

BOARD of SUPERVISORS



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June 22, 2022

File No. 220130-2

Lisa Gibson
Environmental Review Officer
Planning Department
49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103

Dear Ms. Gibson:

On June 14, 2022, Supervisor Melgar submitted the following proposed substitute legislation:

File No. 220130-2

Ordinance amending the Planning Code to allow the signatures of Verified Tenants to count towards the threshold needed to permit an appeal of a Conditional Use authorization; clarifying timelines applicable to appeals of Conditional Use authorizations; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of public convenience, necessity, and welfare under Planning Code, Section 302.

This substitute legislation is being transmitted to you for environmental review.

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

Attachment

c: Joy Navarrete, Environmental Planning
Don Lewis, Environmental Planning

[Planning Code - Conditional Use Appeals]

Ordinance amending the Planning Code to allow the signatures of Verified Tenants to count towards the threshold needed to permit an appeal of a Conditional Use authorization; clarifying timelines applicable to appeals of Conditional Use authorizations; affirming the Planning Department’s determination under the California Environmental Quality Act; and making findings of public convenience, necessity, and welfare under Planning Code, Section 302.

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

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

Section 1. Environmental and Land Use Findings.

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

(b) Pursuant to Planning Code Section 302, the Board of Supervisors find that this ordinance will serve the public necessity, convenience, and welfare for the reasons set forth in Planning Commission Resolution No. _____, and incorporates such reasons by this reference thereto. A copy of said resolution is on file with the Clerk of the Board of

1 Supervisors in File No. _____.

2
3 Section 2. The Planning Code is hereby amended by revising Section 308.1, to read
4 as follows:

5 **SEC. 308.1. APPEALS: AMENDMENTS TO THE PLANNING CODE AND**
6 **CONDITIONAL USES.**

7 (a) **Right of Appeal.** The action of the Planning Commission, in disapproving in
8 whole or in part an amendment to the Planning Code initiated by application as described in
9 Section 302 and Sections 306 through 306.5, or in approving or disapproving in whole or in
10 part an application for Conditional Use authorization as described in Sections 303 and 304
11 and Sections 306 through 306.5 ~~of this Code~~, shall be transmitted to the Office of the Clerk of the
12 Board in final and signed form within ten business days of Commission's action to approve or
13 disapprove in whole or part the application, and subject to appeal to the Board of Supervisors in
14 accordance with this Section 308.1. An action of the Commission so appealed from shall not
15 become effective unless and until approved by the Board of Supervisors in accordance with
16 this Section 308.1.

17 (b) **Notice of Appeal.** Any appeal under this Section 308.1 shall be taken by filing
18 written notice of appeal with the Board of Supervisors no earlier than ten business days after the
19 date of action by the Planning Commission, and no later than 30 days after the date of action by
20 the Planning Commission. The appeal shall be filed with the Office of the Clerk of the Board in a
21 manner prescribed by the Clerk of the Board and in accordance with the Planning Fee Schedule. The
22 notice of appeal shall be subscribed by either (i) the owners or Verified Tenants of at least 20%
23 of the property affected by the proposed amendment or Conditional Use or (ii) five members
24 of the Board of Supervisors. The signature on the appeal of members of the Board shall not
25 be deemed to be any indication of their position on the merits of the appeal but rather shall

1 indicate only that they believe there is sufficient public interest and concern in the matter to
2 warrant a hearing by the Board of Supervisors. Upon receipt of a notice of appeal, the Office of
3 the Clerk of the Board shall transmit the notice of appeal and subscribed signatures to Public Works
4 within five business days for its determination of the 20% threshold of the property referenced above.
5 For the purposes of this Section 308.1, the property affected, and the determination of the 20%
6 threshold, shall be calculated by Public Works within five business days from when the Office of the
7 Clerk of the Board requests a determination on the 20% threshold of the property referenced, as
8 follows:

9 (1) When a proposed amendment or Conditional Use has been disapproved by
10 the Planning Commission, the property affected shall be deemed to be all property within the
11 area that is the subject of the application for amendment or Conditional Use, and within 300
12 feet of all exterior boundaries of the property that is the subject of the application;

