

File No. 231185

Committee Item No. 2

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation

Date: March 4, 2024

Board of Supervisors Meeting: _____

Date: _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
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OTHER

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Planning Commission Transmittal Package – January 26, 2024</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>CEQA Determination – December 11, 2023</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Referrals CEQA and FYI to Depts. – November 17, 2023</u> |
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Prepared by: John Carroll

Date: March 1, 2024

Prepared by: _____

Date: _____

Prepared by: _____

Date: _____

1 [Planning, Administrative Codes - Conditional Use Authorization for Removal of Unauthorized
2 Unit]

3 **Ordinance amending the Planning Code to waive the Conditional Use Authorization**
4 **requirement for removal of an unauthorized unit in a single-family home where the**
5 **owner satisfies certain eligibility criteria, waive the Conditional Use Authorization**
6 **requirement for removal of an unauthorized unit where that unit does not satisfy open**
7 **space, dwelling unit exposure, or minimum floor-to-ceiling height requirements, update**
8 **the required Conditional Use Authorization findings for removal of an unauthorized unit**
9 **to account for the history of tenancies in that unit; amending the Administrative Code**
10 **to require that where an owner obtains an exemption from the Conditional Use**
11 **Authorization requirement to remove an unauthorized unit from a qualifying single-**
12 **family home, the single-family home shall be subject to the rent increase limitations of**
13 **the Rent Ordinance; affirming the Planning Department's determination under the**
14 **California Environmental Quality Act; and making findings of consistency with the**
15 **General Plan, and the eight priority policies of Planning Code, Section 101.1, and**
16 **adopting findings of public necessity, convenience, and welfare under Planning Code,**
17 **Section 302.**

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

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

25 Section 1. CEQA and Land Use Findings.

1 (a) The Planning Department has determined that the actions contemplated in this
2 ordinance comply with the California Environmental Quality Act (California Public Resources
3 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
4 Supervisors in File No. 231185 and is incorporated herein by reference. The Board affirms
5 this determination.

6 (b) On January 18, 2024, the Planning Commission, in Resolution No. 21489, adopted
7 findings that the actions contemplated in this ordinance are consistent, on balance, with the
8 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board
9 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
10 Board of Supervisors in File No. 231185, and is incorporated herein by reference.

11 (c) Pursuant to Planning Code Section 302, this Board finds that these Planning Code
12 amendments will serve the public necessity, convenience, and welfare for the reasons set
13 forth in Planning Commission Resolution No. 21489, and the Board adopts such reasons as
14 its own. A copy of said resolution is on file with the Clerk of the Board of Supervisors in File
15 No. 231185 and is incorporated herein by reference.

16
17 Section 2. Background and Findings.

18 (a) San Francisco faces a continuing shortage of affordable housing. The General
19 Plan recognizes that existing housing is the greatest stock of rental and financially accessible
20 residential units, and is a resource in need of protection. To that end, Planning Code Section
21 317 requires a Conditional Use Authorization (CUA) prior to approval of any permit that would
22 remove existing housing, with certain exceptions.

23 (b) Section 317 also applies to removal of Unauthorized Units, or "UDUs," defined as
24 one or more rooms within a building that have been used, without the benefit of a building
25 permit, as a separate and distinct living or sleeping space independent from the residential

1 units on the same property. In some instances, an unpermitted ground floor bedroom and
2 bathroom in a single-family home may be considered a UDU.

3 (c) Some families purchase single-family homes with no knowledge that the property
4 contains a UDU. For example, at some point after the purchase, families may learn of the
5 UDU when they apply for a building permit to connect the ground-floor bedroom and bathroom
6 with the living spaces on the upper floors. Families in these situations face the high costs of
7 either legalizing the UDU or obtaining a CUA for its removal. In addition to these costs,
8 legalization is not desirable for some homeowners, as some homeowners wish to integrate
9 the separated UDU space with the existing single-family home by, for example, removing
10 internal staircases, walls or doorways, which present internal barriers to growing families or
11 intergenerational living arrangements

12 (d) This ordinance waives the CUA requirement for removal of a UDU in owner-
13 occupied single-family homes where the unit has not been rented for the last 10 years, except
14 to a qualifying member, as defined in the ordinance. Project sponsors that utilize the CUA
15 waiver must enter into regulatory agreements with the City acknowledging that, in
16 consideration for this waiver, the existing unit will be subject to local rent control
17 notwithstanding the Costa-Hawkins Rental Housing Act (California Civil Code Section 1954.50
18 et seq.).

19 (e) Facilitating the removal of UDUs in single-family homes may lead to speculative
20 real estate investments that may seek to maximize profits by displacing current residents,
21 demolishing existing housing stock, absorbing the UDU into a large, remodeled single-family
22 home, and quickly selling those homes. To discourage such speculation and displacement,
23 this ordinance waives the CUA requirement only where the UDU has not been occupied by a
24 tenant in the past 10 years, except where the UDU was occupied by a blood, adoptive, or
25 step-family relative of the owner or the owner's spouse or registered domestic partner.

1 Additionally, the benefits of this ordinance are available only where the owner resides in the
2 primary dwelling unit at the time of application to remove the UDU and intends to remain in
3 the primary dwelling unit for at least three years after removal of the UDU is approved.

4 (f) This ordinance also implements policies and actions adopted in the 2022-2031
5 Housing Element as they pertain to UDUs and facilitating the living needs of multi-
6 generational families. Under current law, removal of a UDU does not require a CUA if the
7 Department of Building Inspection determines that there is no path for legalization under
8 Section 106A.3.1.3 of the Building Code. This ordinance replaces that no-legalization
9 determination with the following objective criteria: whether the UDU satisfies the open space
10 requirements of Planning Code Section 135, the dwelling unit exposure requirements of
11 Planning Code Section 140, or the minimum legal floor-to-ceiling height requirement in the
12 Housing Code. This ordinance also updates the required Conditional Use Authorization
13 findings under Section 317 to account for the history of tenancies in a UDU. Further, this
14 ordinance clarifies that the removal of a UDU pursuant to a permit does not trigger the
15 penalties in Planning Code Section 176(c)(1)(C)(i).

16
17 Section 3. The Planning Code is hereby amended by revising Sections 176 and 317,
18 to read as follows:

19
20 **SEC. 176. ENFORCEMENT AGAINST VIOLATIONS.**

21 * * * *

22 (c) **Penalties.**

23 (1) **Administrative Penalties.**

24 * * * *

25 (C) **Penalties for Specified Violations.**

1 (i) **Alteration, Merger, Construction, or Demolition of**
2 **Residential Units without a Permit.** For any *unpermitted* alteration, merger, construction, or
3 demolition of any building or structure containing one or more Residential Units, including
4 work that takes place in violation of Section 317 of this Code, on or after March 1, 2023,
5 resulting in the addition of more than three unauthorized Residential Units, or the loss of one
6 or more Residential Units, (1) the owner of that building shall be required to apply for a
7 replacement project under section 317 of this Code, and (2) the Responsible Party shall be
8 liable for a penalty of up to \$250,000 upon issuance of a Notice of Violation for each
9 Residential Unit added or lost through such alteration, merger, or demolition. Within 12
10 months of the effective date of the ordinance in Board File No. 220878 amending this Section
11 176, the Planning Commission shall adopt factors and criteria for consideration, to be updated
12 from time to time, to provide guidance to the Zoning Administrator when determining the
13 appropriate penalty amount for violations subject to this subsection (c)(1)(C)(i).

14 * * * *

15
16 **SEC. 317. LOSS OF RESIDENTIAL AND UNAUTHORIZED UNITS THROUGH**
17 **DEMOLITION, MERGER, AND CONVERSION.**

18 * * * *

19 **(c) Applicability; Exemptions.**

20 (1) Any application for a permit that would result in the Removal of one or more
21 Residential Units or Unauthorized Units is required to obtain Conditional Use authorization.
22 For Unauthorized Units, this Conditional Use authorization will not be required for Removal if
23 the Zoning Administrator has determined in writing that the unit cannot be legalized under any
24 applicable provision of this Code. The application for a replacement building or alteration
25 permit shall also be subject to Conditional Use requirements.

1 * * * *

2 (4) The Removal of an Unauthorized Unit does not require a Conditional Use
3 authorization pursuant to Subsection (c)(1) ~~if the Department of Building Inspection has~~
4 ~~determined that there is no path for legalization under Section 106A.3.1.3 of the Building Code. if the~~
5 Unauthorized Unit does not comply with any of the following:

6 _____ (A) the open space requirements of Section 135;

7 _____ (B) the dwelling unit exposure requirements of Section 140; or

8 _____ (C) the minimum legal floor-to-ceiling height requirement in the Housing Code.

9 * * * *

10 (7) **Exception for Certain Unauthorized Units with No Tenant Occupant for 10 Years.**

11 The Conditional Use requirement of subsection (c)(1) shall not apply to an application for a permit that
12 would result in the Removal of an Unauthorized Unit in a one-family dwelling where all of the
13 conditions in subsection (c)(7)(A) are met. To establish eligibility, the owner shall furnish a
14 declaration under penalty of perjury on a form prescribed by the Department, attesting to compliance
15 with all of the conditions in subsection (c)(7)(A).

16 _____ (A) **Eligibility.** The one-family dwelling shall meet all the following criteria:

17 _____ (i) the owner currently resides in the primary dwelling unit;

18 _____ (ii) the Unauthorized Unit has not been rented for consideration in the
19 last 10 years. For the purposes of this subsection (c)(7)(A)(ii), “rented for consideration” shall not
20 include any use or tenancy of the Unauthorized Unit by a blood, adoptive, or step-family relationship,
21 specifically by a grandparent, parent, sibling, child, or grandchild, or the spouse or registered
22 domestic partner of such relations, or by a property owner’s spouse or registered domestic partner;

23 _____ (iii) the owner intends to reside in the one-family dwelling for at least
24 three years after the Removal of the Unauthorized Unit is approved; and

1 _____ (iv) the owner enters into a regulatory agreement with the City subjecting
2 the one-family dwelling to the San Francisco Residential Rent Stabilization and Arbitration Ordinance
3 (Chapter 37 of the Administrative Code) pursuant to subsection (c)(7)(B).

