

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

May 15, 2019

Planning Commission
Attn: Jonas Ionin
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Commissioners:

On May 7, 2019, Supervisor Peskin introduced the following substitute legislation:

File No. 181216-2

Ordinance amending the Planning Code to increase penalties for violations of the Planning Code and change the administrative enforcement procedure; provide new definitions for Residential Demolitions and Residential Flats, expand definitions of Alteration and Removal, expand definitions of, require additional notice, and impose new conditional use criteria for Residential Demolitions, Mergers, and Conversions; require additional review for changes of use to Child Care Facilities that propose an increase in the exterior dimension of the building; expand definition of change of use for Residential, Neighborhood Commercial (NC) and Neighborhood Commercial Transit (NCT) districts; add new notification requirements; add requirements for replacement structures; and establish definitions, criteria and procedures for approvals of Major Expansions of Existing Residential Buildings in certain residential districts; amending the Building Code to make the definition of Residential Demolition consistent with the Planning Code, and require pre-permit inspections and additional application requirements; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; adopting findings of public convenience, necessity, and welfare under Planning Code, Section 302; and instructing the Clerk to forward this Ordinance to the California Building Standards Commission upon final passage.

The proposed ordinance is being transmitted pursuant to Planning Code, Section 302(b), for public hearing and recommendation. The ordinance is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

- c: John Rahaim, Director
- Scott Sanchez, Acting Deputy Zoning Administrator
- Corey Teague, Zoning Administrator
- Lisa Gibson, Environmental Review Officer
- Devyani Jain, Deputy Environmental Review Officer
- AnMarie Rodgers, Director of Citywide Planning
- Dan Sider, Director of Executive Programs
- Aaron Starr, Manager of Legislative Affairs
- Joy Navarrete, Environmental Planning
- Laura Lynch, Environmental Planning

1 [Planning, Building Codes - Controls on Residential Demolition, Merger, Conversion, and
2 Alteration; Review of Additional Non--Residential Changes of Use and Alterations]

3 **Ordinance amending the Planning Code to increase penalties for violations of the**
4 **Planning Code and change the administrative enforcement procedure; provide new**
5 **definitions for Residential Demolitions and Residential Flats, expand definitions of**
6 **Alteration and Removal, expand definitions of, require additional notice, and impose**
7 **new conditional use criteria for Residential Demolitions, Mergers, and Conversions;**
8 **require additional review for changes of use to Child Care Facilities that propose an**
9 **increase in the exterior dimension of the building; expand definition of change of use**
10 **for Residential, Neighborhood Commercial (NC) and Neighborhood Commercial Transit**
11 **(NCT) Districts; add new notification requirements; add requirements for replacement**
12 **structures; and establish definitions, criteria and procedures for approvals of Major**
13 **Expansions of Existing Residential Buildings in certain residential districts; amending**
14 **the Building Code to make the definition of Residential Demolition consistent with the**
15 **Planning Code, and require pre-permit inspections and additional application**
16 **requirements; affirming the Planning Department's determination under the California**
17 **Environmental Quality Act; making findings of consistency with the General Plan, and**
18 **the eight priority policies of Planning Code, Section 101.1; adopting findings of public**
19 **convenience, necessity, and welfare under Planning Code, Section 302; and instructing**
20 **the Clerk to forward this Ordinance to the California Building Standards Commission**
21 **upon final passage.**

22 **NOTE:** **Unchanged Code text and uncodified text** are in plain Arial font.
23 **Additions to Codes** are in *single-underline italics Times New Roman font*.
24 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
25 **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.

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

2
3 Section 1. Findings.

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

9 (b) On _____, the Planning Commission, in Resolution No. _____,
10 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
11 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
12 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
13 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

14 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code
15 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth
16 in Planning Commission Resolution No. _____ and the Board incorporates such reasons
17 herein by reference. A copy of said Resolution is on file with the Board of Supervisors in File
18 No. _____.

19 (d) On _____, the Building Inspection Commission considered this
20 ordinance at a duly noticed public hearing pursuant to Charter Section D3.750-5.

21
22 Section 2. California Health and Safety Code Section 18909(d). No local findings are
23 required under California Health and Safety Code Section 17958.7 because the amendments
24 to the Building Code contained in this ordinance relate in their entirety to civil and
25 administrative procedures and remedies available for enforcing code violations, which are

1 expressly excluded from the definition of a "building standard" by Section 18909.

2
3 Section 3. Article 1.7 of the Planning Code is hereby amended by revising Section 176
4 and deleting Section 176.1, to read as follows:

5
6 **SEC. 176. ENFORCEMENT AGAINST VIOLATIONS.**

7 * * * *

8 (b) **Methods of Enforcement.** The Zoning Administrator shall have authority to
9 enforce this Code against violations thereof by any of the following actions:

10 (1) Serving notice requiring the cessation, removal, or correction of any
11 violation of this Code (*"Notice of Violation"*) upon the owner, agent, or tenant of the property
12 that is the subject of the violation, or upon the architect, builder, contractor, or other person
13 who commits or assists in such violation;

14 * * * *

15 (c) **Penalties.**

16 (1) **Administrative Penalties.** In the notice requiring the cessation, removal
17 or correction of any violation of this Code, the Zoning Administrator may assess upon the
18 responsible party an administrative penalty for each violation in ~~an~~the amount ~~up to~~of
19 ~~\$250.00~~1000 for each day the violation continues unabated, in addition to any penalties required
20 by Sections 317 or 319 of this Code.

21 For purposes of this Section 176, each real property address, each Dwelling Unit within a real
22 property address, and each separate violation of the Planning Code is a distinct violation for
23 calculation of applicable administrative penalties. The "responsible party" is the owner(s) of the
24 real property on which the code violation is located, as listed in the records of the San
25 Francisco Assessor, and the current leaseholder if different from the current owner(s) of the

1 real property.

2 (A) The responsible party may request a Zoning Administrator's
3 hearing in order to show cause why the notice requiring the cessation, removal, or correction
4 of the violation and any assessment of administrative penalties is in error and should be
5 rescinded. The Zoning Administrator may designate a member of Department staff to act as
6 the hearing officer in ~~his or her~~ the Zoning Administrator's place. The Department shall send a
7 notice of the date, hour, and place of the hearing to the responsible party at the address
8 specified in the request for hearing and to any member of the public who has expressed an
9 interest in the matter.

10 ~~The responsible party may also request that the Zoning Administrator terminate abatement~~
11 ~~proceedings under Section 176 and refer the matter to the Director for enforcement action under the~~
12 ~~process set forth in Section 176.1 of this Code. If the Zoning Administrator determines that the~~
13 ~~enforcement case will proceed under Section 176, that determination shall be made as part of the final~~
14 ~~written decision and is not appealable separately from the decision on the merits.~~

15 (B) The responsible party may waive the right to a Zoning
16 Administrator's hearing and proceed directly to an appeal to the Board of Appeals under
17 Section 308.2 of this Code. Administrative penalties shall not accrue during the period of time
18 that the matter is pending before the Zoning Administrator on a request for hearing or before
19 the Board of Appeals on appeal, except that penalties will continue to accrue during the period of
20 any requests for extensions of time other than where such requests are made by the Zoning
21 Administrator, the Board of Appeals, or other City department. If the responsible party elects to
22 request a Zoning Administrator's hearing, the request for hearing must be in writing and
23 submitted to the Zoning Administrator prior to the expiration date of the Notice of Violation and
24 Penalty. If a request for a Zoning Administrator's hearing is timely filed, any appeal to the
25 Board of Appeals shall be from the decision of the Zoning Administrator rendered after the

1 hearing.

2 (C) The Zoning Administrator or the Zoning Administrator's designee,
3 after a full and fair consideration of the evidence and testimony received at the hearing, shall
4 render within ~~thirty~~30 days following the conclusion of the hearing a written decision that either
5 rescinds the notice of violation and dismisses the proceedings, upholds the original decision,
6 or modifies the original decision. In rendering a decision, including a determination regarding the
7 amount of administrative penalties to be assessed, if any, the Zoning Administrator or the Zoning
8 Administrator's designee shall consider:

9 * * * *

10 (J) whether the violation is easy to correct;~~and~~

11 (K) whether any provision of Section 317 has been violated; if so, the
12 enforcement provisions of Section 317(i) shall apply;

13 (L) whether any provision of Section 319 has been violated; if so, the
14 enforcement provisions of Section 319(d) shall apply; and

15 (M) such other factors as the Zoning Administrator or ~~the~~
16 Administrator's ~~his or her~~ designee may consider relevant.

17 In hearing any appeal of the Zoning Administrator's determination, the Board of
18 Appeals shall consider the above factors. If the Board upholds the Zoning Administrator's
19 decision in whole or in part but reduces the amount of the penalty, it may not reduce the
20 amount of the penalty below ~~\$100.00~~500 for each day that the violation exists, excluding the
21 period of time that the matter has been pending either before the Zoning Administrator on a
22 request for hearing or before the Board of Appeals on appeal. The Board of Appeals may, by a
23 vote of four members (or if a vacancy exists, by a vote of three members), reduce the penalty below the
24 amount of any penalty imposed pursuant to Sections 317 or 319 of this Code.

25 ///

1 In addition to any administrative penalties imposed under this subsection
2 176(c)(1) and any penalties imposed under Section 317 or 319 of this Code, the Zoning
3 Administrator may recover any attorneys' fees and costs, including but not limited to expert
4 witness fees, incurred by the City in pursuing administrative remedies. The provision of
5 administrative penalties is not intended to be punitive in nature but is intended to secure
6 compliance with the Planning Code and to compensate the City for its costs of enforcement.

7 (2) **Civil Penalties.** Any individual, firm, partnership, corporation,
8 company, association, society, group, or other person or legal entity that violates any
9 provision of this Code shall be liable for the City's costs of enforcement and a civil penalty, of
10 not less than ~~\$200.00~~1,000 for each day such violation is committed or permitted to continue,
11 which penalty shall be assessed and recovered in a civil action brought in the name of the
12 people of the City and County of San Francisco by the City Attorney in any court of competent
13 jurisdiction. For purposes of this Section 176, each real property address, each Dwelling Unit within
14 a real property address, and each separate violation of the Planning Code is a distinct violation for
15 calculation of applicable civil penalties. The City Attorney may file a civil action or pursue any other
16 legal remedy to collect such unpaid amount, fine, and interest. In any civil action for collection, the
17 City shall be entitled to obtain a judgment for the unpaid amounts, fine, and interest, and for the costs
18 and attorneys' fees incurred by the City in bringing such civil action. The City Attorney may seek
19 recovery of any attorneys' fees and costs, including but not limited to expert witness fees, incurred by
20 the City in bringing such civil action. In assessing the amount of the civil penalty, the court shall
21 consider any one or more of the relevant circumstances presented by any of the parties to the case,
22 including but not limited to, the following: the nature and seriousness of the misconduct, the number of
23 violations, the persistence of the misconduct, the length of time over which the misconduct occurred,
24 the willfulness of the responsible party's misconduct, and the responsibly party's assets, liabilities and
25 net worth. For civil actions to enforce Municipal Code provisions related to general advertising

1 signs, the penalties, attorneys' fees and costs set forth in this Section 176 shall be in addition
2 to those authorized by Section 610 of this Code.

3 (3) **Criminal Penalties.** Any individual, firm, partnership, corporation,
4 company, association, society, group, or other person or legal entity that violates any
5 provision of this Code shall be deemed guilty of a misdemeanor and upon conviction thereof
6 shall be fined in an amount not less than ~~\$200.00~~\$1,000 or be imprisoned for a period not
7 exceeding six months or be both so fined and imprisoned. Each day such violation is
8 committed or permitted to continue shall constitute a separate offense and shall be punishable
9 as such hereunder.

10 (4) **Planning Code Enforcement Fund.** Any fees and penalties
11 collected pursuant to this Section 176 shall be deposited in the Planning Code Enforcement
12 Fund established by Administrative Code Section 10.100-166. The Planning Department,
13 through the Planning Code Enforcement Fund, shall reimburse City departments and
14 agencies, including the City Attorney's Office, for all costs and fees incurred in the
15 enforcement of this Section 176.

16 (d) **Additional Methods of Enforcement and Penalties for Violation of**
17 **Sign Regulations.** Violation of the general advertising sign regulations set forth in Article 6
18 are subject to the administrative penalties and enforcement procedures set forth in Section
19 610 of this Code, in addition to those set forth in this Section 176.

20 (e) **Additional Methods of Enforcement and Penalties for Violation of Section 317.**
21 Violation of the provisions set forth in Section 317 of this Code shall be subject to the penalties and
22 enforcement procedures set forth in Section 317(j), in addition to those set forth in this Section 176.

23 (f) **Additional Methods of Enforcement and Penalties for Violation of Section 319.**
24 Violation of the provisions set forth in Section 319 of this Code shall be subject to the penalties and
25 enforcement procedures set forth in Section 319(d), in addition to those set forth in this Section 176.

1 (g) **Payment and Collection of Administrative Penalty and Enforcement Costs.**

2 Any administrative penalty and/or enforcement costs assessed under this Section 176 is a debt to the
3 City and County of San Francisco and shall be paid to the Treasurer of the City and County of San
4 Francisco. Any amount paid late shall be subject to an additional late fine of 10% on the unpaid
5 amount. The sum of the unpaid amount and the 10% late fine shall accrue interest at the rate of 1% per
6 month (or fraction thereof) until fully paid; any partial payments made shall first be applied to accrued
7 interest.

8 (h) **Lien for Administrative Penalty.** Where an activity or condition on San

9 Francisco real property has caused, contributed to, or been a substantial factor in causing the
10 violation, the Director may initiate proceedings to make any unpaid administrative penalty,
11 enforcement costs, fine, and interest, and all additional authorized costs and attorneys' fees, a lien on
12 the property. Such liens shall be imposed in accordance with Administrative Code Sections 10.230-
13 10.237, or any successor provisions. Before initiating lien proceedings, the Director shall send a
14 request for payment under Administrative Code Section 10.230A.

15 (ei) **Use of Penalties Collected.** All penalties collected under this Section

16 176 shall be deposited in the Planning Code Enforcement Fund established in Administrative
17 Code Section 10.100.166 and shall be used for the purposes specified in that section. All
18 penalties collected under the provisions of Section 317 and 319 shall be deposited into the funds
19 specified in those Sections.

20 (fi) Remedies under this Section 176 are non-exclusive, and, notwithstanding

21 subsection (b)(2), the City Attorney may at any time institute civil proceedings for injunctive
22 and monetary relief, including civil penalties, against any person for violations of the Planning
23 Code, without regard to whether the Zoning Administrator has issued a notice of violation,
24 instituted abatement proceedings, scheduled or held a hearing on a notice of violation, or
25 issued a final decision. For proceedings instituted under this subsection (fi), the City Attorney

1 shall notify the Zoning Administrator or the Planning Director, as appropriate, and collaborate,
2 where mutually desired, on the prosecution of the action. The City Attorney may seek
3 recovery of any attorneys' fees and costs, including but not limited to expert witness fees,
4 incurred by the City in bringing a proceeding~~s~~ under this subsection (f).

5 (k) If any party fails to pay the administrative or enforcement costs imposed by this
6 Section 176 within 30 days of the Zoning Administrator's notice requiring the cessation, removal or
7 correction of any violation of this Code pursuant to Section 176 (c)(1) of this Code, or within 30 days
8 of the date the penalties have been upheld on appeal, the Zoning Administrator may take such action to
9 collect the fees as the Zoning Administrator deems appropriate, including referral of the matter to the
10 Bureau of Delinquent Revenue Collection under Chapter 10, Article V, Section 10.39 of the
11 Administrative Code, initiation of lien proceedings under Chapter 10, Article XX, Sections 10.230 et
12 seq. of the Administrative Code, and/or requesting that the City Attorney pursue collection of the
13 penalties imposed against the responsible party, and all applicable civil penalties, in a civil action.