13 (2) When a proposed Conditional Use has been approved by the Planning
14 Commission, the property affected shall be deemed to be all property within 300 feet of all
15 exterior boundaries of the property for which the Conditional Use has been approved by the
16 Planning Commission, excluding the property for which the approval has been given;

17 (3) In either of the above cases, when any property is owned by the City and
18 County of San Francisco, the United States Government or the State of California, or any
19 department or agency thereof, or by any special district, and is located within 300 feet of the
20 area that is the subject of the application for amendment or Conditional Use, such property
21 shall be excluded in determining the property affected unless such owner shall itself be a
22 subscriber of the notice of appeal; and

23 (4) Wherever a property is held in joint ownership, the signatures of joint
24 owners shall be calculated as representing affected property in direct proportion to the amount
25 of the total ownership of that property attributable to the joint owner or owners subscribing to

1 the notice of appeal. For the purposes of this calculation, the term “joint ownership” shall
2 include joint tenancies, interests in common, community property, partnerships, stock
3 cooperatives, condominiums, community apartments and planned unit developments. Where
4 each owner has exclusive rights to a portion of the property, the proportion of the total
5 ownership attributable to that owner shall be calculated in terms of a ratio of the floor area and
6 land area in which that owner has exclusive, joint, and common rights to the total floor area
7 and land area of that property. Under these calculations, the land area of an affected property
8 in joint ownership shall be given the same weight as the land area of an affected property not
9 in joint ownership, in determining whether 20% of the property affected is represented by
10 signatures to the notice of appeal.

11 (5) For purposes of this Section 308.1, a “Verified Tenant” is a residential or
12 commercial tenant of a property who declares, under penalty of perjury of the laws of the State of
13 California, that the tenant occupies the entire property or at least one separate unit on the property
14 pursuant to a lease with a term exceeding 32 days. Each Verified Tenant who signs an appeal pursuant
15 to this Section 308.1 must maintain proof of tenancy including either an executed lease reflecting a
16 term of more than 32 days, or at least one of the following forms of records reflecting that the tenant
17 has occupied the property for more than 32 consecutive days as of the date of signature: (a) state or
18 federal income tax records, (b) department of motor vehicle records including license, registration or
19 California identification, or (c) utility bills. A Verified Tenant who signs an appeal pursuant to this
20 Section may be required by Public Works to provide such proof of tenancy. A “Verified Tenant” shall
21 not include occupants of property who rent the property for less than 32 consecutive days, or for
22 Tourist or Transient Use, or as a Short-Term Residential Rental, as those terms are defined in Section
23 41A.4 of the Administrative Code.

24 (6) Where a property contains more than one rental unit, the signatures of Verified
25 Tenants shall be calculated as representing the percentage of affected property in the same proportion

1 of the number of rental units on the property represented by the Verified Tenants subscribing to the
2 appeal to the total number of rental units in that property. Only one Verified Tenant for each
3 Residential Unit or commercial unit shall be counted for each such unit; if more than one Verified
4 Tenant occupying a single rental unit subscribes to the appeal, that unit will only be given the weight of
5 a single unit in the property. Under these calculations, an affected property rented by multiple Verified
6 Tenants shall be given the same weight as an affected property owned by a single owner or occupied by
7 a single tenant, in determining whether 20% of the property affected is represented by signatures to the
8 notice of appeal.

9 (7) If an owner of 100% of a tenant-occupied property and one or more Verified
10 Tenants of the same property subscribe to the appeal, the land area of the affected property shall be
11 given the same weight as the land area of an affected property owned by a single owner in determining
12 whether 20% of the property affected is represented by signatures to the appeal. If a joint owner of
13 land held in joint ownership property and one or more Verified Tenants of the same property subscribe
14 to the appeal, the total land area of the affected property shall be calculated by adding the land areas
15 calculated pursuant to subsections (3) through (6), above, and may total, but not exceed 100% of the
16 land area of the property in determining whether 20% of the property affected is represented by
17 signatures to the appeal.

