

BOARD of SUPERVISORS



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October 12, 2021

Planning Commission
Attn: Jonas Ionin
49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103

Dear Commissioners:

On October 5, 2021, Supervisor Mandelman introduced the following legislation:

File No. 210699-2

Ordinance amending the Planning Code to clarify the requirements for applications to construct Accessory Dwelling Units under the City's local Accessory Dwelling Unit approval process; amending the Administrative Code to clarify that landlords may not remove certain tenant housing services without just cause and that issuance of a building permit does not constitute just cause; making findings as required by the Tenant Protection Act of 2019; 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.

The proposed ordinance is being transmitted for review. The ordinance is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

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

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

c: Rich Hillis, Director
Scott Sanchez, Deputy Zoning Administrator
Corey Teague, Zoning Administrator
Lisa Gibson, Environmental Review Officer
Devyani Jain, Deputy Environmental Review Officer
Adam Varat, Acting Director of Citywide Planning
AnMarie Rodgers, Legislative Affairs
Dan Sider, Director of Executive Programs
Aaron Starr, Manager of Legislative Affairs
Joy Navarrete, Environmental Planning

1 [Planning, Administrative Codes - Accessory Dwelling Units]

2

3 **Ordinance amending the Planning Code to clarify the requirements for applications to**
4 **construct Accessory Dwelling Units under the City’s local Accessory Dwelling Unit**
5 **approval process; amending the Administrative Code to clarify that landlords may not**
6 **remove certain tenant housing services without just cause and that issuance of a**
7 **building permit does not constitute just cause; making findings as required by the**
8 **Tenant Protection Act of 2019; affirming the Planning Department’s determination**
9 **under the California Environmental Quality Act; and making findings of consistency**
10 **with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

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

15

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

17

18 Section 1. Findings.

19 (a) The Planning Department has determined that the actions contemplated in this
20 ordinance comply with the California Environmental Quality Act (California Public Resources
21 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
22 Supervisors in File No. 210699 and is incorporated herein by reference. The Board affirms
23 this determination.

24 (b) On September 9, 2021, the Planning Commission, in Resolution No. 20986,
25 adopted findings that the actions contemplated in this ordinance are consistent, on balance,

1 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
2 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
3 the Board of Supervisors in File No. 210699, and is incorporated herein by reference.

4 (c) This ordinance is intended in part to clarify the existing rules in the Rent Ordinance
5 as to housing services. The term housing services refers to services provided by the landlord
6 connected with the use or occupancy of a rental unit including, but not limited to, access to
7 areas such as garages, driveways, storage spaces, laundry rooms, decks, patios, gardens on
8 the same lot, and kitchen facilities or lobbies in single room occupancy (SRO) hotels. This
9 ordinance clarifies that landlords may not sever, remove, or reduce housing services without
10 just cause, and that this rule applies equally to landlords who intend to construct Accessory
11 Dwelling Units. These landlords must comply with just cause rules, and being in possession
12 of a building permit does not, in and of itself, confer just cause to sever a housing service. By
13 clarifying that the just cause rules in the Rent Ordinance apply, this ordinance is more
14 protective than the Tenant Protection Act of 2019 (Cal. Civ. Code § 1946.2), as the Rent
15 Ordinance further limits the reasons for termination of a residential tenancy, provides for
16 higher relocation assistance amounts, and provides additional tenant protections.

17
18 Section 2. Article 2 of the Planning Code is hereby amended by revising Section 207,
19 to read as follows:

20 **SEC. 207. DWELLING UNIT DENSITY LIMITS.**

21 * * * *

22 (c) **Exceptions to Dwelling Unit Density Limits.** An exception to the calculations
23 under this Section 207 shall be made in the following circumstances:

24 * * * *

1 (4) Local Accessory Dwelling Unit Program: Accessory Dwelling Units
2 in Multifamily Buildings; Accessory Dwelling Units in Single-Family Homes That Do Not
3 Strictly Meet the Requirements in subsection (c)(6).