14 **SEC. 176.1. ADMINISTRATIVE ENFORCEMENT PROCEDURES.**

15 ~~—(a) Purpose and Intent.~~

16 ~~—(1) The Board of Supervisors finds that enforcement of the Planning Code is vital to~~
17 ~~ensuring the quality of life in San Francisco's neighborhoods and in the City as a whole. A~~
18 ~~comprehensive code enforcement program using a combination of judicial and administrative remedies~~
19 ~~is likely to be the most successful approach to secure compliance with Planning Code requirements.~~
20 ~~Therefore, it is in the best interests of the City and its citizens to provide an alternative method of~~
21 ~~administrative enforcement that is designed to induce compliance with the Planning Code through~~
22 ~~action by the Director to issue and record orders of abatement and assess administrative penalties.~~

23 ~~—(2) The alternative methods of administrative enforcement established by this Section do~~
24 ~~not replace but rather are intended to supplement the enforcement remedies established in Section 176~~
25 ~~and other penalties or methods of enforcement, both civil and criminal, that are authorized by law. The~~

1 *provision for administrative penalties is not intended to be punitive in nature but is intended to secure*
2 *compliance with the Planning Code and to compensate the City for its costs of enforcement.*

3 ~~—(3) By establishing multiple enforcement mechanisms, it is intended that the Department~~
4 ~~will elect to use the mechanism most likely to achieve an expeditious and effective resolution of the~~
5 ~~violation in a particular case with the best use of the City's resources. In exercising this discretion, the~~
6 ~~Department should usually elect to use the Director's authority under this Section 176.1 in those cases~~
7 ~~where the legal or factual issues are not complex and where an interpretation of the Planning Code is~~
8 ~~not at issue, and reserve the enforcement mechanisms in Section 176 for those cases that are more~~
9 ~~complex or where interpretations of the Planning Code are at issue.~~

10 ~~—(b) **Authority of the Director.** The Director may enforce against violations of the Planning~~
11 ~~Code through the alternative administrative remedies of this Section 176.1. The Director may designate~~
12 ~~a member of Department staff to act under his or her authority with respect to any action the Director~~
13 ~~is authorized to take in this Section 176.1.~~

14 ~~—If the Department elects to use the administrative remedies of this Section, the Department~~
15 ~~must use the abatement process set forth in this Section. However, as provided in Section (d)(3) below,~~
16 ~~the Department is not precluded from pursuing the alternative remedies of Section 176 if abatement of~~
17 ~~the violation has not been achieved under this Section 176.1. In addition, the Department's election of~~
18 ~~this process shall not affect the City Attorney's Charter authority to pursue a civil action. If the City~~
19 ~~Attorney filed a civil action against the property prior to the Director's issuance of the notice of~~
20 ~~violation under this Section 176.1, at the City Attorney's election the process under this Section 176.1~~
21 ~~shall be terminated and abatement of the alleged violations shall be pursued by the City Attorney in the~~
22 ~~ongoing civil action.~~

23 ~~—(c) **Notice of Violation.**~~

24 ~~—(1) **Issuance.** After the Department has determined that a violation of this Code exists, the~~
25 ~~Director shall give written notice of the violation to the responsible party. For purposes of this Section~~

1 ~~176.1, "responsible party" means the owners(s) of the real property on which the code violation is~~
2 ~~located, as listed in the records of the San Francisco Assessor, and the current leaseholder if different~~
3 ~~from the current owner(s) of the real property.~~

4 ~~—(2) **Contents of Notice.** The notice shall cite to this Section 176.1 and describe the~~
5 ~~violation(s) with specificity, including: the date and location of the violations and the approximate time~~
6 ~~the violations were observed; citation to applicable Code sections; and a description of how what was~~
7 ~~observed violated the Code sections. The notice of violation shall state that the responsible party has~~
8 ~~thirty days from the date of service to (i) correct all violations or (ii) file an application for a building~~
9 ~~permit or other authorization necessary to abate the violations and proceed diligently to obtain all~~
10 ~~approvals and complete the work, as specified by the Director's order and within the time periods~~
11 ~~required.~~

12 ~~—The notice of violation shall inform the responsible party that if the action required in the~~
13 ~~notice of violation is not taken by the stipulated deadline, the Director will (i) will issue an order of~~
14 ~~abatement, (ii) cause the order of abatement to be recorded against the property's records in the Office~~
15 ~~of the Recorder of the City and County of San Francisco, and (iii) assess administrative penalties under~~
16 ~~Section 176.1(e). The notice of violation shall also inform the responsible party of the right to request a~~
17 ~~Director's hearing under Subsection (d)(3) below prior to issuance of an order of abatement and~~
18 ~~assessment of administrative penalties. Service of the notice of violation shall be as specified in Section~~
19 ~~(g) below.~~

20 ~~—(d) **Order of Abatement.**~~

21 ~~—(1) **Issuance; Administrative Penalties; Request for Hearing.** If a property remains in~~
22 ~~violation after the deadlines established in the notice of violation, the Director shall issue an order of~~
23 ~~abatement and assess administrative penalties against the responsible party by following the procedure~~
24 ~~set forth in Section 176.1(e). The order of abatement shall state the amount of penalty imposed, explain~~
25 ~~how and when the penalty shall be paid, and describe the consequences of failure to pay the penalty.~~

1 ~~The order of abatement shall inform the responsible party of the right to appeal the order of abatement~~
2 ~~and assessment of administrative penalties to an administrative law judge under Subsection (f) below.~~
3 ~~The Department shall not proceed to enforce the order of abatement or collect the administrative~~
4 ~~penalties until the time for appeal has passed or the order and penalties have been upheld on appeal.~~

5 ~~—(2) **Recording.** The Director shall record the order of abatement against the property's~~
6 ~~records in the Office of the Recorder of the City and County of San Francisco. The Department shall~~
7 ~~not record the order of abatement until the time for appeal has passed or the Director's decision has~~
8 ~~been upheld on appeal. Within fourteen business days after the violation has been finally abated and all~~
9 ~~fees and penalties have been paid, the Director shall record a notice of compliance that cancels the~~
10 ~~order of abatement.~~

11 ~~—(3) **Request for Hearing.** Prior to expiration of the compliance deadlines set forth in the~~
12 ~~notice of violation, the responsible party may request a Director's hearing in order to show cause why~~
13 ~~the order of abatement should not issue and administrative penalties should not be assessed. The~~
14 ~~responsible party may also request that the Department not proceed with abatement proceedings under~~
15 ~~this Section 176.1 but instead proceed under Section 176. The Director's decision to continue~~
16 ~~proceeding under Section 176.1 is final and not appealable.~~

17 ~~—The Director may designate a member of Department staff to may act in his or her place~~
18 ~~as the hearing officer. The hearing officer shall have the same authority as the Director to hear and~~
19 ~~decide the case and to make any order provided for in this section. The responsible party may waive the~~
20 ~~right to a Director's hearing and proceed directly to an appeal under Subsection (f) below after the~~
21 ~~order of abatement is issued and administrative penalties have been assessed. If the responsible party~~
22 ~~requests a Director's hearing, the following procedure shall apply:~~

23 ~~—(A) **Request for hearing; notice.** The responsible party shall submit a written request for~~
24 ~~a Director's hearing prior to expiration of the compliance deadlines set forth in the notice of violation~~
25 ~~on a form or in the manner required by the Director. The Director shall send a notice of the date, hour,~~

1 ~~and place of the hearing to the responsible party at the address specified in the request for hearing and~~
2 ~~to any member of the public who has expressed an interest in the matter.~~

3 ~~—— (B) **Decision.** The Director or the Director's designee, after a full and fair consideration~~
4 ~~of the evidence and testimony received at the hearing, shall render within thirty days following the~~
5 ~~conclusion of the hearing a written decision which either dismisses the proceedings or orders issuance~~
6 ~~of the order of abatement and assessment of the administrative penalties. In rendering a decision, the~~
7 ~~Director or the Director's designee shall consider the following:~~

- 8 ~~—— (i) whether the responsible party was properly identified;~~
9 ~~—— (ii) whether the accrual dates for the administrative penalties are accurate;~~
10 ~~—— (iii) the amount of documented staff time spent in order to secure abatement of the~~
11 ~~violation;~~
12 ~~—— (iv) the nature of the violation;~~
13 ~~—— (v) the duration of the violation;~~
14 ~~—— (vi) efforts made by the responsible party to correct the violation;~~
15 ~~—— (vii) the impact of the violation upon the community;~~
16 ~~—— (viii) any instance in which the responsible party has been in violation of the same or~~
17 ~~similar laws at the same or other locations in the City and County of San Francisco;~~
18 ~~—— (ix) the responsible party's good faith efforts to comply;~~
19 ~~—— (x) whether the violation is easy to correct; and~~
20 ~~—— (xi) such other factors as the Director or the Director's designee may consider~~
21 ~~relevant.~~

22 ~~—— (e) **Administrative Penalties.**~~

23 ~~—— (1) **Assessment.** In an order of abatement issued under Subsection (d) above, the Director~~
24 ~~shall assess administrative penalties for violation of the Planning Code. A penalty shall be assessed for~~
25 ~~each violation observed. Payment of the penalty shall not excuse failure to correct the violations nor~~

1 ~~shall it bar further enforcement action by the City.~~

2 — ~~(2) **Amount of Penalty.** The penalty assessed for each violation shall be \$100.00 if the~~
3 ~~violation has not been corrected within thirty days from the date of service of the notice of violation,~~
4 ~~\$250.00 if the violation has not been corrected within sixty days from the date of service of the notice of~~
5 ~~violation, and \$500.00 if the violation has not been corrected within ninety days from the date of~~
6 ~~service of the notice of violation. If at the end of the 90-day period the violation has not been corrected~~
7 ~~and the matter has not been appealed, the Zoning Administrator may exercise his or her discretion to~~
8 ~~initiate abatement proceedings under Section 176 of this Code or to refer the matter to the City~~
9 ~~Attorney or District Attorney for prosecution.~~

10 — ~~(3) **Failure to Pay the Administrative Penalties.** If the responsible party fails to pay the~~
11 ~~administrative penalties to the Department within thirty days of service of the order of abatement, or~~
12 ~~within thirty days of the date the penalties have been upheld on appeal, the Director may take such~~
13 ~~action to collect the fees as he or she deems appropriate, including (i) referral of the matter to the~~
14 ~~Bureau of Delinquent Revenue Collection under Article V, Section 10.39 of the San Francisco~~
15 ~~Administrative Code, initiation of lien proceedings under Article XX, Section 10.230 et seq. of the San~~
16 ~~Francisco Administrative Code, and/or a requesting that the City Attorney pursue collection of the~~
17 ~~penalties imposed against the Responsible Party in a civil action. The City Attorney may request its~~
18 ~~attorneys' fees in any action that he or she pursues to collect the administrative penalties or to enforce~~
19 ~~collection of the penalties.~~

20 — ~~(f) **Appeal of Order of Abatement and Administrative Penalties.**~~

21 — ~~(1) **Method of Appeal; Fee.** The responsible party may appeal the issuance of an order of~~
22 ~~abatement and any the administrative penalties assessed in the order by filing a written request in the~~
23 ~~form required by the Department within fifteen days of the service of the order. The appeal shall~~
24 ~~describe in detail why the appellant believes that the order of abatement was issued in error or why the~~
25 ~~administrative penalty was assessed in error or should be modified.~~

1 ~~— The appeal shall be filed on a form or in the manner required by the Director and be~~
2 ~~accompanied by the payment of a fee of \$400.00. The Department shall increase this fee on an annual~~
3 ~~basis at a rate equal to that of the Consumer Price Index (CPI). In addition to the appeal fee and~~
4 ~~administrative penalties assessed in the order of abatement, the Director shall assess upon the~~
5 ~~responsible party the Department's cost of preparation for and appearance at the hearing and all prior~~
6 ~~and subsequent attendant costs of the enforcement action. These fees shall be waived if the responsible~~
7 ~~party would qualify for a waiver of court fees and costs under California Government Code Section~~
8 ~~68511.3.~~

9 ~~(2) **Scheduling of Hearing.** Upon timely filing of the appeal and payment of the appeal fee,~~
10 ~~the Director shall schedule a hearing before an administrative law judge, who shall serve as the~~
11 ~~hearing officer. The hearing shall be scheduled for a date no later than thirty days after the request.~~
12 ~~The Director shall notify the responsible party and the appellant, if different from the responsible party,~~
13 ~~of the hearing date, hour, and place of the hearing as soon as the hearing is scheduled and in no event~~
14 ~~later than ten days prior to the hearing. Notice of the hearing shall also be given to any member of the~~
15 ~~public who has expressed interest in the matter. Notice shall be given in the manner specified in~~
16 ~~Subsection (g) below.~~

17 ~~(3) **Documentation to be Provided to the Administrative Law Judge.** The Director shall~~
18 ~~provide to the administrative law judge no later than ten days prior to the hearing a copy of the~~
19 ~~Department's case file, which shall include at a minimum the notice of violation, the order of~~
20 ~~abatement, other written communications between the Department and the responsible party, and~~
21 ~~communications submitted by interested members of the public concerning the case. The Director may~~
22 ~~also submit, but is not required to do so, written arguments on why the Director's order should be~~
23 ~~upheld. Anything submitted to the administrative law judge by either party to the appeal shall be served~~
24 ~~upon the other party at the same time and in the same manner as it is submitted to the administrative~~
25 ~~law judge.~~

1 ~~—(4) **Hearing and Decision.** The administrative law judge shall hold a public hearing to~~
2 ~~hear the appeal of the Director's order of abatement and/or assessment of administrative penalties. In~~
3 ~~considering the appeal, the administrative law judge shall consider the following:~~

4 ~~—(A) whether the responsible party was properly identified;~~
5 ~~—(B) whether the accrual dates for the administrative penalties are accurate;~~
6 ~~—(C) the amount of documented staff time spent in order to secure abatement of the~~
7 ~~violation;~~

8 ~~—(D) the nature of the violation;~~
9 ~~—(E) the duration of the violation;~~
10 ~~—(F) efforts made by the responsible party to correct the violation;~~
11 ~~—(G) the impact of the violation upon the community;~~
12 ~~—(H) any instance in which the responsible party has been in violation of the same or~~
13 ~~similar laws at the same or other locations in the City and County of San Francisco;~~

14 ~~—(I) the responsible party's good faith efforts to comply; and~~
15 ~~—(J) whether the violation is easy to correct; and~~
16 ~~—(K) such other factors as the administrative law judge may consider relevant.~~

17 ~~—The decision of the administrative law judge shall be based upon, but not limited to,~~
18 ~~provisions of the San Francisco Planning Code, any final Zoning Administrator interpretations, the San~~
19 ~~Francisco Building Code, building permits issued by the City, and any final decisions of the San~~
20 ~~Francisco Board of Appeals concerning the subject building or property.~~

21 ~~—The administrative law judge shall issue a written decision on the appeal within thirty~~
22 ~~days of the conclusion of the hearing. The decision shall be served on the responsible party by certified~~
23 ~~mail by deposit in the United States mail in a sealed envelope, postage prepaid, addressed to the~~
24 ~~responsible party at the address provided to the administrative law judge by the responsible party.~~
25 ~~Service shall be considered to have been completed at the time of deposit in the United States mail. A~~

1 *copy of the decision shall also be mailed to the Director of Planning at the offices of the Planning*
2 *Department.*

3 ~~—(5) **Continuance of Hearing.** The parties may by mutual agreement continue the hearing~~
4 ~~date. If the parties do not mutually agree on another hearing date, the party wanting a continuance~~
5 ~~may request the administrative law judge to grant the continuance by submitting a written request for a~~
6 ~~continuance and demonstrating good cause with supporting documentation. A written request for a~~
7 ~~continuance shall be made at the earliest possible date but in no event less than five days before the~~
8 ~~hearing unless unforeseen circumstances prevent such notification. The party requesting the~~
9 ~~continuance shall notify any other parties of the request in the most expeditious manner and provide~~
10 ~~them with copies of the complete request and the supporting documentation. A request for continuance~~
11 ~~made at the time of the hearing may be granted only in those exceptional cases where the requesting~~
12 ~~party demonstrates both good cause and that the party was unable through no fault of their own to~~
13 ~~make the request at an earlier time. The administrative law judge may grant more than one~~
14 ~~continuance, but the combination of all continuances granted shall be for no longer than forty five~~
15 ~~days.~~

16 ~~—For purposes of this section, "good cause" may include:~~

17 ~~—(A) the illness of a party, an attorney or other authorized representative of a party, or a~~
18 ~~material witness of a party;~~

19 ~~—(B) verified travel of a party, attorney, or material witness outside of San Francisco~~
20 ~~scheduled before receipt of the notice of hearing;~~

21 ~~—(C) failure to receive timely notice of the hearing date; or~~

22 ~~—(D) any other reason which makes it impossible or infeasible to appear on the scheduled~~
23 ~~date due to unforeseen circumstances or verified pre-arranged plans that cannot be changed. Mere~~
24 ~~inconvenience in appearing shall not be considered sufficient good cause.~~

25 ~~///~~

1 — ~~In deciding whether to grant the request for continuance, the administrative law judge~~
2 ~~shall also take into consideration the nature of the alleged violation and its impact on neighboring~~
3 ~~properties and the general public if the alleged violations are allowed to continue for an additional~~
4 ~~period of time.~~

5 — ~~(6) **Finality and Effect of the Decision.** The decision of the administrative law judge shall~~
6 ~~be the City's final administrative action on the matter and there shall be no further administrative~~
7 ~~appeals.~~

8 — ~~(7) **Compliance with Decision.** If the administrative law judge upholds the Director's~~
9 ~~order of abatement in whole or in part, the responsible party shall comply with the decision and pay to~~
10 ~~the Department any administrative penalties that were upheld within thirty days of the date the decision~~
11 ~~was served. If the responsible party is proceeding diligently to obtain required permits and to complete~~
12 ~~the abatement work, the Director may grant additional time to comply with the decision. If the~~
13 ~~responsible party fails to comply with the decision and/or to pay the administrative penalties within the~~
14 ~~time period required, the Director may take such action to collect the fees and enforce the decision as~~
15 ~~he or she deems appropriate, including (i) referral of the matter to the Bureau of Delinquent Revenue~~
16 ~~Collection under Article V, Section 10.39 of the San Francisco Administrative Code, initiation of lien~~
17 ~~proceedings under Article XX, Section 10.230 et seq. of the San Francisco Administrative Code, and/or~~
18 ~~a requesting that the City Attorney pursue enforcement of the decision and collection of the penalties~~
19 ~~imposed against the responsible party in a civil action.~~

