

REVISED LEGISLATIVE DIGEST
(Amended in Committee, 7/25/2022)

[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.

Background

On February 1, 2022, Supervisor Melgar introduced this legislation (“Original Legislation”), which was referred to the Planning Commission for Review. On June 14, 2022, Supervisor Melgar introduced a substitute Ordinance, including additional clarification of timelines concerning the conditional use appeal process.

On July 26, 2022, Supervisor Melgar Introduced amendments to extend the time in which the Planning Department must transmit decisions of the Planning Commission disapproving in

whole or in part an amendment to the Planning Code initiated by application as described in Section 302 and Sections 306 through 306.5, or approving or disapproving in whole or in part an application for Conditional Use authorization, to the Clerk of the board. In addition, the amendments clarified that “Verified Tenants” include tenants of Unauthorized Units.

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 includes residential tenants of both authorized and Unauthorized Units. 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 transmitting certain Planning Commission decisions to the Clerk of the Board of Supervisors; requires that hearings on Conditional Use appeals must be held not less than 20 nor more than 40 days after such filing; requires the Board to hear and decide the appeal within 90 days of the filing of the appeal, and to 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.