4 _____ (B) **Regulatory Agreement.** Sponsors of projects utilizing the Conditional Use
5 Authorization exception in subsection (c)(7) of this Section 317 shall enter into a regulatory agreement
6 with the City subjecting the one-family dwelling to the Residential Rent Stabilization and Arbitration
7 Ordinance (Chapter 37 of the Administrative Code), as amended from time to time, as a condition of
8 approval of the permit to remove the Unauthorized Unit (“Regulatory Agreement”). The property
9 owner and the Planning Director, or the Director’s designee, on behalf of the City, shall execute the
10 Regulatory Agreement, which is subject to review and approval by the City Attorney’s Office. The
11 Regulatory Agreement shall be executed prior to the City’s issuance of the permit to remove the
12 Unauthorized Unit. Following execution of the Regulatory Agreement by all parties and approval by
13 the City Attorney, the Regulatory Agreement or a memorandum thereof shall be recorded in the title
14 records in the Office of the Assessor-Recorder against the property and the Regulatory Agreement shall
15 be binding on all future owners and successors in interest. At a minimum, the Regulatory Agreement
16 shall contain the following:

17 _____ (i) A statement that the one-family dwelling is not subject to the Costa-
18 Hawkins Rental Housing Act (California Civil Code Section 1954.50 et seq.) Further, that under
19 Section 1954.52(b), the property owner has entered into and agreed to the terms of the agreement with
20 the City in consideration for other forms of assistance or other direct financial contribution specified in
21 California Government Code Section 65915 et seq.;

22 _____ (ii) A description of the forms of assistance or other direct financial
23 contribution provided to the property owner; and

24 _____ (iii) A description of the remedies for breach of the agreement and other
25 provisions to ensure implementation and compliance with the agreement.

1 * * * *

2 (f) **Residential Merger.** The Merger of Residential Units, not otherwise subject to
3 Conditional Use authorization by this Code, or exempted from the Conditional Use requirement by
4 this Section 317, shall be prohibited.

5 (g) **Conditional Use Criteria.**

6 * * * *

7 (7) **Removal of Unauthorized Units.** In addition to the criteria set forth in
8 subsections (g)(1) through (g)(4) above, the Planning Commission shall consider the criteria
9 below in the review of applications for removal of Unauthorized Units:

10 ~~—— (A) whether the costs to legalize the Unauthorized Unit or Units under the Planning,~~
11 ~~Building, and other applicable Codes is reasonable based on how such cost compares to the average~~
12 ~~cost of legalization per unit derived from the cost of projects on the Planning Department's Master List~~
13 ~~of Additional Dwelling Units Approved required by Section 207.3(k) of this Code;~~

14 ~~—— (B) whether it is financially feasible to legalize the Unauthorized Unit or Units. Such~~
15 ~~determination will be based on the costs to legalize the Unauthorized Unit(s) under the Planning,~~
16 ~~Building, and other applicable Codes in comparison to the added value that legalizing said Units~~
17 ~~would provide to the subject property. The gain in the value of the subject property shall be based on~~
18 ~~the current value of the property with the Unauthorized Unit(s) compared to the value of the property if~~
19 ~~the Unauthorized Unit(s) is/are legalized. The calculation of the gain in value shall be conducted and~~
20 ~~approved by a California licensed property appraiser. Legalization would be deemed financially~~
21 ~~feasible if gain in the value of the subject property is equal to or greater than the cost to legalize the~~
22 ~~Unauthorized Unit.~~

23 ~~—— (C) If no City funds are available to assist the property owner with the cost of~~
24 ~~legalization, whether the cost would constitute a financial hardship.~~

1 (A) whether the Unauthorized Unit has been rented within the 10 years
2 preceding the application, excluding any use of the Unauthorized Unit by a blood, adoptive, or step-
3 family relationship, specifically by a grandparent, parent, sibling, child, or grandchild, or the spouse
4 or registered domestic partner of such relations, or by a property owner's spouse or registered
5 domestic partner;

6 (B) whether the Unauthorized Unit has a history of evictions under
7 Administrative Code Sections 37.9(a)(8)-(12) or 37.9(a)(14)-(16) within the 10 years preceding the
8 application.

9 * * * *

10
11 Section 4. Chapter 37 of the Administrative Code is hereby amended by revising
12 Sections 37.2 and 37.3, to read as follows:

13
14 **SEC. 37.2. DEFINITIONS.**

15 * * * *

16 (r) **Rental Units.** All residential dwelling units in the City together with the land and
17 appurtenant buildings thereto, and all housing services, privileges, furnishings, and facilities
18 supplied in connection with the use or occupancy thereof, including garage and parking
19 facilities.

20 * * * *

21 The term "rental units" shall not include:

22 * * * *

23 (4) Except as provided in subsections (A)-(~~ED~~), dwelling units whose rents are
24 controlled or regulated by any government unit, agency, or authority, excepting those
25 unsubsidized and/or unassisted units which are insured by the United States Department of

1 Housing and Urban Development; provided, however, that units in unreinforced masonry
2 buildings which have undergone seismic strengthening in accordance with Building Code
3 Chapters 16B and 16C shall remain subject to the Rent Ordinances to the extent that the
4 ordinance is not in conflict with the seismic strengthening bond program or with the program's
5 loan agreements or with any regulations promulgated thereunder;

6 * * * *

7 (D) The term “rental units” shall include (i) Accessory Dwelling Units
8 constructed pursuant to Section 207(c)(4) of the Planning Code and that have received a
9 complete or partial waiver of the density limits and the parking, rear yard, exposure, or open
10 space standards from the Zoning Administrator pursuant to Planning Code Section 307(l), and
11 (ii) New Unit(s) constructed and funded pursuant to Administrative Code Chapter 85; (iii) new
12 dwelling units created pursuant to the density exception set forth in Section 207(c)(8) of the
13 Planning Code; (iv) new dwelling units created pursuant to the HOME-SF Program set forth in
14 Section 206.3(c)(1)(B) of the Planning Code; ~~and~~(v) new dwelling units created pursuant to
15 the density exception set forth in Section 249.94(d)(1) of the Planning Code; and (vi) dwelling
16 units that obtain the exemption from the conditional use authorization set forth in Section 317(c)(7) of
17 the Planning Code.

18 * * * *

19
20 **SEC. 37.3. RENT LIMITATIONS.**

21 (a) **Rent Increase Limitations for Tenants in Occupancy.** Landlords may impose
22 rent increases upon tenants in occupancy only as provided below and as provided by
23 subsections 37.3(d) and 37.3(g):

24 * * * *

1 (d) **Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50. et seq.).**

2 Consistent with the Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50. et seq.)
3 and regardless of whether otherwise provided under Chapter 37:

4 (1) **Property Owner Rights to Establish Initial and All Subsequent Rental**
5 **Rates for Separately Alienable Parcels.**

6 (A) An owner of residential real property may establish the initial and all
7 subsequent rental rates for a dwelling or a unit which is alienable separate from the title to any
8 other dwelling unit or is a subdivided interest in a subdivision as specified in subdivision (b),
9 (d), or (f) of Section 11004.5 of the California Business and Professions Code. The owner's
10 right to establish subsequent rental rates under this paragraph shall not apply to a dwelling or
11 unit where the preceding tenancy has been terminated by the owner by notice pursuant to
12 California Civil Code Section 1946 or has been terminated upon a change in the terms of the
13 tenancy noticed pursuant to California Civil Code Section 827; in such instances, the rent
14 increase limitation provisions of Chapter 37 shall continue to apply for the duration of the new
15 tenancy in that dwelling or unit.

16 * * * *

17 (D) An owner's right to establish subsequent rental rates under
18 subsection 37.3(d)(1) shall not apply to a dwelling or unit that is a new dwelling unit created
19 pursuant to the Code provisions specified in subsection Section 37.2(r)(4)(D), or a dwelling unit
20 that utilizes the Code provisions specified in subsection 37.2(r)(4)(D).

21 ~~(D)2—An owner's right to establish subsequent rental rates under subsection~~
22 ~~37.3(d)(1) shall not apply to a dwelling unit that is created pursuant to the HOME SF Program set~~
23 ~~forth in Section 206.3(e)(1)(B) of the Planning Code.~~

24 * * * *

25 (g) **New Construction and Substantial Rehabilitation.**

1 (1) An owner of a residential dwelling or unit which is newly constructed and
2 first received a certificate of occupancy after the effective date of Ordinance No. 276-79 (June
3 13, 1979), or which the Rent Board has certified has undergone a substantial rehabilitation,
4 may establish the initial and all subsequent rental rates for that dwelling or unit, except:

5 (A) where rent restrictions apply to the dwelling or unit under Sections
6 37.3(d) or 37.3(f);

7 (B) where the dwelling or unit is a replacement unit under Section
8 37.9A(b);

9 (C) as provided for certain categories of units ~~Accessory Dwelling Units~~
10 ~~and New Unit(s)~~ under Section 37.2(r)(4)(D); and

11 (D) as provided in a development agreement entered into by the City
12 under Administrative Code Chapter 56; ~~and.~~

13 ~~————— (E) as provided for certain categories of new dwelling units under Section~~
14 ~~37.2(r)(4)(E).~~

15
16 Section 5. Effective Date. This ordinance shall become effective 30 days after
17 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
18 ordinance unsigned or does not sign the ordinance within 10 days of receiving it, or the Board
19 of Supervisors overrides the Mayor's veto of the ordinance.

20
21 Section 6. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
22 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
23 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
24 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
25

1 additions, and Board amendment deletions in accordance with the “Note” that appears under
2 the official title of the ordinance.

3
4 Section 7. Severability. If any section, subsection, sentence, clause, phrase, or word
5 of this ordinance, or any application thereof to any person or circumstance, is held to be
6 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
7 shall not affect the validity of the remaining portions or applications of the ordinance. The
8 Board of Supervisors hereby declares that it would have passed this ordinance and each and
9 every section, subsection, sentence, clause, phrase, and word not declared invalid or
10 unconstitutional without regard to whether any other portion of this ordinance or application
11 thereof would be subsequently declared invalid or unconstitutional.