20 — ~~If the administrative law judge overrules the Director and determines that the order of~~
21 ~~abatement was issued in error, the Department shall consider the case abated and all administrative~~
22 ~~penalties rescinded.~~

23 — ~~(8) **Rescission of Order of Abatement or Withdrawal of Appeal Prior to the Hearing.** If~~
24 ~~the Director rescinds the order of abatement in its entirety prior to the hearing, the case shall be~~
25 ~~considered abated and the appeal withdrawn, and any assessed administrative penalties shall be~~

1 *considered rescinded. The Department shall refund to the responsible party in a timely manner any*
2 *appeal fees that he or she has paid.*

3 *— If the responsible party elects to withdraw the appeal and comply with the order of*
4 *abatement, the Department shall refund in a timely manner any appeal fees that he or she has paid.*
5 *Any administrative penalties already assessed must be paid in full before the Department will consider*
6 *the case abated. If the responsible party withdraws the appeal within ten days of the date the appeal*
7 *was filed, he or she may apply to the Director in writing for a reduction in the amount of any assessed*
8 *administrative penalties based upon the number of days between the filing of the appeal and its*
9 *withdrawal. Any decision by the Director to grant or deny the request shall be at the Director's sole*
10 *discretion and is not appealable.*

11 *~~(g) **Service of Notices and Orders; Proof of Service.** Service of a notice of violation, order~~*
12 *~~of abatement, or other notice or order required by this Section 176.1 shall be given to the owner of the~~*
13 *~~property or other person to be notified by depositing the notice or order in the United States mail in a~~*
14 *~~sealed envelope, postage prepaid, addressed to the person to be notified at that person's last known~~*
15 *~~business or residence address as shown in the Assessor's records. Service by mail shall be considered~~*
16 *~~to have been completed at the time of deposit in the United States mail.~~*

17 *— If the identity of the person or business entity owning the property in question is unknown,*
18 *the notice of violation shall be posted in a conspicuous location on, or if access to the property is not*
19 *available in a conspicuous location as close as practicable to, the building or property. The notice*
20 *shall also be hand-delivered to the person, if any, in real or apparent charge and control of the subject*
21 *premises or property. Once the identity of the person or business entity is known, the notice of violation*
22 *shall be mailed to such person or business entity without the delay affecting the time limits, fees, or*
23 *administrative penalties imposed by this Section 176.1.*

24 *— Proof of giving any notice may be made by the certificate of any officer or employee of the*
25 *City and County of San Francisco or by affidavit of any person over the age of 18 years, which shows*

1 ~~service in conformity with the San Francisco Municipal Code or any other applicable provisions of~~
2 ~~law.~~

3 ~~—(h) **Failure of the City to Comply with Timelines.** The failure of the Director, the~~
4 ~~Department, or the administrative law judge to comply with any of the timelines set forth in this Section~~
5 ~~176.1 shall not render the code violations unenforceable.~~

6 ~~—(i) **Use of Fees and Penalties Collected.** All fees and penalties collected under this Section~~
7 ~~176.1 shall be deposited in the Planning Code Enforcement Fund established in Administrative Code~~
8 ~~Section 10.100.166 and shall be used for the purposes specified in that section.~~

9 ~~—(j) Remedies under this Section 176.1 are non-exclusive, and the City Attorney may at any~~
10 ~~time institute civil proceedings for injunctive and monetary relief, including civil penalties, against any~~
11 ~~person for violations of the Planning Code, without regard to whether the Planning Director has issued~~
12 ~~a notice of violation, scheduled or held a hearing on a notice of violation, issued an order of abatement~~
13 ~~and/or an assessment of administrative penalties, or whether an appeal has been filed or decided.~~

14
15 Section 4. Article 3 of the Planning Code is hereby amended by revising Sections 311
16 and 317, and adding a new Section 319, to read as follows:

17
18 **SEC. 311. PERMIT REVIEW PROCEDURES.**

19 (a) **Purpose.** The purpose of this Section 311 is to establish procedures for
20 reviewing building permit applications to determine compatibility of the proposal with the
21 neighborhood and for providing notice to property owners and residents on the site and
22 neighboring the site of the proposed project and to interested neighborhood organizations, so
23 that concerns about a project may be identified and resolved during the review of the permit
24 and prior to any approval action.

25 ///

1 (b) **Applicability.** Except as indicated herein, all building permit applications in
2 Residential, NC, NCT, and Eastern Neighborhoods Districts for a change of use;
3 establishment of a Micro Wireless Telecommunications Services Facility; establishment of a
4 Formula Retail Use; demolition, new construction, or alteration of buildings, and the removal
5 of ~~an authorized a Residential Unit or an Un~~authorized residential-unit Unit shall be subject to the
6 notification and review procedures required by this Section 311. In addition, all building permit
7 applications that would establish Cannabis Retail or Medical Cannabis Dispensary Uses,
8 regardless of zoning district, shall be subject to the review procedures required by this Section
9 311. Notwithstanding the foregoing or any other requirement of this Section 311, a change of
10 use to a Child Care Facility, as defined in Section 102, shall not be subject to the review
11 requirements of this Section 311, provided there is no increase in the exterior dimensions of the
12 building. Notwithstanding the foregoing or any other requirement of this Section 311, building permit
13 applications to construct an Accessory Dwelling Unit pursuant to Section 207(c)(6) shall not be subject
14 to the notification or review requirements of this Section 311.

15 (1) **Change of Use.** For the purposes of this Section 311, a change of use is
16 defined as follows:

17 (A) **Residential, NC, and NCT Districts.** For all Residential, NC, and
18 NCT Districts, a change of use is defined as a change to, or the addition of any of the
19 following land uses as defined in Section 102 of this Code: Adult Business, Bar, Cannabis
20 Retail, General Entertainment, Group Housing, Health Service, Limited Restaurant, Liquor
21 Store, Massage Establishment, Medical Cannabis Dispensary, Nighttime Entertainment,
22 Outdoor Activity Area, Post-Secondary Educational Institution, Private Community Facility,
23 Public Community Facility, Religious Institution, Residential Care Facility, Restaurant, School,
24 Tobacco Paraphernalia Establishment, Trade School, and Wireless Telecommunications
25 Facility. A change of use from a Restaurant to a Limited-Restaurant shall not be subject to the

1 provisions of this Section 311. Any accessory massage use in .the Ocean Avenue
2 Neighborhood Commercial Transit District shall be subject to the provisions of this Section
3 311. For all Residential Uses, a change of use shall also be defined as a change of occupancy, as
4 defined and regulated by the Building Code, or any change in use, as defined and regulated by the
5 Planning Code, of any Residential Unit(s) or Unauthorized Unit(s) to a Non-Residential or Student
6 Housing use, even if cooking facilities are not removed.

7 * * * *

8 (2) **Alterations.** For the purposes of this Section 311, an alteration shall be
9 defined as any ~~an~~ increase to the exterior dimensions of a building except those features listed
10 in Section s 136(c)(1) through ~~Section~~ 136(c)(24) ~~and 136(e)(26)~~. In addition, an alteration in RH,
11 RM, and RTO Districts shall also include the removal of more than 75% of a residential
12 building's existing interior wall framing or the removal of more than 75% of the area of the
13 existing framing, the addition of a garage, roof deck, or penthouse, or the infilling of a lightwell that
14 blocks the windows on an adjacent building.

15 (3) **Demolition, Removal of Residential Unit.** For the purposes of this Section 311,
16 Demolition and Removal shall be defined as set forth in Section 317 and 319 of this Code and Building
17 Code Section 103A.3.3.

18 (4) **Micro Wireless Telecommunications Services Facilities.** Building
19 permit applications for the establishment of a Micro Wireless Telecommunications Services
20 Facility, other than a Temporary Wireless Telecommunications Services Facility, shall be
21 subject to the review procedures required by this Section. Pursuant to Section 205.2,
22 applications for Temporary Wireless Telecommunications Facilities to be operated for
23 commercial purposes for more than 90 days shall also be subject to the review procedures
24 required by this Section.

25 ///

1 (c) **Building Permit Application Review for Compliance.** Upon acceptance of
2 any application subject to this Section 311, the Planning Department shall review the
3 proposed project for compliance with the Planning Code and ~~any~~all applicable design
4 guidelines including, without limitation, the design policies and guidelines of the General Plan and
5 any Area Plan adopted by the Planning Commission, the design guidelines set forth in Articles 10 and
6 11 of the Planning Code and Appendices thereto, and the Residential Design Guidelines in effect as of
7 the effective date of the ordinance in Board file No. 181216~~approved by the Planning Commission.~~
8 Applications determined not to be in compliance with the standards of Articles
9 1.2, 1.5, 2, ~~and~~ 2.5, 7, and 8 of the Planning Code, the Residential Design Guidelines, including
10 and all applicable design guidelines for specific areas adopted by the Planning Commission, or with
11 any applicable conditions of previous approvals regarding the project, shall be held until either
12 the application is determined to be in compliance, is disapproved or a recommendation for
13 cancellation is sent to the Department of Building Inspection.

14 (1) **Design Guidelines.** "Residential Design Guidelines" shall mean those design
15 policies and guidelines in effect as of the effective date of the ordinance in Board file No. 181216. The
16 construction of new buildings and alteration of existing buildings shall be consistent with the
17 design policies and guidelines of the General Plan and with the "Residential Design
18 Guidelines" and all other applicable design guidelines as adopted and periodically amended
19 for specific areas or conditions by the Planning Commission. The design for new buildings
20 with residential uses in RTO Districts shall also be consistent with the design standards and
21 guidelines of the "Ground Floor Residential Units Design Guidelines" as adopted and
22 periodically amended by the Planning Commission. The Planning Director may~~shall~~ require
23 modifications to the exterior of a proposed new building or proposed alteration of an existing
24 building in order to bring it into conformity with the applicable design guidelines. These
25 modifications may include, but are not limited to, changes in siting~~site~~ design, building

1 envelope, scale, height, form, materials, roofline, architectural features, windows, texture and
2 detailing, openings, and landscaping.

3 (2) **Removal of Residential Units.** When ~~R~~removal or elimination of a
4 Residential Unit or an ~~authorized or U~~unauthorized residential Unit is proposed, in addition to
5 complying with the requirements of Section 317 of this Code, the Applicant shall provide notice as
6 required in this Section 311, and shall include contact information for the appropriate City
7 agency or resource for assistance in securing tenant counseling or legal services, as
8 applicable. The Applicant shall provide a list of all existing Residential or Unauthorized Units in the
9 subject property to the Zoning Administrator. Within five days of filing a permit application to remove
10 any Residential or Unauthorized Unit, the Applicant shall post a notice of the application at least
11 30 inches by 30 inches in a conspicuous common area of the subject property, and such sign
12 shall be posted no later than the start date of the notification period required by this Section
13 311 and shall remain posted until the conclusion of any hearings on the permit before the
14 Planning Commission, the Zoning Administrator, the Board of Supervisors or the Board of
15 Appeals. The Zoning Administrator shall determine any additional notification procedures to
16 be applied in such a case.

17 (3) **Replacement Structure Required.** ~~Unless the building is determined to pose~~
18 ~~a serious and imminent hazard as defined in the Building Code, an application authorizing demolition~~
19 ~~of an historic or architecturally important building or of a dwelling shall not be approved and issued~~
20 ~~until the City has granted final approval of~~No permit authorizing demolition of a residential building
21 shall be issued until a Conditional Use authorization for the demolition and the replacement structure
22 has been finally approved pursuant to Section 317 of this Code and a building permit for
23 construction of the replacement building, consistent with the Conditional Use authorization, has
24 been finally approved. A building permit Conditional Use authorization is finally approved if the
25 Board of ~~Appeals~~Supervisors has taken final action for approval on an appeal of the ~~issuance or~~

1 ~~denial of the permit or if the permit has been issued and~~ Conditional Use authorization or if the time
2 for filing an appeal with the Board has lapsed with no appeal filed. ~~_____ (A)~~ The
3 demolition or alteration of any building, including but not limited to historically and
4 architecturally important buildings, may be approved administratively when the Director of the
5 Department of Building Inspection, the Chief of the Bureau of Fire Prevention and
6 Investigation, or the Director of Public Works ~~determines~~ issues a written determination, after
7 consultation with the Zoning Administrator, that an imminent safety hazard exists, and the
8 Director of the Department of Building Inspection determines that the proposed demolition or
9 extensive alteration of the structure, feature, or part thereof is the only feasible means to correct
10 the condition and secure the public safety; provided, however, that only such work as is necessary to
11 correct the unsafe or dangerous condition may be performed.

12 (4) **Completeness of Plans, and Accuracy of Demolition Calculations.** All
13 proposed plans submitted by the project applicant shall be prepared by a California licensed architect
14 who shall attest, under penalty of perjury, to their accuracy and completeness. Such plans shall depict
15 the existing and proposed conditions of the subject building and site, including any alterations to floor
16 plans and exterior facades. The plans shall show all existing above grade elements, external walls, and
17 internal structural framework to be demolished, destroyed, or removed, even temporarily, and shall
18 include demolition calculations for each. All dimensions shall be clearly shown on the plans. Each
19 permit application shall include the following information, attesting under oath to its accuracy:

20 (A) whether and how many existing tenants reside in any Residential or
21 Unauthorized Unit at the subject property;

22 (B) whether the proposed project will result in the loss or Removal of any
23 affordable housing unit, as defined in Section 401 of this Code, or any unit(s) subject to the Residential
24 Rent Stabilization and Arbitration Ordinance; and

25 ///

1 (C) whether the proposed project will result in the loss or Removal of any
2 housing unit(s) currently occupied by a tenant or tenants or that was occupied by a tenant or tenants at
3 any time within seven years prior to the filing of the permit application, and if so, whether all
4 Residential Units have been withdrawn from residential rental pursuant to Administrative Code Section
5 37.9(a)(13).

6 (5) **Project Review.** As a part of the project review and prior to the notification
7 required by this Section 311, the project planner assigned to review the permit application shall
8 confirm the accuracy and completeness of the proposed plans submitted with the building permit
9 application, including the existing and proposed conditions of the subject building and site, including
10 all required demolition calculation(s) and verification of such calculations by the project applicant
11 under oath reflecting the percentage of the interior and exterior elements of the existing structure to be
12 demolished, destroyed, or removed, even temporarily. Modifications to the proposed plans shall be
13 required as necessary to insure their accuracy and completeness. The permit application shall either be
14 held until complete plans have been submitted or disapproved with a recommendation for cancellation
15 sent to the Department of Building Inspection. If necessary to confirm the existing conditions and
16 demolition calculations, the project planner shall conduct a site visit and consult with the Department
17 of Building Inspection.

18 (6) **Requirement for Conditional Use Authorization.** The Planning Department
19 shall determine whether the proposed project would result in the Demolition of a Residential Building
20 or in the Removal of a Residential Unit or an Unauthorized Unit through Demolition, Merger or
21 Conversion pursuant to the requirements of Section 317 of this Code, or whether the proposed project
22 is a Major Expansion of a Residential Building pursuant to Section 319 of this Code. Upon such a
23 determination by the Planning Department, the project sponsor shall be required to apply for a
24 Conditional Use authorization pursuant to the applicable provisions of this Code, unless exempt from
25 Conditional Use authorization pursuant to subsections 317(c)(2) or 319(h)(2) of this Code. For all

1 projects subject to the Conditional Use requirements of Sections 317 or 319 of this Code, the
2 Department shall notify the Department of Building Inspection that the building permit application
3 shall be held pending action by the Planning Commission to approve or disapprove all Conditional Use
4 authorizations for the proposed project.

5 (d) **Notification.** Upon determination that an application is complete and in
6 compliance with the requirements and development standards of the Planning Code and all
7 applicable design guidelines, the Planning Department shall cause a notice to be posted on the
8 site pursuant to rules established by the Zoning Administrator and shall cause a written notice
9 describing the proposed project to be sent in the manner described below. This notice shall be
10 in addition to any notices required by the Building Code and shall have a format and content
11 determined by the Zoning Administrator. It shall include a description of the proposal
12 compared to any existing improvements on the site with accurate dimensions of the basic
13 features, elevations, and site plan of the proposed project including the position of any
14 adjacent buildings, exterior dimensions and finishes, and a graphic reference scale, existing
15 and proposed uses or commercial or institutional business name, if known. The notice shall
16 describe the project review process and shall set forth the mailing date of the notice and the
17 expiration date of the notification period. The required contents of the notification package shall be
18 as set forth in subsection 311(d)(7), below.

19 (1) **Notification Group and Area.** Written notice shall be mailed to the
20 notification group which shall include the project sponsor, tenants of the subject property,
21 relevant neighborhood organizations as described in subsection 311(d)(4), all individuals
22 having made a written request for notification for a specific parcel or parcels and all owners
23 and, to the extent practical, occupants, of properties in the notification area. For the purposes
24 of Section 311(c)(2), written notice shall also be mailed to tenants of the subject property in
25 Unauthorized residential Units.

1 * * * *

2 (6) **Elimination of Duplicate Notice.** The notice provisions of this Section
3 311 may be waived by the Zoning Administrator for building permit applications for projects
4 that have been, or before approval will be, the subject of a duly noticed public hearing before
5 the Planning Commission or Zoning Administrator, provided that the *notice of such public*
6 *hearing complies with all of the other notification requirements set forth in this subsection 311(d),*
7 *including the notification group and area, notification period, and contents of the notification*
8 *packagenature of work for which the building permit application is required is both substantially*
9 *included in the hearing notice and is the subject of the hearing.*

10 (7) **Notification Package.** The notification package for a project subject to
11 notice under this Section 311 shall include a written notice and reduced-size drawings of the
12 project, *and shall include the names of the property owner or owners (if different from the project*
13 *sponsor), the contractor, and the design professional as well as the name and contact information for*
14 *any primary contact persons for the project.*

15 (A) The written notice shall compare the proposed project to the
16 existing conditions at the development lot. Changes to basic features of the project that are
17 quantifiable shall be disclosed on the written notice. The basic features of existing and
18 proposed conditions shall include, where applicable, front setback, building depth, rear yard
19 depth side, setbacks, building height, number of stories, dwelling unit count, *building square*
20 *footage, and use of the building, and number of parking spaces.*

21 (B) The written notice shall describe whether the project is a
22 demolition, new construction, or alteration project. If the project is an alteration, the type of
23 alteration shall be described: horizontal, vertical, or both horizontal and vertical additions and
24 where the alteration is located. *The project description shall also include, as applicable,*
25 *descriptions of (i) an addition or expansion of a garage, roof deck, parapet, penthouse; (ii) an*

1 alteration of a ground floor storefront; (iii) alterations to existing fenestration pattern, material,
2 dimension, or configuration; (iv) whether the structure is historic or over 50 years old as of the date of
3 the project application; (v) whether the project would partially or completely infill a light well or
4 obstruct windows on adjacent buildings; and (vi) demolition calculations as confirmed by the Planning
5 Department.

6 (C) Written project description shall be part of the notice. In addition,
7 the notice shall describe the project review process, including whether the project will require a
8 Variance, Conditional Use authorization, or amendment to the Planning Code or General Plan,
9 information on how to obtain additional information, and the name, telephone number, and email
10 address of the project planner at the Planning Department assigned to review the application-contact
11 information of the Planning Department.

12 (D) The building permit application number(s) shall be disclosed in the
13 written notice. The start and expiration dates of the notice shall be stated. The written notice
14 shall also provide a description about the recipient's rights to request additional information, to
15 request Discretionary Review by the Planning Commission and to appeal to other boards or
16 commissions shall be provided, and how to request receipt of notices of public hearings on the
17 project.

18 (E) 11x17 sized ~~or equivalent~~ drawings to scale shall be included with
19 the ~~Section 3H~~ written notice. The drawings shall clearly illustrate the existing and proposed
20 conditions in relationship to the adjacent properties. All dimensions and text throughout the
21 drawings shall be legible. The drawings shall include a site plan, floor plans and elevations
22 documenting dimensional changes that correspond to the basic features included in the
23 written notice.

24 (F) The existing and proposed site plan shall illustrate the project
25 including the full lots and structures of the directly adjacent properties and, if a horizontal

1 addition is proposed, the site plan shall include the properties on the block within which the project is
2 located showing rear and front setbacks.

3 (G) The existing and proposed floor plans shall illustrate accurately show
4 the location and removal of all interior and exterior wall elements of the existing structure to be
5 demolished, destroyed, or removed, even temporarily, and include the existing and proposed square
6 footage as well as the amount and location of existing square footage proposed to be demolished. The
7 project applicant shall verify, under oath, the accuracy of all required demolition calculations. The
8 existing and proposed dimensions, square footage, and uses of each room shall be labeled.
9 Significant dimensions shall be provided to document the changes proposed by the project.

10 (H) The existing and proposed elevations shall document the change
11 in building volume: height and depth. Dimensional changes shall be documented, including
12 overall building height and also parapets, penthouses, roof decks, garage additions, and other
13 proposed vertical and horizontal building extensions. The front and rear elevations shall
14 include the full profiles of the adjacent structures including the adjacent structures' doors,
15 windows, and general massing. Each side elevation shall include the full profile of the
16 adjacent building in the foreground of the project, and the adjacent windows, lightwells, and
17 general massing shall be illustrated.

18 (I) An architectural rendering, or architectural illustration, shall be
19 submitted depicting the relationship of the proposed project to adjacent properties.

20 (J) The declaration of compliance with the San Francisco Residential Rent
21 Stabilization and Arbitration Ordinance, as required by Building Code Section 106A.3.1(11), shall be
22 included in the notice package.

23 (K) The notification package shall include a list of all work done under any
24 and all previous permit applications, including revisions to permits, over the five years prior to filing of
25 the application.

1 * * * *

2 (e) **Requests for Planning Commission Review.** A request for the Planning
3 Commission to exercise its discretionary review powers over a specific building permit
4 application shall be considered by the Planning Commission if received by the Planning
5 Department no later than 5:00 p.m. of the last day of the notification period as described in
6 this Section 311, subject to guidelines adopted by the Planning Commission. The project
7 sponsor of a building permit application may request discretionary review by the Planning
8 Commission to resolve conflicts between the Director of Planning and the project sponsor
9 concerning requested modifications to comply with the Residential Design Guidelines, or other
10 applicable design guidelines.

11 (1) **Scheduling of Hearing.** The Zoning Administrator shall set a time for
12 hearing requests for discretionary review by the Planning Commission within a reasonable
13 period.

14 (2) **Notice.** Mailed notice of the discretionary review hearing by the Planning
15 Commission shall be given pursuant to the requirements of Section 333 of this Code.

16 (f) The Department shall retain in its files until completion of the project and final
17 inspection by the Department of Building Inspection of the scale drawings, site plans, floor plans and
18 elevations for each project.

19
20 **SEC. 317. LOSS OF RESIDENTIAL AND UNAUTHORIZED UNITS THROUGH**
21 **DEMOLITION, MERGER, ~~AND~~ OR CONVERSION.**

22 (a) **Findings.** The Board of Supervisors finds that this Section 317 will serve the public
23 necessity, convenience and welfare for the following reasons:

24 (1) San Francisco faces a continuing shortage of affordable housing. There
25 is a high ratio of rental to ownership tenure among the City's residents. The General Plan

1 recognizes that existing housing is the greatest stock of rental and financially accessible
2 ~~Residential~~ ~~Units~~, and is a resource in need of protection. The General Plan further provides,
3 among other things, that existing housing and neighborhood character be conserved and
4 protected. Therefore, a public hearing will be held prior to approval of any permit that would remove
5 existing housing, with certain exceptions, as described below. The Planning Commission shall develop
6 a Code Implementation Document setting forth procedures and regulations for the implementation of
7 this Section 317 as provided further below. The Zoning Administrator shall modify economic criteria
8 related to property values and construction costs in the Implementation Document as warranted by
9 changing economic conditions to meet the intent of this Section. Given the cost of new construction and
10 the insufficiency of public funds available to support housing construction, priority should be given to
11 the retention of existing units as a primary means to provide affordable housing and protect existing
12 tenants. Even if the existing housing is replaced, the new units are generally more costly and
13 demolition often results in displacement of residents, causing personal hardship, relocation problems,
14 and an increased risk of homelessness.

15 (2) According to data contained in the Planning Department's biannual Housing
16 Balance Report No 7 covering the ten-year period from July 1, 2008 through June 30, 2018, San
17 Francisco lost more than one existing affordable housing unit for every two it created. Data provided
18 in the report shows that on average, more than 400 rent-controlled units disappeared from San
19 Francisco each year between 2008 and 2018 (a total of 4,263), due primarily to evictions, owner move-
20 ins, condominium conversions, and demolitions. In contrast, an average of just 650 new affordable
21 units were built each year during that time period (a total of 6,577). The number of rent-controlled
22 units continues to decline, particularly in smaller two- and three-unit buildings.

23 (3) In addition to the production of affordable housing through San Francisco's
24 inclusionary housing ordinance, which requires that new development include a certain number of
25 units affordable to households with incomes that do not exceed the limits for moderate-income, lower

1 income, very low income or extremely low income, the city's existing supply of housing must be
2 preserved and protected as an important part of the City's overall housing strategy.

3 (4) The original intent of Section 317 of the Planning Code was to provide a
4 process for preserving and protecting the City's existing housing stock by requiring a public
5 hearing to be held prior to the approval of any permit that would remove existing housing.
6 However, the absence of clear definitions and standards for the review of residential
7 demolitions, mergers, conversions, and major expansions, and the absence of well-defined
8 enforcement mechanisms and penalties for violations has fueled a speculative real estate
9 market that has accelerated tenant evictions and caused the loss of existing financially
10 accessible residential units and residential buildings that cannot be replaced by new
11 construction.

12 (5) The protection of the City's existing housing stock from such further loss is an
13 emergency that must be immediately addressed through amendments to the City's Planning Code and
14 Building Code to protect rental housing, conserve existing housing, preserve affordable housing, and
15 discourage speculation in the City's existing housing stock.

16 (6) The following problems have furthered the loss of the City's existing financially
17 accessible housing stock:

18 (A) Conflicting definitions and requirements between the Planning and
19 Building Codes;

20 (B) Lack of clarity for the applicant, neighbors and staff in the proper
21 interpretation of the Planning Code and the approval process;

22 (C) Intentional avoidance by developers of public notice and other
23 requirements for housing demolitions by filing an application for an alteration permit and modifying it
24 through serial permitting; and

25 ///

1 (D) Inadequate notice to neighbors and other concerned parties about a
2 proposed project's existing conditions and the scope of proposed demolition and alteration work.

3 (7) This Section 317 addresses these concerns by:

4 (A) Providing a single definition for demolition of residential buildings,
5 based on percentage removals set forth in the Building Code and verified for accuracy by the Planning
6 Department;

7 (B) Providing clear and enforceable definitions for removal of residential
8 units by demolition, conversion, or merger through amendments to Section 317 of the Planning Code;

9 (C) Adding a new definition for major expansions of existing residential
10 buildings, through a new Section 319 of the Planning Code, to regulate the extraordinary expansions of
11 single-family homes without any accompanying increase in residential density;

12 (D) Preventing circumvention of the intent of the Code by restrictions on
13 serial permitting;

14 (E) Providing clear permit application and notice requirements to project
15 sponsors so that it is easy to determine whether a project would be considered a demolition;

16 (F) Providing clear permit application and review procedures so that project
17 applicants, City staff, neighbors, and other interested parties can proceed with assurance following
18 permit application and issuance;

19 (G) Providing permit application procedures for ongoing projects where the
20 scope of work changes or is increased from previously approved permit applications;

21 (H) Ensuring robust and enforceable tenant protections by prohibiting the
22 demolition or removal of any housing that is or has been over the past seven years occupied by a
23 residential tenant, and requiring the project sponsor to submit verification of compliance with
24 applicable sections of the San Francisco Residential Rent Stabilization and Arbitration Ordinance; and

25 ///

1 (I) Ensuring strict and consistent enforcement and penalties for violations
2 and noncompliance.

3 (b) **Definitions.** For the purposes of this Section 317, the terms below shall be as
4 defined below. Capitalized terms not defined below are defined in Section 102 of this Code.

5 (1) "Residential Conversion" or "Conversion" shall mean ~~the removal of~~
6 ~~cooking facilities,~~ change of occupancy (as defined and regulated by the Building Code), or
7 change of use (as defined and regulated by the Planning Code), of any Residential Unit or
8 Unauthorized Unit to a Non-Residential or Student Housing use, even if cooking facilities are not
9 removed.

10 (2) "Residential Demolition" or "Demolition of a Residential Unit" shall mean
11 any of the following loss of residential housing, including any one or more of the following:

12 (A) The total tearing down of an existing Residential Building; Any work on a
13 Residential Building for which the Department of Building Inspection determines that an application
14 for a demolition permit is required; or

15 (B) Removal of one or more Residential Units or Unauthorized Units; A
16 major alteration of a Residential Building that proposes the Removal of more than 50% of the sum of
17 the Front Facade and Rear Facade and also proposes the Removal of more than 65% of the sum of all
18 exterior walls, measured in lineal feet at the foundation level; or

19 (C) Removal of existing above grade elements, external walls, or internal
20 structural framework in amounts equal to or greater than the percentages set forth in Building Code
21 Section 103A.3.3; A major alteration of a Residential Building that proposes the Removal of more than
22 50% of the Vertical Envelope Elements and more than 50% of the Horizontal Elements of the existing
23 building, as measured in square feet of actual surface area.

24 —————(D) The Planning Commission may reduce the above numerical elements of the
25 criteria in Subsections (b)(2)(B) and (b)(2)(C), by up to 20% of their values should it deem that

1 ~~adjustment is necessary to implement the intent of this Section 317, to conserve existing sound housing~~
2 ~~and preserve affordable housing~~

3 To determine whether a project proposes Residential Demolition, calculation of the percentages
4 of Removal under this subsection (b)(2) shall include all work included in permits approved for the
5 property within the prior five years.

6 (3) ~~—"Façade" is defined in Section 102 of this Code.~~

7 (4) ~~—"Front Façade" is defined in Section 102 of this Code.~~

8 (5) ~~—"Horizontal Elements" shall mean all roof areas and all floor plates, except floor~~
9 ~~plates at or below grade.~~

10 (6) ~~—"Mandatory Discretionary Review" is defined in Section 102 of this Code.~~

11 (37) "Residential Merger" or "Merger" shall mean one or more of the following:

12 (A) the combining of two or more existing Residential or Unauthorized
13 Units within a Residential Building containing two or more such Units, resulting in a decrease in
14 the number of Residential Units and Unauthorized Units within a building, or

15 (B) the enlargement of one or more existing units by more than 10% of
16 its original floor area while ~~substantially~~ reducing the size of ~~others~~ one or more other existing units
17 by more than 25%10% of their original floor area, even if the number of units is not reduced, or

18 (C) the Removal of a Residential Flat.

19 ~~The Planning Commission may reduce the numerical element of this criterion by up to 20% of~~
20 ~~its value should it deem that adjustment is necessary to implement the intent of this Section 317, to~~
21 ~~conserve existing housing and preserve affordable housing.~~

22 (8) ~~—"Rear Façade" is defined in Section 102 of this Code.~~

23 (49) "Removal" shall mean, with reference to ~~a~~ the external wall, roof or floor,
24 internal wall, partition, floor or ceiling, or the internal structural framework, interior bearing element
25 or floor plate of a structure, its temporary or permanent dismantling, its relocation, or its alteration,

1 ~~and/or replacement of the exterior function~~ by construction of a new building element ~~exterior to it.~~
2 Where a portion of an exterior or interior wall is removed, any remaining wall with a height
3 less than the Building Code requirement for legal head room shall be considered
4 ~~demolished~~ Removal for the purposes of this Section 317. Where Ordinary maintenance and repair, the
5 sole purpose and effect of which is to correct deterioration, decay, or damage of existing materials,
6 where exterior finishing and deteriorated elements of a building are removed and replaced ~~for~~
7 ~~repair or maintenance~~, in kind with like materials, with no increase in the extent of the element
8 or volume of the building, ~~such replacement~~ shall not be considered Removal for the purposes
9 of this Section 317, provided that any deterioration, decay, or damage of existing materials is verified
10 in advance of Removal under this Section 317 and Building Code Section 103A.3.1. The foregoing does
11 ~~not supersede any requirements for or restrictions on noncomplying structures and their reconstruction~~
12 ~~as governed by Article 1.7 of this Code.~~

13 (510) "Removal" shall mean, with reference to a Residential or Unauthorized
14 Unit, ~~its~~ elimination of the Residential or Unauthorized Unit by Conversion, Demolition, or Merger
15 with another Residential or Unauthorized Unit as defined in this Section 317.

16 (11) ~~"Residential Building" is defined in Section 102 of this Code.~~

17 (6) "Residential Flats" shall mean a housing typology consisting of two or more
18 Dwelling Units in a single building that have exposure onto open areas at the front and rear of the
19 property.

20 (712) "Residential Unit" shall mean a legal conforming or legal nonconforming
21 Dwelling Unit, a legal nonconforming Live/Work Unit, ~~or~~ Group Housing, or an Accessory
22 Dwelling Unit. It shall not include a Residential Unit that is regulated by Chapter 41 of the
23 Administrative Code (the Residential Hotel Unit Conversion and Demolition Ordinance).

24 (813) "Unauthorized Unit" shall mean one or more rooms within a building that
25 have been used, without the benefit of a building permit, as a separate and distinct living or

1 sleeping space independent from Residential Units on the same property. "Independent" shall
2 mean that ~~(A#)~~ the space has independent access that does not require entering a Residential
3 Unit on the property and ~~(B#)~~ there is no open, visual connection to a Residential Unit on the
4 property.

