

## **LEGISLATIVE DIGEST**

[Building Code - Penalties for Constructing an Impervious Surface in the Front Yard Setback Without the Required Permit]

**Ordinance amending the Building Code to modify the penalty for constructing an impervious surface in the front yard setback without a permit; affirming the Planning Department's determination under the California Environmental Quality Act; and directing the Clerk of the Board of Supervisors to forward the Ordinance to the California Building Standards Commission upon final passage.**

### Existing Law

Building Code Section 106A.1.13 requires a permit and establishes a fee for the construction of an impervious surface in a front yard setback. Applications for construction of an impervious surface in the front yard setback are required to be referred to the Planning Department for a determination whether the proposed construction complies with Sections 132(g) and 136(c)(30) of the Planning Code. Violation of the permit requirement is an infraction that can result in a criminal penalty of up to \$100 for a first violation, up to \$200 for a second violation within one year, and up to \$500 for a third violation within one year.

### Amendments to Current Law

This ordinance provides the following additional enforcement tools to achieve compliance with the front yard setback permit requirements:

- The civil penalty of up to \$500 per day and criminal penalties that are set forth in Section 103A of the Building Code will apply;
- The Department will issue a Notice of Municipal Code Violation (NOV) pursuant to Section 102A.4 of the Building Code that requires the owner or owner's agent to apply for and obtain a permit to bring the existing surface in the front yard setback area into compliance with current Municipal Code requirements, including but not limited to the Building and Planning Codes.
- Violations are expressly subject to the Building Code's investigation fees for work without permit or work exceeding the scope of an approved permit, and the Department will be entitled to recover its costs of abatement pursuant to Section 103A of the Building Code.
- During inspections required for work performed under permits issued by the Department, the inspector will verify compliance with the front yard setback permit

requirements, and any violation will be required to be corrected under that existing permit.

### Background Information

Planning Code Section 132(g) sets forth the requirements for landscaping and permeable surfaces in the front setback area. It provides that the front setback shall be appropriately landscaped, meet any applicable water use requirements of Chapter 63 of the Administrative Code, and in every case not less than 20% of the required setback area shall be and remain unpaved. These requirements are triggered by (1) construction of a new building, (2) the addition of a new dwelling unit, garage, or additional parking; (3) any addition to a structure that would result in an increase of 20% or more of the existing gross floor area; (4) a residential merger; or (6) paving or repaving more than 200 square feet of the front setback. Pursuant to Section 132(h), the front setback area shall be at least 50% permeable so as to increase stormwater infiltration. Section 136(c)(30), also referenced in Building Code Section 106A.1.13, allows driveways meeting specified requirements as obstructions in required setback areas.

In Chapter 63 of the Administrative Code (the “Water Efficient Irrigation Ordinance”), the Board of Supervisors found that irrigated landscapes contribute significantly to the quality of life of the people of San Francisco. They provide areas for active and passive recreation and as an enhancement to the environment by cleaning air and water, and add to the natural beauty of San Francisco’s commercial, industrial, and residential neighborhoods. This ordinance will provide additional tools to enforce the Code requirements.

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