

BOARD of SUPERVISORS



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MEMORANDUM

Date: April 1, 2025
To: Planning Department/Planning Commission
From: John Carroll, Assistant Clerk, Land Use and Transportation Committee
Subject: Board of Supervisors Legislation Referral - File No. 250284
Planning, Building Codes - Noncomplying and Accessory Structures

- California Environmental Quality Act (CEQA) Determination
(*California Public Resources Code, Sections 21000 et seq.*)
 - Ordinance / Resolution
 - Ballot Measure

- Amendment to the Planning Code, including the following Findings:
(*Planning Code, Section 302(b): 90 days for Planning Commission review*)
 - General Plan
 - Planning Code, Section 101.1
 - Planning Code, Section 302

- Amendment to the Administrative Code, involving Land Use/Planning
(*Board Rule 3.23: 30 days for possible Planning Department review*)

- General Plan Referral for Non-Planning Code Amendments
(*Charter, Section 4.105, and Administrative Code, Section 2A.53*)
(Required for legislation concerning the acquisition, vacation, sale, or change in use of City property; subdivision of land; construction, improvement, extension, widening, narrowing, removal, or relocation of public ways, transportation routes, ground, open space, buildings, or structures; plans for public housing and publicly-assisted private housing; redevelopment plans; development agreements; the annual capital expenditure plan and six-year capital improvement program; and any capital improvement project or long-term financing proposal such as general obligation or revenue bonds.)

- Historic Preservation Commission
 - Landmark (*Planning Code, Section 1004.3*)
 - Cultural Districts (*Charter, Section 4.135 & Board Rule 3.23*)
 - Mills Act Contract (*Government Code, Section 50280*)
 - Designation for Significant/Contributory Buildings (*Planning Code, Article 11*)

Please send the Planning Department/Commission recommendation/determination to John Carroll at john.carroll@sfgov.org.

1 [Planning, Building Codes - Noncomplying and Accessory Structures]

2

3 **Ordinance amending the Planning Code to allow repair and replacement of**
 4 **noncomplying structures constructed before the year 2003, and allow accessory**
 5 **structures up to 10 feet in height and 120 square feet within required setbacks and**
 6 **usable open space; amending the Building Code to exempt accessory structures up**
 7 **to 120 square feet from building permits; affirming the Planning Department's**
 8 **determination under the California Environmental Quality Act, making findings of**
 9 **consistency with the General Plan, and the eight priority policies of Planning Code,**
 10 **Section 101.1, and making findings of necessity, convenience, and welfare under**
 11 **Planning Code, Section 302.**

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

16

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

18

19 Section 1. Environmental, Land Use, and General 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

1 (b) On _____, the Planning Commission, in Resolution No. _____,
2 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
3 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
4 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
5 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

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

11 (d) On _____, at a duly noticed public hearing, the Building Inspection Commission
12 considered this ordinance in accordance with Charter Section 4.121 and Building Code
13 Section 104A.2.11.1.1. A copy of a letter from the Secretary of the Building Inspection
14 Commission regarding the Commission's recommendation is on file with the Clerk of the
15 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. Articles 1.2 and 1.7 of the Planning Code are hereby amended by revising
23 Sections 136 and 188, and adding Section 188.1, to read as follows:

24 **SEC. 136. OBSTRUCTIONS OVER STREETS AND ALLEYS AND IN REQUIRED**
25 **SETBACKS, YARDS, AND USABLE OPEN SPACE.**

1	Streets and Alleys	Set- backs	Yards	Usable Open Space	
2					
3					
4	* * * *				
5					(c) The permitted obstructions shall be as follows:
6					
7	* * * *				
8		<u>x</u>	x	<u>x</u>	(23) Other structures commonly used in gardening activities, such as greenhouses and sheds for storage of garden tools, if no more than 10 <u>eight</u> feet in height above grade and covering no more than 120 <u>100</u> square feet of land;
9					
10					
11					
12					
13					
14	* * * *				

SEC. 188. NONCOMPLYING STRUCTURES: ENLARGEMENTS, ALTERATIONS, AND RECONSTRUCTION.

(a) Within the limitations of this Article 1.7, and especially Sections 172 and 180 hereof, a noncomplying structure as defined in Section 180 may be enlarged, altered, or relocated, or undergo a change or intensification of use in conformity with the use limitations of this Code, provided that with respect to such structure, its above grade dimensions do not increase, other than to the degree necessary to comply with current Building Code requirements. Interior alterations including the structure's use for different purposes do not constitute an intensification for the purposes of this Section. For any structure that is partially noncompliant, these rules shall only apply to the portions of the structure that are noncomplying; portions of the structure

1 within the buildable area shall be subject to rules governing building within the buildable area of the
2 lot elsewhere in this Code. ~~there is no increase in any discrepancy, or any new discrepancy, at any~~
3 level of the structure, ~~between existing conditions on the lot and the required standards for new~~
4 construction set forth in this Code, and provided the remaining requirements of this Code are met.