4 * * * *

5 (C) Controls on Construction. An Accessory Dwelling Unit regulated
6 by this subsection (c)(4) is permitted to be constructed in an existing or proposed building
7 under the following conditions:

8 (i) For lots that have four existing Dwelling Units or fewer or
9 where the zoning would permit the construction of four or fewer Dwelling Units, one ADU is
10 permitted; for lots that have more than four existing Dwelling Units or are undergoing seismic
11 retrofitting under subsection (c)(4)(F) below, or where the zoning would permit the
12 construction of more than four Dwelling Units, there is no limit on the number of ADUs
13 permitted, ~~provided, however, that~~

14 (ii) ~~The~~ Department shall not approve an application for
15 construction of an ADU where a tenant on the lot has been evicted pursuant to Administrative
16 Code Sections 37.9(a)(9) through (a)(12) and 37.9(a)(14) under a notice of eviction served
17 within 10 years prior to filing the application for a building permit to construct the ADU or
18 where a tenant has been evicted pursuant to Administrative Code Section 37.9(a)(8) under a
19 notice of eviction served within five years prior to filing the application for a building permit to
20 construct the ADU. This ~~provision~~ subsection (c)(4)(C)(ii) shall not apply if the tenant was evicted
21 under Section 37.9(a)(11) or 37.9(a)(14) and the applicant(s) either (A) have certified that the
22 original tenant reoccupied the unit after the temporary eviction or (B) have submitted to the
23 Department and to the Residential Rent Stabilization and Arbitration Board (Rent Board) a
24 declaration from the property owner or the tenant certifying that the property owner notified
25 the tenant of the tenant's right to reoccupy the unit and the tenant chose not to reoccupy it.

1 (iii) Prior to submitting an application to construct an ADU under this
2 subsection (c)(4), the property owner shall file with the Rent Board a written declaration, signed under
3 penalty of perjury, demonstrating that the project will comply with the requirements of Administrative
4 Code Sections 37.2(r) and 37.9 relating to severance, substantial reduction, or removal of a housing
5 service. The Rent Board shall determine the form and content of said declaration, which shall include
6 the following information: (1) a description of any housing services supplied in connection with the use
7 or occupancy of any units on the subject property that are located in the area of the property or
8 building where the ADU would be constructed; (2) whether construction of the ADU would result in the
9 severance, substantial reduction, or removal of any such housing services; and (3) whether any of the
10 just causes for eviction under Administrative Code Section 37.9(a) would apply. The property owner
11 shall also file a copy of the notice required under Section 207(c)(4)(J) with the declaration.

12 (iv) Tenants at the subject property may contest the information in the
13 declaration required by subsection 207(c)(4)(C)(iii) by petitioning for a written determination from the
14 Rent Board verifying the presence and defining characteristics of the housing service or services in
15 question, and whether any such housing services would be severed, substantially reduced, or removed
16 by the project as proposed. Petitions must be filed with the Rent Board within 30 calendar days after
17 the notice required under subsection 207(c)(4)(J) has been provided. If no such petition is timely filed,
18 the Rent Board shall promptly transmit the declaration to the Planning Department. If any such
19 petition is timely filed, the Rent Board shall endeavor to transmit the declaration and its final written
20 determination on the petition to the Planning Department within 90 calendar days of receipt of said
21 petition. The Department shall not approve an application to construct an ADU under this subsection
22 (c)(4) unless (1) the Rent Board has transmitted the declaration and final written determination
23 required by subsections (c)(4)(C)(iii) and (c)(4)(C)(iv), and (2) the materials transmitted by the Rent
24 Board indicate that construction of the ADU would not result in the severance, substantial reduction,
25 or removal without just cause of any tenant housing service set forth in Administrative Code Section

1 37.2(r) that is supplied in the area of the property or building where the ADU would be constructed,
2 unless the property owner demonstrates that the tenant supplied with that housing service has given
3 their express written consent for the severance, substantial reduction, or removal of the housing
4 service.