12
13 Section 8. No Conflict with Federal or State Law. Nothing in this ordinance shall be
14 interpreted or applied so as to create any requirement, power, or duty in conflict with any
15 federal or state law.

16
17 APPROVED AS TO FORM:
18 DAVID CHIU, City Attorney

19 By: /s/ Giulia Gualco-Nelson
20 GIULIA GUALCO-NELSON
21 Deputy City Attorney

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23
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LEGISLATIVE DIGEST

[Planning, Administrative Codes - Conditional Use Authorization for Removal of Unauthorized Unit]

Ordinance amending the Planning Code to waive the Conditional Use Authorization requirement for removal of an unauthorized unit in a single-family home where the owner satisfies certain eligibility criteria, waive the Conditional Use Authorization requirement for removal of an unauthorized unit where that unit does not satisfy open space, dwelling unit exposure, or minimum floor-to-ceiling height requirements, update the required Conditional Use Authorization findings for removal of an unauthorized unit to account for the history of tenancies in that unit; amending the Administrative Code to require that where an owner obtains an exemption from the Conditional Use Authorization requirement to remove an unauthorized unit from a qualifying single-family home, the single-family home shall be subject to the rent increase limitations of the Rent Ordinance; 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, and adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

Existing Law

Planning Code Section 317 requires a Conditional Use Authorization before issuance of a building permit that would result in the removal of one or more Residential Units or Unauthorized Units, or “UDUs.”

A Conditional Use Authorization is not required to remove a UDU where the Department of Building Inspection has determined that there is no path for legalization under Section 106A.3.1.3 of the Building Code. (See Planning Code Section 317(c)(4).)

To grant a Conditional Use Authorization to remove a UDU, the Planning Commission must make certain findings set forth in Section 317(g)(7), which include consideration of the costs and financial feasibility of legalizing the UDU.

Planning Code Section 176(c)(1)(C)(i) sets forth the penalties for alteration, merger, construction, or demolition of residential units without a permit.

Amendments to Current Law

This ordinance would amend the existing Conditional Use Authorization exemption in Planning Code Section 317(c)(4) to eliminate the Department of Building Inspection’s finding that there is no pathway for legalization. Instead, this ordinance would exempt removal of a UDU from the Conditional Use Authorization requirement where the UDU does not meet any

of the following: the open space requirements of Planning Code Section 135, the dwelling unit exposure requirements of Planning Code Section 140, or the minimum legal floor-to-ceiling height requirement in the Housing Code.

This ordinance would also create a new exemption from the Conditional Use Authorization for removal of a UDU in a single-family home that meets all of the following criteria:

- the owner resides in the primary dwelling unit at the time of application;
- the Unauthorized Unit has not been rented for consideration in the last 10 years, except to a qualifying family member, as defined in the ordinance;
- the owner intends to reside in the single-family home for a period of three years after Removal of the Unauthorized Dwelling Unit is approved; and
- the owner enters into a regulatory agreement with the City subjecting the one-family dwelling to the San Francisco Residential Rent Stabilization and Arbitration Ordinance (Chapter 37 of the Administrative Code).

This ordinance states that “rented for consideration” shall not include any use or tenancy of the Unauthorized Unit by a blood, adoptive, or step family relationship, specifically by a grandparent, parent, sibling, child, or grandchild, or the spouse or registered domestic partner of such relations, or by a property owner’s spouse or registered domestic partner. To establish eligibility, this ordinance requires that an owner furnish a declaration under penalty of perjury on a form prescribed by the Department. The ordinance also prescribes requirements for the regulatory agreement and makes parallel amendments to Chapter 37 of the Administrative Code.

This ordinance would also replace several of the existing required Conditional Use Authorization findings in Section 317(g)(7) with the following findings:

- whether the Unauthorized Unit has been rented within the 10 years preceding the application, excluding any use of the Unauthorized Unit by a blood, adoptive, or step-family relationship, specifically by a grandparent, parent, sibling, child, or grandchild, or the spouse or registered domestic partner of such relations, or by a property owner’s spouse or registered domestic partner; and
- whether the Unauthorized Unit has a history of evictions under Administrative Code Sections 37.9(a)(8)-(12) or 37.9(a)(14)-(16) within the 10 years preceding the application.

The ordinance also clarifies that the removal of an Unauthorized Unit pursuant to a permit does not trigger the penalties in Planning Code Section 176(c)(1)(C)(i).

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January 25, 2024

Ms. Angela Calvillo, Clerk
Honorable Supervisor Melgar
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 2023-010847PCA:
Conditional Use Authorization for Removal of Unauthorized Unit
Board File No. 231185

Planning Commission Recommendation: Approval with Modification

Dear Ms. Calvillo and Supervisor Melgar,

On November 14, 2023, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Melgar that amend the Planning Code to waive the Conditional Use Authorization requirement for removal of an unauthorized unit under certain conditions. At the hearing the Planning Commission recommended approval with modification.

The Commission's proposed modifications were as follows:

1. Amend the open space and dwelling unit exposure CUA exemptions so that projects are exempted if the only path to legalize is through a Variance.
2. Amend the floor-to-ceiling height CUA exemption to only apply if the UDU does not meet the minimum floor-to-ceiling height and minimum contiguous area per Housing Code.

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: Giulia Gualco-Nelson, Deputy City Attorney
Michael Farrah, Aide to Supervisor Melgar
John Carroll, Office of the Clerk of the Board

Attachments :

Planning Commission Resolution
Planning Department Executive Summary



PLANNING COMMISSION RESOLUTION NO. 21489

HEARING DATE: JANUARY 18, 2024

Project Name: Conditional Use Authorization for Removal of Unauthorized Unit
Case Number: 2023-010847PCA [Board File No. 231185]
Initiated by: Supervisor Melgar / Introduced November 14, 2023
Staff Contact: Veronica Flores, Legislative Affairs
veronica.flores@sfgov.org, 628-652-7525
Reviewed by: Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, (628) 652-7533

RESOLUTION APPROVING WITH MODIFICATION A PROPOSED ORDINANCE AMENDING THE PLANNING CODE TO WAIVE THE CONDITIONAL USE AUTHORIZATION REQUIREMENT FOR REMOVAL OF AN UNAUTHORIZED UNIT IN A SINGLE-FAMILY HOME WHERE THE OWNER SATISFIES CERTAIN ELIGIBILITY CRITERIA, WAIVE THE CONDITIONAL USE AUTHORIZATION REQUIREMENT FOR REMOVAL OF AN UNAUTHORIZED UNIT WHERE THAT UNIT DOES NOT SATISFY OPEN SPACE, DWELLING UNIT EXPOSURE, OR MINIMUM FLOOR-TO-CEILING HEIGHT REQUIREMENTS, UPDATE THE REQUIRED CONDITIONAL USE AUTHORIZATION FINDINGS FOR REMOVAL OF AN UNAUTHORIZED UNIT TO ACCOUNT FOR THE HISTORY OF TENANCIES IN THAT UNIT; AMENDING THE ADMINISTRATIVE CODE TO REQUIRE THAT WHERE AN OWNER OBTAINS AN EXEMPTION FROM THE CONDITIONAL USE AUTHORIZATION REQUIREMENT TO REMOVE AN UNAUTHORIZED UNIT FROM A QUALIFYING SINGLE-FAMILY HOME, THE SINGLE-FAMILY HOME SHALL BE SUBJECT TO THE RENT INCREASE LIMITATIONS OF THE RENT ORDINANCE; 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, AND ADOPTING FINDINGS OF PUBLIC NECESSITY, CONVENIENCE, AND WELFARE UNDER PLANNING CODE, SECTION 302.

WHEREAS, on November 14, 2023 Supervisor Melgar introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 231185, which would amend the Planning Code to waive the Conditional Use Authorization requirement for removal of an unauthorized unit in a single-family home where the owner satisfies certain eligibility criteria, waive the Conditional Use Authorization requirement for removal of an unauthorized unit where that unit does not satisfy open space, dwelling unit exposure, or minimum floor-to-ceiling height requirements, update the required Conditional Use Authorization findings for removal of an unauthorized unit to account for the history of tenancies in that unit; amending the Administrative Code to require that where an owner obtains an exemption from the Conditional Use Authorization requirement to remove an unauthorized unit from a qualifying single-family home, the single-family home shall be subject to the rent increase limitations of the Rent Ordinance;

WHEREAS, the Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on January 18, 2024; and,

WHEREAS, the proposed Ordinance is not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment; 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 **approves with modifications** the proposed ordinance. The Commission’s proposed recommendations are as follows:

1. Amend the open space and dwelling unit exposure CUA exemptions so that projects are exempted if the only path to legalize is through a Variance.
2. Amend the floor-to-ceiling height CUA exemption to only apply if the UDU does not meet the minimum floor-to-ceiling height and minimum area per Housing Code, ensuring that the area is contiguous.

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 proposed Ordinance will support multi-generational and extended families remain in San Francisco.

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

OBJECTIVE 1.A

Ensure housing stability and healthy homes.

OBJECTIVE 4.C

Diversify housing types for all cultures, family structures, and abilities.

POLICY 21

Prevent the potential displacement and adverse racial and social equity impacts of zoning changes, planning processes, or public and private investments especially for populations and areas vulnerable to displacement.

POLICY 25

Reduce governmental constraints on development in Well-resourced Neighborhoods to enable small and mid-rise multi-family buildings providing improved housing choice and affordability.

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 32

Promote and facilitate aging in place for seniors and multi-generational living that supports extended families and communal households.

POLICY 33

Prevent the outmigration of families with children and support the needs of families to grow.

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.

The proposed Ordinance supports the Housing Element's goals of ensuring stable and healthy homes in San Francisco. Policy 25 calls for the reduction of government constraints on small and multi-family projects, which is supported by the CUA exemption and refined UDU findings provided in the proposed Ordinance. Although Housing Element Policy 4 does note efforts to facilitate the legalization of UDUs while improving their safety and habitability, the Ordinance on balance still supports larger goals of diversifying the housing types for all structures and household types. Specifically, Policies 32 and 33 call the need to support seniors and multi-generational living, as well as growing families. The proposed Ordinance responds directly to these policies by removing barriers for families looking to update their home to accommodate their needs whether that is for a growing family or by having extended family live together under one roof.

