BOARD of SUPERVISORS

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M E M O R A N D U M

TO: Patrick O'Riordan, Director, Department of Building Inspection
Sonya Harris, Commission Secretary, Building Inspection Commission

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

DATE: December 2, 2022

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, introduced by Supervisor Ronen on November 29, 2022:

File No. 220878-2

Ordinance amending the Planning and Building Codes to increase fines and penalties for violations of Planning and Building Code provisions; clarify that violations affecting more than one unit in a building constitute multiple violations for purposes of assessing penalties; adding factors to consider in determining the appropriate amount of civil penalties; establishing penalties for residential units merged, constructed, or divided without required permits or approvals; establishing penalties for violations involving illegal demolition and enhancement of penalty amounts for certain buildings by age or historic status; providing additional notices for Responsible Parties; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

The proposed ordinance is being transmitted pursuant to Charter, Section D3.750-5, for public hearing and recommendation. It is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Please forward me the Commission's recommendation and reports at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: Erica.Major@sfgov.org.

cc: Patty Lee, Department of Building Inspection

[Planning, Building Codes - Penalties for Code Enforcement]

Ordinance amending the Planning and Building Codes to increase fines and penalties for violations of Planning and Building Code provisions; clarify that violations affecting more than one unit in a building constitute multiple violations for purposes of assessing penalties; requiring the Planning Commission and the Historic Preservation Commission to adopt factors for the Zoning Administrator to consider in determining the appropriate amount of civil penalties; establishing penalties for residential units merged, constructed, or divided without required permits or approvals; establishing penalties for violations involving illegal demolition and enhancement of penalty amounts for certain buildings by age or historic status; providing additional notices for Responsible Parties; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

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

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

Section 1. Environmental and Land Use Findings.

(a) The Planning Department has determined that the actions contemplated in this

ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. _____ and is incorporated herein by reference. The Board affirms this determination.

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

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

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

Section 2. General Findings.

(a) All uses, structures on, and conditions of real property in violation of the Planning and Building Codes are both unlawful and a public nuisance, and such violations destroy the distinctive qualities that make San Francisco and its individual neighborhoods unique, and can create urban blight. This is particularly true where violations of the Codes result in damage to or destruction of historic resources or landmarks, removal of much needed housing units, and in other cases where the violation cannot be abated and cured. In recent years, there has been a dramatic increase in violations of the Planning and building Codes that have gone

unabated despite enforcement actions by the Planning Department and the Department of Building Inspection.

(b) The purpose of this ordinance is to increase administrative and civil penalties that can be assessed to encourage compliance with both Codes, deter violation of code requirements, create new penalties for certain violations that are of particular concern to the City and its residents, and to provide additional incentives to deter violations that can result in irreparable harm to the City, including unlawful elimination of existing housing, alteration or damage to, or destruction of historic landmarks and historic resources, as well as to deter other irreversible violations. The goal of these penalties and enforcement mechanisms is to ensure compliance with, and deter violation of, all requirements of the Municipal Code, including but not limited to the Planning Code and Building Code, and to preserve and enhance neighborhood quality of life for all San Francisco residents and visitors.

(c) The ordinance also provides that the Planning Commission and the Historic Preservation Commission shall adopt factors to be considered by the Zoning Administrator in assessing penalties, and expressly states the existing administrative interpretation of the code that a violation at each real property address, and each commercial or dwelling unit within a multi-unit real property address, is a distinct violation for calculation of applicable administrative penalties; further, that each separate violation of the Planning Code stemming from a single incident or practice is likewise a distinct violation of that Code.

(d) No local findings are required under California Health and Safety Code Section 17958.7 because the amendments to the Building Code contained in this ordinance do not regulate materials or manner of construction or repair, and instead relate in their entirety to administrative procedures for implementing the code and remedies available for enforcing the Building Code.

Section 3. The Planning Code is hereby amended by revising Sections 176 and 350, and deleting Section 176.1, to read as follows:

SEC. 176. ENFORCEMENT AGAINST VIOLATIONS.

(a) **Violations Unlawful.** Any use, structure, lot, feature, or condition in violation of this Code is hereby found and declared to be unlawful and a public nuisance. Should any permit or license have been issued that was not then in conformity with the provisions of this Code, such permit or license shall be null and void.

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

(1) Serving ~~*notice*~~ *a Notice of Violation (NOV)* requiring the cessation, removal, or correction of any violation of this Code upon the *property* owner *or owners*~~*, agent, or tenant of the property*~~ (*"Responsible Party" or "Responsible Parties"*) *of the property* that is the subject of the violation~~*, or upon the architect, builder, contractor, or other person who commits or assists in such violation*~~*, by mail or by posting the notice in a conspicuous place on the property that is the subject of the violation. When such information is available, notice may also be served upon the tenant of the property, agent of the owner, designer, builder, or any other person who commits or assists in such violation*;

(2) Calling upon the City Attorney to maintain an action for injunction to restrain or abatement to cause the correction or removal of any such violation, and for assessment and recovery of a civil penalty for such violation as well as any attorneys' fees or costs, including but not limited to expert witness fees~~,~~ *and costs of investigation* incurred in maintaining such an action;

(3) Calling upon the District Attorney to institute criminal proceedings in enforcement of this Code against any such violation;

(4) Calling upon the Chief of Police and authorized agents to assist in the enforcement of this Code; and

(5) Calling upon the Mayor's Office of Housing and Community Development (MOHCD) to enforce Planning Code requirements relating to affordable housing. The Department and MOHCD shall enter into a memorandum of understanding to identify the types of enforcement cases to be delegated to MOHCD.

