



September 20, 2021

Ms. Angela Calvillo, Clerk
Honorable Supervisors Mandelman, Ronen, Preston, and Melgar
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Transmittal of Planning Department Case Number 2021-006365PCA
Accessory Dwelling Units
Board File No. 210699

Planning Commission Recommendation: Approval

Dear Ms. Calvillo and Supervisors Mandelman, Ronen, Preston, and Melgar,

On September 9, 2021, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisors Mandelman that would amend the Planning Code to clarify the requirements for applications to construct Accessory Dwelling Units under the City's local Accessory Dwelling Unit approval process; amending the Administrative Code to clarify that landlords may not remove tenant housing services without just cause and that issuance of a building permit does not constitute just cause. At the hearing the Planning Commission recommended approval.

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information, please do not hesitate to contact me.

Sincerely,

Aaron D. Starr
Manager of Legislative Affairs

cc: Peter Miljanich, Deputy City Attorney
Jacob Bintliff, Aide to Supervisor Mandelman
Erica Major, Office of the Clerk of the Board

Attachments :

Planning Commission Resolution

Planning Department Executive Summary



PLANNING COMMISSION RESOLUTION NO. 20986

HEARING DATE: SEPTEMBER 9, 2021

Project Name: Accessory Dwelling Units
Case Number: 2021-006353PCA [Board File No. 210699]
Initiated by: Supervisors Mandelman, Ronen, Preston, and Melgar / Introduced June 15, 2021
Staff Contact: Veronica Flores, Legislative Affairs
veronica.flores@sfgov.org, (628) 652-7525
Reviewed by: Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, (628) 652-7533

RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO CLARIFY THE REQUIREMENTS FOR APPLICATIONS TO CONSTRUCT ACCESSORY DWELLING UNITS UNDER THE CITY'S LOCAL ACCESSORY DWELLING UNIT APPROVAL PROCESS; ADOPTING A RECOMMENDATION FOR APPROVAL OF AN AMENDMENT TO THE ADMINISTRATIVE CODE TO CLARIFY THAT LANDLORDS MAY NOT REMOVE TENANT HOUSING SERVICES WITHOUT JUST CAUSE AND THAT ISSUANCE OF A BUILDING PERMIT DOES NOT CONSTITUTE JUST CAUSE; MAKING FINDINGS AS REQUIRED BY THE TENANT PROTECTION ACT OF 2019; AFFIRMING THE PLANNING DEPARTMENT'S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; AND MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1.

WHEREAS, on June 15, 2021 Supervisors, Mandelman, Ronen, and Preston introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 210699, which would amend the Planning Code to clarify the requirements for applications to construct Accessory Dwelling Units under the City's local Accessory Dwelling Unit approval process; amending the Administrative Code to clarify that landlords may not remove tenant housing services without just cause and that issuance of a building permit does not constitute just cause; making findings as required by the Tenant Protection Act of 2019;

WHEREAS, the Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on September 9, 2021; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2) and 15378; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the Custodian of Records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby **ap**proves the proposed ordinance.

Findings

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The Commission finds that the proposed Ordinance supports the Housing Element's goals to ensure adequate housing for current and future San Franciscans by increasing the potential for new Accessory Dwelling Units.
2. The Commission finds that the proposed will further protect existing tenants' rights.

General Plan Compliance

The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

OBJECTIVE 1

IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

Policy 1.5

Consider secondary units in community plans where there is neighborhood support and when other neighborhood goals can be achieved, especially if that housing is made permanently affordable to lower-income households.

OBJECTIVE 3

PROTECT THE AFFORDABILITY OF THE EXISTING HOUSING STOCK, ESPECIALLY RENTAL UNITS.

Policy 3.4

Preserve “naturally affordable” housing types, such as smaller and older ownership units.

The General Plan identifies ADUs as an effective and inexpensive way to increase the housing supply. The Ordinance retains existing housing units and prioritizes permanently affordable housing. Additionally, the proposed amendments would expand protections for existing tenants.

Planning Code Section 101 Findings

The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing or neighborhood character.

3. That the City’s supply of affordable housing be preserved and enhanced;

The proposed Ordinance would not have an adverse effect on the City’s supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an adverse effect on City’s preparedness against injury and loss

of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

Planning Code Section 302 Findings.

The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on September 9, 2021.



Jonas P Ionin Digitally signed by Jonas P Ionin
Date: 2021.09.17 10:47:02 -07'00'

Jonas P. Ionin
Commission Secretary

AYES: Tanner, Diamond, Fung, Imperial, Moore, Koppel

NOES: None

ABSENT: Chan

ADOPTED: September 9, 2021



EXECUTIVE SUMMARY

PLANNING AND ADMINISTRATIVE CODE TEXT AMENDMENT

HEARING DATE: September 9, 2021

90-Day Deadline: September 20, 2021

Project Name: Accessory Dwelling Units
Case Number: 2021-006353PCA [Board File No. 210699]
Initiated by: Supervisor Mandelman / Introduced June 22, 2021
Staff Contact: Veronica Flores, Legislative Affairs
veronica.flores@sfgov.org, (628) 652-7525
Reviewed by: Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, (628) 652-7533

Recommendation: Approval with Modifications

Planning Code Amendment

Ordinance amending the Planning Code to clarify the requirements for applications to construct Accessory Dwelling Units under the City’s local Accessory Dwelling Unit (ADU) approval process; amending the Administrative Code to clarify that landlords may not remove tenant housing services without just cause and that issuance of a building permit does not constitute just cause; making findings as required by the Tenant Protection Act of 2019.

The Way It Is Now:	The Way It Would Be:
<p>PLANNING CODE</p> <p>There is no written declaration requirement under the Local ADU Program.</p>	<p>Property owners would be required to submit a written declaration to Rent Board regarding description of housing services that are located where the ADU(s) are proposed; whether ADU construction would result in severance, reduction, or removal of housing services; and the just cause for the previously mentioned.</p>

	Rent Board would then need to submit their determination to Planning within 30 days. Planning would not be able to approve an ADU under the Local Program if either 1) the applicant’s declaration is missing or 2) the declaration indicates that the ADU construction would result in severance, reduction, or removal of housing services supplied in the area of the property where the ADU is proposed without just cause.
There is no notification requirement under the Local ADU Program.	All ADUs under the Local Program would also now require a 15-day notice posted at property prior to submittal of a building permit application, similar to what is sometimes required by the Department of Building Inspection (DBI) Screening Form and what is required for single-family dwellings under Section 207(c)(6).
ADMINISTRATIVE CODE	
The Administrative Code is ambiguous in terms of construction of an ADU being just cause or not for the purpose of severing a housing service.	The Ordinance would clarify that the issuance of a permit for construction of an ADU does not in and of itself constitute a just cause for the purpose of severing a housing service.

Anticipated Amendments

Supervisor Mandelman intends to reintroduce the Ordinance with a few minor amendments that will provide additional grievance paths to tenants and to further clarify the noticing requirements. A summary of the proposed additional amendments is included below:

- Tenants would have an opportunity to contest the information provided in the declaration and petition the Rent Board for a written determination verifying the presence and defining characteristics of the housing service(s) in question. If no petition is filed, Rent Board would have 30 days to transmit the declaration to Planning Department. If a petition is filed, Rent Board would have 90 days to transmit the declaration and their written determination to the Planning Department.
 - The Rent Board determination shall also consider if the reduction of a housing service is substantial or not.
 - Planning Department would be able to approve a proposed ADU application that would sever, reduce, or removal housing services without just cause if the tenant has given their express written consent for severance, reduction, or removal of said housing service.
- Applicants would be required to include a copy of the written declaration in the posted and mailed notices.

Background

San Francisco first adopted a local ADU program in 2014 and made several updates since the initial inception both in response to changes to the State law and to improve the City's local ADU program. The most recent ADU changes enacted prior to this Ordinance occurred in 2019, which allowed ADUs in new construction. More recently, there were changes to the State law that came before the Historic Preservation and Planning Commissions in November 2020 and again this month. That recent Ordinance covered changes prescribed in Section 3 of [Senate Bill 13](#), Section 2 of [Assembly Bill 68](#), Section 1.5 of [Assembly Bill 881](#), and [Assembly Bill 3182](#). This Ordinance expands on these past efforts by ensuring that existing tenants' rights are protected. Specifically, the Ordinance would ensure that no housing services are severed, reduced, or removed as part of the construction of an ADU, unless agreed to by said tenant(s).

Issues and Considerations

Housing Services

A housing service is defined by the Administrative Code as services provided by the landlord connected with the use of the rental unit. These need to be included in an agreement between the landlord and the tenant. Common examples of housing services include an off-street parking space, a laundry facility, or a storage space. These amenities are often noted in plan sets, but not explicitly noted as a housing service as part of an agreement between the landlord and tenant.

The Planning Department is unable to confirm if something is a “housing service”. The Rent Board is unable to confirm if the construction of an ADU is impacting a “housing service”.

The Rent Board currently reviews tenant appeals and provides a factual report of their findings. An example of this includes confirming if a housing service is in fact present and where it is located within the building. The Rent Board currently also reviews and determines if housing services are relocated and replaced without substantial reduction. However, the Rent Board does not determine if housing services are lost due to the construction of an ADU. As written, the Ordinance puts the onus of determining if a housing service would be lost due to the construction of an ADU on the Planning Department, even though Rent Board determines what constitutes a housing service. Supervisor Mandelman's anticipated amendments seek to resolve this information gap by having the Rent Board expand their factual findings to determine if housing services would be lost due to the construction of an ADU.

Existing Tenant Protections

Landlords are legally bound to provide housing services noted in agreements with their tenants. Landlords may replace housing services so long as they are not a substantial reduction of the existing housing service. There is an internal Planning Department policy that laundry facilities should be maintained. Laundry facilities can be relocated within the building so long as the laundry facility quality is retained or improved. For example, a communal laundry facility area can be relocated to a different part of the building, or alternatively, removed altogether if the property owner provides individual in-unit laundry facilities for all the affected tenants. In the latter case, the proposed in-unit laundry is an upgrade compared to the existing common laundry facility housing service. Tenants can work with the Rent Board for official determinations on what would be considered in-kind replacements of existing housing services.

Landlords and tenants may arrive to an agreement regarding the removal of housing services; however, that does not address potential displacement impacts. For example, a landlord must reduce the rent in exchange for their access to a parking space; however, the tenant may still ultimately decide that they need a parking space and look for a new home with this housing service elsewhere. In this case, the Ordinance would protect the housing service or require an appropriate reduction in rent, if tenant agrees; however, the Ordinance may inadvertently force tenants to move if the tenant later decides they need such housing service.

As written, the Ordinance is ambiguous if the landlord and tenant come to an agreement regarding the loss of a housing service and whether the Planning Department can approve an ADU. One of Supervisor Mandelman's anticipated amendments explicitly notes that if a tenant consents to the severance, reduction, or removal of a housing service then Planning Department would be able to approve a proposed ADU. This resolves any ambiguities between the parties and still provides a path to creating additional ADU(s).

Just Cause

Just cause evictions are evictions in which there is a breach in contract by the tenant. Some examples of just cause evictions include non-payment of rent, habitual late payments, or an unapproved subtenant. Other examples of just cause evictions for which the tenant has a right to relocation payments include owner move-in, sale of a unit which has been converted to a condominium, or substantial renovation of the building. The Rent Ordinance is ambiguous on the construction of an ADU and whether it is considered just cause for eviction. The proposed Ordinance clarifies that the construction of an ADU itself does not constitute a just cause for eviction.

Noticing and Review Time

Adding an ADU under the Local Program does not currently require noticing unless a building expansion that triggers neighborhood notification is proposed as part of the ADU. In addition, some proposed ADUs under the Local ADU Program require notification to tenants per the DBI [Screening Form](#). The proposed Ordinance seeks to strengthen the notification requirements so that all tenants are notified up front about the construction of an ADU and whether housing services are removed. Applicants would also be required to submit a declaration to the Rent Board that includes a description of any housing services that would be removed because of the addition of the ADU. Most of the proposed ADU applications that the Department has reviewed do not remove a housing service. In these cases, the Rent Board would have 30 days to send the declaration to Planning and would be more procedural in nature. However, in the cases where a housing service is removed and a tenant petitions the Rent Board to verify said removal, the Rent Board would have 90 days to submit the declaration and their findings to the Planning Department.

While the Rent Board's review process is going on, Planning may begin their review of the ADU application; however, Planning may not approve the application until receipt of the Rent Board declaration and findings that housing services are not being removed. Depending on staff workload, this may cause unnecessary delays. While waiting for information from the Rent Board, staff may have moved on to review other projects, putting the ADU to the back of their workload. Delay concerns extend beyond the Planning Department since ADUs are now reviewed by all City agencies concurrently. This creates potential prioritization issues in deciding which ADU proposals to review first, not knowing if some ultimately would not be eligible to be approved pending the Rent Board declaration. Further, Rent Board appeals typically take months to be heard and resolved, likely beyond the 90 days Rent Board must provide Planning with the required materials.

Approval Paths and Rent Control

If enacted, the Ordinance would allow for ADUs under the Local ADU Program if 1) there is no removal of a housing service or 2) there is in-kind replacement of housing service that is not a substantial reduction. The anticipated amendments also create a third possible scenario that would allow for an ADU under the Local ADU Program: agreement between the landlord and tenant on the removal of the housing service and reduction in rent.

If the proposed ADU application does not comply with one of the above situations, then the proposal is not eligible for the Local ADU Program. The project sponsor may still be able to pursue an ADU under the State-Mandated ADU Program, but this option would likely result with fewer ADUs, and ADUs that are not subject to rent control. Alternatively, they could either 1) revise the proposal to not impact any housing services or 2) work with the tenant on agreeable terms to remove said housing service. These hypothetical scenarios are difficult to forecast, but if applicants pursue a State-Mandated ADU instead, then the City loses the opportunity for rent controlled units under the Local ADU Program. Based on recent Department data of active ADU projects, approximately 90 ADUs would not be approved under the Local ADU Program if this Ordinance were effective today. This data was determined based on projects where Planning is aware that the ADUs would impact housing services due to DBI's screening form or from Discretionary Review requests.

General Plan Compliance

The General Plan identifies ADUs as an effective and inexpensive way to increase the housing supply. The Ordinance retains existing housing units and prioritizes permanently affordable housing. Additionally, the proposed amendments would expand protections for existing tenants.

Racial and Social Equity Analysis

The Planning and Administrative Code amendments in the proposed Ordinance help protect existing tenants' rights. The ADU Programs have evolved so rapidly since the initial pilot program in the Castro. This is likely because the ADU program provides a quicker, and often more financially feasible path for property owners to add to the housing stock and different types of housing. However, the City needs to balance the desire for these ADUs with supporting existing tenants who may be impacted by the addition of an ADU.

Recent changes under State law allowed for more State-Mandated ADUs, potentially disproportionately impacting existing tenants compared to before. The proposed Ordinance seeks to protect existing tenants and their access to housing services. The majority of ADU proposals do not appear to remove housing services, but the proposed Ordinance provides additional support for tenants who believe their housing services are substantially reduced or removed without the appropriate rent adjustment. This gives renters, who typically do not have as much housing wealth as the landlord, an additional legal remedy through the declaration and opportunity to petition to the Rent Board.

Implementation

The Ordinance would yield major implementation impacts. Per recent pool of data, at least 90 ADUs would not be permitted under the Local Program if this legislation was effective. As noted above, this data point is only

based on the information the Department has, but it is still telling of the potential projects that might pursue the State-Mandated ADU Program.

The proposed Ordinance does not include any grandfathering clause and would immediately disqualify active ADU projects. Once enacted, existing projects would need to revise the proposal to retain existing housing services. Some project sponsors remove housing services to construct an ADU do go through the proper Rent Board mechanism to do so (i.e. reduction in rent for removal of parking). However, those project sponsors that are unwilling to do so may potentially pursue the State or Hybrid ADU Programs, if eligible. This would still result in an ADU but does not provide rent-controlled units.

As the proposed Ordinance is written today, the City would be relying on the owners' declaration. The anticipated amendments would require the Rent Board to expand their factual findings to determine if housing services would be lost due to the construction of an ADU, if a petition is received. This is a critical step in ensuring the appropriate agency is making this determination, especially since "housing services" are defined in the Administrative Code only. Without the anticipated amendments, the Planning Department is put in a difficult and awkward situation as the main point of contact for ADUs. Further, "housing services" are not identified on the plans so the Planning Department may not be able to accurately determine the "housing services", if any, as noted by the Rent Board. This information gap described earlier makes the Ordinance difficult to implement, which could negatively impact the existing tenants the legislation is meant to protect.

Lastly, this legislation does not address potential project revisions. There is no language proposed that prevents a project from being modified to later remove a housing service that would otherwise not be captured in the owner declaration to the Rent Board. This presents a major implementation impact to the Planning Department as the declaration to the Rent Board does not include accompanying plans and staff would be unable to confirm if the declaration is still valid. Further, if a Discretionary Review is filed on an ADU and it appears in front of the Planning Commission, the Planning Commission may be limited in how they modify the ADU if a housing service is present. This again creates a burden for implementation and may have unintended consequences that do not serve the existing tenants.

Recommendation

The Department recommends that the Commission *approve with modifications* the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. For ADUs under the Local Program where no housing services are removed and there are no tenant appeals, allow the applicant to submit proof of notification materials directly to Planning, without submitting a declaration to the Rent Board.
2. Allow the Planning Department to approve ADUs proposed under the Local ADU Program if the housing service proposed for removal is a parking space.

Basis for Recommendation

The Department supports the proposed Ordinance because it supports the Housing Element's goals to ensure adequate housing for current and future San Franciscans. Specifically, the Ordinance increases protections for

existing tenants. However, the Ordinance could further support our housing goals and San Francisco residents with the proposed modifications:

Recommendation 1: For ADUs under the Local Program where no housing services are removed and there are no tenant appeals, allow the applicant to submit proof of notification materials directly to Planning, without submitting a declaration to the Rent Board.

The Department's goal is to review proposed ADUs as expeditiously as possible. The majority of ADU proposals do not remove housing services or provide in-kind replacement if housing services are relocated. If enacted, the Ordinance would add an additional unnecessary step to ADU proposals that are not impacting existing tenants' rights. Instead, the applicant should be able to directly submit a copy of notification materials to the Planning Department which could save up to 30 days in review time. The Ordinance would best serve the public if it focused these additional declaration requirements on those proposed ADUs that are removing or substantially reducing housing services.

Recommendation 2: Allow the Planning Department to approve ADUs proposed under the Local ADU Program if the housing service proposed for removal is a parking space.

As written, all housing services are treated equally and the Planning Department is unable to approve a proposed ADU if it severs, substantially reduces, or removes any housing service. However, this may prevent potential ADUs from being built in opportune areas such as parking. The Department feels strongly that the City should strive to house people, not cars. Additionally, there is the concern that certain housing services such as parking are valued over rent controlled units and this should be remedied. This recommendation aligns with all other Department and City efforts to increase housing in San Francisco, while still protecting existing tenants' rights to certain housing services.

Required Commission Action

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

Environmental Review

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c)(2) and 15378 because they do not result in a physical change in the environment.

Public Comment

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 210699

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PLANNING COMMISSION DRAFT RESOLUTION

HEARING DATE: September 9, 2021

Project Name: Accessory Dwelling Units
Case Number: 2021-006353PCA [Board File No. 210699]
Initiated by: Supervisors Mandelman, Ronen, and Preston / Introduced June 15, 2021
Staff Contact: Veronica Flores, Legislative Affairs
veronica.flores@sfgov.org, (628) 652-7525
Reviewed by: Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, (628) 652-7533

RESOLUTION APPROVING WITH MODIFICATION A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO CLARIFY THE REQUIREMENTS FOR APPLICATIONS TO CONSTRUCT ACCESSORY DWELLING UNITS UNDER THE CITY'S LOCAL ACCESSORY DWELLING UNIT APPROVAL PROCESS; AMENDING THE ADMINISTRATIVE CODE TO CLARIFY THAT LANDLORDS MAY NOT REMOVE TENANT HOUSING SERVICES WITHOUT JUST CAUSE AND THAT ISSUANCE OF A BUILDING PERMIT DOES NOT CONSTITUTE JUST CAUSE; MAKING FINDINGS AS REQUIRED BY THE TENANT PROTECTION ACT OF 2019; AFFIRMING THE PLANNING DEPARTMENT'S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; AND MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1.

WHEREAS, on June 15, 2021 Supervisors, Mandelman, Ronen, and Preston introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 210699, which would amend the Planning Code to clarify the requirements for applications to construct Accessory Dwelling Units under the City's local Accessory Dwelling Unit approval process; amending the Administrative Code to clarify that landlords may not remove tenant housing services without just cause and that issuance of a building permit does not constitute just cause; making findings as required by the Tenant Protection Act of 2019;

WHEREAS, the Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on September 9, 2021; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2) and 15378; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby **approves with modifications** the proposed ordinance. The Commission's proposed recommendations are as follows:

1. For ADUs under the Local Program where no housing services are removed and there are no tenant appeals, allow the applicant to submit proof of notification materials directly to Planning, without submitting a declaration to the Rent Board.
2. Allow the Planning Department to approve ADUs proposed under the Local ADU Program if the housing service proposed for removal is a parking space.

Findings

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The Commission finds that the proposed Ordinance supports the Housing Element's goals to ensure adequate housing for current and future San Franciscans by increasing the potential for new Accessory Dwelling Units.
2. The Commission finds that the proposed will further protect existing tenants' rights.

General Plan Compliance

The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

OBJECTIVE 1

IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

Policy 1.5

Consider secondary units in community plans where there is neighborhood support and when other neighborhood goals can be achieved, especially if that housing is made permanently affordable to lower-income households.

OBJECTIVE 3

PROTECT THE AFFORDABILITY OF THE EXISTING HOUSING STOCK, ESPECIALLY RENTAL UNITS.

Policy 3.4

Preserve “naturally affordable” housing types, such as smaller and older ownership units.

The General Plan identifies ADUs as an effective and inexpensive way to increase the housing supply. The Ordinance retains existing housing units and prioritizes permanently affordable housing. Additionally, the proposed amendments would expand protections for existing tenants.

Planning Code Section 101 Findings

The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing or neighborhood character.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or

overburdening the streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

Planning Code Section 302 Findings.

The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES WITH MODIFICATIONS the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on September 9, 2021.

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: September 9, 2021

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1 [Planning, Administrative Codes - Accessory Dwelling Units]

2

3 **Ordinance amending the Planning Code to clarify the requirements for applications to**
 4 **construct Accessory Dwelling Units under the City's local Accessory Dwelling Unit**
 5 **approval process; amending the Administrative Code to clarify that landlords may not**
 6 **remove tenant housing services without just cause and that issuance of a building**
 7 **permit does not constitute just cause; making findings as required by the Tenant**
 8 **Protection Act of 2019; affirming the Planning Department's determination under the**
 9 **California Environmental Quality Act; and making findings of consistency with the**
 10 **General Plan, and the eight priority policies of Planning Code, Section 101.1.**

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.

15

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

17

18 Section 1. Findings.

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

24 (b) On _____, the Planning Commission, in Resolution No. _____,
 25 adopted findings that the actions contemplated in this ordinance are consistent, on balance,

1 with the City’s General Plan and eight priority policies of Planning Code Section 101.1. The
2 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
3 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

4 (c) This ordinance is intended in part to clarify the existing rules in the Rent Ordinance
5 as to housing services. The term housing services refers to services provided by the landlord
6 connected with the use or occupancy of a rental unit including, but not limited to, access to
7 areas such as garages, driveways, storage spaces, laundry rooms, decks, patios, gardens on
8 the same lot, and kitchen facilities or lobbies in single room occupancy (SRO) hotels. This
9 ordinance clarifies that landlords may not sever, remove, or reduce housing services without
10 just cause, and that this rule applies equally to landlords who intend to construct Accessory
11 Dwelling Units. These landlords must comply with just cause rules, and being in possession
12 of a building permit does not, in and of itself, confer just cause to sever a housing service. By
13 clarifying that the just cause rules in the Rent Ordinance apply, this ordinance is more
14 protective than the Tenant Protection Act of 2019 (Cal. Civ. Code § 1946.2), as the Rent
15 Ordinance further limits the reasons for termination of a residential tenancy, provides for
16 higher relocation assistance amounts, and provides additional tenant protections.

