

BOARD of SUPERVISORS



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MEMORANDUM

TO: Katy Tang, Director
Small Business Commission, City Hall, Room 448
FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee
DATE: May 12, 2023
SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use and Transportation Committee

The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 230447-2

Ordinance amending the Building and Planning Codes to create a temporary amnesty program for unpermitted awnings that streamlines the application process to legalize awnings, waives applicable fees, and confers legal nonconforming status for awnings that do not comply with the Planning Code; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and making findings of public necessity, convenience, and welfare pursuant to Planning Code, Section 302.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

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RESPONSE FROM SMALL BUSINESS COMMISSION - Date: \_\_\_\_\_

- No Comment
Recommendation Attached

Chairperson, Small Business Commission

c: Kerry Birnbach

1 [Building, Planning Codes - Existing Awning Amnesty Program]

2

3 **Ordinance amending the Building and Planning Codes to create a temporary amnesty**  
 4 **program for unpermitted awnings that streamlines the application process to legalize**  
 5 **awnings, waives applicable fees, and confers legal nonconforming status for awnings**  
 6 **that do not comply with the Planning Code; affirming the Planning Department's**  
 7 **determination under the California Environmental Quality Act; making findings of**  
 8 **consistency with the General Plan, and the eight priority policies of Planning Code,**  
 9 **Section 101.1; and making findings of public necessity, convenience, and welfare**  
 10 **pursuant to Planning Code, Section 302.**

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.

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

19 Section 1. Findings.

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

25 (b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_,  
 adopted findings [OR, the Planning Department determined] that the actions contemplated in

1 this ordinance are consistent, on balance, with the City’s General Plan and eight priority  
2 policies of Planning Code Section 101.1. The Board adopts these findings [OR, this  
3 determination] as its own. A copy of said Resolution [OR determination] is on file with the  
4 Clerk of the Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by  
5 reference.

6 (c) Pursuant to Planning Code Section 302, the Board finds that this Planning Code  
7 amendment will serve the public necessity, convenience, and welfare for the reasons set forth  
8 in Planning Commission Resolution No. \_\_\_\_\_, and the Board incorporates such  
9 reasons herein by reference. A copy of said resolution is on file with the Clerk of the Board of  
10 Supervisors in File No. \_\_\_\_\_.

11 (d) On \_\_\_\_\_, at a duly noticed public hearing, the Building Inspection  
12 Commission considered this ordinance in accordance with Charter Section D3.750-5 and  
13 Building Code Section 104A.2.11.1.1. A copy of a letter from the Secretary of the Building  
14 Inspection Commission regarding the Commission’s recommendation is on file with the Clerk  
15 of the Board of Supervisors in File No. \_\_\_\_\_.

16 (e) No local findings are required under California Health and Safety Code Section  
17 17958.7 because the amendments to the Building Code contained in this ordinance do not  
18 regulate materials or manner of construction or repair, and instead relate in their entirety to  
19 administrative procedures for implementing the code, which are expressly excluded from the  
20 definition of a “building standard” by California Health and Safety Code Section 18909(c).

21  
22 Section 2. The Building Code is hereby amended by adding Section 106A.5, to read  
23 as follows:

24 **106A.5 Awning Amnesty Program.** *The Department shall implement the temporary amnesty*  
25 *program outlined in this Section 106A.5 to incentivize and expedite the legalization of Awnings, as*

1 defined and regulated in Section 1703 of the Building Code, that were installed without a building  
2 permit or for which the Department has no record of a building permit on file as of the effective date of  
3 this ordinance in Board File No. \_\_\_\_\_ . All property owners that have Awnings without a building  
4 permit on file are eligible for the amnesty program, including property owners with active Notices of  
5 Violation for installing or having an Awning without a building permit.

6 **106A.5.1 Certification of Existing Installation: No New Construction, Repairs, or Corrective**  
7 **Work.** The amnesty program shall provide a streamlined process to verify that an existing Awning  
8 complies with applicable provisions of the Building Code as well as Planning Code Section 187.3 and  
9 will result in a building permit authorizing the existing Awning. The amnesty program shall not  
10 authorize new construction or corrective work to bring an existing Awning into compliance. Any  
11 alterations, modifications, or construction required to bring the Awning into compliance with the  
12 Building Code will require a standard building permit and is not subject to the provisions of this  
13 Section 106A.5, except that the fees for any such permit shall be waived pursuant to Section 106A.5.2.

14 **106A.5.2 Waiving of Fees.** Notwithstanding any other provisions of the Building Code, the  
15 Department shall waive all fees for applications eligible for the amnesty program and for any permits  
16 required to repair or replace an Awning that the Department determined was not in compliance with  
17 the Building Code, including the application fee for plan review, permit issuance fee for inspections,  
18 and any enforcement fees, including inspection fees required under Section 107A.5 for work without a  
19 permit.

20 **106A.5.3 Streamlined Application Process.** The Department shall develop a streamlined  
21 application process to facilitate and expedite review of Awning permits during the amnesty program.  
22 The application shall require only information essential to determining whether an existing Awning  
23 complies with the applicable Building and Planning Code provisions, including the Planning Code's  
24 amnesty program in Planning Code Section 187.3.

1           **106A.5.4 No Relaxation of Building Standards.** The amnesty program governs the  
2 certification of existing Awnings' compliance with applicable Building Code provisions. Any Awning  
3 that is not in compliance with the Building Code will require a separate building permit to repair,  
4 replace, or remove the Awning.

5           **106A.5.5 Sunset.** Unless the Board of Supervisors adopts an ordinance extending the term of  
6 this Section 106A.5, it shall expire by operation of law on June 1, 2024. At such time, the City Attorney  
7 shall cause it to be removed from the Building Code.

8  
9           Section 3. The Planning Code is hereby amended by adding Section 187.3, to read as  
10 follows:

11           **Sec. 187.3. PRE-EXISTING AWNINGS; AMNESTY.**

12           **(a) Intent.** The purpose of this Section 187.3 is to recognize the impacts of the COVID-19  
13 pandemic on small businesses, to acknowledge the contribution of those businesses' Awnings and  
14 Signs, as defined in Sections 102 and 602 of this Code, respectively, to the diverse character of the  
15 City's commercial corridors, and to establish a time-limited program whereby certain existing Awnings  
16 and Signs that have been erected, installed, or maintained without required permits may be allowed to  
17 remain.

18           **(b) Controls.** Notwithstanding any other provision of this Code, an Awning or Sign existing on  
19 the effective date of this ordinance in Board File No. \_\_\_\_\_ may be considered an existing  
20 noncomplying structure and/or nonconforming use governed by this Article 1.8 so long as the Sign or  
21 Awning is not afixed to a building subject to Article 11 of this Code, has existed at the same general  
22 location with the same general size, construction methodology, and material for at least five years prior  
23 to the effective date. In the case of a Sign, the name of the business and/or particular Sign copy need  
24 not have remained unchanged during that five-year period so long as the general location of the Sign  
25 has remained constant. In addition to the foregoing, Awnings that have been required by the

1 Department of Building Inspection on or after January 1, 2023 to be replaced or altered, along with  
2 any Signs affixed to such Awnings, may be replaced or altered consistent with such requirement and  
3 subsequently considered noncomplying structures and/or nonconforming uses subject to this Section  
4 187.3 so long as such replacement or alteration does not increase the degree of nonconformity or  
5 noncompliance with other Sections of this Code.