(c) **Penalties.**

(1) **Administrative Penalties.**

(A) ***General Violations.*** ~~*In the notice requiring the cessation, removal, or correction of any violation of this Code, t*~~The Zoning Administrator*, by issuance of the NOV,* may assess upon the ~~R~~responsible ~~P~~party an administrative penalty for each violation in an amount up to $~~*250*~~*1,000* for each day the violation continues unabated. ~~*The "responsible party" is the owner(s) of the real property on which the code violation is located, as listed in the records of the San Francisco Assessor, and the current leaseholder if different from the current owner(s) of the real property.*~~ *For purposes of this subsection (c)(1)(A), each real property address, and each commercial or dwelling unit within a multi-unit real property address, affected by a violation is a distinct violation for calculation of applicable administrative penalties. Notwithstanding the foregoing, a violation of this Code that affects a common area, feature, or shared detached feature of a multi-unit structure may be treated as a distinct violation of this Code, at the reasonable discretion of the Zoning Administrator. The NOV may be appealed in the manner provided in subsection (c)(1)(E).*

Upon the later of the expiration of the time in which an appeal of an NOV may be filed without any such appeal having been filed, or the entry of a final decision on an appeal of an NOV (a Notice of Violation and Penalty Decision, or NOVPD), the NOV or NOVPD may be recorded as an Order of Abatement against title to the property, and the obligations to correct the violation as set forth in the

NOV or NOVPD Order of Abatement shall be Planning Code conditions pursuant to Section 174 of this Code that run with title to the property. Further, such recordation shall provide notice to each Responsible Party and any subsequent successor or assign of title to the property that the failure to perform such obligations is a violation of the Planning Code and may be enforced as such.

(B) Contents of NOV, NOVPD, and Notice of Additional Compliance Actions And Accrued Penalties.

The NOV shall inform the Responsible Party: of the necessary steps toward compliance the Responsible Party must timely perform to avoid the accrual of daily penalties ("Compliance Actions"); that upon finality, the NOV or NOVPD may be recorded as an Order of Abatement against title to the property; and that any daily penalties or Time and Materials assessed under a final NOV or NOVPD will be a debt to the City and County of San Francisco that may become a lien against the property and/or may be enforced by any means available under the law. At any time following the issuance of an NOV, the Zoning Administrator may issue the Responsible Party a Notice of Additional Compliance Actions and Accrued Penalties requiring the Responsible Party or Parties to perform new or additional Compliance Actions and stating the total penalties accrued during the period covered by the notice. Upon a transfer of an interest in the property, the transferee shall be the Responsible Party for purposes of daily penalties accruing after the date of recordation of the transfer; however, if an NOV or NOVPD was not recorded as an Order of Abatement against title to the property prior to recordation of the transfer, the Zoning Administrator shall issue the transferee a Notice of Additional Compliance Actions stating the Compliance Actions required of the transferee, and the transferee shall be given the opportunity to comply with said Notice prior to the accrual of further daily penalties.

(C) Penalties for Specified Violations.

(i) Alteration, Merger, Construction, or Demolition of Residential Units without a Permit. *For any alteration, merger, construction, or demolition of any building or structure*

containing one or more Residential Units, including work that takes place in violation of Section 317 of this Code, on or after March 1, 2023, resulting in the addition of more than two unauthorized Residential Units, or the loss of one or more Residential Units, (1) the owner of that building shall be required to apply for a replacement project under section 317 of this Code, and (2) the Responsible Party shall be liable for a penalty of up to $250,000 for each Residential Unit added or lost through such alteration, merger, or demolition. Within 12 months of the effective date of the ordinance in Board File No. _____ amending this Section 176, the Planning Commission shall adopt factors and criteria for consideration, to be updated from time to time, to provide guidance to the Zoning Administrator when determining the appropriate penalty amount for violations subject to this subsection (c)(1)(C)(i).

*(ii) **Alteration or Damage to or Demolition of Historic Property.** Whenever the alteration or demolition of a building or structure takes place in violation of this Code and the violation involves significant alteration or damage to or demolition of either a historic landmark, or contributor to one or more historic districts or conservation districts that are identified in the Appendices to Articles 10 and Article 11 of the Planning Code, or any property listed in the California Register of Historical Resources or the National Register of Historic Places, the Responsible Party shall be liable for an additional penalty of up to $500,000 for each structure that is significantly altered or demolished without the issuance of an alteration or demolition permit as required by applicable codes. Within 12 months of the effective date of the ordinance in Board File No. _____ amending this Section 176, the Historic Preservation Commission shall adopt definitions for "significant alteration or damage" and "demolition" as those terms are applied in this Section 176, as well as relevant factors and criteria for consideration, to be updated from time to time, to provide guidance to the Zoning Administrator when determining the appropriate penalty amount for violations subject to this subsection (c)(1)(C).*

*(D) **Restrictions on Construction.** Whenever the demolition of any building or structure containing one or more Residential Units, as defined in Section 317(b)(2)(B) or (C) but exclusive of the application of Section 317(b)(2)(D), takes place in violation of Section 317 of this Code, the site on which the unlawful demolition occurred shall be subject to the following restriction: For five years from the date of the unlawful demolition, no permit authorizing the construction or alteration of any building or structure for that site shall be issued except for a permit for the construction or alteration of a building or structure with the same or a greater number of Residential Units, with the same or higher proportion of residential to nonresidential units as the building or structure that was unlawfully demolished. In cases which qualify for the foregoing exception, the proposed area of all additional units must be at least 40% the gross square footage of the largest unit in the proposed project unless all units in the replacement project will be sold or rented at below market rates. All replacement Residential Units shall be subject to the Rent Ordinance (Administrative Code Chapter 37) to the same extent as the Residential Units that were demolished in violation of Section 317 of this Code.*

