

FILE NO.

ORDINANCE NO.

[Planning, Administrative Codes – Authorization of Dwelling Units Installed Without a Permit]

Ordinance amending the Planning Code to provide a process for granting legal status to existing dwelling units constructed without the required permits and establishing a fee for administering the authorization program, amending the Administrative Code to provide that a dwelling unit that was subject to the Rent Ordinance before legalization will remain under the Rent Ordinance, making environmental findings and findings of consistency with the General Plan and the eight priority policies of Planning Code Section 101.1, and directing the Clerk to submit a copy of this ordinance to the California Department of Housing and Community Development in accordance with State law.

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

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

Section 1. General and Environmental Findings.

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

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

Supervisor Chiu
BOARD OF SUPERVISORS

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1 (c) On _____, the Planning Commission, in Resolution No. _____, adopted findings that the
2 actions contemplated in this ordinance are consistent, on balance, with the City's General Plan and eight priority
3 policies of Planning Code Section 101.1. The Board adopts these findings as its own.

4 Section 2. The Planning Code is hereby amended by adding Section 207.3, to read as follows:

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

7 Notwithstanding Section 207.2 or any other provision of this Code, certain dwelling units that were constructed
8 without benefit of permit in an existing residential building or in an ancillary structure located on the same lot may be
9 granted legal status subject to the conditions and procedures set forth below.

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

11 (1) In Government Code Section 65852.150, the State Legislature declared that second units are a
12 valuable form of housing in California because they "provide housing for family members, students, the elderly, in-home
13 health care providers, the disabled, and others, at below market prices within existing neighborhoods" and that
14 "homeowners who create second units benefit from added income, and an increased sense of security."

15 (2) San Francisco has long had a housing shortage, especially of affordable housing. The housing market
16 continues to be tight and housing costs are beyond the reach of many households. Policy 1.5 of the City's 2009 Housing
17 Element states that secondary units in existing residential buildings represents a simple and cost-effective method of
18 expanding the City's housing supply.

19 (3) The City has no definitive information on the number of dwelling units that have been added to
20 existing residential buildings without benefit of permit, but unofficial estimates indicate that as many as 20,000 to 25,000
21 such dwelling units exist as of 2013. Often these illegal units have been built in the basements, garages, and attics of
22 existing buildings or in rear-yard structures. While many of these units may not meet existing Planning Code requirements,
23 they constitute a major supply of San Francisco's affordable housing units and often meet life and safety standards and may
24 require only exceptions from density, open space, and other Planning Code requirements in order to become legal.

1 (4) Providing a mechanism to grant legal status to an illegally constructed dwelling unit in an existing
2 building zoned for residential use furthers several public policy objectives. By encouraging the legalization of these units,
3 the City can add legitimate units to the City's supply of affordable housing, ensure that these units are safe and habitable,
4 and properly include these units when calculating the City's existing housing supply.

5 (b) **Scope.** This Section 207.3 shall apply to an existing building, or to an ancillary structure on the same lot, in a
6 district where residential use is principally permitted and that has one or more dwelling units that were constructed prior to
7 January 1, 2013 without benefit of permit. One dwelling unit per lot meeting this threshold requirement may be granted
8 legal status under this Section, regardless of the density limits of the zoning district.

9 (c) **Pre-screening Required.** Prior to filing an application for approval of a dwelling unit pursuant to subsection
10 (d), the owner or owner's agent must submit to the Zoning Administrator a pre-screening form, established by the Zoning
11 Administrator, together with:

12 (1) the administrative fee established in Section 359 of this Code;

13 (2) evidence from San Francisco Water Department, telephone, gas and electric records, written lease
14 agreements, or other evidence satisfactory to the Zoning Administrator showing that the additional dwelling unit(s) for
15 which approval is sought existed prior to January 1, 2013; and

16 (3) evidence that the property owner has notified the Assessor of the existence of the additional unit(s);

17 (4) floor plans for the entire building and a plan showing the location of all structures on the subject lot;

18 (5) a Certificate issued by the Department of Building Inspection confirming that an assessment
19 prepared by a licensed contractor, architect, or engineer outlines a plan to comply with all applicable Building Code
20 requirements; and

21 (6) such other information as the Zoning Administrator may require.

22 (d) **Application Process; Permit(s) Required.** After completion of the pre-screening process required by
23 subsection (c) and payment of any permit fees required by this Code or other City codes, a property owner or the owner's
24 authorized agent may file an application for a building permit to grant legal status to one existing dwelling unit on the
25 property. Applications for any required plumbing and electrical permits shall also be submitted.

1 The building permit application shall explicitly refer to this Code section, state the number of dwelling units on the
2 lot, and designate the unit for which approval is sought under this Section 207.3. The approval, issuance, expiration and
3 cancellation of an application filed pursuant to this Section and any resulting permits shall be in accordance with the
4 provisions of all City codes, except as provided below. Cancellation or disapproval of a permit application shall terminate
5 all rights under this Section created by the application. A dwelling unit is not lawful unless and until all necessary
6 approvals have been obtained.

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

8 (1) A dwelling unit authorized under this Section 207.3 must satisfy all applicable requirements of this
9 Code except for the usable open space requirements set forth in Section 135 and the light and air requirements set forth in
10 Section 140 so long as open space requirements are met for the other existing units, the newly legalized unit has its own
11 entrance directly accessible to a public row and each room has windows that open to the outside.

12 (2) A dwelling unit in an ancillary structure on the same lot as the single-family or multi-family building
13 shall not require a variance from the rear yard requirements of Section 134 in order to be granted legal status under this
14 Section 207.3.

15 (3) One such dwelling unit on the lot is allowed to exceed the permitted density authorized for that zoning
16 district provided that a residential use is principally permitted in that zoning district. Authorization of an additional unit
17 over the density limits will not change the official zoning classification of the lot.

18 (4) A legalized unit will be considered a legal nonconforming unit and subject to the same privileges and
19 restrictions contained in Section 181 of this Code.

20 **(f) Compliance With Other City Codes.** A dwelling unit authorized under this Section 207.3 must meet all
21 applicable provisions of other City codes other than the provisions of the Planning Code cited in subsection (e). Any Code
22 equivalencies authorized under the San Francisco Building Code, Electrical Code, Plumbing Code, Mechanical Code, Fire
23 Code, or other applicable Code shall be considered by the relevant agency. As provided by Section 37.2(r) of the
24 Administrative Code, a dwelling unit that was subject to the Residential Rent Stabilization and Arbitration Ordinance
25

1 (Chapter 37 of the San Francisco Administrative Code) prior to legalization under this Section 207.3 shall remain subject to
2 the Residential Rent Stabilization and Arbitration Ordinance after legalization.

3 (g) **Additional Dwelling Unit Considered a Lawful Nonconforming Use.** Any dwelling unit authorized under this
4 Section 207.3 shall be considered a lawful nonconforming use subject to the provisions of Planning Code Sections 180
5 through 189.

6 (h) **Subdivision and Lot Splits Prohibited.** Notwithstanding the provisions of Article 9 of the San Francisco
7 Subdivision Code, a lot with additional units authorized under this Section 207.3 may not be subdivided in a manner that
8 would allow for the additional unit(s) to be sold or separately financed pursuant to any condominium plan, housing
9 cooperative, or similar form of separate ownership.

10 (i) **Reports.** Six months from the effective date of this ordinance and every six months for the first three years
11 after the effective date, the Zoning Administrator and the Director of the Department of Building Inspection shall issue a
12 joint report on the effectiveness of the additional dwelling unit authorization program. After three years, the report will be
13 included in the City's Annual Housing Inventory. The report shall, at a minimum, state the number of pre-screening forms
14 and building permit applications that have been filed pursuant to this Section 207.3. For the first three years, copies of these
15 reports shall be submitted to the Clerk of the Board of Supervisors, the Mayor, and the Controller.

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

20 Section 3. The Planning Code is hereby amended by amending Section 311 and adding Section 369, to
21 read as follows:

22 **SEC. 311. RESIDENTIAL PERMIT REVIEW PROCEDURES FOR RH, RM AND RTO DISTRICTS.**

23 (a) **Purpose.** The purpose of this Section is to establish procedures for reviewing building permit applications for lots
24 in R Districts in order to determine compatibility of the proposal with the neighborhood and for providing notice to

property owners and residents neighboring the site of the proposed project and to interested neighborhood organizations, so that concerns about a project may be identified and resolved during the review of the permit.

(b) **Applicability.** For the purposes of this Section, an alteration in RH and RM Districts shall be defined as any change in use or change in the number of dwelling units of a residential building, removal of more than 75 percent of a residential building's existing interior wall framing or the removal of more than 75 percent of a residential building's existing interior wall framing or the removal of more than 75 percent of the area of the existing framing, or an increase to the exterior dimensions of a residential building except those features listed in Section 136(c)(1) through 136(c)(24) and 136(c)(26).

SEC. 369. DWELLING UNIT AUTHORIZATION PROCESSING FEE.

