

BOARD of SUPERVISORS



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November 8, 2013

Planning Commission and
Attn: Jonas Ionin
1660 Mission Street, 5th Floor
San Francisco, CA 94103

Dear Commissioners:

On October 29, 2013, Supervisor Chiu introduced the following legislation:

File No. 131059

Ordinance amending the Planning Code to allow non-conforming secondary structures in a C-3-R Zoning District to be demolished and rebuilt to the prior non-conforming size under certain conditions; making environmental findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

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 & Economic Development Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script that reads "Alisa Miller".

By: Alisa Miller, Committee Clerk

Land Use & Economic Development Committee

- c: John Rahaim, Director of Planning
- Scott Sanchez, Zoning Administrator
- Sarah Jones, Chief, Major Environmental Analysis
- AnMarie Rodgers, Legislative Affairs
- Monica Pereira, Environmental Planning
- Nannie Turrell, Environmental Planning

*Not a project project
per CEQA Guidelines
Section 15060(c)(3) and
15378. Individual
proposed projects will
be evaluated for
physical impacts
under CEQA.
Nannie Turrell
Nov. 12, 2013*

1 [Planning Code - Allowing Certain Non-Conforming Structures to be Rebuilt Under Certain
2 Conditions]

3 **Ordinance amending the Planning Code to allow non-conforming secondary structures**
4 **in a C-3-R (Downtown Retail) Zoning District to be demolished and rebuilt to the prior**
5 **non-conforming size under certain conditions; making environmental findings, and**
6 **findings of consistency with the General Plan, and the eight priority policies of**
7 **Planning Code, Section 101.1.**

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

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

16 Section 1. Findings.

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

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

1 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code
2 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth
3 in Planning Commission Resolution No. _____ and the Board incorporates such reasons
4 herein by reference.

5
6 Section 2. The Planning Code is hereby amended by revising Section 188, to read as
7 follows:

8 SEC. 188. NONCOMPLYING STRUCTURES: ENLARGEMENTS, ALTERATIONS
9 AND RECONSTRUCTION.

10 (a) Within the limitations of this Article 1.7, and especially Sections 172 and 180
11 hereof, a noncomplying structure as defined in Section 180 may be enlarged, altered or
12 relocated, or undergo a change or intensification of use in conformity with the use limitations
13 of this Code, provided that with respect to such structure there is no increase in any
14 discrepancy, or any new discrepancy, at any level of the structure, between existing
15 conditions on the lot and the required standards for new construction set forth in this Code,
16 and provided the remaining requirements of this Code are met.

17 (b) A noncomplying structure that is damaged or destroyed by fire, or other calamity,
18 or by Act of God, or by the public enemy, may be restored to its former condition; provided
19 that such restoration is permitted by the Building Code, and is started within eighteen months
20 and diligently prosecuted to completion. Except as provided in Subsection (c) below, no
21 noncomplying structure that is voluntarily razed or required by law to be razed by the owner
22 thereof may thereafter be restored except in full conformity with the requirements of this Code.

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

1 (c) In order that major life safety hazards in noncomplying structures may be
2 eliminated as expeditiously as possible, a noncomplying structure constructed of unreinforced
3 masonry that is inconsistent with the requirements of the UMB Seismic Retrofit Ordinance,
4 Ordinance No. 227-92, may be demolished and reconstructed to the same level of
5 noncompliance; provided that:

6 (1) The current requirements of the Building, Housing and Fire Codes and, as
7 applicable, Planning Code are met, provided that the Zoning Administrator may, and is hereby
8 empowered to, permit minor modifications to Planning Code requirements (which may include
9 permitting an increase in the building envelope or a reduction in the number of parking
10 spaces) to the extent necessary and required to bring the replacement building up to such
11 applicable Code requirements and to allow replacement of the demolished building with a
12 building which contains a comparable amount of square footage or the same number of
13 residential units as that of the demolished building. The Zoning Administrator shall provide a
14 written determination regarding such permitted Planning Code modifications; and

15 (2) Such restoration or reconstruction is started within one year after razing or
16 other demolition work on the structure and diligently prosecuted to completion.

17 (d) Notwithstanding Subsection (a) of this Section, a noncomplying structure as
18 defined in Section 180, may add nonusable space. "Nonusable space" is space not used for
19 living, sleeping, eating, cooking or working. Public corridors, mechanical space, fire stairs and
20 similar areas, are nonusable space. The enlargement must:

21 (1) Facilitate the adaptive reuse or the rehabilitation of a landmark site or
22 contributory structure within a Historic District designated under Article 10 of this Code or a
23 significant structure or contributory structure within a Conservation District designated under
24 Article 11 of this Code; and

1 (A) Be necessary to comply with Building Code, Fire Code or Planning
2 Code requirements; or

3 (B) Enhance the life safety aspects of the building and/or mechanical,
4 environmental control systems; or

5 (2) Be located within a C-3 District, and:

6 (A) Be necessary to comply with Building Code, Fire Code or Planning
7 Code requirements; or

8 (B) Enhance aesthetic qualities and/or character; or

9 (C) Enhance the life safety aspects of the building and/or mechanical,
10 environmental control systems; or

11 (D) Accommodate rooftop features exempted from height limits under
12 Section 260(b) or as provided for under Sections 270, 271 or 272 of this Code.