5 (iv) Except as provided in subsections (iii) and (vii) below, an
6 Accessory Dwelling Unit shall be constructed entirely within the buildable area of an existing
7 lot, provided that the ADU does not exceed the existing height of an existing building, or within
8 the built envelope of an existing and authorized stand-alone garage, storage structure, or
9 other auxiliary structure on the same lot, as the built envelope existed three years prior to the
10 time the application was filed for a building permit to construct the ADU. For purposes of this
11 ~~provision~~ subsection (c)(4)(C)(v), the “built envelope” shall include the open area under a
12 cantilevered room or room built on columns; decks, except for decks that are supported by
13 columns or walls other than the building wall to which they are attached and are multi-level or
14 more than 10 feet above grade; and lightwell infills provided that the infill will be against a
15 blank neighboring wall at the property line and not visible from any off-site location; as these
16 spaces existed as of July 11, 2016. An ADU constructed entirely within the existing built
17 envelope, as defined in this subsection ~~(ii)~~, along with permitted obstructions allowed in
18 Section 136(c)(32), of an existing building or authorized auxiliary structure on the same lot, or
19 where an existing stand-alone garage or storage structure has been expanded to add
20 dormers, is exempt from the notification requirements of Section 311 of this Code unless the
21 existing building or authorized auxiliary structure on the same lot is in an Article 10 or Article
22 11 District, in which case the notification requirements will apply. If an ADU will be constructed
23 under a cantilevered room or deck that encroaches into the required rear yard, a pre-
24 application meeting between the applicant and adjacent neighbors for all the proposed work is
25 required before the application may be submitted.

1 (iii) When a stand-alone garage, storage, or other auxiliary
2 structure is being converted to an ADU, an expansion to the envelope is allowed to add
3 dormers even if the stand-alone garage, storage structure, or other auxiliary structure is in the
4 required rear yard.

5 (iv) On a corner lot, a legal stand-alone nonconforming garage,
6 storage structure, or other auxiliary structure may be expanded within its existing footprint by
7 up to one additional story in order to create a consistent street wall and improve the continuity
8 of buildings on the block.

9 (v) An Accessory Dwelling Unit shall not be constructed using
10 space from an existing Dwelling Unit except that an ADU may expand into habitable space on
11 the ground or basement floors provided that it does not exceed 25% of the gross square
12 footage of such space. The Zoning Administrator may waive this 25% limitation if (a) the
13 resulting space would not be usable or would be impractical to use for other reasonable uses
14 included but not limited to storage or bicycle parking or (b) waiving the limitation would help
15 relieve any negative layout issues for the proposed ADU.

16 (vi) An existing building undergoing seismic retrofitting may be
17 eligible for a height increase pursuant to subsection (c)(4)(F) below.

18 (vii) Notwithstanding any other provision of this Code, an
19 Accessory Dwelling Unit authorized under this ~~Section 207~~ subsection (c)(4) may not be merged
20 with an original unit(s).

21 (viii) An Accessory Dwelling Unit shall not be permitted in any
22 building in a Neighborhood Commercial District or in the Chinatown Community Business or
23 Visitor Retail Districts if it would eliminate or reduce a ground-story retail or commercial space,
24 unless the Accessory Dwelling Unit is a Designated Child Care Unit, as defined in Section
25 102, and meets all applicable standards of Planning Code Section 414A.6(e).