5 * * * *

6 **SEC. 188.1. EXCEPTIONS FOR PRE-EXISTING NONCOMPLYING STRUCTURES IN**
7 **RH, RM, AND RTO DISTRICTS FROM RESTRICTIONS ON REPLACEMENTS.**

8 (a) Noncomplying accessory structures that were constructed prior to the year 2003 may be
9 replaced in-kind with the same dimensions without the need for a variance. In-kind replacements may
10 deviate from the original noncomplying structure’s dimensions only to the degree necessary to comply
11 with current Building Code requirements.

12 (b) The Planning Department shall refund any permit fees incurred by applicants who sought a
13 variance determination from Section 136(c)(23) after January 1, 2021 and prior to the effective date of
14 the ordinance enacting this Section 188.1, to repair or replace a noncomplying structure that was
15 constructed prior to the year 2003.

16
17 Section 3. Chapter 1A of the Building Code is hereby amended by revising Section
18 106A.2, to read as follows:

19 **106A.2 Work exempt from permit.** [Section 105.2 of the California Building Code.]
20 Exemptions from the permit requirements of this code shall not be deemed to grant
21 authorization for any work to be done in any manner in violation of the provisions of this code
22 or any other laws or ordinances of this jurisdiction. A building permit shall not be required for
23 the following:

24 1. One-story detached accessory buildings or structures used as tool and storage
25 sheds, playhouses and similar uses, provided the floor projected roof area does not exceed

1 120400 square feet (11.159.29 m²). It is permissible that these structures still be regulated by Section
2 710A, despite exemption from permit.

3 * * * *

4
5
6 Section 4. Effective Date. This ordinance shall become effective 30 days after
7 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
8 ordinance unsigned or does not sign the ordinance within 10 days of receiving it, or the Board
9 of Supervisors overrides the Mayor’s veto of the ordinance.

10
11 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
12 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
13 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
14 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
15 additions, and Board amendment deletions in accordance with the “Note” that appears under
16 the official title of the ordinance.

17
18 APPROVED AS TO FORM:
19 DAVID CHIU, City Attorney

20 By: /s/ Robb Kapla
21 ROBB KAPLA
22 Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning, Building Codes - Noncomplying and Accessory Structures]

Ordinance amending the Planning Code to allow repair and replacement of noncomplying structures constructed before the year 2003, and allow accessory structures up to 10 feet in height and 120 square feet within required setbacks and usable open space; amending the Building Code to exempt accessory structures up to 120 square feet from building permits; 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 necessity, convenience, and welfare under Planning Code, Section 302.

Existing Law

The Planning Code allows small structures like gardening sheds shorter than eight feet in height and less than 100 square feet to be located in rear yards while prohibiting them in setbacks or usable open space. The Planning Code allows existing noncomplying structures—structures that do not comply with current Planning Code provisions—including accessory structures such as gardening sheds, to be repaired, altered, relocated or enlarged—but not replaced—provided that the extent of noncompliance is not intensified.

The San Francisco Building Code requires building permits for small accessory structures over eight feet tall and/or larger than 100 square feet.

Amendments to Current Law

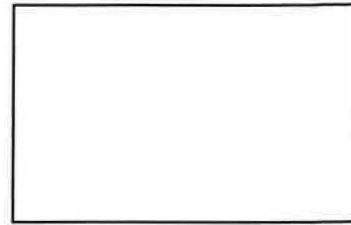
The Proposed Legislation amends the Planning Code to allow gardening sheds and other small accessory structures up to 10 feet in height and/or 120 square feet, and allow them to be located in setbacks and usable open space in addition to rear yards. The Proposed Legislation also allows existing noncomplying accessory structures built before the year 2003 to be replaced in kind without the need for a variance, and would authorize refunding any fees paid by applicants to the Planning Department between January 1, 2021 to the effective date of the Proposed Legislation for variances to replace noncomplying structures built before 2003.

The Proposed Legislation amends the Building Code to harmonize with the California Building Code by exempting accessory structures up to 10 feet in height and and/or 120 square feet from needing a building permit.

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Introduction Form

(by a Member of the Board of Supervisors or the Mayor)



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

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)
(Routine, non-controversial and/or commendatory matters only)
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor _____ inquires..."
- 5. City Attorney Request
- 6. Call File No. _____ from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No. _____
- 9. Reactivate File No. _____
- 10. Topic submitted for Mayoral Appearance before the Board on _____

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission Youth Commission Ethics Commission
 Planning Commission Building Inspection Commission Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes No

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

Sponsor(s):

Engardio

Subject:

Planning, Building Codes - Noncomplying and Accessory Structures

Long Title or text listed:

Ordinance amending the Planning Code to allow repair and replacement of noncomplying structures constructed before the year 2003, and allow accessory structures up to 10 feet in height and 120 square feet within required setbacks and usable open space; amending the Building Code to exempt accessory structures up to 120 square feet from building permits; 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 necessity, convenience, and welfare under Planning Code, Section 302.

Signature of Sponsoring Supervisor: