

BOARD of SUPERVISORS



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March 11, 2020

**File No. 190757**

Lisa Gibson  
Environmental Review Officer  
Planning Department  
1650 Mission Street, Ste. 400  
San Francisco, CA 94103

Dear Ms. Gibson:

On March 3, 2020, Supervisor Mandelman submitted the following legislation:

**File No. 190757**

**Ordinance amending the Planning Code to provide an exception from density limit calculations for all affordable units in projects not seeking and receiving a density bonus, permit the legalization of all unauthorized dwelling units notwithstanding a history of no-fault evictions if the applicant demonstrates compliance with the requirements of specified sections of the Rent Ordinance, and principally permit residential care facilities for seven or more persons in all RH (Residential, House) zoning districts; 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 adopting findings of public necessity, convenience, and general 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

1 [Planning Code - Exemption from Density Limits for Affordable and Unauthorized Units -  
2 Residential Care Facilities]

3 **Ordinance amending the Planning Code to provide an exception from density limit**  
4 **calculations for all affordable units in projects not seeking and receiving a density**  
5 **bonus, permit the legalization of all unauthorized dwelling units notwithstanding a**  
6 **history of no-fault evictions if the applicant demonstrates compliance with the**  
7 **requirements of specified sections of the Rent Ordinance, and principally permit**  
8 **residential care facilities for seven or more persons in all RH (Residential, House)**  
9 **zoning districts; affirming the Planning Department's determination under the**  
10 **California Environmental Quality Act; making findings of consistency with the General**  
11 **Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting**  
12 **findings of public necessity, convenience, and general welfare under Planning Code,**  
13 **Section 302.**

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

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

22 Section 1. Findings.

23 (a) The Planning Department has determined that the actions contemplated in this  
24 ordinance comply with the California Environmental Quality Act (California Public Resources  
25 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of

1 Supervisors in File No. 190757 and is incorporated herein by reference. The Board affirms  
2 this determination.

3 (b) On December 5, 2019, the Planning Commission, in Resolution No. 20584,  
4 adopted findings that the actions contemplated in this ordinance are consistent, on balance,  
5 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The  
6 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of  
7 the Board of Supervisors in File No. 190757, and is incorporated herein by reference.

8 (c) Pursuant to Planning Code Section 302, this Board finds that these Planning  
9 Code amendments will serve the public necessity, convenience, and general welfare for the  
10 reasons set forth in Planning Commission Resolution No. 20584.

11  
12 Section 2. The Planning Code is hereby amended by revising Sections 207, 207.3,  
13 and 209.1, to read as follows:

14 **SEC. 207. DWELLING UNIT DENSITY LIMITS.**

15 \* \* \* \*

16 (c) **Exceptions to Dwelling Unit Density Limits.** An exception to the calculations  
17 under this Section 207 shall be made in the following circumstances:

18 (1) **Affordable Units** ~~in Projects with 20 Percent or More Affordable Units.~~ For  
19 projects that are not ~~located in any RH-1 or RH-2 zoning district, or are not~~ seeking and receiving  
20 a density bonus under the provisions of Planning Code Section 206.5 or 206.6, California  
21 Government Code Section 65915, where 20 percent or more of the Dwelling Units on-site are  
22 "Affordable Units," the on-site Affordable Units, including such units in projects that consist entirely  
23 of Affordable Units, shall not count towards the calculation of dwelling unit density. This  
24 Planning Code Section 207(c)(1) does not provide exceptions to any other Planning Code  
25 requirements such as height or bulk. For purposes of this Section 207(c)(1), "Affordable Units"

1 shall be defined as meeting (A) the criteria of Section 406(b); (B) the requirements of Section  
2 415 et seq. for on-site units; or (C) restricted units in a project using California Debt Limit  
3 Allocation Committee (CDLAC) tax-exempt bond financing and ~~4% percent~~ tax credits under  
4 the Tax Credit Allocation Committee (TCAC). If a project sponsor proposes to provide  
5 "Affordable Units" that are not restricted by any other program, in order to receive the benefit  
6 of the additional density permitted under this ~~§~~subsection (c)(1) or ~~§~~subsection (c)(2), the  
7 project sponsor shall elect and the Planning Department and MOHCD shall be authorized to  
8 enforce, restricting the units as affordable under Planning Code Section 415.6 ~~up to a maximum~~  
9 ~~of 25 percent of the units in the principal project.~~ The project sponsor shall make such election  
10 through the procedures described in Section 415.5(g) including submitting an Affidavit of  
11 Compliance indicating the project sponsor's election to pursue the benefits of ~~§~~subsection  
12 (c)(1) or (c)(2) and committing to ~~up to 25 percent~~ on-site units restricted under Section 415.6  
13 prior to approval by the Planning Commission or Planning Department staff. If a project  
14 sponsor obtains the exemption from the density calculation for Affordable Units provided in  
15 this subsection ~~(c)(1)~~, the exemption shall be recorded against the property. Any later request  
16 to decrease the number of Affordable Units shall require the project to go back to the Planning  
17 Commission or Planning Department, whichever entity approved the project as a whole.