13 (3) Application for enlargement of a non-complying structure under Subsection
14 (d)(1) shall be considered as part of an application for a Certificate of Appropriateness under
15 Article 10 or a Permit to Alter under Article 11 of this Code. Any application to enlarge a
16 noncomplying structure under Article 11 shall be considered as a major alteration under
17 Section 1111 of the Planning Code. Application to alter a noncomplying structure not
18 designated an Article 11 significant or contributory building under Subsection (d)(2) shall be
19 considered under the provisions of Section 309(b) of this Code. These applications shall be
20 subject to the following additional criteria:

21 (A) That the enlargement promote the health, safety and welfare of the
22 public; and

23 (B) That the enlargement not cause significant shadows or wind impacts
24 on public sidewalks and parks; and

1 (C) That the structure provides an appropriate transition to adjacent
2 properties, as necessary; and

3 (D) That the interior block open space formed by the rear yards of
4 abutting properties will not be adversely affected; and

5 (E) That the access of light and air to abutting properties will not be
6 significantly affected; and

7 (F) That public view corridors not be significantly affected; and

8 (4) The City Planning Commission, subject to the same application procedures
9 of Section 188(d)(3) above, may grant an exception to the Planning Code requirements rather
10 than expansion of the structure to accommodate the Planning Code requirements. The
11 exception of the Planning Code requirement shall be subject to the criteria below:

12 (A) That the exception promote the health, safety and welfare of the
13 public; and

14 (B) That the exception result in an increased benefit to the public and the
15 adjacent properties over the increase in nonconformance; and

16 (C) That the exception not be detrimental to either the occupants of the
17 proposed project or to the neighborhood.

18 (e) Notwithstanding Subsection (a) of this Section, and in order that certain character-
19 defining architectural elements of Qualified Movie Theaters be preserved and enhanced, a
20 noncomplying Historic Movie Theater Projecting Sign, as defined in Section 602.25, and/or a
21 noncomplying Historic Movie Theater Marquee, as defined in Section 602.26, may be
22 preserved, rehabilitated, or restored. A noncomplying Historic Movie Theater Projecting Sign
23 or a noncomplying Historic Movie Theater Marquee removed from a Qualified Movie Theater
24 prior to or in absence of an application for replacement may be reconstructed.

1 (1) For the purposes of this Section, "Qualified Movie Theater" shall mean a
2 building that: (A) is currently or has been used as a movie theater; and (B) is listed on or
3 eligible for listing on the National Register of Historic Places or the California Register of
4 Historical Resources, designated a City Landmark or a contributor to a City Landmark District
5 under Article 10, or designated as a Significant or Contributory Building under Article 11.

6 (2) Any preservation, rehabilitation, restoration, or reconstruction permitted
7 under this Section shall be in strict conformity with the overall design, scale, and character of
8 the existing or previously existing Historic Movie Theater Sign or Historic Movie Theater
9 Marquee and:

10 (A) For a Qualified Movie Theater that retains its Historic Movie Theater
11 Projecting Sign and/or Historic Movie Theater Marquee, the signage features shall be limited
12 to the following:

13 (i) On a Historic Movie Theater Projecting Sign, the historic name
14 associated with a previous theater occupant;

15 (ii) On a Historic Movie Theater Marquee, the historic name
16 associated with a previous theater occupant and, where applicable, on the signboard, other
17 information that is an Identifying Sign, as defined in Section 602.10, provided such information
18 shall be contained within the signboard, shall not consist of any logos, and shall be in the
19 character of lettering historically found on movie theater signboards in terms of size, font, and
20 detail.

21 (B) For a Qualified Movie Theater where the Historic Movie Theater
22 Projecting Sign and/or Historic Movie Theater Marquee has been removed and is proposed to
23 be reconstructed, the overall design and signage features shall be limited to the following:

24 (i) On a Historic Movie Theater Projecting Sign, the historic name
25 associated with a previous theater occupant;

1 (ii) On a Historic Movie Theater Marquee, the historic name
2 associated with a previous theater occupant and, where applicable, on the signboard, other
3 information that is an Identifying Sign, as defined in Section 602.10, provided such information
4 shall be contained within the signboard, shall not consist of any logos, and shall be in the
5 character of lettering historically found on movie theater signboards in terms of size, font, and
6 detail.

7 (C) Any application to reconstruct shall include evidence of the
8 dimensions, scale, materials, placement, and features of the previously existing Historic Movie
9 Theater Projecting Sign and/or Historic Movie Theater Marquee, as well as any other
10 information required by the Zoning Administrator.

11 (D) General advertising signs shall not be permitted on either a Historic Movie
12 Theater Projecting Sign or a Historic Movie Theater Marquee.

13 (f) Notwithstanding Subsection (a) of this Section 188, a secondary structure that is
14 noncomplying with respect to the maximum floor area ratio limit may be removed, in whole or in part,
15 and reconstructed pursuant to the criteria below. For purposes of this Subsection (f), a secondary
16 structure means a structure located on a lot with two or more structures that has no more than one-
17 quarter of the gross floor area of the primary structure on the lot.

18 (1) The proposed removal and reconstruction shall:

19 (A) Be located within a C-3-R District;

20 (B) Promote and enhance the C-3-R District as a retail destination;

21 (C) Result in an increased benefit to the public and the adjacent properties;

22 (D) Enhance the aesthetic qualities and/or character of the lot;

23 (E) Result in a net decrease of gross floor area of all structures on the subject
24 property;

25 (F) Result in a structure that more closely conforms to the floor area ratio limit;

- 1 (G) Not result in an adverse impact to a historic resource;
2 (H) Not cause significant shadows or wind impacts on public sidewalks or
3 parks;
4 (I) Not obstruct significant public view corridors; and
5 (J) Not significantly impair light and air to abutting properties.
6 (2) An application for removal and reconstruction of a non-complying secondary
7 structure shall be considered under the provisions of Section 309(b) of this Code.

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

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

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

23 By: _____
24 KATE HERRMANN STACY
25 Deputy City Attorney