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 APPROVES 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 January 18, 2024.



Jonas P Ionin

Digitally signed by Jonas P Ionin
Date: 2024.01.22 16:09:41 -08'00'

Jonas P. Ionin
Commission Secretary

AYES: Braun, Ruiz, Tanner, Imperial, Koppel, Moore, Diamond

NOES: None

ABSENT: None

ADOPTED: January 18, 2024

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EXECUTIVE SUMMARY

PLANNING CODE TEXT AMENDMENT

HEARING DATE: JANUARY 18, 2023

90-Day Deadline: February 15, 2024

Project Name: Conditional Use Authorization for Removal of Unauthorized Unit

Case Number: 2023-010847PCA [Board File No. 231185]

Initiated by: Supervisor Melgar / Introduced November 14, 2023

Staff Contact: Veronica Flores, Legislative Affairs
veronica.flores@sfgov.org, 628-652-7525

Reviewed by: Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, (628) 652-7533

Environmental Review: Not a Project Under CEQA

Recommendation: Approval with Modifications

Planning Code Amendment

The proposed Ordinance would amending the Planning Code to waive the Conditional Use Authorization requirement for removal of an unauthorized unit in a single-family home where the owner satisfies certain eligibility criteria; waive the Conditional Use Authorization requirement for removal of an unauthorized unit where that unit does not satisfy open space, dwelling unit exposure, or minimum floor-to-ceiling height requirements; update the required Conditional Use Authorization findings for removal of an unauthorized unit to account for the history of tenancies in that unit; and amending the Administrative Code to require that where an owner obtains an exemption from the Conditional Use Authorization requirement to remove an unauthorized unit from a qualifying single-family home, the single-family home shall be subject to the rent increase limitations of the Rent Ordinance.

The Way It Is Now:	The Way It Would Be:
<p>Removing an Unauthorized Dwelling Unit (UDU) requires a Conditional Use Authorization (CUA).</p>	<p>For all structures: The CUA would be waived for proposed UDU removals when the UDU does not currently meet the open space or Dwelling Unit exposure requirements of the Planning Code or the minimum floor-to-ceiling height requirement of the Housing Code.</p> <p>For single-family homes only: The CUA would be waived for UDU removals in which the UDU has not been “rented for consideration”¹ in the last 10 years. Additionally, the property owner must currently reside in the primary unit and confirm they intend to reside within the single-family home for at least three years after the UDU is removed. Lastly, the property owner would need to enter into a Regulatory Agreement subjecting the single-family home to the price increase limitations of the Rent Stabilization and Arbitration Ordinance (Rent Ordinance).</p>
<p>When considering projects proposing the removal of a UDU, the Planning Commission needs to make findings under Section 317(g)(7).</p>	<p>The findings in Section 317(g)(7) would be revised to only consider the UDU’s tenant and eviction history from the past 10 years.</p>

Background

The General Plan recognizes that existing housing is the greatest stock of rental and financially accessible residential units and seeks to protect them. As such, all Residential demolitions, mergers, and conversions require a CUA prior to removing any existing housing, including UDUs. There are a few CUA exemptions currently in place, and the proposed Ordinance seeks to add an additional exemption. Eligible projects would include single-family homes where the UDU has not been rented out in the past ten years and the property owner intends to reside in the primary residence. The Department is aware of at least two properties at 112 Clipper Street and 124 Forest Side Avenue that would directly benefit from this proposed Ordinance.

¹ For the purposes of this Ordinance, “rented for consideration” shall not include any use or tenancy of the UDU by a blood, adoptive, or stepfamily relationship, specifically by a grandparent, parent, sibling, child, or grandchild, or the spouse or registered domestic partner of such relations, or by a property owner’s spouse or registered domestic partner.

Issues and Considerations

UDU Tenancy

| If a UDU has not been rented out in recent years, it is not adding to the housing stock.

Removing a UDU requires a CUA to help protect the existing housing stock and any tenants within the UDU. If there is no evidence that a UDU has been rented and actively used as a separate living space, it is not effectively adding to the housing stock. In the case of a single-family home with a UDU, the single-family home still functions as one dwelling and one household. In this situation, the property owner is still required to submit a CUA to remove the UDU even when there is no apparent change to the household configuration. The proposed Ordinance provides a CUA exemption for these single-family homes if they intend to reside at the property.

Additionally, if the UDU was rented out to or shared with family members, the UDU is not being used as a separate and distinct living space, but instead acts as one combined household. Again, this means that the UDU does not serve as a separate Dwelling Unit for the purposes of the housing stock. If a UDU is currently or was recently rented out to a family member, the property owner is still required to submit a CUA request to remove said UDU. The CUA exemption in the proposed Ordinance also applies if the UDU in question were rented out to a family member during the past ten years in efforts to support multi-generational and extended family households to stay in San Francisco.

Paths to Legalization

There are several ways to legalize UDUs including through State-Mandated ADUs, the Local ADU Program, and the Legalization Program. In recent years, State and City programs have made it easier to add new units or legalize unpermitted ones. This is particularly the case with State-Mandated ADUs that the City must approve if the proposal complies with state law. Further, staff believes that most single-family homeowners may be eligible to legalize a UDU under the State-Mandated ADU Program. Some property owners may not want to legalize an unwarranted unit. In that case, they would need to go through the CUA process for the Commission to decide whether the UDU removal is warranted or not.

Open Space and Exposure Variances

In some instances, the UDU (or primary unit) does not comply with the Planning Code's open space or exposure requirements. Often, the Zoning Administrator is able to grant a Variance for these two Code requirements based on exceptional or extraordinary circumstances applying to the property. However, should the property owner opt not to legalize the UDU, it introduces a scenario for the Planning Commission to evaluate a proposed removal even when a path to legalization exists through the Variance option. The proposed Ordinance seeks to address and streamline such situations, eliminating the possibility of conflicting determinations. Under the proposed changes, property owners with a UDU that does not meet open space or exposure requirements can remove the UDU using a building permit, bypassing the CUA process.

Clarifications When There Is No Path to Legalize

The proposed Ordinance removes the CUA exemption when the Department of Building Inspection (DBI) determines "there is no path to legalization under Section 106A3.1.3 of the Building Code". DBI does not currently

issue such determinations; however, based on feedback from DBI, not meeting the minimum floor-to-ceiling height requirement is often one of the major aspects that would prevent a property owner from legalizing the UDU as is. The Ordinance thus replaces DBI's "no path to legalization" CUA exemption and instead incorporates the minimum floor-to-ceiling height threshold. Currently, if a UDU does not meet the Housing Code's minimum floor-to-ceiling height requirements, DBI cannot approve legalizing it in the existing conditions; however, because DBI does not issue determinations that there is no path to legalization, the property owner still needs to present their case to the Planning Commission. Excavation is very expensive, and often the only way for a unit to meet the minimum floor-to-ceiling height requirements. Allowing for this exception recognizes the financial realities associated with construction projects.

There may be scenarios where most of the UDU meets the minimum floor-to-ceiling height except for a small portion of the unit. As drafted, the Ordinance does not account for this situation. These UDUs may still be generally livable, and the Department has concerns about allowing the removal of the UDU when most of the unit conforms with the floor to ceiling height. To address this situation, the Department offers a minor modification for this provision as described under Recommended Modifications.

Process Improvements and Removing Procedural Barriers

To reduce unnecessary process, the Ordinance includes an exception for single-family homes where the UDU has not been rented out in the past ten years or rented out only to family. This exception requires that the property owners currently reside at the property and that they intend to reside there for at least three years after the UDU is removed. In this case, the UDU area would officially be incorporated into the owner's primary residence. The intent of the CUA requirement for UDU removals is to protect the housing stock and tenants. The proposed Ordinance maintains these existing protections, while also allowing families more flexibility and streamlined review through a CUA exception.

Current UDU Removal Findings

The first finding for UDU removal relates to "Costs to Legalize." This finding allows the UDU to be removed without a CUA if the work required to make the UDU code compliant is reasonable compared to the average cost of legalization. The "Costs to Legalize" finding is often inconsistent in terms of what scopes of work applicants include, and the associated costs. DBI does not generally check this documentation for completeness or accuracy and the Planning Department does not have the expertise to properly analyze it. Further, because applicants have different opinions on what is needed versus what is desirable it is difficult to compare the true cost to legalize the unit. For example, some documentation may include luxury countertop materials, when a more affordable countertop would be suitable. In such cases, it makes the costs to legalize appear to be a larger burden than it really is in comparison to the average cost of legalization. Additionally, DBI's figure for the average cost of legalization does not account for variables such as size of the area to be legalized or scopes of work like excavation or plumbing. This all makes it difficult for staff to determine what is *reasonable*.

The second finding relates to the whether it is financially reasonable to legalize the UDU. This finding compares the costs of legalizing the UDU to the added value that the additional unit would add to the property. Legalization would be deemed financially feasible if the gained value is equal to or greater than the cost to legalize the UDU. In addition to the discrepancies for the "Cost to Legalize" noted above, it is difficult to accurately respond to this finding because professional appraisers do not generally appraise hypothetical scenarios. They only appraise the existing conditions based on comparable properties in the area, which do not

generally disclose the presence of a UDU or not. This finding is anecdotal at best and does not provide the most accurate details for considering the gained value of legalizing said UDU.

When responding to the findings today, property owners often need to include sensitive financial information in the public record or present it at the public hearing to respond to these findings. In the proposed Ordinance, the findings are refined to instead focus on recent tenant and eviction history. These changes allow the property owners to determine what sensitive or private information to include (if any) when making their case to remove the UDU.

Unsuspecting Buyers

There have also been situations where new property owners were led to believe they were purchasing a single-family home and were not informed of the presence of a UDU. If staff finds evidence of a UDU during the permit review, currently the *new* property owner is penalized and subjected to the CUA to remove the UDU. However, the proposed Ordinance may waive the CUA if certain requirements are met. Additionally, the ten-year timeframe is included to alleviate unsuspecting homeowners who may have recently purchased properties where the UDU was rented out more than a decade ago long before the new property owner acquired the property. Again, the proposed Ordinance seeks to exempt the new property owner from the CUA if all requirements are met.