*(E) **Hearings.***

*(i) **Zoning Administrator Hearing.***

A Responsible Party or other party identified as a violator in an NOV or Notice of Additional Compliance Action And Accrued Penalties may appeal the NOV or Notice of Additional Compliance Action And Accrued Penalties by submitting a request, in writing, to the Zoning Administrator within 30 days of issuance of the NOV or Notice of Additional Compliance Action And Accrued Penalties. The hearing shall be conducted in the manner provided in this subsection (c)(1)(E)(i). An NOV or Notice of Additional Compliance Action And Accrued Penalties that is not timely appealed shall be final. Upon finality, an NOV, NOVPD, or Notice of Additional Compliance Action And Accrued Penalties in its original or reduced amount may be collected pursuant to subsection (f).

An appellant~~*The responsible party*~~ may request a Zoning Administrator's hearing in order to show cause why the notice requiring the cessation, removal, or correction of the violation and any assessment of administrative penalties is in error and should be rescinded*, or why any assessed penalties should be reduced*. The Zoning Administrator may designate a member of Department staff to act as the hearing officer in the Zoning Administrator's place. The Department shall send a notice of the date, hour, and place of the hearing to the *appellant*~~*responsible party*~~ at the address specified in the request for hearing and to any member of the public who has expressed an interest in the matter.

Following the hearing, the Zoning Administrator or other hearing officer designated by the Zoning Administrator shall issue a NOVPD reflecting the Zoning Administrator's determination of the NOV appeal, identifying all individuals liable for the violation(s), and including a description of all corrective actions required, and all administrative penalties due for such violation(s).

(ii) ***Direct Appeal to the Board of Appeals.*** ~~*The responsible party may also request that the Zoning Administrator terminate abatement proceedings under Section 176 and refer the matter to the Director for enforcement action under the process set forth in Section 176.1. If the Zoning Administrator determines that the enforcement case will proceed under Section 176, that determination shall be made as part of the final written decision and is not appealable separately from the decision on the merits.*~~

The *appellant* ~~*responsible party*~~ may waive the right to a Zoning Administrator's hearing and proceed directly to an appeal to the Board of Appeals under Section 308.2. Administrative penalties shall not accrue during the period of time that the matter is pending before the Zoning Administrator on a request for hearing or before the Board of Appeals on appeal*, except that the accrual of penalties will not be tolled during the period of any continuance or request for extension of time in the proceeding before the Zoning Administrator or the Board of Appeals granted at the request of the Responsible Party*.

(iii) ***Appeals.*** If ~~*the responsible party*~~ *any party listed in an NOVPD* elects to ~~*request a Zoning Administrator's hearing*~~ *appeal the NOVPD, such appeal shall be to the Board of Appeals.*~~*, the request for hearing must be in writing and submitted to the Zoning Administrator prior to the expiration date of the Notice of Violation and Penalty. If a request for a Zoning Administrator's hearing is timely filed, any appeal to the Board of Appeals shall be from the decision of the Zoning Administrator rendered after the hearing.*~~

(iv) Decision by the Zoning Administrator.

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

~~*(A*~~*a.*~~*)*~~ whether the *R*~~*r*~~esponsible *P*~~*p*~~arty *or other appellant* was properly identified;

~~*(B*~~*b.*~~*)*~~ whether the accrual dates for the *daily* administrative penalties are accurate;

~~*(C*~~*c.*~~*)*~~ the amount of documented staff time spent in order to secure abatement of the violation;

~~*(D*~~*d.*~~*)*~~ the nature of the violation;

~~*(E*~~*e.*~~*)*~~ the duration of the violation;

~~*(F*~~*f.*~~*)*~~ *whether the violation was willful or intentional;*

g. whether the violation resulted in a financial gain to one or more of the Responsible Parties;

h. efforts made by the *R*~~r~~esponsible *P*~~p~~arty to correct the violation;

~~*(G*~~*i.)* the impact of the violation upon the community;

~~*(H*~~*j.)* any instance in which the *R*~~r~~esponsible *P*~~p~~arty has been in violation of the same or similar laws at the same or other locations in the City and County of San Francisco;

~~*(I*~~*k.)* the *R*~~r~~esponsible *P*~~p~~arty's good faith efforts to comply;

~~*(J*~~*l.)* whether the violation is easy to correct; ~~*and*~~

~~*(K*~~*m.)* *whether the violation of the Planning Code resulted in the displacement of one or more tenants;*

n. whether the violations of the Planning Code created a nuisance, a public health hazard, or a dangerous condition on the affected property;

o. whether the violation is reversible;

p. such other factors as the Zoning Administrator or the Zoning Administrator's designee may consider relevant*; and*

q. for penalties imposed under subsection (c)(1)(C), the foregoing factors are in addition to the factors set forth in the fee schedule described in that fee subsection.