18 (2) **Designated Child Care Units.** A Designated Child Care Unit that meets all the  
19 applicable standards of Planning Code Section 414A.6 shall not count towards the calculation of  
20 maximum density permitted on the site.

21 ~~(2) **Affordable Units in RTO Districts.** In the RTO District, on site Dwelling Units~~  
22 ~~that are "Affordable Units," as defined in Subsection (a), shall not count toward density calculations or~~  
23 ~~be limited by lot area.~~

24 \* \* \* \*

1 (4) **Local Accessory Dwelling Unit Program; Accessory Dwelling Units**  
2 **in Multifamily Buildings; Accessory Dwelling Units in Single-Family Homes That Do Not**  
3 **Strictly Meet the Requirements in subsection (c)(6).**

4 \* \* \* \*

5 (B) **Applicability.** This subsection (c)(4) shall apply to the construction  
6 of Accessory Dwelling Units on all lots located within the City and County of San Francisco in  
7 areas that allow ~~R~~Residential ~~U~~Use, except that construction of an Accessory Dwelling Unit is  
8 regulated by subsection (c)(6), and not this subsection (c)(4), if all of the following  
9 circumstances exist:

10 \* \* \* \*

11 (iii) the ADU is either attached to or will be constructed entirely  
12 within the "living area" (as defined in subsection (c)(6)(B)(iii)) or the buildable area of the  
13 proposed or existing primary dwelling, or constructed within the built envelope of an existing  
14 and authorized auxiliary structure on the same lot; provided, however, that (A) when a stand-  
15 alone garage, storage structure, or other auxiliary structure is being converted to an ADU, an  
16 expansion to the envelope is allowed to add dormers even if the stand-alone garage, storage  
17 structure, or other auxiliary structure is in the required rear yard and (B) on a ~~C~~Corner ~~L~~ot or  
18 *through lot*, a legal stand-alone nonconforming garage, storage structure, or other auxiliary  
19 structure may be expanded within its existing footprint by up to one additional story in order to  
20 create a consistent street wall and improve the continuity of buildings on the block.

21 \* \* \* \*

22 (H) **Regulatory Agreements.** A Regulatory Agreement required by  
23 subsection (c)(4)(G) as a condition of approval of an Accessory Dwelling Unit shall contain the  
24 following:

1 (i) a statement that the ADU(s) are not subject to the Costa-  
2 Hawkins Rental Housing Act (California Civil Code Sections 1954.50 *et seq.*) because, under  
3 Section 1954.52(b), the owner has entered into this agreement with the City in consideration  
4 for a complete or partial waiver of the density limits, and/or bicycle parking, rear yard,  
5 exposure, or open space standards of this Code or other direct financial contribution or other  
6 form of assistance specified in California Government Code Sections 65915 et seq.  
7 ("Agreement"); and

8 \* \* \* \*

9 (6) **State Mandated Accessory Dwelling Unit Program: Accessory**  
10 **Dwelling Units in Existing or Proposed Single-Family Homes or in a Detached Auxiliary**  
11 **Structure on the Same Lot.**

12 \* \* \* \*

13 (B) **Lots Zoned for Single-Family or Multifamily Use and**  
14 **Containing an Existing Single-Family Home; Controls on Construction.** An Accessory  
15 Dwelling Unit located on a lot that is zoned for single-family or multifamily use and contains an  
16 existing or proposed single-family dwelling and constructed pursuant to this subsection (c)(6)  
17 shall meet all of the following:

18 \* \* \* \*

19 (ix) *No parking is required for the ADU. If existing parking is*  
20 *demolished in order to construct the ADU, only the parking space required by this Code for the existing*  
21 *single-family home must be replaced. If replacement parking is required, it may be located in any*  
22 *configuration on the lot including but not limited to covered, uncovered, or tandem space or by the use*  
23 *of mechanical automobile parking lifts.*

24 (x) When a stand-alone garage, storage *structure*, or other  
25 auxiliary structure is being converted to an ADU, an expansion to the envelope is allowed to

1 add dormers even if the stand-alone garage, storage structure, or other auxiliary structure is in  
2 the required rear yard.

