

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

Ordinance amending the Planning and Building Codes 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, and requiring the property owner to provide relocation assistance to displaced tenants; 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 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 ~~strikethrough 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) This ordinance is adopted under the California Second Unit Law (Government Code Section 65852.2 et seq.

(b) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources

1 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
2 Supervisors in File No. _____ and is incorporated herein by reference

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

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

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

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

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

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

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

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

5 (3) The City has no definitive information on the number of dwelling units that have
6 been added to existing residential buildings without benefit of permit, but unofficial estimates indicate
7 that as many as 30,000 to 40,000 such dwelling units exist as of 2013. Often these illegal units have
8 been built in the basements, garages, and attics of existing buildings or in rear-yard structures. While
9 many of these units may not meet existing Planning Code requirements, they constitute a major supply
10 of San Francisco's affordable housing units and often meet life and safety standards and may require
11 only exceptions from density, open space, and other Planning Code requirements in order to become
12 legal.

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

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

23 **(c) Compliance with Planning Code Requirements; Exceptions.**

24 (1) A dwelling unit authorized under this Section 207.3 must satisfy all applicable
25 requirements of this Code except for the usable open space requirements set forth in Section 135 and

1 the light and air requirements set forth in Section 140 so long as open space requirements are met for
2 the other existing units.

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

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

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

12 (d) **Compliance With Other City Codes.** A dwelling unit authorized under this Section 207.3
13 must meet all applicable provisions of other City codes other than the provisions of the Planning Code
14 cited in subsection (c). Any Code equivalencies authorized under the San Francisco Building Code,
15 Electrical Code, Plumbing Code, Mechanical Code, Fire Code, or other applicable Code shall be
16 considered by the relevant agency. As provided by Section 37.2(r) of the Administrative Code, a
17 dwelling unit that was subject to the Residential Rent Stabilization and Arbitration Ordinance (Chapter
18 37 of the San Francisco Administrative Code) prior to legalization under this Section 207.3 shall
19 remain subject to the Residential Rent Stabilization and Arbitration Ordinance after legalization.

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

23 (f) **Subdivision and Lot Splits Prohibited.** Notwithstanding the provisions of Article 9 of the
24 San Francisco Subdivision Code, a lot with an additional unit authorized under this Section 207.3 may
25 not be subdivided in a manner that would allow for the additional unit to be sold or separately financed

1 pursuant to any condominium plan, housing cooperative, or similar form of separate ownership. The
2 additional unit may be re-merged per Section 317 of the Planning Code.

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

11 (h) **Master List of Additional Dwelling Units Approved.** The Planning Department shall
12 create and maintain a master list of dwelling units approved pursuant to the provisions of this Section
13 207.3 and corresponding property addresses for use by the San Francisco Rent Stabilization and
14 Arbitration Board, Tax Assessor, and other interested City departments, boards or commissions.

15 Section 3. The Planning Code is hereby amended by amending Section 311, to reach
16 as follows:

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

19 * * * *

20 (b) **Applicability.** Except as indicated herein, all building permit applications for
21 demolition and/or new construction, and/or alteration of residential buildings in RH, RM, and
22 RTO Districts shall be subject to the notification and review procedures required by this
23 Section. Subsection 311(e) regarding demolition permits and approval of replacement
24 structures shall apply to all R Districts.

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

7 (2) For the purposes of this Section, an alteration in RTO Districts shall be defined as a
8 change of use described in Section 312(c) ~~or a change in the number of dwelling units of a~~
9 ~~building,~~ removal of more than 75 percent of a building's existing interior wall framing or the
10 removal of more than 75 percent of the existing framing, or an increase to the exterior
11 dimensions of a building except for those features listed in Section 136(c)(1) through
12 136(c)(24) and 136(c)(26).

13 * * * *

14 Section 4. The Building Code is hereby amended by adding Section 106A.3.1.3, to
15 read as follows:

16 **106A.3.1.3. Authorization of Dwelling Units Installed Without a Permit.**

17 **(a) Pre-Screening required.** Prior to filing a permit application for approval of an existing
18 unauthorized dwelling unit under Section 207.3 of the Planning Code, the owner of the building or the
19 owner's authorized agent shall submit the following information to the Department for the purpose of
20 determining whether the unauthorized dwelling unit can comply with the requirements of this Code or
21 other codes administered and enforced by the Department, or whether equivalencies from Code
22 requirements can be obtained:

23 (1) a pre-screening form, together with floor plans for the entire building and a plan
24 showing the location of all structures on the subject lot;
25

1 (2) evidence from the San Francisco Water Department, telephone, gas or electric
2 records, written lease agreements, or other evidence acceptable to the Department showing that the
3 dwelling unit for which approval is sought existed prior to January 1, 2013;

4 (3) an assessment prepared by a licensed contractor, architect, or engineer that outlines
5 a plan to comply with all applicable requirements of the Building Code and other Codes administered
6 and enforced by the Department; and

7 (4) such other information as the Building Official shall require.

8 **(b) Alternative review process.** The Department shall provide a list of consultants who are
9 expert in Code requirements or develop an equivalent process that would enable the property owner to
10 consult with outside experts in advance of submitting to the Department the pre-screening form and
11 other information required by subsection (a).

12 **(c) Fee.** The Standard Hourly Rates for Administration shall apply to compensate the
13 Department for its costs in administering the pre-screening program.

14 **(d) Application Process; Permit(s) Required.** After completion of the pre-screening process
15 required by subsection (a) a property owner or the owner's authorized agent may file an application
16 for a building permit to grant legal status to one existing dwelling unit on the property along with
17 applications for any required plumbing and electrical permits. The building permit application shall
18 explicitly refer to this Code section and designate the unit for which approval is sought. The approval,
19 issuance, expiration and cancellation of an application filed pursuant to this Section and any resulting
20 permits shall be in accordance with the provisions of all City codes, except as provided below.
21 Cancellation or disapproval of a permit application shall terminate all rights under this Section
22 created by the application. A dwelling unit is not lawful unless and until all necessary approvals have
23 been obtained.

24 Section 5. The Administrative Code is hereby amended by amending Sections 37.2
25 and 37.7, to read as follows:

1 * * * *

2 **SEC. 37.2. DEFINITIONS.**

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

7 Garage facilities, parking facilities, driveways, storage spaces, laundry rooms, decks,
8 patios, or gardens on the same lot, or kitchen facilities or lobbies in single room occupancy
9 (SRO) hotels, supplied in connection with the use or occupancy of a unit, may not be severed
10 from the tenancy by the landlord without just cause as required by Section 37.9(a). Any
11 severance, reduction or removal permitted under this Section 37.2(r) shall be offset by a
12 corresponding reduction in rent. Either a landlord or a tenant may file a petition with the Rent
13 Board to determine the amount of the rent reduction.

14 The term "rental units" shall not include:

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

23 (2) Dwelling units in nonprofit cooperatives owned, occupied and controlled by a
24 majority of the residents or dwelling units solely owned by a nonprofit public benefit
25 corporation governed by a board of directors the majority of which are residents of the

1 dwelling units and where it is required in the corporate by-laws that rent increases be
2 approved by a majority of the residents;

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

8 (4) Except as provided in Subsections (A), (B) and (C), dwelling units whose rents
9 are controlled or regulated by any government unit, agency or authority, excepting those
10 unsubsidized and/or unassisted units which are insured by the United States Department of
11 Housing and Urban Development; provided, however, that units in unreinforced masonry
12 buildings which have undergone seismic strengthening in accordance with Building Code
13 Chapters 16B and 16C shall remain subject to the Rent Ordinances to the extent that the
14 ordinance is not in conflict with the seismic strengthening bond program or with the program's
15 loan agreements or with any regulations promulgated thereunder;

16 (A) For purposes of Sections 37.2, 37.3(a)(10)(A), 37.4, 37.5, 37.6, 37.9, 37.9A,
17 37.10A, 37.11A and 37.13, and the arbitration provisions of Sections 37.8 and 37.8A
18 applicable only to the provisions of Sections 37.3(a)(10)(A), the term "rental units" shall
19 include units occupied by recipients of tenant-based rental assistance where the tenant-based
20 rental assistance program does not establish the tenant's share of base rent as a fixed
21 percentage of a tenant's income, such as in the Section 8 voucher program and the "Over-
22 FMR Tenancy" program defined in 24 CFR Section 982.4;

23 (B) For purposes of Sections 37.2, 37.3(a)(10)(B), 37.4, 37.5, 37.6, 37.9, 37.9A,
24 37.10A, 37.11A and 37.13, the term "rental units" shall include units occupied by recipients of
25 tenant-based rental assistance where the rent payable by the tenant under the tenant-based

1 rental assistance program is a fixed percentage of the tenant's income; such as in the Section
2 8 certificate program and the rental subsidy program for the Housing Opportunities for
3 Persons with Aids ("HOPWA") program (42 U.S.C. Section 12901 et seq., as amended);

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

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

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

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

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

22 (D) The term "rental units" shall a dwelling unit constructed without benefit of permit
23 in an existing residential building and subsequently authorized pursuant to Section 207.3 of the
24 Planning Code if that unit had been subject to the Residential Rent Stabilization and Arbitration
25 Ordinance prior to authorization.

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

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

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

14 * * * *

15 **SEC. 37.7. CERTIFICATION OF RENT INCREASES FOR CAPITAL IMPROVEMENTS,**
16 **REHABILITATION WORK, ENERGY CONSERVATION IMPROVEMENTS, AND**
17 **RENEWABLE ENERGY IMPROVEMENTS.**

18 (a) **Authority.** In accordance with such guidelines as the Board shall establish, the
19 Board and designated Administrative Law Judges shall have the authority to conduct hearings
20 in order to certify rental increases to the extent necessary to amortize the cost of capital
21 improvements, rehabilitations, energy conservation improvements, and renewable energy
22 improvements. Costs determined to be attributable to such work and improvements shall be
23 amortized over a period which is fair and reasonable for the type and the extent of the work
24 and improvements, and which will provide an incentive to landlords to maintain, improve and
25 renovate their properties while at the same time protecting tenants from excessive rent

1 increases. Costs attributable to routine repair and maintenance, or any costs attributable to
2 legalizing an existing dwelling unit under Section 207.3 of the Planning Code shall not be certified.