17
18 Section 2. Article 2 of the Planning Code is hereby amended by revising Section 207,
19 to read as follows:

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

21 * * * *

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

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 (C) Controls on Construction. An Accessory Dwelling Unit regulated
6 by this subsection (c)(4) is permitted to be constructed in an existing or proposed building
7 under the following conditions:

8 (i) For lots that have four existing Dwelling Units or fewer or
9 where the zoning would permit the construction of four or fewer Dwelling Units, one ADU is
10 permitted; for lots that have more than four existing Dwelling Units or are undergoing seismic
11 retrofitting under subsection (c)(4)(F) below, or where the zoning would permit the
12 construction of more than four Dwelling Units, there is no limit on the number of ADUs
13 permitted, ~~provided, however, that~~

14 (ii) ~~The~~ Department shall not approve an application for
15 construction of an ADU where a tenant on the lot has been evicted pursuant to Administrative
16 Code Sections 37.9(a)(9) through (a)(12) and 37.9(a)(14) under a notice of eviction served
17 within 10 years prior to filing the application for a building permit to construct the ADU or
18 where a tenant has been evicted pursuant to Administrative Code Section 37.9(a)(8) under a
19 notice of eviction served within five years prior to filing the application for a building permit to
20 construct the ADU. This ~~provision~~ subsection (c)(4)(C)(ii) shall not apply if the tenant was evicted
21 under Section 37.9(a)(11) or 37.9(a)(14) and the applicant(s) either (A) have certified that the
22 original tenant reoccupied the unit after the temporary eviction or (B) have submitted to the
23 Department and to the Residential Rent Stabilization and Arbitration Board (Rent Board) a
24 declaration from the property owner or the tenant certifying that the property owner notified
25 the tenant of the tenant’s right to reoccupy the unit and the tenant chose not to reoccupy it.

1 more than 10 feet above grade; and lightwell infills provided that the infill will be against a
2 blank neighboring wall at the property line and not visible from any off-site location; as these
3 spaces existed as of July 11, 2016. An ADU constructed entirely within the existing built
4 envelope, as defined in this subsection~~(ii)~~, along with permitted obstructions allowed in
5 Section 136(c)(32), of an existing building or authorized auxiliary structure on the same lot, or
6 where an existing stand-alone garage or storage structure has been expanded to add
7 dormers, is exempt from the notification requirements of Section 311 of this Code unless the
8 existing building or authorized auxiliary structure on the same lot is in an Article 10 or Article
9 11 District, in which case the notification requirements will apply. If an ADU will be constructed
10 under a cantilevered room or deck that encroaches into the required rear yard, a pre-
11 application meeting between the applicant and adjacent neighbors for all the proposed work is
12 required before the application may be submitted.

13 (iii) When a stand-alone garage, storage, or other auxiliary
14 structure is being converted to an ADU, an expansion to the envelope is allowed to add
15 dormers even if the stand-alone garage, storage structure, or other auxiliary structure is in the
16 required rear yard.

17 (iv) On a corner lot, a legal stand-alone nonconforming garage,
18 storage structure, or other auxiliary structure may be expanded within its existing footprint by
19 up to one additional story in order to create a consistent street wall and improve the continuity
20 of buildings on the block.

21 (v) An Accessory Dwelling Unit shall not be constructed using
22 space from an existing Dwelling Unit except that an ADU may expand into habitable space on
23 the ground or basement floors provided that it does not exceed 25% of the gross square
24 footage of such space. The Zoning Administrator may waive this 25% limitation if ~~(a)~~ the
25 resulting space would not be usable or would be impractical to use for other reasonable uses

1 included but not limited to storage or bicycle parking or (b2) waiving the limitation would help
2 relieve any negative layout issues for the proposed ADU.

3 (viii) An existing building undergoing seismic retrofitting may be
4 eligible for a height increase pursuant to subsection (c)(4)(F) below.

5 (vix) Notwithstanding any other provision of this Code, an
6 Accessory Dwelling Unit authorized under this ~~Section 207~~subsection (c)(4) may not be merged
7 with an original unit(s).

8 (vix) An Accessory Dwelling Unit shall not be permitted in any
9 building in a Neighborhood Commercial District or in the Chinatown Community Business or
10 Visitor Retail Districts if it would eliminate or reduce a ground-story retail or commercial space,
11 unless the Accessory Dwelling Unit is a Designated Child Care Unit, as defined in Section
12 102, and meets all applicable standards of Planning Code Section 414A.6(e).