Rent Control

Many UDUs are subject to the price increase limitations of the Rent Ordinance, also known as rent control.² Therefore, in many cases, when a UDU is removed, it effectively removes one rent-controlled unit from the housing market. The proposed Ordinance allows qualifying UDUs to be removed without a public hearing in front of the Planning Commission. Instead, said UDU removal would be completed administratively through a building permit application under the proposed Ordinance.

In a single-family home constructed before June 13, 1979, the presence of a UDU subjects both the single-family dwelling and the UDU to the Rent Ordinance since there are effectively two units on the property. The Costa-Hawkins Rental Housing Act (Costa-Hawkins) preempts local government from imposing rent control on units that are separately alienable from the title to any other Dwelling Unit, such as a single-family home. Therefore, the removal of a UDU within a single-family home would typically restore the single-family home as a separately alienable Dwelling Unit, and thus exempt it from rent control under Costa-Hawkins. This in turn results in removing two rent-controlled units from the City's rent-controlled housing stock. However, the proposed Ordinance implements a Regulatory Agreement to subject the resulting single-family home to rent control in exchange for the CUA exemption. The Department recognizes that 76% of single-family homes in San Francisco are currently owner-occupied.³ Thus, subjecting the resulting single-family home to rent control is not super impactful on the *rental* housing market because it is likely the owner resides at the property. Further, the intent of the proposed Ordinance is to support single-family homeowners intending to reside at the property for at least three years and make the property meet their family's housing needs. Therefore, there is no perceivable addition to the rent-controlled housing stock. However, if these single-family homes were ever to be rented, the

² One factor in determining if the Dwelling Unit is rent-controlled is the age of the primary structure.

³ 2022 American Community Survey.

Regulatory Agreement would be set in place for full clarity for the City to be able to impose rent control in the future.

Potential to Expand to Multi-Family Homes

The CUA exception is targeted towards single-family homes only. However, UDUs do exist in multi-family buildings. Under the proposed Ordinance, UDUs proposed for removal within multi-family homes would still trigger a CUA. Future legislation should assess if there are benefits to expanding the CUA exception criterion to also apply to multi-family homes. Projects moving forward with a CUA would benefit from the refined UDU findings described earlier in the report. Additionally, the other clarifications related to, open space, exposure, minimum floor-to-ceiling height requirements would apply to both single-family and multi-family homes alike.

General Plan Compliance

The proposed Ordinance supports the Housing Element's goals of ensuring stable and healthy homes in San Francisco. Policy 25 calls for the reduction of government constraints on small and multi-family projects, which is supported by the CUA exemption and refined UDU findings provided in the proposed Ordinance. Although Housing Element Policy 4 does note efforts to facilitate the legalization of UDUs while improving their safety and habitability, the Ordinance on balance still supports larger goals of diversifying the housing types for all structures and household types. Specifically, Policies 32 and 33 call the need to support seniors and multi-generational living, as well as growing families. The proposed Ordinance responds directly to these policies by removing barriers for families looking to update their home to accommodate their needs whether that is for a growing family or by having extended family live together under one roof.

Racial and Social Equity Analysis

The proposed Ordinance furthers racial and social equity by supporting households that have been excluded from access to economic resources, social services, and land, including communities of color, and low-income communities. It does this by helping to retain multi-generational and growing families in the city by removing barriers to incorporate UDUs into their primary dwelling through a new CUA exemption. This particularly benefits families in single-family homes where the unit has not been rented for the last 10 years, except to a qualifying family member. Under today's Code, these households must go through the CUA process, which is lengthy and expensive and often procedural for its own sake. When presenting to the Planning Commission, these applicants usually secure approval by demonstrating that the UDU serves the same household, accommodating family growth, aging parents, adult children, or extended relatives. The proposed Ordinance streamlines the removal of UDU for eligible households and projects through a building permit application, bypassing the CUA process.

Moreover, the proposed Ordinance also benefits property owners who do not qualify for the new exemption. The findings have been refined to be clearer and more accessible for applicants, acknowledging that UDU removal requirements are often technical and typically require professional assistance. Given that this disproportionately affects low-income households, it is crucial to publicize the amendment widely to ensure its success and broad accessibility. Additionally, identifying financial resources to assist those seeking to legalize UDUs or adjust their housing to meet family needs is imperative.

The proposed Ordinance also protects the city's rent-controlled housing stock by requiring the primary dwelling unit to remain under rent control in exchange for the CUA exemption. Rent controlled units help provide financial security and stability to the families that inhabit them. While there is no guarantee that these units will be occupied by economically disadvantaged families, it is important to maintain as large of a stock of rent-controlled units in the city as possible. This is especially important since new rent-controlled units, and especially rent-controlled single-family homes, are difficult to produce. When and if these single-family go onto the rental market, the new tenants will be able to benefit from its rent-controlled status.

Lastly, as with all other process improvements removing procedural barriers, the proposed Ordinance allows the Department to shift staff time from reviewing UDU removals to other projects that further support the Housing Element goals of creating diverse and affordable housing for all.

Implementation

The Department has determined that this Ordinance would reduce the number of CUAs that appear in front of the Planning Commission by exempting certain UDU removals within qualifying single-family home projects. Of those UDU removals that are still required to go to Commission, there will be less ambiguity in the required findings related to costs to legalize and appraisals.

Recommendation

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

1. Amend the open space and dwelling unit exposure CUA exemptions so that projects are exempted if the only path to legalize is through a Variance.
2. Amend the floor-to-ceiling height CUA exemption to only apply if the UDU does not meet the minimum floor-to-ceiling height and minimum area per Housing Code.

Basis for Recommendation

The Department supports the proposed Ordinance because it supports single-family homeowners looking to adjust their homes to accommodate their needs to be able to remain in San Francisco. This supports the Housing Element's goals of removing process and barriers. While removing the UDU does mean losing a rent-controlled unit, the proposed Ordinance would subject the primary unit to rent control if it were to be rented out in the future. The Department believes that although only minimal projects may qualify for the proposed CUA exemption, the projects that do qualify would benefit tremendously. Further, other clarifications in the proposed Ordinance also make the process easier and clearer for all structures, not just single-family homes. However, the Department believes the Ordinance would be more effective with the following modifications:

Recommendation 1: Amend the open space and dwelling unit exposure CUA exemptions so that projects are exempted if the only path to legalize is through a Variance.

The proposed Ordinance allows a CUA exemption anytime when the UDU does not currently comply with the Planning Code's open space or exposure requirements; however, the Ordinance not account for the various ADU

or Legalization Programs available to qualifying projects. As drafted, the proposed Ordinance allows the property owner to remove the UDU administratively instead of the CUA process. Staff supports the CUA exemption if the only way to legalize the UDU is through a Variance. However, staff believes if there are still ways to legalize the UDU through the ADU or Legalization Programs, then those paths should be retained instead of automatically granting a CUA exemption. Staff recommends requiring the property owner to go through the CUA process to describe why they are seeking removal of UDU, including why they are not pursuing one of the eligible programs.

Recommendation 2: Amend the floor-to-ceiling height CUA exemption to only apply if the UDU does not meet the minimum floor-to-ceiling height and minimum area per Housing Code.

As drafted, there are scenarios that if an insignificant portion of the unit does not meet the floor-to-ceiling height, then they automatically would be exempted from a CUA. Figure A illustrates an example UDU where a small percentage of the UDU does not meet the minimum floor-to-ceiling height but everything else does. Under the proposed Ordinance, this UDU would automatically be exempted from the CUA even if the non-complying area were just five square feet for example. The Department believes there should be efforts to retain and legalize viable UDUs when possible. Therefore, the proposed Ordinance should be amended to consider if there is a portion of the UDU that complies with the Housing Code’s minimum area and minimum floor-to-ceiling height. Housing Code Section 503. Room Dimensions is included as Exhibit C for reference.



Figure A: Example UDU meeting both the minimum floor-to-ceiling height and minimum area

The proposed modification ensures that the absolute minimum floor-to-ceiling height and minimum area is met, even if there is a small percentage of the UDU that does not comply. Property owners can still go through the CUA process to make their cases for the UDU removal when the existing conditions meet the minimum floor-to-ceiling height and minimum area per the Housing Code such as the example under Figure A above. The goal is that only those UDUs that do not meet minimum floor-to-ceiling height and minimum area are exempt from the CUA. Figure B illustrates an example UDU that meets the minimum Dwelling Unit area but does not comply with the minimum floor-to-ceiling height requirement in this entire area. Under the recommended staff modification, the example in Figure B would be exempt from the CUA.

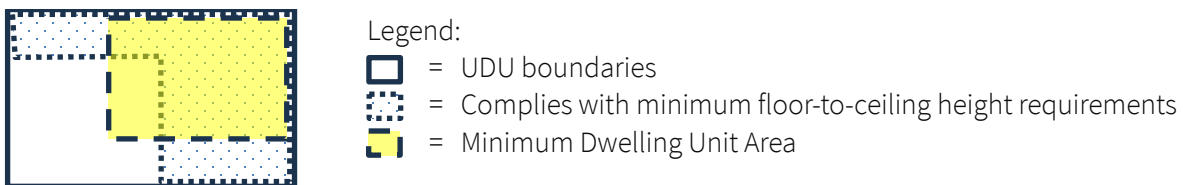


Figure B: Example UDU meeting minimum area, but not meeting floor-to-ceiling height

Required Commission Action

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

Environmental Review

The proposed amendments are not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect 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. 231185
- Exhibit C: Housing Code Section 503. Room Dimensions

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PLANNING COMMISSION DRAFT RESOLUTION

HEARING DATE: January 18, 2024

Project Name: Conditional Use Authorization for Removal of Unauthorized Unit
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aaron.starr@sfgov.org, (628) 652-7533

RESOLUTION APPROVING WITH MODIFICATION A PROPOSED ORDINANCE AMENDING THE PLANNING CODE TO WAIVE THE CONDITIONAL USE AUTHORIZATION REQUIREMENT FOR REMOVAL OF AN UNAUTHORIZED UNIT IN A SINGLE-FAMILY HOME WHERE THE OWNER SATISFIES CERTAIN ELIGIBILITY CRITERIA, WAIVE THE CONDITIONAL USE AUTHORIZATION REQUIREMENT FOR REMOVAL OF AN UNAUTHORIZED UNIT WHERE THAT UNIT DOES NOT SATISFY OPEN SPACE, DWELLING UNIT EXPOSURE, OR MINIMUM FLOOR-TO-CEILING HEIGHT REQUIREMENTS, UPDATE THE REQUIRED CONDITIONAL USE AUTHORIZATION FINDINGS FOR REMOVAL OF AN UNAUTHORIZED UNIT TO ACCOUNT FOR THE HISTORY OF TENANCIES IN THAT UNIT; AMENDING THE ADMINISTRATIVE CODE TO REQUIRE THAT WHERE AN OWNER OBTAINS AN EXEMPTION FROM THE CONDITIONAL USE AUTHORIZATION REQUIREMENT TO REMOVE AN UNAUTHORIZED UNIT FROM A QUALIFYING SINGLE-FAMILY HOME, THE SINGLE-FAMILY HOME SHALL BE SUBJECT TO THE RENT INCREASE LIMITATIONS OF THE RENT ORDINANCE; 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, AND ADOPTING FINDINGS OF PUBLIC NECESSITY, CONVENIENCE, AND WELFARE UNDER PLANNING CODE, SECTION 302.

