

REVISED LEGISLATIVE DIGEST
(Amended in Committee – March 4, 2024)

[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 requires and is ineligible for waivers from open space, or dwelling unit exposure requirements, or the unit does not meet minimum floor area and floor-to-ceiling height requirements, and 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:

- requires a waiver of the open space requirements of Section 135 or dwelling unit exposure requirements, and the Unauthorized Unit is ineligible for a waiver or exemption from those standards pursuant to Section 307, Section 207(c)(4) (Accessory Dwelling Units - Local Program), Section 207(c)(6) (Accessory Dwelling Units - State Mandated Program), or Section 207.3 (Dwelling Unit Legalization Program); or
- has no contiguous area that meets both the required minimum superficial floor area in Housing Code Section 503(b) and the minimum legal floor-to-ceiling height requirement in Housing Code Section 503(a).

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).

Background Information

This ordinance is the result of amendments made at the March 4, 2024 meeting of the Land Use and Transportation Committee. Those amendments:

- refined the CUA exemption for UDUs that do not meet open space, dwelling unit exposure, or minimum floor to ceiling height; and
- updated the references in Planning Code Section 317 and Administrative Code Section 37.3(g) to reflect changes to the law that occurred after the introduction of this ordinance.

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