13 * * * *

14 (J) **Notification.** Prior to submitting an application to construct an
15 ADU under this subsection (c)(4), the property owner shall cause a notice describing the proposed
16 project to be posted on the subject property for at least 15 days, cause a written notice describing the
17 proposed project to be mailed or delivered to each unit (including unauthorized units) at the subject
18 property at least 15 days prior to submitting an application to construct an ADU, and submit proof of
19 these notices to the Planning Department as part of the application to construct an ADU. These
20 notices shall have a format and content determined by the Zoning Administrator, and shall generally
21 describe the project, including the number and location of the proposed ADU(s), and how to obtain the
22 written declaration required by subsection (c)(4)(C)(iii). These notices shall describe how to obtain
23 additional information regarding the project and shall provide contact information for the Planning
24 Department that complies with the requirements of the Language Access Ordinance, Chapter 91 of the
25 Administrative Code, to provide vital information about the Planning Department’s services or

1 programs in the languages spoken by a Substantial Number of Limited English Speaking Persons, as
2 defined in Chapter 9I.

3 * * * *

4
5 Section 3. Chapter 37 of the Administrative Code is hereby amended by revising
6 Sections 37.2 and 37.9, to read as follows:

7 **SEC. 37.2. DEFINITIONS.**

8 * * * *

9 (r) Rental Units. All residential dwelling units in the City and County of San Francisco
10 together with the land and appurtenant buildings thereto, and all housing services, privileges,
11 furnishings, and facilities supplied in connection with the use or occupancy thereof, including
12 garage and parking facilities.

13 Garage facilities, parking facilities, driveways, storage spaces, laundry rooms, decks,
14 patios, or gardens on the same lot, or kitchen facilities or lobbies in single room occupancy
15 (SRO) hotels, supplied in connection with the use or occupancy of a unit, may not be severed
16 from the tenancy by the landlord without just cause as required by Section 37.9(a). Any
17 severance, reduction or removal of a housing service, even if permitted under ~~this Section 37.2(r)~~
18 Section 37.9(a), shall be offset by a corresponding reduction in rent. Either a landlord or a
19 tenant may file a petition with the Rent Board to determine the amount of the rent reduction.
20 For the avoidance of doubt, the issuance of a permit for construction of an Accessory Dwelling Unit
21 does not in and of itself constitute a just cause for the purpose of severing a housing service.

22 * * * *

23 **SEC. 37.9. EVICTIONS.**

24 Notwithstanding Section 37.3, this Section 37.9 shall apply as of August 24, 1980, to
25 all landlords and tenants of rental units as defined in Section 37.2(r).

1 * * * *

2 (f) Whenever a landlord wrongfully endeavors to recover possession or recovers
3 possession of a rental unit in violation of Sections 37.9 and/or 37.10A as enacted herein, or
4 wrongfully endeavors to sever or severs a housing service supplied in connection with the use or
5 occupancy of a rental unit as set forth in Section 37.2(r), the tenant or Rent Board may institute a
6 civil proceeding for injunctive relief, money damages of not less than three times actual
7 damages (including damages for mental or emotional distress as specified below), and
8 whatever other relief the court deems appropriate. If the landlord has recovered possession
9 pursuant to Section 37.9(a)(8), such action shall be brought no later than five years after (1)
10 the date the landlord files the first statement of occupancy with the Rent Board under Section
11 37.9(a)(8)(vii) or (2) three months after the landlord recovers possession, whichever is earlier.
12 In the case of an award of damages for mental or emotional distress, said award shall only be
13 trebled if the trier of fact finds that the landlord acted in knowing violation of or in reckless
14 disregard of Section 37.9 or 37.10A herein. The prevailing party shall be entitled to
15 reasonable attorney's fees and costs pursuant to order of the court. The remedy available
16 under this Section 37.9(f) shall be in addition to any other existing remedies which may be
17 available to the tenant or the Rent Board.

18 * * * *

19
20 Section 4. Effective Date. This ordinance shall become effective 30 days after
21 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
22 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
23 of Supervisors overrides the Mayor's veto of the ordinance.
24
25

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

7

8 APPROVED AS TO FORM:
9 DENNIS J. HERRERA, City Attorney

10 By: /s/ Peter R. Miljanich
11 PETER R. MILJANICH
12 Deputy City Attorney

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