

REVISED LEGISLATIVE DIGEST
(Amended in Committee, 3/6/2023)

[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.

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requiring cessation, removal or correction of a violation or the assessment of penalties is in error and should be rescinded.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, which would accrue upon issuance of a Notice of Violation, would be as follows:

- Alteration, Merger, Construction, or Demolition of Residential Units Without a Permit Resulting in the Addition of More Than Three 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.

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. Following hearing at the Planning Commission, the sponsor amended the ordinance at the Land Use and Transportation Committee to reflect the following recommendations of the Commission and Planning staff:

- Add language to state that the one-time fines of either up to \$250k for loss of residential units, or up to \$500k for the damage to or loss of a historic structure penalty is triggered when an NOV is issued.
- Remove the 5-year prohibition on construction for violations of Sec. 176(c)(1)(C).
- Make several clarifying and typographical amendments to the proposed Ordinance.
- Not require the Department to serve new notices to the new property owners when titles transfer, but to require the Department to record Notices of Violation where a penalty will be imposed against the property's title.
- Increase the unit count when the up to \$250k penalty applies for illegal units added from "more than 2 units" to "more than 3 units".

The sponsor declined to amend the ordinance to lower the amount to which the Board of Appeals may decrease the fine for demolitions or addition of residential units cases that are appealed to them.

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