shall~~
7 ~~create and maintain a master list of dwelling units approved pursuant to the provisions of this Section~~
8 ~~207.3 and corresponding property addresses for use by the San Francisco Rent Stabilization and~~
9 ~~Arbitration Board, Tax Assessor, and other interested City departments, boards or commissions.~~

10 Section 3. The Planning Code is hereby amended by revising Section 311, to reach as
11 follows:

12 **SEC. 311. RESIDENTIAL PERMIT REVIEW PROCEDURES FOR RH, RM, AND RTO**
13 **DISTRICTS.**

14 * * * *

15 (b) **Applicability.** Except as indicated herein, all building permit applications for
16 demolition and/or new construction, and/or alteration of residential buildings in RH, RM, and
17 RTO Districts shall be subject to the notification and review procedures required by this
18 Section. Subsection 311(e) regarding demolition permits and approval of replacement
19 structures shall apply to all R Districts.

20 (1) For the purposes of this Section, an alteration in RH and RM Districts shall be
21 defined as any change in use ~~or change in the number of dwelling units of a residential building.~~
22 removal of more than 75 percent of a residential building's existing interior wall framing or the
23 removal of more than 75 percent of the area of the existing framing, or an increase to the
24 exterior dimensions of a residential building except those features listed in Section 136(c)(1)
25 through 136(c)(24) and 136(c)(26).

1 (2) For the purposes of this Section, an alteration in RTO Districts shall be defined as a
2 change of use described in Section 312(c) ~~or a change in the number of dwelling units of a~~
3 ~~building~~, removal of more than 75 percent of a building's existing interior wall framing or the
4 removal of more than 75 percent of the existing framing, or an increase to the exterior
5 dimensions of a building except for those features listed in Section 136(c)(1) through
6 136(c)(24) and 136(c)(26).

7 * * * *

8 Section 4. The Building Code is hereby amended by adding Section 106A.3.1.3, to
9 read as follows:

10 **106A.3.1.3. Authorization of Dwelling Units Installed Without a Permit.**

11 (a) Screening required. Prior to filing a permit application to legalize an existing unauthorized
12 dwelling unit under Section 207.3 of the Planning Code, the owner of the building or the owner's
13 authorized agent shall submit the following information to the Department for the purpose of
14 determining whether the unauthorized dwelling unit can comply with the requirements of this Code or
15 other codes administered and enforced by the Department, or whether equivalencies from Code
16 requirements can be obtained:

17 (1) a Dwelling Unit Legalization Checklist form, created by the Department, together
18 with floor plans for the entire building and a plan showing the location of all structures on the subject
19 lot;

20 (2) evidence from the San Francisco Water Department, telephone, gas or electric
21 records, written lease agreements, or other evidence acceptable to the Department showing that the
22 dwelling unit for which approval is sought existed prior to January 1, 2013;

23 (3) an assessment prepared by a licensed contractor, architect, or engineer that outlines
24 a plan to comply with all applicable requirements of the Building Code and other Codes administered
25 and enforced by the Department; and

1 (4) other information as the Building Official shall require.

2 (b) Imminent and Substantial Hazard. If the Department identifies an imminent and
3 substantial hazard as described in Section 102A.16 of this Code during the screening process, the
4 Department shall inform the applicant of the appropriate remedial actions and notifications to tenants.

5 (c) Application Process; Required Permit(s). After completion of the screening process
6 required by subsection (a.) a property owner or the owner's authorized agent may file with the Zoning
7 Administrator an application to legalize one existing unauthorized dwelling unit on the property and
8 may file applications with the Department, Fire Department, or other City department for any building
9 or other permits that are required. The application(s) shall refer explicitly to this Section 106A.3.1.3
10 and Section 207.3 of the Planning Code. If there is more than one existing unauthorized unit on the
11 site, the owner or agent shall designate the unauthorized unit for which legalization is sought. The
12 approval, issuance, expiration, or cancellation of an application filed pursuant to this Section
13 106A.3.1.3 and any resulting permits shall be in accordance with the provisions of all City codes,
14 except as provided below. Cancellation or disapproval of the application or any resulting permit shall
15 terminate all rights under this Section created by the application. A dwelling unit is not lawful unless
16 and until all necessary approvals have been obtained.

17 (d) Notices of Violation. If the Department has issued a notice of violation for the unauthorized
18 unit for which legalization is being sought and all violations would be corrected by legalization of the
19 unit, the Director shall:

20 (1) temporarily suspend the notice of violation and enforcement action upon initiation
21 of the process set forth in subsection (a) by the owner or owner's authorized agent and acceptance of
22 the required applications by the City; and

23 (2) rescind the notice of violation and remove any related liens on the property if
24 legalization of the unit is approved within one year of initiation of the process set forth in subsection
25 (a).