WHEREAS, on November 14, 2023 Supervisor Melgar introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 231185, which would amend the Planning Code to waive the Conditional Use Authorization requirement for removal of an unauthorized unit in a single-family home where the owner satisfies certain eligibility criteria, waive the Conditional Use Authorization requirement for removal

of an unauthorized unit where that unit does not satisfy open space, dwelling unit exposure, or minimum floor-to-ceiling height requirements, update the required Conditional Use Authorization findings for removal of an unauthorized unit to account for the history of tenancies in that unit; amending the Administrative Code to require that where an owner obtains an exemption from the Conditional Use Authorization requirement to remove an unauthorized unit from a qualifying single-family home, the single-family home shall be subject to the rent increase limitations of the Rent Ordinance;

WHEREAS, the Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on January 18, 2024; and,

WHEREAS, the proposed Ordinance is not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment; 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 **approves with modifications** the proposed ordinance. The Commission’s proposed recommendations are as follows:

1. Amend the open space and dwelling unit exposure CUA exemptions so that projects are exempted if the only path to legalize is through a Variance.
2. Amend the floor-to-ceiling height CUA exemption to only apply if the UDU does not meet the minimum floor-to-ceiling height and minimum area per Housing Code.

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 proposed Ordinance will support multi-generational and extended families remain in San Francisco.

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

OBJECTIVE 1.A

Ensure housing stability and healthy homes.

OBJECTIVE 4.C

Diversify housing types for all cultures, family structures, and abilities.

POLICY 21

Prevent the potential displacement and adverse racial and social equity impacts of zoning changes, planning processes, or public and private investments especially for populations and areas vulnerable to displacement.

POLICY 25

Reduce governmental constraints on development in Well-resourced Neighborhoods to enable small and mid-rise multi-family buildings providing improved housing choice and affordability.

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 32

Promote and facilitate aging in place for seniors and multi-generational living that supports extended families and communal households.

POLICY 33

Prevent the outmigration of families with children and support the needs of families to grow.

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.

The proposed Ordinance supports the Housing Element's goals of ensuring stable and healthy homes in San Francisco. Policy 25 calls for the reduction of government constraints on small and multi-family projects, which is supported by the CUA exemption and refined UDU findings provided in the proposed Ordinance. Although Housing Element Policy 4 does note efforts to facilitate the legalization of UDUs while improving their safety and habitability, the Ordinance on balance still supports larger goals of diversifying the housing types for all structures and household types. Specifically, Policies 32 and 33 call the need to support seniors and multi-generational living, as well as growing families. The proposed Ordinance responds directly to these policies by removing barriers for families looking to update their home to accommodate their needs whether that is for a growing family or by having extended family live together under one roof.

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 APPROVES 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 January 18, 2024.

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: January 18, 2024

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EXHIBIT B

1 [Planning, Administrative Codes - Conditional Use Authorization for Removal of Unauthorized
2 Unit]

3 **Ordinance amending the Planning Code to waive the Conditional Use Authorization**
4 **requirement for removal of an unauthorized unit in a single-family home where the**
5 **owner satisfies certain eligibility criteria, waive the Conditional Use Authorization**
6 **requirement for removal of an unauthorized unit where that unit does not satisfy open**
7 **space, dwelling unit exposure, or minimum floor-to-ceiling height requirements, update**
8 **the required Conditional Use Authorization findings for removal of an unauthorized unit**
9 **to account for the history of tenancies in that unit; amending the Administrative Code**
10 **to require that where an owner obtains an exemption from the Conditional Use**
11 **Authorization requirement to remove an unauthorized unit from a qualifying single-**
12 **family home, the single-family home shall be subject to the rent increase limitations of**
13 **the Rent Ordinance; affirming the Planning Department's determination under the**
14 **California Environmental Quality Act; and making findings of consistency with the**
15 **General Plan, and the eight priority policies of Planning Code, Section 101.1, and**
16 **adopting findings of public necessity, convenience, and welfare under Planning Code,**
17 **Section 302.**

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

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

25 Section 1. CEQA and Land Use Findings.

1 (a) The Planning Department has determined that the actions contemplated in this
2 ordinance comply with the California Environmental Quality Act (California Public Resources
3 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
4 Supervisors in File No. 231185 and is incorporated herein by reference. The Board affirms
5 this determination.

6 (b) On _____, the Planning Commission, in Resolution No. _____,
7 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
8 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
9 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
10 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

11 (c) Pursuant to Planning Code Section 302, this Board finds that these Planning Code
12 amendments will serve the public necessity, convenience, and welfare for the reasons set
13 forth in Planning Commission Resolution No. _____, and the Board adopts such
14 reasons as its own. A copy of said resolution is on file with the Clerk of the Board of
15 Supervisors in File No. _____ and is incorporated herein by reference.

16
17 Section 2. Background and Findings.

18 (a) San Francisco faces a continuing shortage of affordable housing. The General
19 Plan recognizes that existing housing is the greatest stock of rental and financially accessible
20 residential units, and is a resource in need of protection. To that end, Planning Code Section
21 317 requires a Conditional Use Authorization (CUA) prior to approval of any permit that would
22 remove existing housing, with certain exceptions.

23 (b) Section 317 also applies to removal of Unauthorized Units, or "UDUs," defined as
24 one or more rooms within a building that have been used, without the benefit of a building
25 permit, as a separate and distinct living or sleeping space independent from the residential

1 units on the same property. In some instances, an unpermitted ground floor bedroom and
2 bathroom in a single-family home may be considered a UDU.

3 (c) Some families purchase single-family homes with no knowledge that the property
4 contains a UDU. For example, at some point after the purchase, families may learn of the
5 UDU when they apply for a building permit to connect the ground-floor bedroom and bathroom
6 with the living spaces on the upper floors. Families in these situations face the high costs of
7 either legalizing the UDU or obtaining a CUA for its removal. In addition to these costs,
8 legalization is not desirable for some homeowners, as some homeowners wish to integrate
9 the separated UDU space with the existing single-family home by, for example, removing
10 internal staircases, walls or doorways, which present internal barriers to growing families or
11 intergenerational living arrangements

12 (d) This ordinance waives the CUA requirement for removal of a UDU in owner-
13 occupied single-family homes where the unit has not been rented for the last 10 years, except
14 to a qualifying member, as defined in the ordinance. Project sponsors that utilize the CUA
15 waiver must enter into regulatory agreements with the City acknowledging that, in
16 consideration for this waiver, the existing unit will be subject to local rent control
17 notwithstanding the Costa-Hawkins Rental Housing Act (California Civil Code Section 1954.50
18 et seq.).

19 (e) Facilitating the removal of UDUs in single-family homes may lead to speculative
20 real estate investments that may seek to maximize profits by displacing current residents,
21 demolishing existing housing stock, absorbing the UDU into a large, remodeled single-family
22 home, and quickly selling those homes. To discourage such speculation and displacement,
23 this ordinance waives the CUA requirement only where the UDU has not been occupied by a
24 tenant in the past 10 years, except where the UDU was occupied by a blood, adoptive, or
25 step-family relative of the owner or the owner's spouse or registered domestic partner.

1 Additionally, the benefits of this ordinance are available only where the owner resides in the
2 primary dwelling unit at the time of application to remove the UDU and intends to remain in
3 the primary dwelling unit for at least three years after removal of the UDU is approved.

4 (f) This ordinance also implements policies and actions adopted in the 2022-2031
5 Housing Element as they pertain to UDUs and facilitating the living needs of multi-
6 generational families. Under current law, removal of a UDU does not require a CUA if the
7 Department of Building Inspection determines that there is no path for legalization under
8 Section 106A.3.1.3 of the Building Code. This ordinance replaces that no-legalization
9 determination with the following objective criteria: whether the UDU satisfies the open space
10 requirements of Planning Code Section 135, the dwelling unit exposure requirements of
11 Planning Code Section 140, or the minimum legal floor-to-ceiling height requirement in the
12 Housing Code. This ordinance also updates the required Conditional Use Authorization
13 findings under Section 317 to account for the history of tenancies in a UDU. Further, this
14 ordinance clarifies that the removal of a UDU pursuant to a permit does not trigger the
15 penalties in Planning Code Section 176(c)(1)(C)(i).