(v) ***Appeal of Zoning Administrator Determination to the Board of Appeals.*** In hearing any appeal of the Zoning Administrator's determination, the Board of Appeals shall consider the above factors. If the Board upholds the Zoning Administrator's decision in whole or in part but reduces the amount of the *daily* penalty *applicable under subsection (c)(1)(A)*, it may not reduce the amount of the penalty below $~~*100*~~*200* for each day that the violation exists, excluding the period of time that the matter has been pending either before the Zoning Administrator on a request for hearing or before the Board of Appeals on appeal. *If the Board of Appeals upholds the Zoning Administrator's decision in whole or in part with respect to the penalty applicable under subsection (c)(1)(C), but reduces the amount of such penalty, it*

may not reduce the amount of the penalty below $50,000 for each residential unit added or removed without authorization, or $100,000 for each historic landmark, or contributor to one or more historic districts or conservation districts that are identified in the Appendices to Articles 10 and Article 11 of the Planning Code, or property listed in the California Register of Historical Resources or the National Register of Historic Places, that is significantly damaged or altered, or demolished.

~~*In addition to any administrative penalties imposed under this subsection (c)(1), the Zoning Administrator may recover any attorneys' fees and costs, including but not limited to expert witness fees, incurred by the City in pursuing administrative remedies.*~~ The provision of administrative penalties is ~~*not intended to be punitive in nature but is*~~ intended to secure compliance with *and deter violations of* the Planning Code and to compensate the City for its costs of enforcement.

*(vi) **Order of Abatement.** Upon the expiration of 90 days following the finality of an NOV, NOVPD, or Notice of Additional Compliance Actions and Accrued Penalties, the Department may record an Order of Abatement against the property's records in the Office of the Recorder of the City and County of San Francisco. The Department may also report any licensed professional responsible for the violation(s) to the appropriate local, state, or federal licensing boards. Within 14 business days after the violation has been finally abated and all restrictions imposed by the NOV or NOVPD have expired, the Department shall record a notice of compliance that cancels the order of abatement.*

(2) **Civil Penalties.** Any individual, firm, partnership, corporation, company, association, society, group, or other person or legal entity that violates any provision of this Code shall be liable for the City's costs of enforcement and a civil penalty~~,~~ of not less than $200 *and not more than $1,000* for each day such violation is committed or permitted to continue, which penalty shall be assessed and recovered in a civil action brought in the name of the ~~*p*~~*P*eople of the City and County of San Francisco by the City Attorney in any court of

competent jurisdiction. *For purposes of this Section 176, each real property address, each commercial or dwelling unit within a multi-unit real property address affected by a violation, and each separate violation of the Planning Code is a distinct violation for calculation of applicable civil penalties.* The City ~~*Attorney may seek recovery of any*~~*, when it is the prevailing party, shall be awarded reasonable* attorneys' fees and costs, including but not limited to expert witness fees~~,~~ *and costs of investigation* incurred by the City in bringing such civil action. For civil actions to enforce Municipal Code provisions related to general advertising signs, the penalties, attorneys' fees, and costs set forth in this Section 176 shall be in addition to those authorized by Section 610 of this Code.

In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including but not limited to, the following:

(A) the nature and seriousness of the misconduct, including but not limited to whether the violation resulted in any public health or safety hazard, or a dangerous condition on the affected property, and the impact of the violation on the occupants of the property and the surrounding neighborhood;

(B) the number of violations;

(C) the persistence of the misconduct;

(D) the length of time over which the misconduct occurred;

(E) the willfulness of the misconduct;

(F) whether the violation of the Planning Code resulted in the displacement of one or more tenants;

(G) whether the violation is reversible;

(H) whether the violation damaged or demolished a historic landmark, or contributor to a historic district, identified in Appendix A to Articles 10 and 11 of the Planning Code,

or any property listed in the California Register of Historical Resources or the National Register of Historic Places;

(I) the violator's financial gain or opportunity for financial gain from the misconduct; and

(J) the defendant's assets, liabilities, and net worth.

(3) **Criminal Penalties.** Any individual, firm, partnership, corporation, company, association, society, group, or other person or legal entity that violates any provision of this Code shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not less than $200 or be imprisoned for a period not exceeding six months or be both so fined and imprisoned. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

(4) **Planning Code Enforcement Fund.** Any fees and penalties collected pursuant to this Section 176 except those collected pursuant to subsection (b)(5) shall be deposited in the Planning Code Enforcement Fund established by Administrative Code Section 10.100-166*, and shall be used for the purposes specified in that section*. The Planning Department, through the Planning Code Enforcement Fund, shall reimburse City departments and agencies, including the City Attorney's Office, for all costs and fees incurred in the enforcement of this Section 176.

(5) **Affordable Housing Enforcement Fund.** Any fees and penalties described in subsection (c)(2) that are collected as a result of the enforcement efforts of MOHCD as provided in subsection (b)(5), shall be deposited in the Affordable Housing Enforcement Fund established by Administrative Code Section 10.100-10. MOHCD shall reimburse City departments and agencies including the City Attorney's Office, for all costs and fees incurred in the enforcement of this Section 176, from the Affordable Housing Enforcement Fund.