18 (c) **Hearing.** Upon the filing of such written notice of appeal so subscribed, the
19 Board of Supervisors or the Clerk thereof shall set a time and place for hearing such appeal,
20 which ~~may~~ be not less than ~~1021~~ nor more than 45 days after such filing. If there is not a
21 Board meeting scheduled during that time, the Clerk may schedule the hearing at the next regularly
22 scheduled Board meeting more than 50 days after the filing. The hearing may be held no more than 60
23 days from the date of filing, unless the parties consent to a later date as provided in subsection (f)
24 below. Provided, that if the Board of Supervisors does not conduct at least three regular Board
25 meetings during the 30 day period referred to in the previous sentence, the Board of Supervisors or the

1 ~~Clerk shall schedule the appeal not more than 40 days (rather than 30 days) after the filing of such~~
2 ~~written notice of appeal.~~

3 (d) **Decision.** The Board of Supervisors ~~must~~ shall hear and decide the appeal within 90
4 days of the filing of the written notice of appeal, unless the parties consent to a later date as provided in
5 subsection (f) below. The Board's decision on the appeal is final upon adjournment of the meeting at
6 which the hearing was held and at which the Board votes to approve or deny such appeal. ~~such appeal~~
7 within 30 days of the time set for the hearing thereon, provided that, if the full membership of the Board
8 is not present on the last day on which said appeal is set or continued for hearing within said period,
9 the Board may postpone said hearing and decision thereon until, but not later than, the full
10 membership of the Board is present; provided further, that the latest date to which said hearing and
11 decision may be so postponed shall be not more than 90 days from the date of filing of the appeal.
12 Provided, that if the Board of Supervisors does not conduct at least three regular Board meetings
13 during the 30-day period referred to in the previous sentence, the Board of Supervisors 40 days (rather
14 than 30 days) of the time set for the hearing thereon Failure of the Board of Supervisors to act
15 within such time limit shall be deemed to constitute approval by the Board of the action of the
16 Planning Commission.

17 (e) **Findings.** The Board of Supervisors shall adopt findings supporting its decision to
18 uphold or deny an appeal under this Section 308.1 within 60 days after making its decision on the
19 appeal. Notwithstanding the foregoing sentence, failure of the Board to approve findings within the
20 time specified will not affect the finality of the Board's decision on the appeal.

21 (f) **Continuances.** Any continuance of the time periods specified in this section 308.1 shall
22 require a written request from the party or parties seeking continuance in such form as may be
23 provided by the Clerk of the Board for the Board of Supervisors' consideration.

24 (dg) **Decision Votes Required.** In acting upon an appeal of a Planning Commission
25 determination on a request for reclassification by an interested party, the Board of Supervisors

1 may disapprove the action of the Planning Commission only by a vote of not less than 2/3 of
2 all members of the Board. In acting upon any other appeal of a Planning Commission
3 determination on a Planning Code amendment, the Board of Supervisors may disapprove the
4 action of the Planning Commission by a majority vote of the Board. In both cases, in the
5 event that one or more of the full membership of the Board is disqualified or excused from
6 voting because of an interest prohibited by general law or the San Francisco Charter, any
7 such disapproval shall be by a vote of all members of the Board that are not disqualified or
8 excused; provided, however, that in the event that a quorum of all members of the Board is
9 disqualified or excused from voting because of an interest prohibited by general law or the
10 Charter, the action of the Planning Commission shall be deemed approved. In the event the
11 Board disapproves the action of the Commission when the Commission has disapproved in
12 whole or in part a proposed amendment, the Board shall, not later than its next regularly
13 scheduled meeting, adopt the proposed ordinance. In the event the Board disapproves the
14 action of the Commission when the Commission has disapproved in whole or in part a
15 proposed conditional use, the Board shall prescribe in its ~~resolution~~motion such conditions as
16 are in its opinion necessary to secure the objectives of this Code, in accordance with Section
17 303(d).

18

19 Section 3. Effective Date. This ordinance shall become effective 30 days after
20 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
21 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
22 of Supervisors overrides the Mayor's veto of the ordinance.

23

24 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
25 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,

1 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
2 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
3 additions, and Board amendment deletions in accordance with the “Note” that appears under
4 the official title of the ordinance.