16
17 Section 3. The Planning Code is hereby amended by revising Sections 176 and 317,
18 to read as follows:

19
20 **SEC. 176. ENFORCEMENT AGAINST VIOLATIONS.**

21 * * * *

22 **(c) Penalties.**

23 **(1) Administrative Penalties.**

24 * * * *

25 **(C) Penalties for Specified Violations.**

1 (i) **Alteration, Merger, Construction, or Demolition of**
2 **Residential Units without a Permit.** For any *unpermitted* alteration, merger, construction, or
3 demolition of any building or structure containing one or more Residential Units, including
4 work that takes place in violation of Section 317 of this Code, on or after March 1, 2023,
5 resulting in the addition of more than three unauthorized Residential Units, or the loss of one
6 or more Residential Units, (1) the owner of that building shall be required to apply for a
7 replacement project under section 317 of this Code, and (2) the Responsible Party shall be
8 liable for a penalty of up to \$250,000 upon issuance of a Notice of Violation for each
9 Residential Unit added or lost through such alteration, merger, or demolition. Within 12
10 months of the effective date of the ordinance in Board File No. 220878 amending this Section
11 176, the Planning Commission shall adopt factors and criteria for consideration, to be updated
12 from time to time, to provide guidance to the Zoning Administrator when determining the
13 appropriate penalty amount for violations subject to this subsection (c)(1)(C)(i).

14 * * * *

15
16 **SEC. 317. LOSS OF RESIDENTIAL AND UNAUTHORIZED UNITS THROUGH**
17 **DEMOLITION, MERGER, AND CONVERSION.**

18 * * * *

19 **(c) Applicability; Exemptions.**

20 (1) Any application for a permit that would result in the Removal of one or more
21 Residential Units or Unauthorized Units is required to obtain Conditional Use authorization.
22 For Unauthorized Units, this Conditional Use authorization will not be required for Removal if
23 the Zoning Administrator has determined in writing that the unit cannot be legalized under any
24 applicable provision of this Code. The application for a replacement building or alteration
25 permit shall also be subject to Conditional Use requirements.

1 * * * *

2 (4) The Removal of an Unauthorized Unit does not require a Conditional Use
3 authorization pursuant to Subsection (c)(1) ~~if the Department of Building Inspection has~~
4 ~~determined that there is no path for legalization under Section 106A.3.1.3 of the Building Code. if the~~
5 Unauthorized Unit does not comply with any of the following:

6 _____ (A) the open space requirements of Section 135;

7 _____ (B) the dwelling unit exposure requirements of Section 140; or

8 _____ (C) the minimum legal floor-to-ceiling height requirement in the Housing Code.

9 * * * *

10 (7) **Exception for Certain Unauthorized Units with No Tenant Occupant for 10 Years.**

11 The Conditional Use requirement of subsection (c)(1) shall not apply to an application for a permit that
12 would result in the Removal of an Unauthorized Unit in a one-family dwelling where all of the
13 conditions in subsection (c)(7)(A) are met. To establish eligibility, the owner shall furnish a
14 declaration under penalty of perjury on a form prescribed by the Department, attesting to compliance
15 with all of the conditions in subsection (c)(7)(A).

16 _____ (A) **Eligibility.** The one-family dwelling shall meet all the following criteria:

17 _____ (i) the owner currently resides in the primary dwelling unit;

18 _____ (ii) the Unauthorized Unit has not been rented for consideration in the
19 last 10 years. For the purposes of this subsection (c)(7)(A)(ii), “rented for consideration” shall not
20 include any use or tenancy of the Unauthorized Unit by a blood, adoptive, or step-family relationship,
21 specifically by a grandparent, parent, sibling, child, or grandchild, or the spouse or registered
22 domestic partner of such relations, or by a property owner’s spouse or registered domestic partner;

23 _____ (iii) the owner intends to reside in the one-family dwelling for at least
24 three years after the Removal of the Unauthorized Unit is approved; and

1 _____ (iv) the owner enters into a regulatory agreement with the City subjecting
2 the one-family dwelling to the San Francisco Residential Rent Stabilization and Arbitration Ordinance
3 (Chapter 37 of the Administrative Code) pursuant to subsection (c)(7)(B).

4 _____ (B) **Regulatory Agreement.** Sponsors of projects utilizing the Conditional Use
5 Authorization exception in subsection (c)(7) of this Section 317 shall enter into a regulatory agreement
6 with the City subjecting the one-family dwelling to the Residential Rent Stabilization and Arbitration
7 Ordinance (Chapter 37 of the Administrative Code), as amended from time to time, as a condition of
8 approval of the permit to remove the Unauthorized Unit (“Regulatory Agreement”). The property
9 owner and the Planning Director, or the Director’s designee, on behalf of the City, shall execute the
10 Regulatory Agreement, which is subject to review and approval by the City Attorney’s Office. The
11 Regulatory Agreement shall be executed prior to the City’s issuance of the permit to remove the
12 Unauthorized Unit. Following execution of the Regulatory Agreement by all parties and approval by
13 the City Attorney, the Regulatory Agreement or a memorandum thereof shall be recorded in the title
14 records in the Office of the Assessor-Recorder against the property and the Regulatory Agreement shall
15 be binding on all future owners and successors in interest. At a minimum, the Regulatory Agreement
16 shall contain the following:

17 _____ (i) A statement that the one-family dwelling is not subject to the Costa-
18 Hawkins Rental Housing Act (California Civil Code Section 1954.50 et seq.) Further, that under
19 Section 1954.52(b), the property owner has entered into and agreed to the terms of the agreement with
20 the City in consideration for other forms of assistance or other direct financial contribution specified in
21 California Government Code Section 65915 et seq.;

22 _____ (ii) A description of the forms of assistance or other direct financial
23 contribution provided to the property owner; and

24 _____ (iii) A description of the remedies for breach of the agreement and other
25 provisions to ensure implementation and compliance with the agreement.

1 * * * *

2 (f) **Residential Merger.** The Merger of Residential Units, not otherwise subject to
3 Conditional Use authorization by this Code, or exempted from the Conditional Use requirement by
4 this Section 317, shall be prohibited.

5 (g) **Conditional Use Criteria.**

6 * * * *

7 (7) **Removal of Unauthorized Units.** In addition to the criteria set forth in
8 subsections (g)(1) through (g)(4) above, the Planning Commission shall consider the criteria
9 below in the review of applications for removal of Unauthorized Units:

10 ~~—— (A) whether the costs to legalize the Unauthorized Unit or Units under the Planning,~~
11 ~~Building, and other applicable Codes is reasonable based on how such cost compares to the average~~
12 ~~cost of legalization per unit derived from the cost of projects on the Planning Department's Master List~~
13 ~~of Additional Dwelling Units Approved required by Section 207.3(k) of this Code;~~

14 ~~—— (B) whether it is financially feasible to legalize the Unauthorized Unit or Units. Such~~
15 ~~determination will be based on the costs to legalize the Unauthorized Unit(s) under the Planning,~~
16 ~~Building, and other applicable Codes in comparison to the added value that legalizing said Units~~
17 ~~would provide to the subject property. The gain in the value of the subject property shall be based on~~
18 ~~the current value of the property with the Unauthorized Unit(s) compared to the value of the property if~~
19 ~~the Unauthorized Unit(s) is/are legalized. The calculation of the gain in value shall be conducted and~~
20 ~~approved by a California licensed property appraiser. Legalization would be deemed financially~~
21 ~~feasible if gain in the value of the subject property is equal to or greater than the cost to legalize the~~
22 ~~Unauthorized Unit.~~

23 ~~—— (C) If no City funds are available to assist the property owner with the cost of~~
24 ~~legalization, whether the cost would constitute a financial hardship.~~

1 (A) whether the Unauthorized Unit has been rented within the 10 years
2 preceding the application, excluding any use of the Unauthorized Unit by a blood, adoptive, or step-
3 family relationship, specifically by a grandparent, parent, sibling, child, or grandchild, or the spouse
4 or registered domestic partner of such relations, or by a property owner's spouse or registered
5 domestic partner;

6 (B) whether the Unauthorized Unit has a history of evictions under
7 Administrative Code Sections 37.9(a)(8)-(12) or 37.9(a)(14)-(16) within the 10 years preceding the
8 application.

9 * * * *

10
11 Section 4. Chapter 37 of the Administrative Code is hereby amended by revising
12 Sections 37.2 and 37.3, to read as follows:

13
14 **SEC. 37.2. DEFINITIONS.**

15 * * * *

16 (r) **Rental Units.** All residential dwelling units in the City together with the land and
17 appurtenant buildings thereto, and all housing services, privileges, furnishings, and facilities
18 supplied in connection with the use or occupancy thereof, including garage and parking
19 facilities.

20 * * * *

21 The term "rental units" shall not include:

22 * * * *

23 (4) Except as provided in subsections (A)-(~~ED~~), dwelling units whose rents are
24 controlled or regulated by any government unit, agency, or authority, excepting those
25 unsubsidized and/or unassisted units which are insured by the United States Department of

1 Housing and Urban Development; provided, however, that units in unreinforced masonry
2 buildings which have undergone seismic strengthening in accordance with Building Code
3 Chapters 16B and 16C shall remain subject to the Rent Ordinances to the extent that the
4 ordinance is not in conflict with the seismic strengthening bond program or with the program's
5 loan agreements or with any regulations promulgated thereunder;

6 * * * *

7 (D) The term "rental units" shall include (i) Accessory Dwelling Units
8 constructed pursuant to Section 207(c)(4) of the Planning Code and that have received a
9 complete or partial waiver of the density limits and the parking, rear yard, exposure, or open
10 space standards from the Zoning Administrator pursuant to Planning Code Section 307(l), and
11 (ii) New Unit(s) constructed and funded pursuant to Administrative Code Chapter 85; (iii) new
12 dwelling units created pursuant to the density exception set forth in Section 207(c)(8) of the
13 Planning Code; (iv) new dwelling units created pursuant to the HOME-SF Program set forth in
14 Section 206.3(c)(1)(B) of the Planning Code; ~~and~~ (v) new dwelling units created pursuant to
15 the density exception set forth in Section 249.94(d)(1) of the Planning Code; and (vi) dwelling
16 units that obtain the exemption from the conditional use authorization set forth in Section 317(c)(7) of
17 the Planning Code.