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

(e) ~~***Use of Penalties Collected.*** *All penalties collected under this Section 176 shall be deposited in the Planning Code Enforcement Fund established in Administrative Code Section 10.100.166 and shall be used for the purposes specified in that section.*~~

Failure to Pay Administrative Penalties. *If the Responsible Party fails to pay the administrative penalties to the Department within 30 days of the date on which an NOVPD or Notice of Additional Compliance Actions And Accrued Penalties specifying such penalty amount becomes final, the Zoning Administrator may take such actions to collect the penalties and any unpaid Time and Materials owed to the Department as the Zoning Administrator deems appropriate, including (1) referral of the matter to the Bureau of Delinquent Revenue Collection under Chapter 10, Article V, Section 10.39 of the Administrative Code, (2) initiation of lien proceedings under Chapter 10, Article XX, Sections 10.230 et seq. of the Administrative Code, and (3) requesting that the City Attorney pursue collection of the penalties imposed against the Responsible Party in a civil action.*

(f) ***Remedies Not Exclusive.*** Remedies under this Section 176 are non-exclusive, and, notwithstanding subsection (b)(2), the City Attorney may at any time institute civil proceedings for injunctive and monetary relief, including civil penalties, against any person for violations of the Planning Code, without regard to whether the Zoning Administrator has issued a notice of violation, instituted abatement proceedings, scheduled or held a hearing on a notice of violation, or issued a final decision. For proceedings instituted under this subsection (f), the City Attorney shall notify the Zoning Administrator or the Planning Director, as appropriate, and collaborate, where mutually desired, on the prosecution of the action. ~~*The City Attorney*~~

~~*may seek recovery of any attorneys' fees and costs, including but not limited to expert witness fees, incurred by the City in bringing a proceedings under this subsection (f).*~~

~~***SEC. 176.1. ADMINISTRATIVE ENFORCEMENT PROCEDURES.***~~

~~*(a) Purpose and Intent.*~~

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

~~*(2) The alternative methods of administrative enforcement established by this Section do not replace but rather are intended to supplement the enforcement remedies established in Section 176 and other penalties or methods of enforcement, both civil and criminal, that are authorized by law. The provision for administrative penalties is not intended to be punitive in nature but is intended to secure compliance with the Planning Code and to compensate the City for its costs of enforcement.*~~

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

~~*(b) Authority of the Director. The Director may enforce against violations of the Planning Code through the alternative administrative remedies of this Section 176.1. The Director may designate*~~

~~*a member of Department staff to act under his or her authority with respect to any action the Director is authorized to take in this Section 176.1.*~~

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

~~*(c) Notice of Violation.*~~

~~*(1) Issuance. After the Department has determined that a violation of this Code exists, the Director shall give written notice of the violation to the responsible party. For purposes of this Section 176.1, "responsible party" means the owners(s) of the real property on which the code violation is located, as listed in the records of the San Francisco Assessor, and the current leaseholder if different from the current owner(s) of the real property.*~~

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

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

~~*(d) Order of Abatement.*~~

~~*(1) Issuance; Administrative Penalties; Request for Hearing. If a property remains in violation after the deadlines established in the notice of violation, the Director shall issue an order of abatement and assess administrative penalties against the responsible party by following the procedure set forth in Section 176.1(e). The order of abatement shall state the amount of penalty imposed, explain how and when the penalty shall be paid, and describe the consequences of failure to pay the penalty. The order of abatement shall inform the responsible party of the right to appeal the order of abatement and assessment of administrative penalties to an administrative law judge under Subsection (f) below. The Department shall not proceed to enforce the order of abatement or collect the administrative penalties until the time for appeal has passed or the order and penalties have been upheld on appeal.*~~

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

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

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

~~*(A) Request for hearing; notice. The responsible party shall submit a written request for a Director's hearing prior to expiration of the compliance deadlines set forth in the notice of violation on a form or in the manner required by the Director. The Director shall send a notice of the date, hour, and place of the hearing to the responsible party at the address specified in the request for hearing and to any member of the public who has expressed an interest in the matter.*~~

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

~~*(i) whether the responsible party was properly identified;*~~

~~*(ii) whether the accrual dates for the administrative penalties are accurate;*~~

~~*(iii) the amount of documented staff time spent in order to secure abatement of the violation;*~~

~~*(iv) the nature of the violation;*~~

~~*(v) the duration of the violation;*~~

~~*(vi) efforts made by the responsible party to correct the violation;*~~

~~*(vii) the impact of the violation upon the community;*~~

~~*(viii) any instance in which the responsible party has been in violation of the same or similar laws at the same or other locations in the City and County of San Francisco;*~~

~~*(ix) the responsible party's good faith efforts to comply;*~~

~~*(x) whether the violation is easy to correct; and*~~

~~*(xi) such other factors as the Director or the Director's designee may consider relevant.*~~

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

~~*(1) Assessment. In an order of abatement issued under Subsection (d) above, the Director shall assess administrative penalties for violation of the Planning Code. A penalty shall be assessed for each violation observed. Payment of the penalty shall not excuse failure to correct the violations nor shall it bar further enforcement action by the City.*~~

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

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

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

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

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

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

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

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

~~*(A) whether the responsible party was properly identified;*~~

~~*(B) whether the accrual dates for the administrative penalties are accurate;*~~

~~*(C) the amount of documented staff time spent in order to secure abatement of the violation;*~~

~~*(D) the nature of the violation;*~~

~~(E) the duration of the violation;~~

~~(F) efforts made by the responsible party to correct the violation;~~

~~(G) the impact of the violation upon the community;~~

~~(H) any instance in which the responsible party has been in violation of the same or similar laws at the same or other locations in the City and County of San Francisco;~~

~~(I) the responsible party's good faith efforts to comply; and~~

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

~~(K) such other factors as the administrative law judge may consider relevant.~~

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

~~The administrative law judge shall issue a written decision on the appeal within thirty days of the conclusion of the hearing. The decision shall be served on the responsible party by certified mail by deposit in the United States mail in a sealed envelope, postage prepaid, addressed to the responsible party at the address provided to the administrative law judge by the responsible party. Service shall be considered to have been completed at the time of deposit in the United States mail. A copy of the decision shall also be mailed to the Director of Planning at the offices of the Planning Department.~~

~~(5) Continuance of Hearing. The parties may by mutual agreement continue the hearing date. If the parties do not mutually agree on another hearing date, the party wanting a continuance may request the administrative law judge to grant the continuance by submitting a written request for a continuance and demonstrating good cause with supporting documentation. A written request for a continuance shall be made at the earliest possible date but in no event less than five days before the hearing unless unforeseen circumstances prevent such notification. The party requesting the~~

~~*continuance shall notify any other parties of the request in the most expeditious manner and provide them with copies of the complete request and the supporting documentation. A request for continuance made at the time of the hearing may be granted only in those exceptional cases where the requesting party demonstrates both good cause and that the party was unable through no fault of their own to make the request at an earlier time. The administrative law judge may grant more than one continuance, but the combination of all continuances granted shall be for no longer than forty-five days.*~~

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

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

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

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

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

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

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

~~*(7) Compliance with Decision. If the administrative law judge upholds the Director's order of abatement in whole or in part, the responsible party shall comply with the decision and pay to the*~~

~~*Department any administrative penalties that were upheld within thirty days of the date the decision was served. If the responsible party is proceeding diligently to obtain required permits and to complete the abatement work, the Director may grant additional time to comply with the decision. If the responsible party fails to comply with the decision and/or to pay the administrative penalties within the time period required, the Director may take such action to collect the fees and enforce the decision as he or she deems appropriate, including (i) referral of the matter to the Bureau of Delinquent Revenue Collection under Article V, Section 10.39 of the San Francisco Administrative Code, initiation of lien proceedings under Article XX, Section 10.230 et seq. of the San Francisco Administrative Code, and/or a requesting that the City Attorney pursue enforcement of the decision and collection of the penalties imposed against the responsible party in a civil action.*~~

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

~~*(8) Rescission of Order of Abatement or Withdrawal of Appeal Prior to the Hearing. If the Director rescinds the order of abatement in its entirety prior to the hearing, the case shall be considered abated and the appeal withdrawn, and any assessed administrative penalties shall be considered rescinded. The Department shall refund to the responsible party in a timely manner any appeal fees that he or she has paid.*~~

~~*If the responsible party elects to withdraw the appeal and comply with the order of abatement, the Department shall refund in a timely manner any appeal fees that he or she has paid. Any administrative penalties already assessed must be paid in full before the Department will consider the case abated. If the responsible party withdraws the appeal within ten days of the date the appeal was filed, he or she may apply to the Director in writing for a reduction in the amount of any assessed administrative penalties based upon the number of days between the filing of the appeal and its*~~

~~*withdrawal. Any decision by the Director to grant or deny the request shall be at the Director's sole discretion and is not appealable.*~~

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

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

~~*Proof of giving any notice may be made by the certificate of any officer or employee of the City and County of San Francisco or by affidavit of any person over the age of 18 years, which shows service in conformity with the San Francisco Municipal Code or any other applicable provisions of law.*~~

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

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

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

SEC. 350. FEES.

* * * *

(g) **Time and Materials.** The Planning Department shall charge the applicant for any time and materials cost*s* incurred in excess of the initial fee charged if required to recover the Department's costs for providing services.

(1) The Department shall charge time and materials to recover the cost of correcting code violations and violations of Planning Commission and Department conditions of approval of use if such costs are not covered by the monitoring fee for conditions of approval specified in the Planning Department Fee Schedule.

(2) Where a different limitation on time and material*s* charges is set forth elsewhere in this Article 3.5, that limitation shall prevail.

(3) The Planning Department *may* also charge the applicant for any time and materials costs incurred by any other departments or agency~~*y*~~*ies* of the City and County of San Francisco, or may authorize such other departments or agencies of the City and County to charge directly for any time and materials costs incurred by the respective department or agency to recover the cost of correcting code violations~~,~~ *and* violations of Planning Commission and Department conditions of approval.

(4) Any balance of time and materials costs for active and open projects must be paid in full one week in advance of a scheduled public hearing before the Planning

Commission to consider the project or before *Planning Department approval* ~~*issuance*~~ of the first site permit if no hearing is required.

* * * *

Section 4. The Building Code is hereby amended by revising Sections 102A.8 and 103A (including Sections 103A.3.1, 103A.3.4, 103A.3.5, and 103A.3.7), to read as follows:

102A.8 Remedies are Non-Exclusive. Notwithstanding the provisions of Sections 102A.4 through 102A.7, the City Attorney may institute civil proceedings for injunctive and monetary relief, including civil penalties, against a building owner for violations of the Municipal Code under any circumstances, without regard to whether a complaint has been filed or the Building Official has issued a NOV or an Administrative Order. In any civil action filed by the City Attorney under this Section 102A.8, the City ~~*Attorney may seek recovery of and the court may award the City its*~~*, when it is the prevailing party, shall be awarded reasonable* attorneys*'* fees and costs, including but not limited to expert witness fees~~,~~ *and costs of investigation* incurred in bringing the proceedings.

SECTION 103A – VIOLATIONS

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy*,* or maintain any building, structure, property, or portions thereof or cause or permit the same to be done in violation of this code.

(a) ***Penalties.***

(1) ***Civil Penalties.*** Any person, the owner*,* or the owner's authorized agent, who *provides false information on permit applications or plans, or who otherwise* violates, disobeys, omits, neglects, or refuses to comply with, or resists or opposes the execution of any of the provisions of this *C*~~*c*~~ode, shall be liable for a civil penalty, *not less than $200, and* not to exceed

$~~500~~1,000, for each day such violation is committed or permitted to continue, which penalty shall be assessed and recovered in a civil action brought in the name of the ~~p~~People of the City and County of San Francisco by the City Attorney in any court of competent jurisdiction. Any penalty assessed and recovered in an action brought pursuant to this ~~*paragraph*~~*subsection (a)(1)* shall be paid to the City Treasurer and credited to the Department's Special Fund. *For purposes of this subsection (a)(1), each real property address, each commercial or dwelling unit within a multi-unit real property address affected by a violation, and each separate violation of the Building Code is a distinct violation for calculation of applicable civil penalties.*

In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including but not limited to, the following:

(A) the nature and seriousness of the misconduct, including but not limited to whether the violation resulted in any public health or safety hazard, or a dangerous condition on the affected property, and the impact of the violation on the occupants of the property and the surrounding neighborhood;

(B) the number of violations;

(C) the persistence of the misconduct;

(D) the length of time over which the misconduct occurred;

(E) the willfulness of the misconduct;

(F) whether the violation of the Building Code resulted in the displacement of one or more tenants;

(G) whether the violation is reversible;

(H) the violator's financial gain or opportunity for financial gain from the misconduct; and

(I) the defendant's assets, liabilities and net worth.

*(2) **Criminal Penalties.*** Any person, the owner, or the owner's authorized agent, who violates, disobeys, omits, neglects, or refuses to comply with, or who resists or opposes the execution of any of the provisions of this code, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding $~~*500*~~*1,000*, or by imprisonment not exceeding six months, or by both such fine and imprisonment, unless otherwise provided in this code, and shall be deemed guilty of a separate offense for every day such violation, disobedience, omission, neglect, or refusal shall continue. Any person who shall do any work in violation of any of the provisions of this code, and any person having charge of such work who shall permit it to be done, shall be liable to the penalty provided.

It shall be unlawful for any person to interfere with the posting of any notice provided for in this code, or to tear down or mutilate any such notice posted by the Department.

* * * *

103A.3 Restrictions of unlawful residential demolition replacement.

103A.3.1 Demolition without permit. Whenever the demolition of any building or structure ~~*containing one or more residential units*~~ takes place, *including as defined in Section 317(b)(2)(B) or (C) but exclusive of the application of Section 317(b)(2)(D),* without the issuance of a demolition permit as required by this code, the site on which the unlawful demolition occurred shall be subject to the following restriction: For five years from the date of the unlawful demolition, no permit authorizing the construction or alteration of any building or structure for that site shall be issued, except for a permit for the construction or alteration of a building or structure with the same *or greater* number of residential units, with the same *or higher* proportion of residential to nonresidential units ~~*and with the same or fewer square feet*~~ as the building or structure that was unlawfully demolished. *In cases which qualify for the foregoing exception, the proposed area of all additional units must be at least 40% the gross square footage of the largest unit in the proposed project unless all units in the replacement project will be sold or rented*

at below market rates. All replacement Residential Units shall be subject to the Rent Ordinance (Administrative Code Chapter 37) to the same extent as the Residential Units that were demolished in violation of Section 317 of this Code. * * * *

103A.3.4 Civil penalties. Any agent, contractor, or other person acting on behalf of the owner of a building or structure ~~*containing one or more residential units*~~ who causes or permits the demolition of the building or structure with the knowledge that a demolition permit has not been issued as required by this code shall be subject to a civil penalty of $*10*~~5~~,000. ~~*Any owner who causes or permits the demolition of his or her building or structure containing one or more residential units with the knowledge that no demolition permit has been issued as required by this code shall be subject to a civil penalty of $1,000.*~~

103A.3.5 Penalties nonexclusive. The penalties set forth in this section *103A* are not exclusive, but are in addition to any other penalties set forth in this code, *in other San Francisco Municipal codes, or in state law*.

* * * *

103A.4.7 Violation a public nuisance; enforcement. A property in violation of the provisions of this section is deemed to be a public nuisance and subject to enforcement by the Department and penalties under Section 102A and 103A of this Code or under other applicable sections of the San Francisco Municipal Code *or state law*.

* * * *

Section 5. Effective Date; Application of Ordinance.

(a) This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

(b) The following increased penalties or new fines contained in this ordinance shall apply to violations of the Planning Code or Building Code that were committed on or after the effective date of the ordinance:

(1) the provision in Planning Code Section 176(c)(1)(A) that "For purposes of this subdivision (c)(1)(A), each real property address, each commercial or dwelling unit within a multi-unit real property address affected by a violation, and each separate violation of the Planning Code is a distinct violation for calculation of applicable administrative penalties;

(2) the provision in Planning Code Section 176(c)(1)(A) authorizing more than $250 per day in daily administrative penalties (i.e., the $250 cap shall continue to apply to violations committed prior to the effective date of the ordinance);

(3) the fines and other consequences provided for in Planning Code Section 176(c)(1)(C);

(4) the provision in Planning Code Section 176(c)(2) that "For purposes of this subdivision (c)(2), each real property address, each commercial or dwelling unit within a multi-unit real property address affected by a violation, and each separate violation of the Planning Code is a distinct violation for calculation of applicable civil penalties.";

(5) the provision in Building Code Section 103A(a)(1) that "For purposes of this subdivision (a)(1), each real property address, each commercial or dwelling unit within a multi-unit real property address affected by a violation, and each separate violation of the Planning Code is a distinct violation for calculation of applicable civil penalties.";

(6) the provision setting a $200 minimum for daily civil penalties under Building Code section 103A(a)(1);

(7) the provision in Building Code section 103A.3.3 authorizing a fine in excess of $5,000 (i.e., the $5,000 fine amount shall apply to violations committed prior to the Effective Date).

All other provisions of this ordinance shall apply to pending proceedings for violations of the Building Code or Planning Code, unless such application would violate the United States Constitution or California Constitution.

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

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: /s/ KRISTEN A. JENSEN
KRISTEN A. JENSEN
Deputy City Attorney

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FILE NO. 220878

LEGISLATIVE DIGEST

(Substituted, 11/29/2022)

[Planning and Building Codes - Penalties for Code Enforcement]

Ordinance amending the Planning and Building Codes to increase fines and penalties for violations of Planning and Building Code provisions; clarify that violations affecting more than one unit in a building constitute multiple violations for purposes of assessing penalties; requiring the Planning Commission and the Historic Preservation Commission to adopt factors for the Zoning Administrator to consider in determining the appropriate amount of civil penalties; establishing penalties for residential units merged, constructed, or divided without required permits or approvals; establishing penalties for violations involving illegal demolition and enhancement of penalty amounts for certain buildings by age or historic status; providing additional notices for Responsible Parties; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

Existing Law

Planning Code

Planning Code Section 176 establishes methods of enforcement for violations of the Planning Code, as well as administrative, civil and criminal penalties. The Zoning Administrator may impose daily penalties of 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.

The City may also recover civil 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 of not less than $200 or imprisonment for a period not exceeding six months, or both.

Responsible parties may seek a hearing before the Zoning Administrator to show cause why the notice requiring cessation, removal or correction of a violation or the assessment of penalties is in error and should be rescinded. Existing law provides factors for the Zoning Administrator to consider in assessing penalties against the Responsible Party.

Instead of administrative proceedings before the Zoning Administrator, the responsible party may request the matter be referred to the Director for enforcement under the process set forth

in Section 176.1 of the Code, or may waive the right to a Zoning Administrator's hearing and appeal a notice of violation directly to the Board of Appeals.

Civil penalties are recovered in a civil action brought by the City Attorney.

Building Code

The Building Code provides for civil and criminal penalties for violations of the code.

Amendments to Current Law

Planning Code

The ordinance would increase daily administrative or civil penalties to $1000 per day, and create additional fines for specific violations. Additional fines would be as follows:

- Alteration, Merger, Construction, or Demolition of Residential Units Without a Permit Resulting in the Addition of More Than Two Unauthorized Residential Units, or the Loss of One or More Residential Units: up to $250,000 for each Residential Unit added or lost through such alteration, merger, or demolition.
- Significant Alteration or Damage to or Demolition of Historic Property without a Permit: up to $500,000 for each structure demolished without the issuance of an alteration or demolition permit as required by applicable codes.

Under the ordinance, once a Notice of Violation (NOV) or Notice of Additional Compliance Action and Accrued Penalties is final, the City could record the NOV, Notice of Additional Compliance Action and Accrued Penalties or the Zoning Administrator's decision on appeal of the NOV (NOVPD) as an Order of Abatement against title to the property. Daily penalties assessed in an NOV, a Notice of Additional Compliance Action and Accrued Penalties or NOVPD, and any time and materials incurred to enforce the violations, would become a debt to the City enforceable by a lien against the property or any other means available under the law.

The ordinance would permit the Zoning Administrator to notify certain parties of additional compliance requirements, and would restrict construction on properties for five years following the demolition of any building or structure containing one or more Residential Units in violation of Section 317 of the code, unless waived by the Zoning Administrator. An exception would apply where the replacement project maintains or increases density on the site as compared to the demolished building, and all new units are at least 40% the gross square footage of the largest unit on the site unless all units in the replacement project will be sold or rented at below market rates. Other restrictions would apply to replacement units, where permitted.

The ordinance provides that, while daily administrative penalties are accruing, the Department may periodically issue a Notice of Additional Compliance Action And Accrued Penalties.

Under the proposed legislation, in any appeal of the Zoning Administrator's determination of a violation, if the Board of Appeals upholds the Zoning Administrator's decision in whole or in part, it may not reduce the amount for daily administrative penalties below $200 per day. Similarly, the Board of Appeals could not reduce the amount of the penalty below $50,000 for each residential unit added or removed without authorization, or $100,000 for each Historic Property as defined in the ordinance, that is significantly altered, damaged, or demolished.

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.

This ordinance would delete Section 176.1 from the Code, eliminating administrative appeals of violations to the Director.

The ordinance provides that the Planning Commission and the Historic Preservation Commission shall adopt factors that the Zoning Administrator should consider in determining the amount of administrative penalties to be assessed, and courts should consider in determining the amount of civil penalties to be assessed, if any.

Building Code

The ordinance clarifies that anyone who provides false information on permit applications or plans, or who otherwise violates the code, shall be liable for a civil penalty. Civil penalties for all violations of the code would be not less than $200, and would not exceed $1,000 for each day such violation is committed or permitted to continue and shall be recovered in a civil action by the City Attorney. The ordinance clarifies each real property address, and each commercial or dwelling unit within a multi-unit real property address, is a distinct violation for calculation of applicable penalties. The ordinance specifies relevant circumstances to be considered by the Building Department in determining the amount of penalties, if any, to be assessed.

The ordinance would increase the amount of civil fines available for violations of the code to $1,000. Civil penalties for demolition of a structure without a permit would be increased to $10,000.

Background

The ordinance was introduced on July 26, 2022; a substitute ordinance was introduced on November 29, 2022.

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