1 (e) **Funding Resources Information.** The Department shall provide information about the
2 Mayor's Office of Housing and Community Development Code Enforcement Rehabilitation Fund and
3 other potential funding sources that may be available for code compliance.

4 Section 5. The Administrative Code is hereby amended by revising 37.7, to read as
5 follows:

6 **SEC. 37.7. CERTIFICATION OF RENT INCREASES FOR CAPITAL IMPROVEMENTS,**
7 **REHABILITATION WORK, ENERGY CONSERVATION IMPROVEMENTS, AND**
8 **RENEWABLE ENERGY IMPROVEMENTS.**

9 (a) **Authority.** In accordance with such guidelines as the Board shall establish, the
10 Board and designated Administrative Law Judges shall have the authority to conduct hearings
11 in order to certify rental increases to the extent necessary to amortize the cost of capital
12 improvements, rehabilitations, energy conservation improvements, and renewable energy
13 improvements. Costs determined to be attributable to such work and improvements shall be
14 amortized over a period which is fair and reasonable for the type and the extent of the work
15 and improvements, and which will provide an incentive to landlords to maintain, improve and
16 renovate their properties while at the same time protecting tenants from excessive rent
17 increases. Costs attributable to routine repair and maintenance, or any costs attributable to
18 legalizing an existing dwelling unit under Section 207.3 of the Planning Code, shall not be certified.

19 * * * *

20 Section 6. Equivalencies. The Director of the Department of Building Inspection and the
21 Fire Marshal shall determine whether equivalencies from the provisions of the San Francisco
22 Building Code can be developed in order to facilitate authorization of existing dwelling units
23 under Planning Code Section 207.3, shall prepare one or more Administrative Bulletins to
24 define and implement the code equivalencies, and shall coordinate with the Zoning
25 Administrator in the development of any joint Administrative Bulletins that the Planning and

1 Building Departments determine are necessary or desirable in order to implement the policy
2 and provisions of this ordinance. Any Administrative Bulletins developed jointly or by either
3 Department shall be completed within one year of the effective date of this ordinance.

4 Section 7. Notice. Within one month from the effective date of this ordinance, the Clerk
5 of the Board of Supervisors shall cause to be published at least once in a newspaper of
6 ~~general circulation notice that the program for authorization of existing dwelling units under~~
7 Planning Code Section 207.3 is in effect. The Tax Collector shall mail notice to property
8 owners with the first property tax bill sent after the effective date of this ordinance. The notices
9 by the Clerk of the Board and the Tax Collector shall advise property owners of the provisions
10 of Section 207.3. The Zoning Administrator and the Director of the Department of Building
11 Inspection shall supplement the aforementioned notices with any additional notice they deem
12 necessary to insure that the public receives adequate notice of the provisions of said Section
13 207.3.

14 Section 8. Effective Date. This ordinance shall become effective 30 days after
15 enactment. ~~Enactment occurs when the Mayor signs the ordinance, the Mayor returns the~~
16 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
17 of Supervisors overrides the Mayor's veto of the ordinance.

18 Section 9. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
19 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
20 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
21 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
22 additions, and Board amendment deletions in accordance with the "Note" that appears under
23 the official title of the ordinance.

24 Section 10. Severability. If any section, subsection, sentence, clause, phrase, or word
25 of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any

1 court of competent jurisdiction, such decision shall not affect the validity of the remaining
2 portions of the ordinance. The Board of Supervisors hereby declares that it would have
3 passed this ordinance and each and every section, subsection, sentence, clause, phrase, and
4 word not declared invalid or unconstitutional without regard to whether any other portion of
5 this ordinance would be subsequently declared invalid or unconstitutional.

6 Section 11. Conflict with Federal or State Law. Nothing in this ordinance shall be
7 interpreted or applied so as to create any requirement, power, or duty in conflict with any
8 federal or state law.

9 Section 12. Directions to Clerk. The Clerk of the Board of Supervisors is hereby
10 directed to submit a copy of this ordinance to the California Department of Housing and
11 Community Development within 60 days following adoption pursuant to Section 65852.2(h) of
12 the California Government Code.

13
14 APPROVED AS TO FORM:
15 DENNIS J. HERRERA, City Attorney

16 By: _____
17 JUDITH A. BOYAJIAN
18 Deputy City Attorney

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