5 ~~(14) "Vertical Envelope Elements" shall mean all exterior walls that provide weather~~
6 ~~and thermal barriers between the interior and exterior of the building, or that provide structural~~
7 ~~support to other elements of the building envelope.~~

8 (c) **Conditional Use Authorization Required; Applicability, Exemptions, and**
9 **Conditions of Approval.**

10 (1) Applicability. Conditional Use authorization pursuant to the requirements of this
11 Section 317 is required prior to:

12 (A) the approval of ~~A~~ny application for a permit that would result in:
13 (i) the Removal ~~by Demolition, Merger, or Conversion~~ of one or
14 more Residential Units or Unauthorized Units; ~~is required to obtain Conditional Use authorization,~~
15 or

16 (ii) the Demolition of a Residential Building;
17 (B) the approval of an application for a replacement structure in the case of
18 a Residential Demolition, or

19 (C) the approval of an alteration permit in the case of a Conversion.

20 For Unauthorized Units, this Conditional Use authorization will not be required for
21 Removal if the Zoning Administrator has determined in writing that the unit cannot be
22 legalized under any applicable provision of this Code. ~~The application for a replacement building~~
23 ~~or alteration permit shall also be subject to Conditional Use Requirements.~~

24 ~~(2) The Conditional Use requirement of Subsection (c)(1) shall apply to (A) any~~
25 ~~building or site permit issued for Removal of an Unauthorized Unit on or after March 1, 2016, and (B)~~

1 *any permit issued for Removal of an Unauthorized Unit prior to March 1, 2016 that has been*
2 *suspended by the City or in which the applicant's rights have not vested.*

3 (23) Exemptions.

4 (A) The Demolition, Merger, or Conversion Removal of a Residential Unit
5 or the Demolition of a Residential Building that has received final approval from the Planning
6 Department through administrative approval or the Planning Commission through a
7 Discretionary Review or Conditional Use authorization prior to the effective date of the
8 Conditional Use requirement of Subsection (e)(1) the ordinance in Board file No. 181216is does not
9 required to apply for an additional approval under Subsection (e)(1) this Section 317 unless the
10 construction activity exceeds the Conditions of Approval or scope of work under a building permit, in
11 which case the provisions of subsection (h) shall apply.

12 (B) This Section 317 shall not apply to property:

13 (i) owned by the United States or any of its agencies, with the
14 exception of such property not used exclusively for a governmental purpose;

15 (ii) owned by the State of California or any of its agencies, with the
16 exception of such property not used exclusively for a governmental purpose;

17 (iii) under the jurisdiction of the Port of San Francisco or the Office of
18 Community Investment and Infrastructure, also known as the Successor Agency to the Redevelopment
19 Agency of the City and County, where the application of this Section 317 is prohibited by State law; or

20 (iv) where demolition of the building or Removal of a Residential Unit
21 or Unauthorized Unit is necessary to comply with a court order that directs the owner to demolish the
22 building or remove the unit due to conditions that present an imminent threat to life safety, or where the
23 Director of the Department of Building Inspection or the Chief of the Bureau of Fire Prevention and
24 Public Safety has issued a written determination that an imminent safety hazard exists, and that the
25 proposed demolition or alteration of the structure, feature, or part thereof, is the only feasible means to

1 correct the condition and secure the public safety; provided, however, that only such work as is
2 necessary to correct the unsafe or dangerous condition may be performed.

3 (3) **Conditions of Approval.** The Planning Commission, or the Board of Supervisors
4 on appeal, may prescribe such additional conditions as may be necessary to secure the objectives of
5 this Section 317 and the General Plan to protect existing housing as the greatest stock of rental and
6 financially accessible housing.

7 ~~(4) — The Removal of an Unauthorized Unit does not require a Conditional Use~~
8 ~~authorization pursuant to Subsection (c)(1) if the Department of Building Inspection has determined~~
9 ~~that there is no path for legalization under Section 106A.3.1.3 of the Building Code.~~

10 ~~(5) — The Demolition of a Single-Family Residential Building that meets the~~
11 ~~requirements of subsection (d)(3) below may be approved by the Department without requiring a~~
12 ~~Conditional Use authorization.~~

13 (d) **Building Inspection Review of Specified Projects.** For all projects subject to the
14 Conditional Use authorization requirement of this Section 317 that would require structural retrofit or
15 foundation upgrade, Planning Department staff may require the project sponsor to submit plans for the
16 structural work prepared by a California licensed structural engineer who shall attest, under penalty of
17 perjury, to their accuracy and completeness. Planning Department staff may request the Department of
18 Building Inspection to review these plans and provide further structural or engineering review or
19 review of proposed construction means and methods to be included in the Planning Department staff
20 report for the Conditional Use authorization hearing before the Planning Commission.

21 (e) **Issuance of Residential Demolition Permit; Approval of Replacement Structure**
22 **Required.**

23 (1) No permit ~~for a Residential Demolition of to Demolish a~~ an existing
24 Residential ~~Building~~Unit or an Unauthorized Unit in any zoning district shall be issued until a
25 Conditional Use authorization for the Demolition and the replacement structure have been finally

1 approved pursuant to the criteria set forth in this Section 317, and a building or site permit for the
2 replacement structure consistent with the Conditional Use authorization has been issued. ~~is finally~~
3 ~~approved, unless the building is determined to pose a serious and imminent hazard as defined in the~~
4 ~~Building Code. A building permit Conditional Use authorization~~ is finally approved if the Board of
5 ~~Appeals Supervisors~~ has taken final action for approval on an appeal of the ~~issuance or denial of~~
6 ~~the permit Conditional Use authorization,~~ or if the ~~permit has been issued and the~~ time for filing an
7 appeal with the Board of ~~Appeals Supervisors~~ has lapsed with no appeal filed.

8 (2) ~~Conditional Use authorization is required for approval of the permit for~~
9 ~~Residential Demolition, and t~~The Commission shall consider the replacement structure as part
10 of its decision on the Conditional Use application for the Residential Demolition pursuant to the
11 criteria set forth in subsection 317(g)(6), below. If Conditional Use authorization is required for the
12 replacement structure by other sections of this Code, the Commission shall consider the
13 ~~Residential d~~Demolition as part of its decision on ~~that the~~ Conditional Use application provided
14 that the criteria for the Demolition set forth in subsection 317(g)(6)(A) shall apply.

15 (3) ~~An application to demolish a Single-Family Residential Building on a site in a RH-~~
16 ~~1 or RH-1(D) District that is demonstrably not affordable or financially accessible housing is exempt~~
17 ~~from the Conditional Use authorization requirement of Subsection (c)(1). Specific numerical criteria~~
18 ~~for such analyses shall be adopted by the Planning Commission in the Code Implementation Document,~~
19 ~~in accordance with this Section 317, and shall be adjusted periodically by the Zoning Administrator~~
20 ~~based on established economic real estate and construction indicators.~~

21 ~~(A) The Planning Commission shall determine a level of affordability or~~
22 ~~financial accessibility, such that Single-Family Residential Buildings on sites in RH-1 and RH-1(D)~~
23 ~~Districts that are demonstrably not affordable or financially accessible, that is, housing that has a~~
24 ~~value greater than at least 80% of the combined land and structure values of single family homes in~~
25 ~~San Francisco as determined by a credible appraisal, made within six months of the application to~~

1 ~~demolish, are not subject to a Conditional Use hearing. The demolition and replacement building~~
2 ~~applications shall undergo notification as required by other sections of this Code. The Planning~~
3 ~~Commission, in the Code Implementation Document, may increase the numerical criterion in this~~
4 ~~Subsection by up to 10% of its value should it deem that adjustment is necessary to implement the intent~~
5 ~~of this Section 317, to conserve existing housing and preserve affordable housing.~~

6 ~~_____ (B) The Planning Commission, in the Code Implementation Document, shall~~
7 ~~adopt criteria and procedures for determining the soundness of a structure proposed for demolition,~~
8 ~~where "soundness" is an economic measure of the feasibility of upgrading a residence that is deficient~~
9 ~~with respect to habitability and Housing Code requirements, due to its original construction. The~~
10 ~~"soundness factor" for a structure shall be the ratio of a construction upgrade cost (i.e., an estimate of~~
11 ~~the cost to repair specific habitability deficiencies) to the replacement cost (i.e., an estimate of the~~
12 ~~current cost of building a structure the same size as the existing building proposed for demolition),~~
13 ~~expressed as a percent. A building is unsound if its soundness factor exceeds 50%. A Residential~~
14 ~~Building that is unsound may be approved for demolition.~~

15 (34) Nothing in this Section 317 is intended to permit a Residential Demolition
16 in those areas of the City where other sections of this Code prohibit such ~~a~~Demolition or a
17 replacement structure.

18 (45) Nothing in this Section 317 is intended to exempt ~~buildings or sites where a~~
19 ~~proposed demolition~~Demolition is proposed from undergoing additional review ~~with respect under~~
20 ~~any other provision of this Code that regulates Demolition or replacement structures, including without~~
21 ~~limitation buildings or sites subject to Articles 10 and 11 of this the Planning Code; where the~~
22 requirements of those articles also apply. ~~Notwithstanding the definition of "Residential~~
23 ~~Demolition" in this section and as further described in the Code Implementation Document with regard~~
24 ~~to Residential Demolition, the criteria of Section 1005 shall apply to projects subject to review under~~
25 ~~the requirements of Article 10 with regard to the structure itself.~~

1 **(f) Conversion to Student Housing.** The ~~ε~~Conversion of Residential Units to
2 Student Housing is prohibited. For the purposes of this subsection ~~(f)~~, Residential Units that
3 have been defined as such by the time a First Certificate of Occupancy has been issued by
4 the Department of Building Inspection for new construction shall not be converted to Student
5 Housing.

6 ~~(f) — **Residential Merger.** The Merger of Residential Units, not otherwise subject to~~
7 ~~Conditional Use authorization by this Code, shall be prohibited.~~

8 **(g) Conditional Use Criteria.**

9 **(1) General.**

10 (A) The Conditional Use criteria set forth in this Section 317 shall be in
11 addition to the criteria set forth in Section 303 of this Code, provided that in the event of a conflict, the
12 criteria set forth in this Section 317 shall apply.

13 (B) Prior to granting any Conditional Use authorization under this Section
14 317, the Planning Commission shall find that the following criteria are met: (i) the proposed project
15 will not result in the loss or Removal of any affordable housing unit, as defined in Section 401 of this
16 Code, or any unit(s) subject to the Residential Rent Stabilization and Arbitration Ordinance; and (ii)
17 the proposed project will not result in the loss or Removal of any housing unit(s) that is/are currently
18 occupied by a tenant or tenants or was occupied by a tenant or tenants at any time within seven years
19 prior to the filing of the Conditional Use Application, provided that this criterion shall not apply to any
20 building where all Residential Units have been withdrawn from residential rental pursuant to
21 Administrative Code Section 37.9(a)(13).

22 **(2) C-3 Districts.** When considering whether to grant Conditional Use
23 authorization for the loss or Removal of Residential or Unauthorized Unit(s) in the C-3
24 districts, ~~in lieu of the criteria set forth in Planning Code Section 303, consideration shall be given to~~
25 the Planning Commission shall find that, in addition to the criteria set forth in subsection (g)(1), the

1 loss or Removal of the Residential or Unauthorized Unit(s) will have no adverse impact on the
2 public health, safety, and general welfare of due to the loss of housing stock in the district ~~and~~
3 ~~to any unreasonable hardship to the applicant if the permit is denied.~~

4 (32) **Residential Merger.** In addition to the criteria set forth in subsection (g)(1),
5 ~~The~~ Planning Commission shall find that the following criteria are met before a Conditional Use
6 authorization for the ~~consider the following criteria in the review of applications to merge~~ Merger of
7 Residential Units or Unauthorized Units can be approved:

8 (A) Merger of the units would not result in any single Residential Unit larger
9 than 1,200 square feet or the average size of the existing Residential Units within 300 feet of the subject
10 property, whichever is less; ~~whether removal of the unit(s) would eliminate only owner-occupied~~
11 ~~housing, and if so, for how long the unit(s) proposed to be removed have been owner occupied; and~~

12 (B) Merger would not result in the elimination of one or more Residential
13 Flats or adversely impact the existing exposure of any Residential Flat or Residential Unit onto open
14 areas ~~whether removal of the unit(s) and the merger with another is intended for owner occupancy.~~

15 (C) ~~whether removal of the unit(s) will remove an affordable housing unit as~~
16 ~~defined in Section 401 of this Code or housing subject to the Residential Rent Stabilization and~~
17 ~~Arbitration Ordinance; and~~

18
19 ~~_____ (D) if removal of the unit(s) removes an affordable housing unit as defined in~~
20 ~~Section 401 of this Code or units subject to the Residential Rent Stabilization and Arbitration~~
21 ~~Ordinance, whether replacement housing will be provided which is equal or greater in size, number of~~
22 ~~bedrooms, affordability, and suitability to households with children to the units being removed;~~

23 (E) ~~how recently the unit being removed was occupied by a tenant or tenants;~~

24 (F) ~~whether the number of bedrooms provided in the merged unit will be~~
25 ~~equal to or greater than the number of bedrooms in the separate units;~~

1 ~~(AB)~~ *whether the Residential Conversion would will provide desirable new*
2 *Non-Residential Use(s) appropriate for the neighborhood and that is principally permitted within*
3 *the zoning adjoining district(s) in which it is located; and*

4 ~~(BC)~~ *in districts where Residential Uses are not permitted, whether the*
5 *Residential Conversion will bring the building closer into conformance with the Uses permitted*
6 *in the zoning district; and*

7 ~~(D)~~ *whether conversion of the unit(s) will be detrimental to the City's housing*
8 *stock;*

9 ~~(CE)~~ *whether eConversion of the unit(s) is necessary to eliminate design,*
10 *functional, or habitability deficiencies that cannot otherwise be corrected;*

11 ~~(F)~~ *whether the Residential Conversion will remove Affordable Housing, or*
12 *units subject to the Residential Rent Stabilization and Arbitration Ordinance.*

13 ~~(3)~~ *Planning Commission approval shall not be required for the change of use or*
14 *occupancy of a dwelling unit, group housing, or SRO to Student Housing if the dwelling unit, group*
15 *housing, or SRO will be Student Housing owned, operated or otherwise controlled by a not for profit*
16 *post-secondary Educational Institution and*

17 ~~(A)~~ *it was built by the post-secondary Educational Institution;*

18 ~~(B)~~ *it is in a convent, monastery, or similar religious order facility;*

19 ~~(C)~~ *it is on an adjoining lot (i.e., sharing the same lot line) to the post-*
20 *secondary Educational Institution, so long as the lot has been owned by the post-secondary*
21 *Educational Institution for at least ten years as of the effective date of Ordinance 188-12; or*

22 ~~(D)~~ *as of August 10, 2010, it was owned, operated or otherwise controlled by*
23 *a post-secondary Educational Institution that had an Institutional Master Plan on file with the*
24 *Planning Commission, and where the occupancy by those other than students at that date was less than*
25 *20% of the total occupants. For purposes of determining occupancy, the post-secondary Educational*

1 *Institution shall present to the Planning Department verified information regarding its rental or lease*
2 *of units as of that date.*

3 (5) **Change of use or occupancy of a dwelling unit, group housing, or SRO to**
4 **Student Housing.** Planning Commission approval shall not be required for the change of use or
5 occupancy of a dwelling unit, group housing, or SRO to Student Housing if the dwelling unit, group
6 housing, or SRO will be Student Housing owned, operated or otherwise controlled by a not for profit
7 post-secondary Educational Institution, and:

8 (A) it was built by the post-secondary Educational Institution;

9 (B) it is in a convent, monastery, or similar religious order facility;

10 (C) it is on an adjoining lot (i.e., sharing the same lot line) to the post-
11 secondary Educational Institution, so long as the lot has been owned by the post-secondary
12 Educational Institution for at least ten years as of the effective date of Ordinance 188-12; or

13 (D) as of August 10, 2010, it was owned, operated or otherwise controlled by
14 a post-secondary Educational Institution that had an Institutional Master Plan on file with the
15 Planning Commission, and where the occupancy by non-students at that date was less than 20% of the
16 total occupants. For purposes of determining occupancy, the post- secondary Educational Institution
17 shall present to the Planning Department verified information regarding its rental or lease of units as
18 of that date.

19 ~~(4) Planning Commission approval shall not be required for a Residential~~
20 ~~Conversion if the Residential Unit was subject to the Residential Hotel Unit Conversion and~~
21 ~~Demolition Ordinance, San Francisco Administrative Code Chapter 41, and obtained a permit to~~
22 ~~convert in compliance with the requirements set forth therein.~~

23 (56) **Residential Demolition; Replacement Structure.** The Planning Commission
24 shall consider the following additional criteria in the review of applications for Residential Demolition:
25 As a condition precedent to granting a Conditional Use authorization for a Residential Demolition

1 pursuant to the criteria set forth in subsection (A), below, the Planning Commission shall have
2 approved the structure to replace the demolished structure (hereinafter referred to as the
3 “Replacement Structure”) pursuant to the criteria set forth in subsection (B), below.