3 (xi) On a ~~e~~Corner ~~H~~Lot *or through lot*, a legal stand-alone  
4 nonconforming garage, storage structure, or other auxiliary structure may be expanded within  
5 its existing footprint by up to one additional story in order to create a consistent street wall and  
6 improve the continuity of buildings on the block.

7 \* \* \* \*

8 ~~(7) A Designated Child Care Unit that meets all the applicable standards of Planning~~  
9 ~~Code Section 414A.6 shall not count towards the calculation of maximum density permitted on the site.~~

10 **SEC. 207.3. AUTHORIZATION OF DWELLING UNITS CONSTRUCTED WITHOUT A**  
11 **PERMIT IN AN EXISTING BUILDING ZONED FOR RESIDENTIAL USE.**

12 Notwithstanding Section 207.2 or any other provision of this Code, certain dwelling  
13 units that were constructed without benefit of permit in an existing residential building or in an  
14 ancillary structure located on the same lot, *defined for purposes of this Section 207.3 and in Section*  
15 *317(b) as "unauthorized units,"* may be granted legal status subject to the conditions and  
16 procedures set forth below. ~~For purposes of this Section 207.3, a dwelling unit shall not include~~  
17 ~~single room occupancy units.~~

18 (a) **Purpose and Findings.**

19 \* \* \* \*

20 (4) Providing a mechanism to grant legal status to ~~an~~ illegally constructed  
21 dwelling units in an existing building zoned for ~~R~~Residential ~~U~~se furthers several public policy  
22 objectives. By encouraging the legalization of these *unauthorized* units, the City can add  
23 legitimate units to the City's supply of affordable housing, ensure that these units are safe and  
24 habitable, and properly include these units when calculating the City's existing housing  
25 supply.

1 (b) **Scope.** ~~(1) Except as provided in subsection (2) below, t~~This Section 207.3 shall  
2 apply to an existing building or an ancillary structure on the same lot, that is located in a  
3 district where ~~#R~~esidential ~~#U~~se is ~~p~~Principally ~~p~~Permitted, and that has one or more  
4 ~~unauthorized dwelling~~ units that were constructed prior to January 1, 2013 without benefit of  
5 permit and used as residential space. ~~One of t~~The unauthorized ~~dwelling~~ units on the lot that  
6 meet this threshold requirement and the requirements of this Section 207.3 may be granted  
7 legal status under this Section 207.3, regardless of the density limits of the zoning district.

8 (2) **No-fault Eviction.** ~~The Department shall not approve Upon receipt of an~~  
9 application for legalization, ~~the Department shall verify with the applicant and the Rent Board~~  
10 ~~whether a landlord had recovered possession of if any tenant has been evicted from~~ the unit pursuant  
11 to Administrative Code Sections 37.9(a)(~~8~~ 9) through (a)(~~12~~ or (14) ~~at any time after May 13,~~  
12 ~~2014 that is within 10 years prior to the filing of the application. If a landlord did recover possession~~  
13 ~~as set forth in the foregoing sentence, as a condition of approval the applicant shall be required to~~  
14 ~~demonstrate that the landlord then complied or shall comply with all applicable requirements of~~  
15 ~~Sections 37.3(a), 37.3(f), 37.9B, and 37.9C of the Administrative Code, where the tenant was served~~  
16 ~~with the notice of eviction after March 13, 2014 if the notice was served within ten (10) years prior to~~  
17 ~~filing the application for legalization. Additionally, the Department shall not approve an application~~  
18 ~~for legalization of the unit if any tenant has been evicted pursuant to Administrative Code Section~~  
19 ~~37.9(a)(8) where the tenant was served with a notice of eviction after March 13, 2014 if the notice was~~  
20 ~~served within five (5) years prior to filing the application for legalization. The Department shall verify~~  
21 ~~with the Rent Board that no no-fault eviction had been filed. This subsection (b)(2) shall not apply if the~~  
22 ~~tenant was evicted under Administrative Code Section 37.9(a)(11) and the applicant(s) have either: (A)~~  
23 ~~certified that the original tenant reoccupied the unit after the temporary eviction or (B) submitted to the~~  
24 ~~Department a declaration from the property owner or the tenant certifying that the property owner or~~



1 *the Rent Board has notified the tenant of the tenant's right to reoccupy the unit after the temporary*  
2 *eviction and the tenant chose not to reoccupy it.*

3 (c) **Notices of Violation.** If the Director or Zoning Administrator has issued a notice  
4 of violation for ~~the~~ an unauthorized unit for which legalization is being sought and all violations  
5 would be corrected by legalization of the unit, the Director or Zoning Administrator shall:

6 \* \* \* \*

7 (d) **Legalization Application.** The Department shall approve an application to  
8 legalize an existing unauthorized dwelling unit if the unit complies with Planning Code  
9 requirements as specified in subsection (e) below and with other City codes as specified in  
10 subsection (f) below, ~~if the Rent Board verifies that no no-fault eviction was filed pursuant to~~  
11 ~~subsection (b)(2) above,~~ and if the permit application is completed at and plans approved by the  
12 Department of Building Inspection. In compliance with the State's Second Accessory Dwelling  
13 Unit Law (California Government Code 65852.2), the Department shall ~~exercise ministerial~~  
14 ~~approval of~~ approve the application ministerially if the dwelling unauthorized unit is ~~in a single-~~  
15 ~~family home and thus within the scope of the State's Second Unit Law~~ approved as an Accessory  
16 Dwelling Unit pursuant to Section 206(c)(6) of this Code.

17 (e) **Compliance with Planning Code Requirements; Exceptions.**

18 (1) ~~A~~ Dwelling ~~u~~ Units authorized under this Section 207.3 must satisfy all  
19 applicable requirements of this Code except for the rear yard requirements set forth in Section  
20 134, the usable open space requirements set forth in Section 135, and the light and air  
21 requirements set forth in Section 140, and except as otherwise provided in this Section 207.3.

22 (2) ~~One such~~ Dwelling ~~u~~ Units on the lot ~~is~~ are allowed to exceed the permitted  
23 density authorized for that zoning district provided that a ~~r~~ Residential ~~u~~ Use is ~~p~~ Principally  
24 ~~p~~ Permitted in that zoning district. Authorization of ~~an~~ the additional units over the density limits  
25 will not change the official zoning classification of the lot; provided, however, that the

1 additional dDwelling #Units shall count towards the density limits if the parcel is under its  
2 density limit capacity.

3 ~~(3) Off street parking requirements may be reduced to the extent necessary to retain~~  
4 ~~dwelling units authorized under this Section 207.3, without requiring compliance with Sections 305,~~  
5 ~~161(j) or 307(g) or (i) of this Code.~~

6 (f) **Compliance With Other City Codes.** A dDwelling #Unit authorized under this  
7 Section 207.3 must meet all applicable provisions of other City codes other than the  
8 provisions of the Planning Code cited in subsection (e). Any Code equivalencies authorized  
9 under the Building Code, Electrical Code, Plumbing Code, Mechanical Code, Fire Code, or  
10 other applicable Code shall be considered by the relevant agency.

11 Legalization Authorization of a dDwelling #Unit under this Section 207.3 shall not affect  
12 whether the dDwelling #Unit is subject to the Residential Rent Stabilization and Arbitration  
13 Ordinance (Chapter 37 of the Administrative Code). A dDwelling #Unit that was subject to the  
14 Residential Rent Stabilization and Arbitration Ordinance prior to legalization under this Section  
15 207.3 shall remain subject to the Residential Rent Stabilization and Arbitration Ordinance after  
16 legalization. Landlords shall pay relocation assistance to tenants who are temporarily  
17 displaced due to work required for dwelling unit legalization pursuant to the provisions in  
18 Section 37.9C of the Residential Rent Stabilization and Arbitration Ordinance or California  
19 Civil Code Section 1947.9 for displacements of less than 20 days.

20 (g) **Additional Dwelling Unit Considered a Lawful Nonconforming Use.** Any  
21 dDwelling #Unit authorized under this Section 207.3 shall be considered a lawful  
22 nonconforming use subject to the provisions of Planning Code Sections 180 through 189;  
23 provided, however, that expansion of the additional dDwelling #Unit within the building  
24 envelope shall be permitted as part of the legalization process.

25 \* \* \* \*

(k) **Master List of Additional Dwelling Units Approved.** The Planning Department shall create and maintain a master list of ~~d~~Dwelling ~~u~~Units approved pursuant to the provisions of this Section 207.3 and corresponding property addresses for use by the San Francisco Rent Stabilization and Arbitration Board, Tax Assessor, and other interested City departments, boards or commissions.

**SEC. 209.1. RH (RESIDENTIAL, HOUSE) DISTRICTS.**

\* \* \* \*

**Table 209.1  
ZONING CONTROL TABLE FOR RH DISTRICTS**

Zoning Category	§ References	RH-1(D)	RH-1	RH-1(S)	RH-2	RH-3
* * * *						
<b>NON-RESIDENTIAL STANDARDS AND USES</b>						
* * * *						
<b>Institutional Use Category</b>						
Institutional Uses*	§ 102	NP	NP	NP	NP	NP
****	****	****	****	****	****	****
Residential Care Facility	§ 102	P <del>(3)</del>	P <del>(3)</del>	P <del>(3)</del>	P <del>(3)</del>	P
****	****	****	****	****	****	****

\* Not listed below.

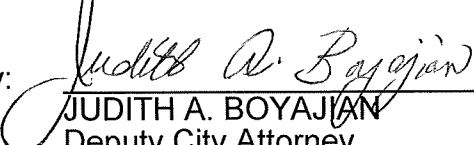
(3) ~~[Note deleted]~~ *C* required for seven or more persons.

1 \* \* \* \*

2 Section 3. Effective Date. This ordinance shall become effective 30 days after  
3 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
4 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
5 of Supervisors overrides the Mayor's veto of the ordinance.  
6

7 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
8 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
9 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
10 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
11 additions, and Board amendment deletions in accordance with the "Note" that appears under  
12 the official title of the ordinance.  
13

14 APPROVED AS TO FORM:  
15 DENNIS J. HERRERA, City Attorney

16 By:   
17 JUDITH A. BOYAJIAN  
18 Deputy City Attorney

19 n:\legana\as2019\1900565\01427847.docx

**REVISED LEGISLATIVE DIGEST**

(Substituted, 3/3/2020)

[Planning Code - Exemption from Density Limits for Affordable and Unauthorized Units; Residential Care Facilities]

**Ordinance amending the Planning Code to provide an exception from density limit calculations for all affordable units in projects not seeking and receiving a density bonus, permit the legalization of all unauthorized dwelling units notwithstanding a history of no-fault evictions if the applicant demonstrates compliance with the requirements of specified sections of the Rent Ordinance, and principally permit residential care facilities for seven or more persons in all RH (Residential, House) zoning districts; 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 adopting findings of public necessity, convenience, and general welfare under Planning Code, Section 302.**

Existing Law

Section 207 exempts affordable units from the calculation of density limits in projects where 20% or more of the dwelling units on the site are affordable so long as the project is not in an RH-1 or RH-2 zoning district, the project sponsor is not seeking a density bonus under other sections of the Planning Code, and the units meet the other requirements of the Code. If the affordable units to be provided are not restricted by any other program, the units shall be restricted as affordable under Planning Code Section 415.6 up to a maximum of 25% of the units in the principal project.

Section 207.3 permits the legalization of one unauthorized dwelling unit per lot. Units with a prior record of no-fault evictions may not be legalized.

Section 209.1 requires residential care facilities for seven or more persons to receive a conditional use authorization in RH-1(D), RH-1, RH-1(S), and RH-2 zoning districts.

Amendments to Current Law

Section 207 is amended to exempt all on-site affordable units from the calculation of density limits, so long as the project is not seeking a state density bonus and the units meet the other requirements of the Planning Code. The 25% cap on the number of units to be restricted if they are not restricted by any other program is deleted.

Section 207.3 is amended to permit legalization of more than one unauthorized dwelling unit per lot. Legalization of dwelling units with prior no-fault evictions is allowed if the applicant, as a condition of approval, has complied or will comply with all applicable requirements of the

Rent Ordinance governing rent increase limitations, Costa-Hawkins vacancy control, and tenant rights for no-fault evictions.

Section 209.1 is amended to principally permit residential care facilities for seven or more persons in RH-1, RH-1(S), RH-1(D), and RH-2 districts.

### Background Information

Preserving San Francisco's rent-stabilized dwelling units is a crucial strategy for keeping housing affordable for San Francisco households and protecting San Franciscans from displacement.

In 2014, the Board of Supervisors adopted Ordinance 43-14, which permits the legalization of one unauthorized dwelling unit per lot. In 2016, the Board adopted Ordinance 33-16, which sought to prevent the loss of dwelling units by requiring a conditional use authorization to merge, demolish, or remove any unit, whether authorized or unauthorized. Ordinance 33-16 exempted units for which there is no path to legalization from its protections against demolition, merger, and conversion. This proposed ordinance will provide a path to legalization for any unauthorized unit and no longer compels the Planning Department to require removal of units which feasibly could be preserved as needed housing.

Unauthorized dwelling units add to the City's documented housing supply, diversify housing options in neighborhoods, and expand the City's rent-stabilized housing stock. By lifting the arbitrary limits on the number of unauthorized units that can be legalized in a building and permitting the retention of existing housing, the City can add to its supply of affordable housing while retaining the character of its neighborhoods.

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