3 * * * *

4 Section 6. The Administrative Code is hereby amended by adding Chapter 73, to read
5 as follows:

6 **CHAPTER 73. RELOCATION ASSISTANCE FOR RESIDENTS DISPLACED DUE TO**
7 **LEGALIZATION OF EXISTING DWELLING UNITS UNDER PLANNING CODE SECTION**
8 **207.3.**

9 **SEC. 73.1. INTENT AND PURPOSE.**

10 (a) The Board of Supervisors finds that authorization of an illegally installed dwelling unit
11 pursuant to Planning Code Section 207.3 may require temporary vacation of the tenants because the
12 work necessary to authorize the unit cannot be performed while they remain in place and that tenants
13 who are required to vacate their units may experience difficulty in finding affordable replacement
14 housing because of San Francisco's housing market.

15 (b) The Board of Supervisors specifically finds that tenants displaced as a result of the property
16 owner's obtaining legal authorization for the unit suffer a financial burden because of the acute lack of
17 resources available for locating and securing suitable relocation housing. Additional hardship is often
18 caused by lack of safe and decent comparably sized and located housing at an affordable rent.

19 (c) In order to ensure that adequate relocation assistance is available to lawful tenants who are
20 subject to displacement due to the fact that the owner of their illegal unit is obtaining authorization for
21 the unit and to provide that assistance in a manner that is as equitable as possible to the tenant, the
22 landlord, and the public at large, the Board of Supervisors finds and declares that this Chapter is
23 necessary to protect and further the public health, safety, and welfare.

24 **SEC. 73.2. DEFINITIONS.** The terms Landlord, Owner, Relocation Assistance, Residential
25 Unit, Right to Occupy, and Tenant shall be as defined in Chapter 72 of this Code.

1 **SEC. 73.3. RELOCATION ASSISTANCE.** *The procedures for Relocation Assistance under*
2 *this Chapter and the provisions for enforcement and penalties for violation shall be as set forth in*
3 *Chapter 72 for Lead Hazard Remediation.*

4 Section 7. Equivalencies. This section is uncodified. The Director of the Department of
5 Building Inspection shall determine whether equivalencies from the provisions of the San
6 Francisco Building Code can be developed in order to facilitate authorization of existing
7 dwelling units under Planning Code Section 207.3, shall prepare one or more Administrative
8 Bulletins to define and implement the code equivalencies, and shall coordinate with the
9 Zoning Administrator in the development of any joint Administrative Bulletins that the Planning
10 and Building Departments determine are necessary or desirable in order to implement the
11 policy and provisions of this ordinance. Any Administrative Bulletins developed jointly or by
12 either Department shall be completed within one year of the effective date of this ordinance.

13 Section 8. Notice. This section is uncodified. Within one month from the effective date
14 of this ordinance, the Clerk of the Board of Supervisors shall cause to be published at least
15 once in a newspaper of general circulation notice that the program for authorization of existing
16 dwelling units under Planning Code Section 207.3 is in effect. The Tax Collector shall mail
17 notice to property owners with the first property tax bill sent after the effective date of this
18 ordinance. The notices by the Clerk of the Board and the Tax Collector shall advise property
19 owners of the provisions of said Section 207.3. The Zoning Administrator and the Director of
20 the Department of Building Inspection shall supplement the aforementioned notices with any
21 additional notice they deem necessary to insure that the public receives adequate notice of
22 the provisions of said Section 207.3.

23 Section 9. Effective Date. This ordinance shall become effective 30 days after
24 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
25

1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
2 of Supervisors overrides the Mayor's veto of the ordinance.

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

9 Section 11. Severability. If any section, subsection, sentence, clause, phrase, or word
10 of this Section is for any reason held to be invalid or unconstitutional by a decision of any
11 court of competent jurisdiction, such decision shall not affect the validity of the remaining
12 portions of the Section. The Board of Supervisors hereby declares that it would have passed
13 this Section and each and every section, subsection, sentence, clause, phrase, and word not
14 declared invalid or unconstitutional without regard to whether any other portion of this Section
15 would be subsequently declared invalid or unconstitutional.

16 Section 12. Directions to Clerk. The Clerk is hereby directed to submit a copy of this
17 ordinance to the California Department of Housing and Community Development within 60
18 days following adoption pursuant to Section 65852.2(h) of the California Government Code.

19 APPROVED AS TO FORM:
20 DENNIS J. HERRERA, City Attorney

21 By:

22 JUDITH A. BOYAJIAN
Deputy City Attorney

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