5
6 APPROVED AS TO FORM:
7 DAVID CHIU, City Attorney

8 By: /s/ KRISTEN A. JENSEN
9 KRISTEN A. JENSEN
10 Deputy City Attorney

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REVISED LEGISLATIVE DIGEST
(Substituted 6/14/2022)

[Planning Code - Conditional Use Appeals]

Ordinance amending the Planning Code to allow the signatures of Verified Tenants to count towards the threshold needed to permit an appeal of a Conditional Use authorization; clarifying timelines applicable to appeals of Conditional Use authorizations; affirming the Planning Department’s determination under the California Environmental Quality Act; and making findings of public convenience, necessity, and welfare under Planning Code, Section 302.

Existing Law

Planning Code Section 308.1 provides the right of appeal, notice, hearing procedures, and decision requirements for appeals of amendments to the Planning Code and decisions on Conditional Use authorizations to the Board of Supervisors.

Section 308.1 permits appeals where the notice of appeal is subscribed to by either (i) the owners of at least 20% of the property affected by the proposed amendment or Conditional Use or (ii) five members of the Board of Supervisors. Under existing law, tenants of affected properties who do not also own the property may not appeal Conditional Use authorization decisions. Section 308.1 describes how signatures of owners of property held in joint ownership shall be counted for purposes of calculating whether the notice of appeal has been subscribed to by the required percentage of affected property.

Section 308.1 sets time limits for setting and holding hearings on covered appeals, and provides that failure of the Board of Supervisors to act within the prescribed time limit shall be deemed to constitute approval by the Board of the action of the Planning Commission.

Background

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

Amendments to Current Law

The proposed legislation would permit “Verified Tenants” of affected properties to appeal Conditional Use determinations to the Board of Supervisors. “Verified Tenants” would include residential or commercial tenants of an affected property who declare, under penalty of perjury under the laws of the State of California, that the tenant occupies the entire property or at least one separate unit on the property pursuant to a lease with a term exceeding 32 days. The proposed legislation requires that Verified Tenants maintain proof of tenancy, and specifies the forms of proof that may be used to document qualifying tenancy. Under the proposed legislation, occupants who rent the property for less than 32 consecutive days, or for Tourist or Transient Use, or as a Short-Term Residential Rental, as those terms are defined in Section 41A.4 of the Administrative Code, may not subscribe to Conditional Use appeals. The legislation provides that the signatures of Verified Tenants will be weighted according to the percentage of the affected property represented by the unit or units they occupy to the total number of rental units in that property, and that only one Verified Tenant for each qualifying unit shall be counted for each such unit. The legislation also provides that the signatures of Verified Tenants and one or more owners of the same affected property may total, but not exceed 100% of the land area of the property in determining whether 20% of the property affected by the Conditional Use is represented by signatures to the appeal.

The proposed legislation also modifies the deadlines for setting hearings on Conditional Use appeals so that such hearings must be held not less than 20 nor more than 40 days after such filing, the Board must hear and decide the appeal within 90 days of the filing of the appeal, and the Board of Supervisors shall approve findings supporting its decision to uphold or deny an appeal within 50 days after making its decision on the appeal. The legislation also clarifies that failure of the Board to approve findings within the time specified will not affect the finality of the Board’s decision on the appeal. The legislation requires a written request from the party or parties seeking continuance for any continuance of the time periods specified in Section 308.1.

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February 4, 2022

File No. 220130

Lisa Gibson
Environmental Review Officer
Planning Department
49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103

Dear Ms. Gibson:

On February 1, 2022, Supervisor Melgar submitted the following legislation:

File No. 220130

Ordinance amending the Planning Code to allow the signatures of Verified Tenants to count towards the threshold needed to permit an appeal of a Conditional Use authorization; clarifying timelines applicable to appeals of Conditional Use authorizations; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of public convenience, necessity, and welfare under Planning Code, Section 302.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

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

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

Attachment

- c: Joy Navarrete, Environmental Planning
Don Lewis, Environmental Planning
- 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.

02/10/2022

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

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