

1 [Planning Code - Nonconforming Uses: Enlargement, Alteration or Reconstruction]

2

3 **Ordinance amending the Planning Code to permit the enlargement, alteration or**
4 **reconstruction of a dwelling or other housing structure that exceeds the permitted**
5 **density of the district if dwelling units are principally permitted in the district and the**
6 **enlargement, alteration or reconstruction does not extend beyond the building**
7 **envelope as it existed on January 1, 2013; and making environmental findings and**
8 **findings of consistency with the General Plan and the eight priority policies of Planning**
9 **Code, Section 101.1.**

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

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

18

19 Section 1. Findings.

20 (a) The Planning Department has determined that the actions contemplated in this
21 ordinance comply with the California Environmental Quality Act (California Public Resources
22 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
23 Supervisors in File No. 130783 and is incorporated herein by reference.

24 (b) On September 19, 2013, the Planning Commission, in Resolution No. 18967,
25 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
with the City's General Plan and the eight priority policies of Planning Code, Section 101.1.

1 The Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk
2 of the Board of Supervisors in File No. 130783, and is incorporated herein by reference.

3
4 Section 2. The Planning Code is hereby amended by revising Section 181, to read as
5 follows:

6 **SEC. 181. NONCONFORMING USES: ENLARGEMENTS, ALTERATIONS AND**
7 **RECONSTRUCTION.**

8 The following provisions shall apply to ~~non-conforming~~ nonconforming uses with respect
9 to enlargements, alterations and reconstruction:

10 (a) Increases in nonconformity. A nonconforming use, and any structure occupied by
11 such use, shall not be enlarged, intensified, extended, or moved to another location, with the
12 exception of the construction of a mezzanine within a live/work unit and expansion of dwelling
13 units in PDR Districts, unless the result will be elimination of the nonconforming use, except
14 as provided ~~in Paragraph (b)(3) and (i)~~ below and in Section 186.1 of this Code. A
15 nonconforming use shall not be extended to occupy additional space in a structure, or
16 additional land outside a structure, or space in another structure, or to displace any other use,
17 except as provided in Sections 182 and 186.1 of this Code.

18 (b) Permitted alterations. A structure occupied by a nonconforming use shall not be
19 constructed, reconstructed or altered, unless the result will be elimination of the
20 nonconforming use, except as provided in Section 186.1 of this Code and in Subsections (a)
21 above and (d), (e), (f) ~~and~~ (g), (h) and (i) below, and except as follows:

22 (1) Ordinary maintenance and minor repairs shall be permitted where necessary
23 to keep the structure in sound condition, as well as minor alterations, where such work is
24 limited to replacement of existing materials with similar materials placed in a similar manner.

1 (2) Minor alterations shall be permitted where ordered by an appropriate public
2 official to correct immediate hazards to health or safety, or to carry out newly enacted
3 retroactive requirements essential to health or safety.

4 (3) Alterations otherwise allowed by this Code shall be permitted for any portion
5 of the structure that will not thereafter be occupied by the nonconforming use, provided the
6 nonconforming use is not enlarged, intensified, extended, or moved to another location.

7 (4) All other alterations of a structural nature shall be permitted only to the extent
8 that the aggregate total cost of such other structural alterations, as estimated by the
9 Department of Building Inspection ~~Public Works~~, is less than ½ of the assessed valuation of the
10 improvements prior to the first such alteration, except that structural alterations required to
11 reinforce the structure to meet the standards for seismic loads and forces of the Building Code
12 shall be permitted without regard to cost.

13 (c) Dwellings nonconforming as to density. A dwelling or other housing structure
14 exceeding the permitted density of dwelling units or other housing units set forth in Sections
15 207.5, 208, 209.1, 209.2, or 215 of this Code for the district in which it is located shall be
16 classified as a nonconforming use under Section 180 of this Code, but only to the extent that
17 such dwelling or other housing structure exceeds the permitted density. In districts where a
18 dwelling unit is a principally permitted use, this ~~This~~ Section 181 shall not apply with respect to
19 enlargements, alterations and reconstruction of the nonconforming portion of such dwelling or
20 other housing structure, consisting of those dwelling units or other housing units which exceed
21 the permitted density, so long as such enlargements, alterations, or reconstruction do not otherwise
22 extend beyond the building envelope as it existed on January 1, 2013. Any dwelling unit or other
23 housing unit coming within the density limit shall not be affected by this Section 181. Except
24 as provided in Sections 181(h) and 182(e), no dwelling or other housing structure exceeding
25 the permitted density of dwelling units or other housing units shall be altered to increase the

1 number of dwelling units or other housing units therein, or to increase or create any other
2 nonconformity with respect to the dwelling unit or other housing unit density limitations of
3 Section 209.1 or Section 209.2.