4 (A) **Residential Demolition:** In addition to the criteria set forth in subsection
5 (g)(1), above, and subsection (g)(6)(B), below, the Planning Commission shall find that each of the
6 following criteria are met before a Conditional Use authorization for a Residential Demolition can be
7 approved:

8 _____ whether the property is free of a history of serious, continuing
9 Code violations;

10 (iB) whether the project sponsor has housing has been maintained
11 the property in a decent, safe, and sanitary condition and there are no curable outstanding
12 Planning or Building Code violations at the time of submission of the project application; and

13 (ii) the existing Residential Building does not conform to the height,
14 scale, or architectural details of the buildings on the block on which it is located; and

15 (iiiC) whether the existing Residential Building property is not an
16 historic resource and is not located within an existing or potential national, state, or local historic
17 district, as identified in any local, state, or national survey "historical resource" under CEQA; and

18 (ivD) whether the removal of the existing Residential Building
19 resource could not will have a substantial adverse impact under CEQA.

20 (E) whether the project converts rental housing to other forms of tenure or
21 occupancy;

22 (F) whether the project removes rental units subject to the Residential Rent
23 Stabilization and Arbitration Ordinance or affordable housing;

24 (G) whether the project conserves existing housing to preserve cultural and
25 economic neighborhood diversity;

1 ~~(H) — whether the project conserves neighborhood character to preserve~~
2 ~~neighborhood cultural and economic diversity;~~

3 ~~(I) — whether the project protects the relative affordability of existing housing;~~

4 ~~(J) — whether the project increases the number of permanently affordable units~~
5 ~~as governed by Section 415;~~

6 ~~(K) — whether the project locates in-fill housing on appropriate sites in~~
7 ~~established neighborhoods;~~

8 ~~(L) — whether the project increases the number of family-sized units on-site;~~

9 ~~(M) — whether the project creates new supportive housing;~~

10 ~~(N) — whether the project is of superb architectural and urban design, meeting~~
11 ~~all relevant design guidelines, to enhance existing neighborhood character;~~

12 ~~(O) — whether the project increases the number of on-site Dwelling Units;~~

13 ~~(P) — whether the project increases the number of on-site bedrooms;~~

14 ~~(Q) — whether or not the replacement project would maximize density on the~~
15 ~~subject lot; and~~

16 ~~(R) — if replacing a building not subject to the Residential Rent Stabilization~~
17 ~~and Arbitration Ordinance, whether the new project replaces all of the existing units with new~~
18 ~~Dwelling Units of a similar size and with the same number of bedrooms.~~

19 (B) **Replacement Structure:** The Planning Commission shall find that each
20 of the following criteria are met as to the Replacement Structure:

21 (i) the architectural design of the replacement structure meets all
22 applicable design guidelines, including the Residential Design Guidelines in effect on the date of
23 project approval, and conforms to the height, scale, form, materials, architectural details, and
24 character of the surrounding neighborhood; and

25 ///

1 (ii) the Replacement Structure requires no variances from applicable
2 provisions of the Planning Code and conforms to the zoning for the property on which the project is
3 located; and

4 (iii) if the Replacement Structure is located within an existing or
5 potential historic district, the project has been reviewed for compliance with the Secretary of Interior's
6 Standards and with any more specific guidelines that may apply; and

7 (iv) the Replacement Structure will provide both added density and
8 affordability equal to or greater than the Residential Unit(s) proposed for Demolition; and

9 (v) in a Replacement Structure of two or more units, all units are
10 comparably sized with substantially the same front and rear exposure, and the size of each unit shall
11 not exceed the lesser of the average size of existing Residential Units within 300 feet of the proposed
12 project site or 1,200 square feet; and

13 (vi) the Replacement Structure would not include a garage.

14
15 **(67) Removal of Unauthorized Units.** In addition to each of the criteria set
16 forth in ~~S~~subsections (g)(1) through (g)(46) above, the Planning Commission shall ~~consider~~ find
17 that the following criteria ~~below~~ are met before a Conditional Use authorization for ~~in the review of~~
18 ~~applications~~ removal of Unauthorized Units can be approved:

19 (A) The Unauthorized Unit or Units are not eligible for legalization under
20 Section 207.3 of this Code; or

21 (B) The Unauthorized Unit or Units are eligible for legalization under
22 Section 207.3 of this Code, but:

23 (i) whether the costs to legalize the Unauthorized Unit or Units
24 under the Planning, Building, and other applicable Codes is reasonable based on how such cost
25 compares to greater than 15% above the average cost of legalization per unit derived from the

1 cost of projects on the Planning Department's Master List of Additional Dwelling Units
2 Approved required by Section 207.3(k) of this Code; and

3 ~~(B)(ii)~~ *whether* it is not financially feasible to legalize the
4 Unauthorized Unit or Units. Such determination will be based on the costs to legalize the
5 Unauthorized Unit(s) under the Planning, Building, and other applicable Codes in comparison
6 to the added value that legalizing said Units would provide to the subject property. The gain in
7 the value of the subject property shall be based on the current value of the property with the
8 Unauthorized Unit(s) compared to the value of the property if the Unauthorized Unit(s) is/are
9 legalized. The calculation of the gain in value shall be conducted and approved by an
10 independent California licensed property appraiser *who shall present the appraisal to the Planning*
11 Commission as a part of the consideration of the Conditional Use authorization. Legalization would
12 be deemed financially feasible if gain in the value of the subject property is equal to or greater
13 than the cost to legalize the Unauthorized Unit pursuant to subsection (i), above.

14 ~~(C) — If no City funds are available to assist the property owner with the cost of~~
15 ~~legalization, whether the cost would constitute a financial hardship.~~

16 **(7h) Denial of Application to Remove an Unauthorized Unit; Requirement to**
17 **Legalize the Unit.** If the Planning Commission denies an application to Remove an
18 Unauthorized Unit, the property owner shall file an application for a building permit to legalize
19 the Unit. Failure to do so within a reasonable period of time, as determined by the Zoning
20 Administrator, shall be deemed to be a violation of the Planning Code.

21 **(7i) Notice of Conditional Use Hearing.** For any hearing to consider a Conditional
22 Use authorization required under ~~subsections (g)(2), (g)(3), (g)(4), or (g)(5)~~ this Section 317, the
23 Zoning Administrator shall provide notice as required by Section 333 of this Code, including
24 an explanation of the process for demolishing, merging, or converting Residential Units or
25 Unauthorized Units, and including a description of subsequent permits that would be required

1 from the Planning Department and Department of Building Inspection and how they could be
2 appealed, in addition to any other notice required under this Code, including without limitation
3 notice required by Section 311.

4 (j) **Enforcement Against Violations.** The failure to obtain a Conditional Use authorization
5 pursuant to the requirements of this Section 317 and/or any construction activity that exceeds the
6 Conditions of Approval of the Conditional Use authorization shall be unlawful, shall constitute a
7 violation of the Planning Code, and shall be subject to the enforcement provisions set forth in Section
8 176 of this Code.

9 (1) **Unlawful Demolition.** “Unlawful Demolition” or “Unlawfully Demolish” shall
10 mean the Demolition, as defined in subsection 317(b)(2) above, of any building or structure containing
11 one or more Residential Units that takes place without a Conditional Use authorization as required by
12 this Section 317, or any alteration of a Residential Building that takes place beyond the scope of or in
13 violation of an approved Conditional Use authorization or building permit such that a Demolition has
14 taken place. The following restrictions and penalties shall apply to an Unlawful Demolition:

15 (A) The Zoning Administrator shall issue a Notice of Violation pursuant to
16 Section 176 of this Code and immediately request that the Building Inspection Department issue a stop
17 work order for the entire project.

18 (B) The Planning Department shall not approve any permit that legalizes any
19 work performed without a Conditional Use authorization, or beyond the scope of or in violation of a
20 Conditional Use authorization or building permit.

21 (C) In addition to the penalties set forth in Section 176 of this Code, and in
22 order to provide a disincentive for a property owner to violate the Code by preventing the owner from
23 receiving a windfall profit for the illegal activity, the City shall impose a penalty for the Unlawful
24 Demolition equal to any increase in the value of the property resulting from the project sponsor’s
25 illegal or wrongful conduct as measured by the difference in fair-market value of the property prior to

1 and after the illegal conduct. The Zoning Administrator shall engage a certified real property appraiser
2 to determine the fair-market value of the property prior to and after the illegal conduct and such costs
3 of procuring a certified real property appraiser shall be borne by the project sponsor.

4 (D) The Department shall place a Block Book Notation on the property
5 address and shall cause a Notice of Special Restrictions to be recorded against the property providing
6 that for five years from the date of the Notice of Violation for the Unlawful Demolition, no permit
7 authorizing the construction or alteration of any building or structure for that site shall be issued,
8 except for a permit for the construction of a building or structure with the same number of Residential
9 Units, with the same proportion of Residential Units to nonresidential units at their original size(s),
10 with the same or fewer square feet as the building or structure that was Unlawfully Demolished, with
11 the same materials and design, and restoring original design features that were removed. All permit
12 applications for construction of the building or structure pursuant to this provision shall be routed to
13 the Planning Department for design review subject to the design review criteria for a Replacement
14 Structure under subsection 317(g)(6)(B) and for compliance with these requirements. Permit
15 applications shall be subject to public notice under Sections 311, and any other public notice(s)
16 required for a new project. The Planning Department shall approve no over-the-counter permits for the
17 building or site until the project, pursuant to the approved Conditional Use authorization, has been
18 completed and a notice of occupancy has been issued.

19 (2) **Unlawful Merger.** “Unlawful Merger” shall mean a Residential Merger, as
20 defined in subsection 317(b)(3), that takes place without a Conditional Use authorization as required
21 by this Section 317. The following restrictions and administrative penalty shall apply to an Unlawful
22 Residential Merger:

23 (A) The Zoning Administrator shall issue a Notice of Violation pursuant to
24 Section 176 of this Code, and shall request that the Building Inspection Department issue a stop work
25 order for the entire project.

1 (B) In addition to the administrative penalties set forth in Section 176 of this
2 Code, the Zoning Administrator shall impose an administrative penalty of up to \$50,000.

3 (C) The responsible party shall be required to restore the original Residential
4 or Unauthorized Units to their original condition, with the original number of Residential Units at their
5 original square footage, floor area, and location within the Residential Building. Failure to do so shall
6 be deemed to be a violation of the Planning Code subject to the administrative penalties set forth in
7 Section 176 of this Code, in addition to the penalties set forth in Section 317(j)(2)(B).

8 (D) The Department shall place a Block Book Notation on the property and
9 shall cause a Notice of Special Restrictions to be recorded against the property requiring the
10 restoration of the original residential occupancy and number of units or units.

11 (3) **Unlawful Conversion.** “Unlawful Conversion” shall mean a Residential
12 Conversion, as defined in Section 317(b)(1), that takes place without a Conditional Use authorization
13 as required by this Section 317. The following restrictions and administrative penalty shall apply to an
14 Unlawful Conversion:

15 (A) The Zoning Administrator shall issue a Notice of Violation pursuant to
16 Section 176 of this Code, and immediately request that the Building Inspection Department issue a stop
17 work order for the entire project.

18 (B) In addition to the penalties set forth in Section 176 of this Code, the
19 Zoning Administrator shall impose an administrative penalty of up to \$50,000.

20 (C) The responsible party shall be required to restore the original residential
21 occupancy and/or use of the unit or units that were unlawfully converted. Failure to do so shall be
22 deemed a violation of the Planning Code subject to a fine of \$1,000 per day in addition to the
23 administrative penalties set forth in Section 176 of this Code.

24 ///

25 ///

1 (D) The Department shall place a Block Book Notation on the property
2 address and shall cause a Notice of Special Restrictions to be recorded against the property requiring
3 the restoration of the original residential occupancy and/or use of unit or units.

4 (4) **Unlawful Demolition or Alteration of Historic Building.** In addition to the
5 penalties set forth in Section 176 of this Code or in this subsection 317(j), the Zoning Administrator
6 shall impose an additional administrative penalty of up to \$500,000 for the Unlawful Demolition or
7 Unlawful Alteration or Expansion of a building or structure that, prior to the demolition, or the
8 removal or alteration of architectural features, was an historic or architecturally significant building,
9 or was located within an existing or potential national or local historic district, as identified in any
10 local, state, or national survey. In assessing the amount of the administrative penalty, the Zoning
11 Administrator shall consider any one or more of the following factors: the nature and seriousness of
12 the misconduct, the number of violations, the persistence of the misconduct, the length of time over
13 which the misconduct occurred, the willfulness of the responsible party's misconduct, and the
14 responsibly party's assets, liabilities and net worth. In lieu of an administrative penalty, the Zoning
15 Administrator may require the property owner to restore any building, structure, or architectural
16 feature that is subject to this subsection 317(j)(4) to its original condition. All penalties collected under
17 this Section 317(j)(4) shall be deposited into San Francisco's Historic Preservation Fund administered
18 by the Mayor's Office of Economic and Workforce Development to be disbursed in accordance with the
19 recommendations of the Historic Preservation Fund Committee.

20 (5) Except those penalties collected under Subsection 317(j)(4), all administrative
21 penalties collected under this Section 317, less costs incurred by the Department for time and materials
22 to enforce the provisions of this Section 317, shall be deposited into San Francisco's Small Sites
23 Program administered by the Mayor's Office of Housing and Community Development for the
24 acquisition and rehabilitation of small multifamily residential buildings to protect and establish long-
25 term affordable housing.

1 SEC. 319. MAJOR EXPANSION OF AN EXISTING RESIDENTIAL BUILDING IN THE RH-
2 1(D), RH-1, RH-2, AND RH-3 DISTRICTS.

3 (a) Findings.

4 (1) Passed by San Francisco voters as an advisory document in 1986, and rendered
5 a mandatory document by subsequent voter approval in 1995, the San Francisco General Plan
6 mandates, among other things, that existing housing and neighborhood character be conserved and
7 protected in order to preserve the cultural and economic diversity of San Francisco's neighborhoods.
8 The General Plan also includes a general goal of providing housing representing good standards for
9 all residents.

10 (2) Since at least 2015, the City has confronted the rampant and often extraordinary
11 expansion of single family homes with legislative remedies seeking to preserve existing housing,
12 conserve neighborhood character, and protect the cultural and economic diversity of San Francisco
13 neighborhoods.

14 (3) The permissive development potential of existing lots has fueled a speculative
15 real estate market that imperils residential tenants living in existing buildings and structures subject to
16 major expansions.

17 (4) The City, the broader Bay Area region and the State of California are
18 experiencing a housing crisis which, if not exacerbated by the investment of private funds in the major
19 expansion of existing housing, is not ameliorated by the expansion of existing Residential Units,
20 particularly when the expansion of existing Residential Units is not accompanied by any increase in the
21 number of Residential Units.

22 (5) Even in zoning districts that permit higher density of Residential Units per lot
23 and for Accessory Dwelling Units, demand for expanding single family homes without any
24 accompanying increase in that residential density impairs the City's ability to build out its substantial
25 housing capacity incrementally and citywide.

1 (6) The price per square foot of existing housing increases dramatically with the
2 increased development capacity of the lots on which they exist, and responsible regulation should steer
3 that development capacity away from market constraints on the development of new housing and
4 toward the construction of additional units of housing.

5 (7) Neither existing nor prospective residents of the City benefit from the major
6 expansion of residential housing without any accompanying increase in residential density. By
7 imperiling residents in the City's existing housing, major expansions that fail to include added housing
8 units are inconsistent with the San Francisco General Plan and its Housing Element.

9 (b) **Purpose.** The purpose of this Section is to ensure that all large residential projects
10 proposed in the RH-1(D), RH-1, RH-2, and RH-3 Districts are reviewed by the Planning Commission,
11 in an effort to achieve the objectives and policies of the General Plan, the applicable Design
12 Guidelines, and the purposes of this Code.

13 (c) **Definitions.** For the purposes of this Section 319, the terms below shall be as defined
14 below. Capitalized terms not defined below are defined in Section 102 of this Code.

15 (1) “Major Expansion of a Residential Building” or a “Major Expansion” shall
16 mean any work on a Residential Building that would increase the floor area ratio (“FAR”) to exceed
17 the FAR set forth in the table contained in Section 319(d), or, for Residential Buildings already in
18 excess of the FAR set forth in the table contained in Section 319(d), an expansion greater than a Minor
19 Expansion, as defined in subsection 319(f).

20 (2) “Residential Building” shall be defined as any structure containing one or more
21 Residential Units as a principal use regardless of any other uses present in the building and regardless
22 of how the site is otherwise zoned.

23 (d) **Applicability.** This Section applies to the alteration or new construction of all
24 Residential Buildings in the RH-1(D), RH-1, RH-2, and RH-3 Districts where such alteration or new
25 construction will exceed the Floor Area Ratio (FAR) triggers stated in the table below, except that FAR

1 contained in any accessory structure permitted pursuant to Planning Code Section 136(c)(23) is
 2 excluded from the FAR triggers set forth below.

<u>Zoning</u>	<u>FAR Triggers</u>		
<u>RH-1(D)</u>	<u>0.5</u>		
<u>RH-1</u>	<u>0.6</u>		
<u>RH-2</u>	<u>0.6</u>	<u>1.2 (2 units)</u>	
<u>RH-3</u>	<u>0.6 (1 unit)</u>	<u>1.2 (2 units)</u>	<u>1.8 (3 units)</u>

9
 10 (e) **Unit Proportionality.** For all Major Expansions, the square footage of the smallest unit
 11 must be equal to at least 3/4 of the square footage of the largest unit, exclusive of parking and common
 12 spaces shared by all tenants of the building.

13 (f) **Minor Expansions to Existing Residential Buildings.** Residential Buildings that
 14 exceed the FAR limits set forth in Section 319(d) are exempt from this Section 319 if the proposed
 15 dwelling unit expansion is 10% or less of the Gross Floor Area of the existing Residential Building.
 16 Such expansions will be reviewed cumulatively, based on building permit applications filed within the
 17 previous ten years.

18 (g) **Accessory Dwelling Units.** A project may include an Accessory Dwelling Unit in
 19 addition to the FAR in the table above without requiring review by the Planning Commission.

20 (h) **Conditional Use Authorization Required; Applicability, Exemptions, and Conditions**
 21 **of Approval.**

22 (1) **Applicability.** Conditional Use authorization pursuant to the requirements of
 23 this Section 319 is required prior to the approval of any application for a permit that would result in a
 24 Major Expansion of a Residential Building.

25 ///

1 (2) **Exemptions.**

2 (A) The Major Expansion of a Residential Building that has received final
3 approval from the Planning Department through administrative approval or the Planning Commission
4 through a Discretionary Review or Conditional Use authorization prior to the effective date of the
5 Conditional Use requirement of the ordinance in Board File No. 181216 does not require an additional
6 approval under this Section 319 unless the construction activity exceeds the Conditions of Approval or
7 scope of work under a building permit, in which case the provisions of this Section 319 shall apply.

8 (B) This Section 319 shall not apply to property:

9 (i) owned by the United States or any of its agencies, with the
10 exception of such property not used exclusively for a government purpose;

11 (ii) owned by the State of California or any of its agencies, with the
12 exception of such property not used exclusively for a government purpose; or

13 (iii) under the jurisdiction of the Port of San Francisco or the Office of
14 Community Investment and Infrastructure, also known as the Successor Agency to the Redevelopment
15 Agency of the City and County where the application of this Section is prohibited by State law.

16 (3) **Conditions of Approval.** The Planning Commission, or the Board of Supervisors
17 on appeal, may prescribe such additional conditions as may be necessary to secure the objectives of
18 this Section 319 and the General Plan to protect existing housing as the greatest stock of rental and
19 financially accessible housing.

20 (i) **Conditional Use Criteria.**

21 (1) The Conditional Use criteria set forth in this Section 319 shall be in addition to
22 the criteria set forth in Section 303 of this Code, provided that in the event of a conflict, the criteria set
23 forth in this Section 319 shall apply.

24 (2) Prior to granting any Conditional Use authorization under this Section 319, the
25 Planning Commission shall find that the following criteria are met:

1 (A) The proposed project would not require an amendment to the Planning
2 Code or General Plan; and

3 (B) No new garage or additional parking will be added; and

4 (C) Significant exterior architectural features that are integral to the overall
5 character of the building are not proposed for removal; and

6 (D) The proposed project will provide both added density and affordability
7 equal to or greater than the existing structure; and

8 (E) If the existing building may be an eligible historic resource or is located
9 within an existing or potential national, state, or local historic district, or identified in any local, state,
10 or national survey, the project shall comply with the Secretary of the Interior's Standards and with any
11 more specific guidelines that may apply; and

12 (F) The proposed project will not result in (i) the loss or Removal of any
13 affordable housing unit, as defined in Section 401 of this Code, or any unit(s) subject to the Residential
14 Rent Stabilization and Arbitration Ordinance, and (ii) the proposed project will not result in the loss or
15 Removal of any housing unit(s) that is/are currently occupied by a tenant or tenants or that was
16 occupied by a tenant or tenants at any time within seven years prior to the filing of the building permit
17 application, provided that this criteria shall not apply to any building where all Residential Units have
18 been withdrawn from residential rental pursuant to Administrative Code Section 37.9(a)(13); and

19 (G) There has not been any no-fault eviction at the property in the last seven
20 years, provided that this criteria shall not apply to any building where all Residential Units have been
21 withdrawn from residential rental pursuant to Administrative Code Section 37.9(a)(13).

22 (i) **Enforcement Against Violations.** In addition to the enforcement provisions and
23 penalties set forth in Section 176 of this Code, the Zoning Administrator shall enforce this Section 319
24 against violations thereof in accordance with the following provisions:

25 ///

1 (1) **Unlawful Expansion.** *“Unlawful Expansion” shall mean any expansion or*
2 *alteration of a building or structure meeting the definition of a Major Expansion that:*

3 (A) *takes place without a Conditional Use authorization as required by this*
4 *Section 319; or*

5 (B) *is beyond the scope of or in violation of an approved Conditional Use*
6 *authorization for a Major Expansion or building permit issued pursuant thereto; or*

7 (C) *was determined by the Department to be exempt from Conditional Use*
8 *authorization pursuant to subsection 319(c)(2) but which, as a result of any alterations or changes*
9 *prior to or during construction, with or without a building permit, meets the definition of a Major*
10 *Expansion.*

11 (2) **Penalties for Unlawful Expansion.** *The following restrictions and penalties*
12 *shall apply to an Unlawful Expansion:*

13 (A) *The Zoning Administrator shall issue a Notice of Violation pursuant to*
14 *Section 176 of this Code and immediately request that the Building Inspection Department issue a stop*
15 *work order for the entire project.*

16 (B) *The Planning Department shall not approve any permit that legalizes an*
17 *Unlawful Expansion.*

18 (C) *In addition to the penalties set forth in Section 176 of this Code, the City*
19 *shall impose a penalty for the Unlawful Expansion equal to any increase in the value of the property as*
20 *a result of the responsible party’s illegal or wrongful conduct as measured by the difference in fair-*
21 *market value of the property prior to and after the illegal conduct. The Zoning Administrator shall*
22 *engage a certified property appraiser to determine the fair-market value of the property prior to and*
23 *after the illegal conduct and such costs of procuring a certified property appraiser shall be borne by*
24 *the responsible party.*

25 *///*

1 (D) **Unlawful Alteration of Historic Building.** In addition to the penalties
2 set forth in Section 176 of this Code or in this Section 319(j), the Zoning Administrator shall impose an
3 additional administrative penalty of up to \$500,000 for the Unlawful Alteration or Expansion of a
4 building or structure that, prior to the expansion, was an historic or architecturally significant
5 building, or was located within an existing or potential national, state, or local historic district, as
6 identified in any local, state, or national survey. In assessing the amount of the administrative penalty,
7 the Zoning Administrator shall consider any one or more of the following factors: the nature and
8 seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of
9 time over which the misconduct occurred, the willfulness of the responsible party's misconduct, and the
10 responsibly party's assets, liabilities and net worth. In lieu of an administrative penalty, the Zoning
11 Administrator may require the property owner to restore any building, structure or architectural
12 feature that is subject to this subsection 317(j)(4) to its original condition. All penalties collected under
13 this Section 319(j)(2)(D) shall be deposited into San Francisco's Historic Preservation Fund
14 administered by the Mayor's Office of Economic and Workforce Development to be disbursed in
15 accordance with the recommendations of the Historic Preservation Fund Committee.

16 (E) The department shall put a block book notation on the property address
17 and shall cause a notice of special restrictions to be recorded against the property providing that for
18 five years from the date of the notice of violation for the unlawful alteration or expansion, no permit
19 authorizing the construction or alteration of any building or structure for that site shall be issued,
20 except for a permit to restore or rebuild the building or structure to its original condition, with the
21 same number of residential units at their original size(s), with the same proportion of residential to
22 nonresidential units, with the same or fewer square feet as the building or structure that was unlawfully
23 altered or expanded, with the same materials and design, and with restoration of original features that
24 were removed. All permit applications for restoration or rebuilding of the building or structure shall
25 be routed to the Planning Department for design review subject to design review criteria for this

1 Section 319 and for compliance with these requirements. All permit applications shall be subject to
2 public notice under Section 311, and any other public notice(s) required for a new project. No over-
3 the-counter permits shall be issued for the building or site until the project, pursuant to the approved
4 Conditional Use authorization, has been completed and a notice of occupancy has been issued.

5 (F) If the Planning Department or the responsible party believes that the
6 Conditional Use criteria for an expansion can be met as in set forth in subsection 319(i), the project
7 sponsor may file an application for a Conditional Use authorization for the project, which the Planning
8 Department shall review as a new project application for a Major Expansion, including, without
9 limitation, design review pursuant to conditional use criteria for a Major Expansion under subsection
10 319(i). The application shall be subject to public notice under Section 311, and any other public
11 notice(s) required for a new project. If the Department determines that the Conditional Use criteria for
12 a Major Expansion can be met, a Planning Commission hearing on the Conditional Use application
13 will be scheduled. The Planning Commission may either approve or deny the application for a
14 Conditional Use authorization pursuant to the requirements of subsection 319(i) as follows:

15 (i) if the Planning Commission finds that the Conditional Use
16 criteria for a Major Expansion of a Residential Building are met, a Conditional Use authorization shall
17 be approved and the responsible party shall be relieved of the penalty assessed pursuant to subsection
18 319(d)(2)(C) above; provided however, that the responsible party shall not be relieved of the penalties
19 assessed pursuant to section 176 of this code for work done prior to the approval of the Conditional
20 Use authorization or for any penalties for the demolition or alteration of the features of a historic
21 building under Section 319(d)(2)(D); and provided further that the Department shall approve no over-
22 the-counter permits for the building or site until the project, pursuant to the approved Conditional Use
23 authorization, has been completed and a notice of occupancy has been issued.

24 (ii) if the Planning Commission determines that the Conditional Use
25 criteria for a Major Expansion of a residential building are not met, the Conditional Use application

1 shall be denied, and the restrictions and penalties for an unlawful alteration or expansion set forth in
2 subsection 319(d)(2) shall apply.

3
4 Section 5. The Building Code is hereby amended by revising Sections 103A.3 and
5 202, and adding Sections 106A.4.1.2 and 106A.4.14, to read as follows:

6 **103A.3 ~~Restrictions of unlawful~~ Residential ~~d~~Demolition ~~replacement~~.**

7 103A.3.1 Demolition permit required. A Residential Demolition, as defined below, shall require a
8 demolition permit. Prior to commencement of the project, a building inspector shall inspect the
9 building and site to confirm the existing conditions. No demolition to remove dry rot shall occur
10 without prior inspection by a building inspector and a demolition permit for the proposed removal.

11 **103A.3.2 ~~Demolition without permit.~~** Whenever the demolition of any building or structure
12 containing one or more ~~Residential~~ ~~Units~~ takes place without the issuance of a demolition
13 permit as required by Section 103A.3.1 ~~this code~~, the site on which the unlawful demolition
14 occurred shall be subject to the ~~following~~ restrictions and penalties set forth in Section 103A.3.4.

15 ~~For five years from the date of the unlawful demolition, no permit authorizing the construction~~
16 ~~or alteration of any building or structure for that site shall be issued, except for a permit for the~~
17 ~~construction or alteration of a building or structure with the same number of residential units, with the~~
18 ~~same proportion of residential to nonresidential units, and with the same or fewer square feet as the~~
19 ~~building or structure that was unlawfully demolished.~~

20 **103A.3.3~~2~~ Definitions.** For the purposes of this ~~s~~Section 103A.3, the following definitions shall
21 apply:

22 **RESIDENTIAL DEMOLITION** means ~~the total tearing down or destruction of a~~
23 ~~building containing one or more residential units, or any alteration which destroys or removes, as~~
24 ~~those terms are defined by the Building Official of the Department of Building Inspection, principal~~
25 ~~portions of an existing structure containing one or more residential units~~ loss of residential housing.

1 including any one or more of the following:

2 (A) The total tearing down of an existing Residential Building; or

3 (B) Removal of one or more Residential Units or Unauthorized Units; or

4 (C) Removal of existing above grade elements, external walls, or internal
5 structural framework in amounts equal to or greater than the following percentages:

6 (1) Removal of more than 50% of the sum of all existing above-grade
7 external elements from their function as all external elements; or

8 (2) Removal of more than 25% of the surface of all external walls
9 facing a public street or streets; or

10 (3) Removal of more than 75% of the building's existing internal
11 structural framework, interior bearing elements and/or floor plates.

12
13 To determine whether a project proposes Residential Demolition, calculation of the percentages
14 of Removal under this subsection (b)(2) shall include all work included in permits approved for the
15 property within the prior five years.

16 ~~PRINCIPAL PORTION means that construction which determines the shape and size of the~~
17 ~~building envelope (such as the exterior walls, roof and interior bearing elements), or that construction~~
18 ~~which alters two-thirds or more of the interior elements (such as walls, partitions, floors or ceilings).~~

19 RESIDENTIAL UNIT means any dwelling unit, as defined in this code, or any guest
20 room, as defined in the ~~San Francisco~~ Housing Code, other than the following:

21 1. Any guest room in a building classified as a residential hotel pursuant to the
22 Residential Hotel Unit Conversion and Demolition Ordinance; or

23 2. Any ~~R~~esidential ~~U~~nit in a building where the demolition or alteration is required to
24 comply with this code, the Housing Code or the ~~C~~ity Planning Code.

25 ///

1 **103A.3.4~~3~~ Hearing.** The Building Official shall hold a hearing within a reasonable period of
2 time after discovering that an unlawful demolition may have taken place. The Building Official
3 shall cause notice to be given to the owners of the affected property, and to the owners and
4 occupants of property on the same block as the affected property's site and across the street
5 from the site for one block (that is, on lots which abut the same street as that which abuts the
6 site to the nearest intersections on either side of the site), using the names and addresses of
7 the owners as shown on the last assessment rolls of the City and County of San Francisco.
8 For corner lots, notice shall be provided to the owners and occupants of property on the same
9 block as the affected property's site and for one block along both streets which the lot abuts
10 (that is, on lots which abut the two streets which the site abuts to the nearest intersection on
11 either side of the site) and, in addition, to the other corner lots at the intersection where the
12 site is located. Notice may be given either by personal service or any mail, not less than 30
13 days before the scheduled date of the hearing. Immediately after giving such notice, the
14 Building Official shall cause a copy of the notice, printed on a card of not less than 8 inches by
15 10 inches (203.2 mm × 254 mm), to be posted in a conspicuous place on the affected
16 property. The notice shall specify the date and nature of the hearing and that the following
17 issues will be determined at the hearing: whether an unlawful demolition has taken place as
18 described in Sections 103A.3.1 and 103A.3.2, and, if so, the number of ~~#~~Residential ~~#~~Units
19 that existed on the site, the proportion of residential to nonresidential units that existed on the
20 site and the total square feet of the building or structure that existed on the site. Upon
21 determination that an unlawful demolition has taken place, the Building Official shall promptly
22 record a notice in the official records of the Recorder of the City ~~and County of San Francisco~~;
23 the recorded notice shall state that the property is subject to the restrictions set forth in
24 Section 103A.3.5.1 of this code.

25 ///

1 Upon determination that an unlawful demolition has taken place, the Building Official
2 shall send a notice of payment due to the property owner at the address shown on the City's last
3 assessment rolls assessing the owner all costs incurred by the City and County of San
4 Francisco in detecting violations of this section and conducting the Building Official's hearing
5 ~~by sending a notice of payment due to the property owner at the address shown on the City's last~~
6 ~~assessment rolls~~. The notice shall list the costs incurred by the City in detecting violations of ~~the~~
7 ~~ordinance~~ this Section 103A.3 and conducting the Building Official's hearing, advise the owner
8 that he or she is liable for these costs, and advise the owner that payment to the City is due
9 within 60 days of the mailing date of the notice. The notice shall also advise that, if payment of
10 the costs is not received within 30 days of the due date, a lien may be imposed on the
11 property pursuant to the report and confirmation procedure set forth in Sections 102A.18 and
12 102A.19 of this code.

13 **103A.3.54 Restrictions and penalties for unlawful demolition.**

14 **103A.3.5.1. Restriction.** For five years from the date of the unlawful demolition, no permit
15 authorizing the construction or alteration of any building or structure for that site shall be issued,
16 except for a permit for the construction or alteration of a building or structure with the same number of
17 Residential Units, with the same proportion of residential to nonresidential units, and with the same or
18 fewer square feet as the building or structure that was unlawfully demolished.

19 **103A.3.5.2. Civil penalties.** Any agent, contractor or other person acting on behalf of
20 the owner of a building or structure containing one or more ~~#~~Residential ~~#~~Units who causes or
21 permits the demolition of the building or structure with the knowledge that a demolition permit
22 has not been issued as required by this code shall be subject to a civil penalty of \$5,000. Any
23 owner who causes or permits the demolition of ~~the owner's his or her~~ building or structure
24 containing one or more ~~#~~Residential ~~#~~Units with the knowledge that no demolition permit has
25 been issued as required by this code shall be subject to a civil penalty of \$1,000.

1 **103A.3.6 5 Penalties nonexclusive.** The penalties set forth in this section are not
2 exclusive, but are in addition to any other penalties set forth in this code or other Municipal
3 Codes.

4 **SECTION 106A – PERMITS**

5 **106A.1 Permits required.** Except as specified in Section 106A.2, no building or
6 structure regulated by this code shall be erected, constructed, enlarged, altered, repaired,
7 moved, improved, removed, converted or demolished unless a separate permit for each
8 building or structure has first been obtained from the Building Official.

9
10 * * * *

11 **106A.3.1 Application.** To obtain a permit, the applicant shall first file an application
12 therefor in writing on a form furnished by the code enforcement agency for that purpose.
13 Every such application shall:

14 * * * *

15 11. For any application for a building permit to construct, alter, or demolish a structure
16 containing one or more Residential or Unauthorized Units, include a declaration attesting under oath
17 that:

18 (a) submitted plans accurately reflect the existing structure and any proposed
19 changes to the existing structure, including percentage removal of above-grade exterior elements,
20 external walls facing a public street, and internal structural elements; and

21 (b) the permit application accurately reflects whether and how many existing tenants
22 reside in any Residential or Unauthorized Unit at the subject property; and

23 (c) if any existing residential tenants will be removed temporarily from any
24 Residential or Unauthorized Unit at the subject property, that Applicant has informed all tenants of
25 applicable provisions of the San Francisco Rent Stabilization and Arbitration Ordinance and provided

1 all tenants with contact information for the San Francisco Rent Board; and

2 (d) the project will not result in a substantial decrease in housing services without a
3 corresponding, reasonable, and consensual, reduction in any affected tenant's base rent; and

4 12. Include a declaration attesting under oath the construction means and methods that will
5 be employed to perform the project work, including any proposed temporary removal and replacement
6 of elements in excess of the percentages set forth in Section 103A.3.3.

7
8 **106A.3.1.1 Application processing.** The application, plans, specifications and other
9 information submitted shall be referred for such review and approval as is required under
10 applicable ordinances and laws. Each such reviewing bureau, department or agency shall
11 indicate in a manner determined by the Building Official its approval, approval with conditions,
12 or disapproval.

13
14 **106A.4 Permits issuance.**

15 * * * *

16 **106A.4.1.5 Permits to authorize work constructed without permit or beyond the scope of an issued**
17 **permit.** The Department shall not issue a permit after-the-fact to authorize work done without the
18 benefit of a permit or beyond the scope of an issued permit even if such work would comply with the
19 requirements of the Building Code or other Municipal Codes. Before a permit authorizing such work
20 may be issued, the property owner or the owner's authorized agent shall file and obtain a permit to
21 remove the illegal work and return the building and/or site to its pre-existing condition.

22
23 **106A.4.1.6 Pre-inspection required.** Before a permit is issued for work on a building classified by this
24 Code as a Residential Group R Occupancy to any person, property owner, contractor, or permit
25 expeditor, or to a firm, corporation, or other legal entity, with a prior violation for doing work without

1 a permit or going beyond the scope of an issued permit, the Department shall inspect the building and
2 the site to verify the existing conditions.

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

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

15
16 Section 8. Directions to Clerk. The Clerk of the Board of Supervisors is hereby directed
17 to forward a copy of this ordinance to the California Building Standards Commission upon final
18 passage.

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

22 By:


23 KRISTEN A. JENSEN
24 Deputy City Attorney

25 n:\legana\as2019\1800222\01359223.docx

LEGISLATIVE DIGEST

(Substituted 05/07/19)

[Planning, Building Codes - Controls on Residential Demolition, Merger, Conversion, and Alteration; Review of Additional Non - Residential Changes of Use and Alterations]

Ordinance amending the Planning Code to increase penalties for violations of the Planning Code and change the administrative enforcement procedure; provide new definitions for Residential Demolitions and Residential Flats, expand definitions of Alteration and Removal, expand definitions of, require additional notice, and impose new conditional use criteria for Residential Demolitions, Mergers, and Conversions; require additional review for changes of use to Child Care Facilities that propose an increase in the exterior dimension of the building; expand definition of change of use for Residential, Neighborhood Commercial (NC) and Neighborhood Commercial Transit (NCT) districts; add new notification requirements; add requirements for replacement structures; and establish definitions, criteria and procedures for approvals of Major Expansions of Existing Residential Buildings in certain residential districts; amending the Building Code to make the definition of Residential Demolition consistent with the Planning Code, and require pre-permit inspections and additional application requirements; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; adopting findings of public convenience, necessity, and welfare under Planning Code, Section 302; and instructing the Clerk to forward this Ordinance to the California Building Standards Commission upon final passage.

Existing Law

Enforcement of Violations, Penalties and Abatement

Planning Code Section 176 establishes methods of enforcement for violations of the Planning Code, as well as administrative, civil and criminal penalties.

Administrative Penalties: Current law permits the Zoning Administrator to assess administrative penalties on the responsible party in an amount up to \$250 for each day the violation continues unabated. In any appeal of the Zoning Administrator's determination, if the Board of Appeals upholds the Zoning Administrator's decision in whole or in part, it may not reduce the penalty below \$100 for each day the violation exists.

Civil Penalties: The City may also recover civil penalties in an amount of not less than \$200 for each day the violation is committed or permitted to continue. Violation of the Planning Code is a misdemeanor subjecting violators to a fine in an amount of not less than \$200 or imprisonment for a period not exceeding six months, or both.

Enforcement Methods: Instead of administrative proceedings before the Zoning Administrator, the responsible party may request that the Zoning Administrator terminate abatement proceedings and refer the matter to the Director for enforcement under the process set forth in Section 176.1 of the Code. Civil penalties shall be recovered in a civil action brought by the City Attorney.

Abatement: Generally, work performed without a permit, or work performed beyond the authorized scope of a permit can be legalized so long as it complies with applicable Code provisions.

Notice Requirements and Permit Review Procedures

Section 311 identifies the applications to which neighborhood notice and review requirements apply, defines Changes of Use, Alterations, and other uses subject to Section 311 review, and provides guidelines for building permit review. Neighborhood notification is required for most building expansions and for specific land uses in Residential and Neighborhood Commercial Districts. Certain building features - typically those that are small or less prominent - are exempt from this requirement.

Where a project would remove an historic or architecturally important building or a dwelling, Section 311 prohibits issuance of a demolition permit until a building permit for a replacement structure has been finally approved. Section 311 allows administrative approval of a permit to demolish a building when the Director of the Department of Building Inspection, the Chief of the Bureau of Fire Prevention and Investigation or the Director of Public Works determines that an imminent safety hazard exists and the proposed demolition is the only means to secure the public safety.

Loss of Residential and Unauthorized Units by Demolition, Merger and Conversion

Current law requires conditional use authorization for the removal of any residential unit, for both legal and illegal existing units, with limited exceptions.

Residential Demolitions

The current Planning Code defines Residential Demolition as the removal of either (a) two-thirds of a building's foundation or (b) the majority of a building's walls and floors. Excepting unsound or unaffordable single-family homes, Demolition requires Conditional Use authorization. Below Market Rate or rent-controlled units that are demolished as part of a new project containing 10 or more units must be replaced.

Residential Mergers

Under current law, combining two or more units into a single unit or reducing the size of one unit by at least 25% to make another unit larger requires Conditional Use Authorization.

Residential Conversions

Current law limits additions to residential buildings to specific depths, widths, and heights set forth in the Planning Code, as further restricted by the Residential Design Guidelines.

Permit Issuance; Residential Demolition

The Building Code defines Demolition, sets forth requirements for building permit applications, and prohibits construction for five years following the date of an unlawful demolition.

Amendments to Current Law

Enforcement of Violations, Penalties and Abatement

Administrative Penalties: This ordinance would increase the daily amounts for administrative penalties to \$1000 per day. Additional fines would be as follows:

- Unlawful Merger or Conversion: up to \$50,000 per violation;
- Unlawful Alteration or Demolition of a historic or architecturally significant building: up to \$500,000 per violation;
- Unlawful Demolition or Unlawful Major Expansion: Penalties equal to any increase in the value of the property resulting from the unlawful conduct.

In any appeal of the Zoning Administrator's determination under the proposed new section 176, if the Board of Appeals upholds the Zoning Administrator's decision in whole or in part, it may not reduce the penalty below \$500 for each day the violation exists.

The ordinance would provide that the penalty provisions of Section 176 are not exclusive. Any penalties imposed for violations under Section 176 would be in addition to those required by new Sections 317 and 319.

Civil Penalties: This ordinance would increase the daily amounts for civil and criminal penalties to \$1000 per day.

The ordinance confirms that each real property address, each Dwelling Unit within a real property address, and each separate violation of the Planning Code is a distinct violation for calculation of applicable administrative and civil penalties.

Enforcement Methods: This ordinance would delete Section 176.1 from the Code.

In the case of Unlawful Mergers and Unlawful Conversions, the ordinance also requires responsible parties to restore the original Residential or Unauthorized Units to their original condition, with the original number of units, in their original square footage and location. For

Unlawful Demolition or Alteration of historic buildings, the ordinance provides new administrative penalties or, in the alternative, permits the Zoning Administrator to require the property owner to restore the building or the feature demolished without or in excess of permit to its previous condition.

Notice Requirements and Permit Review Procedures

This ordinance would expand the application of Section 311 notice requirements, revises the definition of Alterations, provides new definitions of Demolition, New Construction and Removal of Residential Units. Under this ordinance, additional building features or land uses that do not currently require notification would require public notification and could no longer be approved over-the-counter. These features include adding a backyard retaining wall to maintain existing grade, adding a third-unit within an existing two-unit building, replacing front-entry stairs, and building a backyard fence.

The Ordinance would provide that a change of use to a Child Care Facility, as defined in Section 102, would not be subject to the review requirements of Section 311, provided there is no increase in the exterior dimensions of the building. The ordinance expands the categories of changes in use in Residential, NC and NCT Districts subject to Section 311 notice requirements to add Health Service uses. For all Residential Uses, the Ordinance expands the definition of a change of use to a change of occupancy, as defined and regulated by the Building Code, or any change in use, as defined and regulated by the Planning Code, of any Residential Unit(s) or Unauthorized Unit(s) to a Non-Residential or Student Housing use, even if cooking facilities are not removed.

The Ordinance would require that building permit applications be reviewed for compliance with all applicable design guidelines, expand application requirements for proposed Removal of Residential Units, and provide that no permit for demolition of a Residential building would be issued until a Conditional Use authorization for a replacement structure has been finally approved. The ordinance requires project applicants to submit additional plans and calculations with project applications, including verification under oath of the accuracy and completeness of those plans and calculations. The ordinance also would expand the requirements for materials to be included in required notification packets for proposed projects.

Loss of Residential and Unauthorized Units by Demolition, Merger and Conversion

This ordinance revises the definitions of Residential Conversion, Residential Demolition, Residential Merger, Removal, and Residential Unit, and adds new defined terms to the Code for Residential Flats, Unlawful Demolition, Unlawful Merger and Unlawful Conversion. The ordinance expands the applicability of Section 317's Conditional Use requirement, and provides limited exemptions for Demolition, Merger or Conversion of a Residential Unit or the Demolition of a Residential Building that has received final approval from the Planning Department through administrative approval or the Planning Commission through a

Discretionary Review or Conditional Use authorization prior to the effective date of the Conditional Use requirement of the ordinance unless the construction activity exceeds the Conditions of Approval or scope of work under a building permit, and for projects proposed on the following property:

- (i) owned by the United States or any of its agencies, with the exception of such property not used exclusively for a governmental purpose;
- (ii) owned by the State of California or any of its agencies, with the exception of such property not used exclusively for a governmental purpose;
- (iii) under the jurisdiction of the Port of San Francisco or the Successor Agency to the Redevelopment Agency of the City and County where the application of this Section is prohibited by State law; or
- (iv) where demolition of the building or Removal of a Residential Unit or Unauthorized Unit is necessary to comply with a court order that directs the owner to demolish the building or remove the unit due to conditions that present an imminent threat to life safety, or where the Director of the Department of Building Inspection or the Chief of the Bureau of Fire Prevention and Public Safety has issued a written determination that an imminent safety hazard exists, and that the proposed demolition or alteration of the structure, feature, or part thereof, is the only feasible means to correct the condition and secure the public safety; provided, however, that only such work as is necessary to correct the unsafe or dangerous condition may be performed.

With these exceptions, the ordinance requires that all proposed projects that would result in the Demolition of a Residential Unit or Removal of a Residential Building, or the Removal of a Residential Unit or Unauthorized Unit through Demolition, Merger or Conversion, or would result in a Major Expansion of a Residential Building (as defined in the ordinance), must obtain Conditional Use authorization. The ordinance requires that the Planning Department request Department of Building Inspection review of specified projects, and provides that no permit to for a Residential Demolition shall be issued until a Conditional Use authorization for a replacement structure has been finally approved. The ordinance also provides new criteria for Conditional Use authorizations reviewed under Section 317.

This ordinance prohibits the Planning Department from approving any permit to legalize work performed without a required Conditional Use authorization, or beyond the scope or in violation of a Conditional Use authorization or building permit. In addition, the ordinance imposes new penalties for Unlawful Demolitions, Unlawful Mergers and Unlawful Conversions, described above.

Residential Demolitions

Demolitions would require a structural engineering report upon submittal with subsequent reports to reflect any changes or revisions. The ordinance defines Residential Demolition as loss of residential housing, including any one or more of the following:

- (A) The total tearing down of an existing Residential Building; or

- (B) Removal of one or more Residential Units or Unauthorized Units; or
- (C) Removal of existing above grade elements, external walls, or internal structural framework in amounts equal to or greater than the percentages set forth in Building Code Section 103A.3.3, which are:
 - (1) Removal of more than 50% of the sum of all existing above-grade external elements from their function as all external elements; or
 - (2) Removal of more than 25% of the surface of all external walls facing a public street or streets; or
 - (3) Removal of more than 75% of the building’s existing internal structural framework, interior bearing elements and/or floor plates.

Residential Flats Defined

The ordinance defines “Residential Flats” as a housing typology consisting of two or more Dwelling Units in a single building that have exposure onto open areas at the front and rear of the property,

Major Expansion of an Existing Residential Building

This ordinance would add a new Section 319 to the Planning Code to define and regulate Major Expansions and Unlawful Expansions of Residential Buildings. The purpose of the new Section 319 is to ensure that all large residential projects proposed in the RH-1(D), RH-1, RH-2, and RH-3 Districts are reviewed by the Planning Commission, in an effort to achieve the objectives and policies of the General Plan, the applicable Design Guidelines, and the purposes of this Code.

Major Expansions

The ordinance defines a Major Expansion in terms of the Floor Area Ratio (“FAR”) set forth in the following table or, for Residential Buildings already in excess of the FAR set forth in the table, an expansion greater than a Minor Expansion, as defined in the ordinance:

<u>Zoning</u>	<u>FAR Triggers</u>		
<u>RH-1(D)</u>	<u>0.6</u>		
<u>RH-1</u>	<u>0.7</u>		
<u>RH-2</u>	<u>0.8</u>	<u>1.2 (2 units)</u>	
<u>RH-3</u>	<u>0.9 (1 unit)</u>	<u>1.3 (2 units)</u>	<u>1.7 (3 units)</u>

The new section 319 would require, for all Major Expansions, that the square footage of the smallest unit must be equal to at least 3/4 of the square footage of the largest unit, exclusive of parking and common spaces shared by all tenants of the building.

Minor Expansions

The ordinance defines Minor Expansions to Existing Residential Buildings as a Dwelling Unit expansion that is 10% or less of the Gross Floor Area of the existing Residential Building. Such expansions will be reviewed cumulatively, based on building permit applications filed within the previous ten years.

Any project that qualifies as a Major Expansion under this code section would require a Conditional Use authorization and be subject to notice under Planning Code Section 311. The ordinance provides limited exceptions to its applicability, establishes conditional use criteria applicable to Major Expansions, and creates enforcement procedures and penalties for Unlawful Expansions.

The ordinance would prohibit the Planning Department from approving any permit that legalizes an Unlawful Expansion. The Ordinance would also provide a penalty for an unlawful expansion in addition to the penalties set forth in Section 176 of this Code, equal to any increase in the value of the property as a result of the responsible party's illegal or wrongful conduct as measured by the difference in fair-market value of the property prior to and after the illegal conduct.

Permit Issuance; Residential Demolition

The ordinance would amend the Building Code to conform the definition of Residential Demolition with that in the revised Planning Code; require that a building inspector shall inspect the building and site to confirm existing conditions prior to commencement of a project involving Residential Demolition; prohibit demolitions to remove dry rot without prior inspection; and require that project sponsors provide additional materials and information in connection with building permit applications.

The ordinance would prohibit the Department of Building Inspection from issuing a permit authorizing the construction or alteration of any building or structure for any site of an unlawful residential demolition for five years following such unlawful demolition, except for a permit for the construction or alteration of a building or structure with the same number of Residential Units, with the same proportion of residential to nonresidential units, and with the same or fewer square feet as the building or structure that was unlawfully demolished. The ordinance would prohibit the Department of Building Inspection from issuing a permit to legalize work previously conducted without a permit or beyond the scope of an issued permit even if such work would comply with the requirements of applicable codes. Before such a permit may be issued, the property owner must obtain a permit to remove the illegal work and return the building or site to its pre-existing condition.

FILE NO. 181216

n:\legana\as2018\1800222\01356923.docx