In addition to any other permit fees required by this Code or other City codes, each applicant seeking to authorize an additional dwelling unit constructed without benefit of permit pursuant to Section 207.3 of this Code shall pay an administrative fee to compensate the Planning Department for its full costs of reviewing pre-screening applications and maintaining the master list of dwelling units approved under Section 207.3. The fee shall be \$xxx.00 as an initial fee, plus time and materials as set forth in Section 350(c) of this Code.

Comment [A1]: tbd

Section 4. The Administrative Code is hereby amended by amending Section 37.2 and adding Chapter 73, to read as follows:

SEC. 37.2. DEFINITIONS

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

Garage facilities, parking facilities, driveways, storage spaces, laundry rooms, decks, patios, or gardens on the same lot, or kitchen facilities or lobbies in single room occupancy (SRO) hotels, supplied in connection with the use or occupancy of a unit, may not be severed from the tenancy by the landlord without just cause as required by Section 37.9(a). Any severance, reduction or removal permitted under this Section 37.2(r) shall be

1 offset by a corresponding reduction in rent. Either a landlord or a tenant may file a petition with the Rent Board to
2 determine the amount of the rent reduction.

3 The term "rental units" shall include a dwelling unit constructed without benefit of permit in an existing residential
4 building and subsequently authorized pursuant to Section 207.3 of the Planning Code if that unit had been subject to the
5 Residential Rent Stabilization and Arbitration Ordinance prior to authorization.

6 The term "rental units" shall not include:

7 (1) Housing accommodations in hotels, motels, inns, tourist houses, rooming and boarding houses,
8 provided that at such time as an accommodation has been occupied by a tenant for 32 continuous days or more,
9 such accommodation shall become a rental unit subject to the provisions of this Chapter; provided further, no
10 landlord shall bring an action to recover possession of such unit in order to avoid having the unit come within the
11 provisions of this Chapter. An eviction for a purpose not permitted under Section 37.9(a) shall be deemed to be
12 an action to recover possession in order to avoid having a unit come within the provisions of this Chapter;

13 (2) Dwelling units in nonprofit cooperatives owned, occupied and controlled by a majority of the
14 residents or dwelling units solely owned by a nonprofit public benefit corporation governed by a board of
15 directors the majority of which are residents of the dwelling units and where it is required in the corporate by-laws
16 that rent increases be approved by a majority of the residents;

17 (3) Housing accommodation in any hospital, convent, monastery, extended care facility, asylum,
18 residential care or adult day health care facility for the elderly which must be operated pursuant to a license
19 issued by the California Department of Social Services, as required by California Health and Safety Chapters 3.2
20 and 3.3; or in dormitories owned and operated by an institution of higher education, a high school, or an
21 elementary school;

22 (4) Except as provided in Subsections (A), (B) and (C), dwelling units whose rents are controlled or
23 regulated by any government unit, agency or authority, excepting those unsubsidized and/or unassisted units
24 which are insured by the United States Department of Housing and Urban Development; provided, however, that
25 units in unreinforced masonry buildings which have undergone seismic strengthening in accordance with

1 Building Code Chapters 16B and 16C shall remain subject to the Rent Ordinances to the extent that the
2 ordinance is not in conflict with the seismic strengthening bond program or with the program's loan agreements
3 or with any regulations promulgated thereunder;

4 (A) For purposes of Sections 37.2, 37.3(a)(10)(A), 37.4, 37.5, 37.6, 37.9, 37.9A, 37.10A, 37.11A
5 and 37.13, and the arbitration provisions of Sections 37.8 and 37.8A applicable only to the provisions of Sections
6 37.3(a)(10)(A), the term "rental units" shall include units occupied by recipients of tenant-based rental assistance
7 where the tenant-based rental assistance program does not establish the tenant's share of base rent as a fixed
8 percentage of a tenant's income, such as in the Section 8 voucher program and the "Over-FMR Tenancy"
9 program defined in 24 CFR Section 982.4;

10 (B) For purposes of Sections 37.2, 37.3(a)(10)(B), 37.4, 37.5, 37.6, 37.9, 37.9A, 37.10A, 37.11A
11 and 37.13, the term "rental units" shall include units occupied by recipients of tenant-based rental assistance
12 where the rent payable by the tenant under the tenant-based rental assistance program is a fixed percentage of
13 the tenant's income; such as in the Section 8 certificate program and the rental subsidy program for the Housing
14 Opportunities for Persons with Aids ("HOPWA") program (42 U.S.C. Section 12901 et seq., as amended);

15 (C) The term "rental units" shall include units in a building for which tax credits are reserved or
16 obtained pursuant to the federal low income housing tax credit program (LIHTC, Section 42 of the Internal
17 Revenue Code, 26 U.S.C. Section 42), that satisfy the following criteria:

18 (i) Where a tenant's occupancy of the unit began before the applicable LIHTC regulatory
19 agreement was recorded; and,

20 (ii) Where the rent is not controlled or regulated by any use restrictions imposed by the City and
21 County of San Francisco, the San Francisco Redevelopment Agency, the State of California Office of Housing
22 and Community Development, or the United States Department of Housing and Urban Development.