1 * * * *

2 (J) **Notification.** Prior to submitting an application to construct an
3 ADU under this subsection (c)(4), the property owner shall cause a notice describing the proposed
4 project to be posted in an accessible common area of the building for at least 15 calendar days prior to
5 submitting an application to construct an ADU, and shall cause said notice to be mailed or delivered to
6 each unit (including unauthorized units) at the subject property, also at least 15 calendar days prior to
7 submitting the application. The property owner shall submit proof of these notices to the Planning
8 Department as part of the application to construct an ADU. These notices shall have a format and
9 content determined by the Zoning Administrator, and shall generally describe the project, including the
10 number and location of the proposed ADU(s), and shall include a copy of the written declaration
11 required by subsection (c)(4)(C)(iii). These notices shall also include instructions on how a tenant may
12 petition the Rent Board for a written determination on the declaration as set forth in subsection
13 (c)(4)(C)(iii), including the deadline for filing such petition, which shall be 30 calendar days after the
14 notice has been provided. These notices shall also describe how to obtain additional information
15 regarding the project and shall provide contact information for the Planning Department that complies
16 with the requirements of the Language Access Ordinance, Chapter 91 of the Administrative Code, to
17 provide vital information about the Planning Department's services or programs in the languages
18 spoken by a Substantial Number of Limited English Speaking Persons, as defined in Chapter 91.

19 * * * *

20
21 Section 3. Chapter 37 of the Administrative Code is hereby amended by revising
22 Sections 37.2 and 37.9, to read as follows:

23 **SEC. 37.2. DEFINITIONS.**

24 * * * *

1 (r) Rental Units. All residential dwelling units in the City and County of San Francisco
2 together with the land and appurtenant buildings thereto, and all housing services, privileges,
3 furnishings, and facilities supplied in connection with the use or occupancy thereof, including
4 garage and parking facilities.

5 Garage facilities, parking facilities, driveways, storage spaces, laundry rooms, decks,
6 patios, or gardens on the same lot, or kitchen facilities or lobbies in single room occupancy
7 (SRO) hotels, supplied in connection with the use or occupancy of a unit, may not be severed
8 from the tenancy by the landlord without just cause as required by Section 37.9(a). Any
9 severance, substantial reduction or removal of a housing service, even if permitted under ~~this~~
10 ~~Section 37.2(r)~~ Section 37.9(a), shall be offset by a corresponding reduction in rent. Either a
11 landlord or a tenant may file a petition with the Rent Board to determine the amount of the rent
12 reduction. In addition, a tenant may petition the Rent Board for a determination on whether an
13 Accessory Dwelling Unit proposed to be constructed under Planning Code Section 207(c)(4) would
14 sever, substantially reduce, or remove a housing service, pursuant to the procedures set forth in
15 subsection 207(c)(4)(C)(iii). The issuance of a permit for construction of an Accessory Dwelling Unit
16 does not, in and of itself, constitute a just cause for the purpose of severing a housing service.

17 * * * *

18 **SEC. 37.9. EVICTIONS.**

19 Notwithstanding Section 37.3, this Section 37.9 shall apply as of August 24, 1980, to
20 all landlords and tenants of rental units as defined in Section 37.2(r).

21 * * * *

22 (f) Whenever a landlord wrongfully endeavors to recover possession or recovers
23 possession of a rental unit in violation of Sections 37.9 and/or 37.10A as enacted herein, or
24 wrongfully endeavors to sever, substantially reduce, or remove, or actually severs, substantially
25 reduces, or removes a housing service supplied in connection with the use or occupancy of a rental unit

1 as set forth in Section 37.2(r), the tenant or Rent Board may institute a civil proceeding for
2 injunctive relief, money damages of not less than three times actual damages (including
3 damages for mental or emotional distress as specified below), and whatever other relief the
4 court deems appropriate. If the landlord has recovered possession pursuant to Section
5 37.9(a)(8), such action shall be brought no later than five years after (1) the date the landlord
6 files the first statement of occupancy with the Rent Board under Section 37.9(a)(8)(vii) or (2)
7 three months after the landlord recovers possession, whichever is earlier. In the case of an
8 award of damages for mental or emotional distress, said award shall only be trebled if the trier
9 of fact finds that the landlord acted in knowing violation of or in reckless disregard of Section
10 37.9 or 37.10A herein. The prevailing party shall be entitled to reasonable attorney's fees and
11 costs pursuant to order of the court. The remedy available under this Section 37.9(f) shall be
12 in addition to any other existing remedies which may be available to the tenant or the Rent
13 Board.

14 * * * *

15
16 Section 4. 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 ten days of receiving it, or the Board
19 of Supervisors overrides the Mayor's veto of the ordinance.