4 (d) Structures damaged or destroyed by calamity. Notwithstanding the foregoing provisions
5 of this Section 181, a structure occupied by a nonconforming use that is damaged or
6 destroyed by fire, or other calamity, or by Act of God, or by the public enemy, may be restored
7 to its former condition and use; provided that such restoration is permitted by the Building
8 Code, and is started within eighteen months and diligently prosecuted to completion. The age
9 of such a structure for the purposes of Sections 184 and 185 shall nevertheless be computed
10 from the date of the original construction of the structure. Except as provided in Subsection (e)
11 below, no structure occupied by a nonconforming use that is voluntarily razed or required by
12 law to be razed by the owner thereof may thereafter be restored except in full conformity with
13 the use limitations of this Code.

14 For purposes of this Subsection (d), "started within eighteen months" shall mean that
15 within eighteen months of the fire or other calamity or Act of God, the structure's owner shall
16 have filed a building permit application to restore the structure to its former condition and use.

17 (e) Unreinforced masonry buildings. In order that major life safety hazards in structures
18 may be eliminated as expeditiously as possible, a structure containing nonconforming uses
19 and constructed of unreinforced masonry that is inconsistent with the requirements of the
20 UMB Seismic Retrofit Ordinance, Ordinance No. 227-92, may be demolished and
21 reconstructed with the same nonconforming use or a use as permitted by Planning Code
22 Section 182; provided that:

23 (1) there is no increase in any nonconformity, or any new nonconformity, with
24 respect to the use limitations of this Code;

1 ~~(2) provided further that~~ the current requirements of the Building Code, the
2 Housing Code and other applicable portions of the Municipal Code are met; and

3 ~~(3) provided further that~~ such restoration or reconstruction is started within one
4 year after razing or other demolition work on the structure and diligently prosecuted to
5 completion.

6 (f) **Nighttime Entertainment Uses in certain Mixed-Use Districts.** A nighttime entertainment
7 use within the RSD, MUG, MUR, or SLR Districts may be enlarged, intensified, extended or
8 expanded, including the expansion to an adjacent lot or lots, provided that:

9 (1) the enlargement, intensification, extension or expansion is approved as a
10 conditional use pursuant to Sections 303 and 316 of this Code;

11 (2) the use as a whole meets the parking and signage requirements, floor area
12 ratio limit, height and bulk limit, and all other requirements of this Code which would apply if
13 the use were a permitted one; and

14 (3) the provisions of Section 803.5(b) of this Code are satisfied.

15 (g) **Automotive Sales and Service Signs in the Automotive Special Use District.** Automotive
16 sales and service signs within the Automotive Special Use District which have all required
17 permits but which do not comply with the controls for new signs established in Section 607.3
18 of this Code shall be permitted to remain as nonconforming uses and shall be permitted to
19 modify the signage text to describe new automobile ownerships and dealerships that may
20 occur from time to time.

21 (h) **Dwellings in PDR and M-2 Districts.** In PDR and M-2 Districts, no building containing
22 a residential use shall be altered to increase the number of dwelling units or other housing
23 units therein. However, individual dwelling units or other housing units may be expanded,
24 subject to height, bulk, and all other provisions of this Code which would otherwise be
25 applicable to dwelling units or other housing units in the Urban Mixed Use District.

1 (i) Nonconforming Non-Residential Uses in the Eastern Neighborhoods Mixed Use, PDR-1-
2 D, and PDR-1-G Districts. In the Eastern Neighborhoods Mixed Use, PDR-1-D, and PDR-1-G
3 Districts, a non-residential nonconforming use may expand in gross floor area by no more
4 than 25 percent with conditional use authorization pursuant to Section 303 of this Code. Such
5 conditional use authorization may not be granted for any subsequent or additional expansion
6 beyond the initial 25 percent.

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

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

17
18 APPROVED AS TO FORM:
19 DENNIS J. HERRERA, City Attorney

20 By: _____
21 JUDITH A. BOYAJIAN
22 Deputy City Attorney

23 n:\legana\as2013\1300041\00862711.doc
24
25