23 Nothing in this Section 37.2(r)(4)(C) precludes a landlord from seeking an exemption from rent
24 regulation on the basis of substantial rehabilitation under Section 37.2(r)(6).

1 This Section 37.2(r)(4)(C) definition of "rental unit" shall apply to any unit where the qualifying
2 tenant (see Section 37.2(r)(4)(C)(i)) is in possession of the unit on or after the effective date of this ordinance
3 (Ord. No. 281-06), including but not limited to any unit where the tenant has been served with a notice to quit but
4 has not vacated the unit and there is no final judgment against the tenant for possession of the unit as of the
5 effective date of this ordinance (Ord. No. 281-06).

6 (5) Rental units located in a structure for which a certificate of occupancy was first issued after the
7 effective date of this ordinance; (A) except as provided for certain categories of units and dwellings by Section
8 37.3(d) and Section 37.9A(b) of this Chapter, (B) except as provided in a development agreement entered into
9 by the City under San Francisco Administrative Code Chapter 56; and (C) except as provided for foreclosed units
10 and dwellings by Section 37.9D.

11 (6) Dwelling units in a building which has undergone substantial rehabilitation after the effective
12 date of this ordinance; provided, however, that RAP rental units are not subject to this exemption; and except as
13 provided for foreclosed units and dwellings by Section 37.9D.

14 (7) Dwellings or units otherwise subject to this Chapter 37, to the extent such dwellings or units are
15 partially or wholly exempted from rent increase limitations by the Costa-Hawkins Rental Housing Act (California
16 Civil Code Sections 1954.50, et seq.) and/or San Francisco Administrative Code Section 37.3(d).

17 **CHAPTER 73. RELOCATION ASSISTANCE FOR SECONDARY UNIT LEGALIZATION.**

18 Section 5. This section is uncoded.

19 (a) **Equivalencies.** The Director of the Department of Building Inspection shall determine whether
20 equivalencies from the provisions of dwelling units authorized by Planning Code Section 207.3, shall prepare
21 one or more Administrative Bulletins to define and implement the code equivalencies, and shall coordinate with
22 the Zoning Administrator in the development of any joint Administrative Bulletins that the Planning and Building
23 Departments determine are necessary or desirable in order to implement the policy and provisions of this
24 ordinance. Any Administrative Bulletins developed jointly or by either Department shall be completed within one
25 year of the effective date of this ordinance.

Comment [A2]: Lift from Chap 72 Relocation assistance

1 **(b) Notice.** Within one month from the effective date of this ordinance, the Clerk of the Board of Supervisors shall
2 cause to be published at least once in a newspaper of general circulation notice that the program for authorization of
3 dwelling units under Section 207.3 is in effect. The Tax Collector shall mail notice to property owners with the first property
4 tax bill sent after the effective date of this ordinance. The notices by the Clerk of the Board and the Tax Assessor shall
5 advise property owners of the provisions of said Section 207.3. The Zoning Administrator and Director of the Department of
6 Building Inspection shall supplement the aforementioned notices with any additional notice they deem necessary to insure
7 that the public receives adequate notice of the provisions of Section 207.3.

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

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

16 Section 8. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance is
17 for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such
18 decision shall not affect the validity of the remaining portions of the ordinance. The Board of Supervisors hereby
19 declares that it would have passed this ordinance and each and every section, subsection, sentence, clause,
20 phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this
21 ordinance would be subsequently declared invalid or unconstitutional.

22 Section 9. Directions to Clerk. The Clerk is hereby directed to submit a copy of this ordinance to the
23 California Department of Housing and Community Development within 60 days following adoption pursuant to
24 Section 65852.2(h) of the California Government Code.

25 APPROVED AS TO FORM:

Supervisor Chiu
BOARD OF SUPERVISORS

DENNIS J. HERRERA, City Attorney

By:

JUDITH A. BOYAJIAN
Deputy City Attorney

Supervisor Chiu
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