20
21 Section 5. 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 APPROVED AS TO FORM:
5 DENNIS J. HERRERA, City Attorney

6 By: /s/ Peter R. Miljanich
7 PETER R. MILJANICH
8 Deputy City Attorney

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REVISED LEGISLATIVE DIGEST

(Substituted, 10/5/2021)

[Planning, Administrative Codes - Accessory Dwelling Units]

Ordinance amending the Planning Code to clarify the requirements for applications to construct Accessory Dwelling Units under the City's local Accessory Dwelling Unit approval process; amending the Administrative Code to clarify that landlords may not remove certain tenant housing services without just cause and that issuance of a building permit does not constitute just cause; making findings as required by the Tenant Protection Act of 2019; 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.

Existing Law

Planning Code subsection 207(c)(4) sets forth the City's discretionary local approval process for accessory dwelling unit (ADU) projects that are not eligible for state-mandated, ministerial consideration by the City.

Chapter 37 of the Administrative Code (the City's Residential Rent Stabilization and Arbitration Ordinance, or Rent Ordinance) protects tenants in certain rental units from evictions without just cause. Under Rent Ordinance section 37.2(r), a rental unit includes all housing services, privileges, furnishings, and facilities supplied in connection with the use or occupancy thereof, including garage and parking facilities. Such housing services may not be severed from a tenancy without just cause, as required by Rent Ordinance section 37.9. The issuance of a permit for construction of an Accessory Dwelling Unit does not in and of itself constitute a just cause for the purpose of severing, reducing, or removing a housing service.

Amendments to Current Law

This ordinance would require project sponsors seeking to construct an ADU under Planning Code subsection 207(c)(4) to submit a written declaration, signed under penalty of perjury, to the San Francisco Rent Stabilization and Arbitration Board (Rent Board) that the project will comply with the requirements of Administrative Code Sections 37.2(r) and 37.9 relating to severance, substantial reduction, or removal of certain housing services. This ordinance would require the Rent Board to determine the form and content of the declaration, which shall include, at minimum, the following information:

- (1) A description of any housing services supplied in connection with the use or occupancy of any units on the subject property that are located in the area of the property or building where the ADU would be constructed;

- (2) Whether construction of the ADU would result in the severance, substantial reduction, or removal of any such housing services; and
- (3) The just cause for the severance, substantial reduction, or removal of such housing services.

The ordinance would allow tenants at the subject property to contest the information in the declaration by petitioning for a written determination from the Rent Board verifying the presence and defining characteristics of the housing service or services in question, and whether any such housing services would be severed, substantially reduced, or removed by the project as proposed. If no petition is timely filed, the ordinance would require the Rent Board to transmit the declaration to the Planning Department promptly. If a petition is timely filed, the ordinance would require the Rent Board to endeavor to transmit the declaration to the Planning Department within 90 days of receiving the petition.

The Planning Department would no longer be authorized to approve an application to construct an ADU under subsection (c)(4) unless (1) the Department has received the declaration or final written determination from the Rent Board, and (2) the declaration and final written determination indicate that construction of the ADU would not result in severance, substantial reduction, or removal of any tenant housing service that is supplied in the area of the property or building where the ADU would be constructed without just cause, unless the property owner demonstrates that the tenant supplied with that housing service has given their express written consent for the severance, substantial reduction, or removal of the housing service.

This ordinance also sets forth additional tenant notification requirements for applications to construct an ADU under subsection 207(c)(4).

This ordinance amends Rent Ordinance sections 37.2(r) and 37.9 to clarify existing law that the issuance of a permit for construction of an ADU does not in and of itself constitute a just cause for the purpose of severing a housing service.

Background Information

San Francisco first enacted a local ADU ordinance in 2015 and has updated its ADU program several times since then, both in response to amendments to State law and also to facilitate the construction of ADUs under the City's local program.

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Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

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

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

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

Sponsor(s):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:

For Clerk's Use Only