18 * * * *

19
20 **SEC. 37.3. RENT LIMITATIONS.**

21 (a) **Rent Increase Limitations for Tenants in Occupancy.** Landlords may impose
22 rent increases upon tenants in occupancy only as provided below and as provided by
23 subsections 37.3(d) and 37.3(g):

24 * * * *

1 (d) **Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50. et seq.).**

2 Consistent with the Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50. et seq.)
3 and regardless of whether otherwise provided under Chapter 37:

4 (1) **Property Owner Rights to Establish Initial and All Subsequent Rental**
5 **Rates for Separately Alienable Parcels.**

6 (A) An owner of residential real property may establish the initial and all
7 subsequent rental rates for a dwelling or a unit which is alienable separate from the title to any
8 other dwelling unit or is a subdivided interest in a subdivision as specified in subdivision (b),
9 (d), or (f) of Section 11004.5 of the California Business and Professions Code. The owner's
10 right to establish subsequent rental rates under this paragraph shall not apply to a dwelling or
11 unit where the preceding tenancy has been terminated by the owner by notice pursuant to
12 California Civil Code Section 1946 or has been terminated upon a change in the terms of the
13 tenancy noticed pursuant to California Civil Code Section 827; in such instances, the rent
14 increase limitation provisions of Chapter 37 shall continue to apply for the duration of the new
15 tenancy in that dwelling or unit.

16 * * * *

17 (D) An owner's right to establish subsequent rental rates under
18 subsection 37.3(d)(1) shall not apply to a dwelling or unit that is a new dwelling unit created
19 pursuant to the Code provisions specified in subsection Section 37.2(r)(4)(D), or a dwelling unit
20 that utilizes the Code provisions specified in subsection 37.2(r)(4)(D).

21 ~~(D)2—An owner's right to establish subsequent rental rates under subsection~~
22 ~~37.3(d)(1) shall not apply to a dwelling unit that is created pursuant to the HOME SF Program set~~
23 ~~forth in Section 206.3(e)(1)(B) of the Planning Code.~~

24 * * * *

25 (g) **New Construction and Substantial Rehabilitation.**

1 (1) An owner of a residential dwelling or unit which is newly constructed and
2 first received a certificate of occupancy after the effective date of Ordinance No. 276-79 (June
3 13, 1979), or which the Rent Board has certified has undergone a substantial rehabilitation,
4 may establish the initial and all subsequent rental rates for that dwelling or unit, except:

5 (A) where rent restrictions apply to the dwelling or unit under Sections
6 37.3(d) or 37.3(f);

7 (B) where the dwelling or unit is a replacement unit under Section
8 37.9A(b);

9 (C) as provided for certain categories of units ~~Accessory Dwelling Units~~
10 ~~and New Unit(s)~~ under Section 37.2(r)(4)(D); and

11 (D) as provided in a development agreement entered into by the City
12 under Administrative Code Chapter 56; ~~and.~~

13 ~~————— (E) as provided for certain categories of new dwelling units under Section~~
14 ~~37.2(r)(4)(E).~~

15
16 Section 5. Effective Date. This ordinance shall become effective 30 days after
17 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
18 ordinance unsigned or does not sign the ordinance within 10 days of receiving it, or the Board
19 of Supervisors overrides the Mayor's veto of the ordinance.

20
21 Section 6. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
22 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
23 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
24 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
25

1 additions, and Board amendment deletions in accordance with the “Note” that appears under
2 the official title of the ordinance.

3
4 Section 7. Severability. If any section, subsection, sentence, clause, phrase, or word
5 of this ordinance, or any application thereof to any person or circumstance, is held to be
6 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
7 shall not affect the validity of the remaining portions or applications of the ordinance. The
8 Board of Supervisors hereby declares that it would have passed this ordinance and each and
9 every section, subsection, sentence, clause, phrase, and word not declared invalid or
10 unconstitutional without regard to whether any other portion of this ordinance or application
11 thereof would be subsequently declared invalid or unconstitutional.

12
13 Section 8. No Conflict with Federal or State Law. Nothing in this ordinance shall be
14 interpreted or applied so as to create any requirement, power, or duty in conflict with any
15 federal or state law.

16
17 APPROVED AS TO FORM:
18 DAVID CHIU, City Attorney

19 By: /s/ Giulia Gualco-Nelson
20 GIULIA GUALCO-NELSON
21 Deputy City Attorney

22
23
24
25
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EXHIBIT C

SEC. 503. ROOM DIMENSIONS.

(a) **Ceiling Heights.** Unless legally constructed as such, no habitable room shall have a ceiling height less than seven feet six inches. Any room, other than a habitable room, shall have a ceiling height of not less than seven feet.

(b) **Superficial Floor Area.** Every dwelling unit and congregate residence shall have at least one room which shall have not less than 120 square feet of superficial floor area. Every room which is used for both cooking and living or both living and sleeping purposes shall have not less than 144 square feet of superficial floor area. Every room used for sleeping purposes shall have not less than 70 square feet of superficial floor area. When more than two persons occupy a room used for sleeping purposes the required superficial floor area shall be increased at the rate of 50 square feet for each occupant in excess of two. Guest rooms with cooking shall contain the combined required superficial areas of a sleeping and a kitchen, but not less than 144 square feet. Other habitable rooms shall be not less than 70 square feet.

Notwithstanding any provision of this Section, children under the age of six shall not be counted for purposes of determining whether a family with minor children complies with the provisions of this Code.

(c) **Width.** No habitable room except a kitchen shall be less than seven feet in width. Rooms used as guest rooms with cooking shall have a 10-foot minimum width.

(d) **Housing Access.** To promote access to housing by families, it shall be unlawful for the owner, lessor, lessee, sublessee, real estate broker, assignee, or other person having the rights of ownership, the right of possession, or other right to rent or lease any dwelling unit or any agent or employee of such person to refuse to rent or lease, or otherwise deny, a dwelling unit to a family, as defined in Section 401 of this Code, on the basis of the actual or potential number of occupants if the total number of persons occupying a room for sleeping purposes does not violate the minimum superficial floor area standards prescribed in Subsection (b) of this Section.

(e) **Remedies.** A violation of Subsection (d) of this Section shall be subject to the civil remedies specified in Section 204(e) of this Code.

(Added by Ord. 399-89, App. 11/6/89; amended by Ord. 161-92, App. 6/4/92; Ord. 123-93, App. 4/29/93; Ord. 350-95, App. 11/3/95; Ord. 256-07, App. 11/6/2007)

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

MEMORANDUM

Date: November 17, 2023
To: Planning Department/Planning Commission
From: John Carroll, Assistant Clerk, Land Use and Transportation Committee
Subject: Board of Supervisors Legislation Referral - File No. 231185
Planning, Administrative Codes - Conditional Use Authorization for Removal of
Unauthorized Unit

- California Environmental Quality Act (CEQA) Determination
(*California Public Resources Code, Sections 21000 et seq.*)
- Ordinance / Resolution
- Ballot Measure

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment.

12/11/23

A handwritten signature in black ink, appearing to read "John Carroll".

- Amendment to the Planning Code, including the following Findings:
(*Planning Code, Section 302(b): 90 days for Planning Commission review*)
- General Plan Planning Code, Section 101.1 Planning Code, Section 302
- Amendment to the Administrative Code, involving Land Use/Planning
(*Board Rule 3.23: 30 days for possible Planning Department review*)
- General Plan Referral for Non-Planning Code Amendments
(*Charter, Section 4.105, and Administrative Code, Section 2A.53*)
(Required for legislation concerning the acquisition, vacation, sale, or change in use of City property; subdivision of land; construction, improvement, extension, widening, narrowing, removal, or relocation of public ways, transportation routes, ground, open space, buildings, or structures; plans for public housing and publicly-assisted private housing; redevelopment plans; development agreements; the annual capital expenditure plan and six-year capital improvement program; and any capital improvement project or long-term financing proposal such as general obligation or revenue bonds.)
- Historic Preservation Commission
- Landmark (*Planning Code, Section 1004.3*)
- Cultural Districts (*Charter, Section 4.135 & Board Rule 3.23*)
- Mills Act Contract (*Government Code, Section 50280*)
- Designation for Significant/Contributory Buildings (*Planning Code, Article 11*)

Please send the Planning Department/Commission recommendation/determination to John Carroll at john.carroll@sfgov.org.

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MEMORANDUM

TO: Patrick O'Riordan, Director, Department of Building Inspection
Christina Varner, Acting Executive Director, Rent Board
Joaquín Torres, Assessor Recorder

FROM: John Carroll, Assistant Clerk, Land Use and Transportation Committee

DATE: November 17, 2023

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Melgar on November 14, 2023.

File No. 231185

Ordinance amending the Planning Code to waive the Conditional Use Authorization requirement for removal of an unauthorized unit in a single-family home where the owner satisfies certain eligibility criteria, waive the Conditional Use Authorization requirement for removal of an unauthorized unit where that unit does not satisfy open space, dwelling unit exposure, or minimum floor-to-ceiling height requirements, update the required Conditional Use Authorization findings for removal of an unauthorized unit to account for the history of tenancies in that unit; amending the Administrative Code to require that where an owner obtains an exemption from the Conditional Use Authorization requirement to remove an unauthorized unit from a qualifying single-family home, the single-family home shall be subject to the rent increase limitations of the Rent Ordinance; 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, and adopting findings of public necessity, convenience, 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: john.carroll@sfgov.org.

cc:

Office of Chair Melgar
Patty Lee, Department of Building Inspection
Carl Nicita, Department of Building Inspection
Kurt Fuchs, Office of the Assessor-Recorder
Holly Lung, Office of the Assessor-Recorder

Introduction Form

(by a Member of the Board of Supervisors or the Mayor)



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

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)
(Routine, non-controversial and/or commendatory matters only)
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor inquires..."
- 5. City Attorney Request
- 6. Call File No. from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the Board on

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes No

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

Sponsor(s):

Subject:

Long Title or text listed:

Ordinance amending the Planning Code to waive the Conditional Use Authorization requirement for removal of an unauthorized unit in a single-family home where the owner satisfies certain eligibility criteria, waive the Conditional Use Authorization requirement for removal of an unauthorized unit where that unit does not satisfy open space, dwelling unit exposure, or minimum floor-to-ceiling height requirements, update the required Conditional Use Authorization findings for removal of an unauthorized unit to account for the history of tenancies in that unit; amending the Administrative Code to require that where an owner obtains an exemption from the Conditional Use Authorization requirement to remove an unauthorized unit from a qualifying single-family home, the single-family home shall be subject to the rent increase limitations of the Rent Ordinance; 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, and adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

Signature of Sponsoring Supervisor: