

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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