6 (c) **Procedures.** The Planning Director or Zoning Administrator or their designee(s) shall  
7 determine the degree of nonconformity or noncompliance for each Awning or Sign that is granted  
8 amnesty under this Section. Determinations of nonconformity and/or noncompliance shall be based on  
9 (i) historical photographs to be provided by the applicant and/or which are publicly available; (ii)  
10 current photographs provided by the applicant, including photographs showing the Awning's points of  
11 attachment to the building; and (iii) drawings provided by the applicant which need not be  
12 professionally prepared so long as those drawings depict the width, depth, height, projection, elevation,  
13 and other key characteristics of the Signs or Awnings in question. Such determination shall be  
14 memorialized either on a Building Permit, Sign Permit, or other form developed by the Planning  
15 Department or other City agency.

16 (d) **Fees.** Notwithstanding any other provision of this Code or the Administrative Code, no fee  
17 shall be charged by the Planning Department for a determination under this Section and/or for review  
18 of Building Permit Applications, Sign Permit Applications, or other approvals which relate exclusively  
19 to the implementation of this Section, including any enforcement fees under Section 350(g)(1) of this  
20 Code.

21 (e) **Sunset.** Unless the Board of Supervisors adopts an ordinance extending the term of this  
22 Section 187.3, it shall expire by operation of law on June 1, 2024. At such time, the City Attorney shall  
23 cause it to be removed from the Planning Code and no additional Signs or Awnings may be altered,  
24 replaced, or reviewed for consideration as nonconforming or noncomplying under this Section.

1           Section 4. Effective Date. This ordinance shall become effective 30 days after  
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
4 of Supervisors overrides the Mayor's veto of the ordinance.

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

8 By:     /s/ Robb Kapla      
9       ROBB KAPLA  
      Deputy City Attorney

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FILE NO.

## **LEGISLATIVE DIGEST**

[Building, Planning Codes - Existing Awning Amnesty Program]

**Ordinance amending the Building and Planning Codes to create a temporary amnesty program for unpermitted awnings that streamlines the application process to legalize awnings, waives applicable fees, and confers legal nonconforming status for awnings that do not comply with the Planning Code; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and making findings of public necessity, convenience, and welfare pursuant to Planning Code, Section 302.**

### Existing Law

Section 3105 of the Building Code regulates the installation of awnings as ancillary structures requiring a building permit and compliance with specific fastening standards and strength specifications. Building permits for installing or modifying awnings require review by the Planning Department for compliance with Planning Code Section 136.1 and various zoning controls in use districts across the City.

### Amendments to Current Law

The Proposed Legislation would establish an amnesty program for existing awnings that were installed without a building permit or for which there is no specific building permit regarding the existing awning in the City's records. Awnings and signs affixed to historic buildings subject to Article 11 of the Planning Code are not eligible for the amnesty program. The amnesty program would waive enforcement, application, and inspection fees under both the Planning and Building Codes for applicants that apply for a permit to legalize an existing awning during the program's duration. The amnesty program would also streamline the application process, as compared to standard building permits for new construction, by only requiring submission of information necessary to confirm the existing structure complies with the Building and Planning Codes or, if necessary, to document the degree of noncompliance nonconformity with the Planning Code. For an existing awning or sign that does not comply with the Planning Code, the amnesty program would grant them legal nonconforming status provided the owner establishes that the awning or sign is 5 or more years old and the degree of nonconformity as determined by the Zoning Administrator or Planning Director and is memorialized on the awning permit.

The amnesty program would not waive compliance with any substantive building standards, nor does it allow any new work or construction to repair, remove, or replace a noncompliant awning. If an awning does not meet applicable Building Code provisions, the property owner



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must pull a standard building permit to perform any corrective work or to remove or replace the awning. The plan review, inspection and any enforcement fees would be waived for these permits to perform corrective work on, remove, or replace an existing awning. Where an owner is required by the Department of Building Inspection to pull a permit to repair or replace an existing awning, the amnesty program would allow the owner to transfer legal nonconforming status under the Planning Code to the repaired or replaced awning, provided that the degree of nonconformity of the new awning would not exceed that of the original awning as determined by the Director of Planning or Zoning Administrator.

The amnesty program would automatically terminate, unless extended by the Board of Supervisors, on June 1st, 2024.

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