

1 [Planning Code - Nonconforming Uses; Enlargements and Alterations]

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3 **Ordinance amending the Planning Code to permit the enlargement, alteration or**  
4 **reconstruction of a dwelling or other housing structure that exceeds the permitted**  
5 **density of the district if dwelling units are principally permitted in the district and the**  
6 **enlargement, alteration or reconstruction does not extend beyond the building**  
7 **envelope as it existed on January 1, 2013 and if no tenants were evicted under certain**  
8 **provisions of the Rent Ordinance; making environmental findings and findings of**  
9 **consistency with the General Plan and the eight priority policies of Planning Code**  
10 **Section 101.1.**

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

15

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

17

18 Section 1. Findings.

19 (a) The Planning Department has determined that the actions contemplated in this  
20 ordinance comply with the California Environmental Quality Act (California Public Resources  
21 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
22 Supervisors in File No. 130783 and is incorporated herein by reference.

23 (b) On September 19, 2013, the Planning Commission, in Resolution No. 18967,  
24 adopted findings that the actions contemplated in this ordinance are consistent, on balance,  
25 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The

1 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of  
2 the Board of Supervisors in File No. 130783, and is incorporated herein by reference.

3 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code  
4 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth  
5 in Planning Commission Resolution No. 18967 and the Board incorporates such reasons  
6 herein by reference.

7 (d) This Board intends to allow the enlargement, alteration and reconstruction of non-  
8 conforming uses, as long as such permission does not result in additional tenant evictions in  
9 order to use these benefits. Accordingly, this Board intends to strike a balance between  
10 allowing the non-conforming uses to be altered as described and the need to protect  
11 important housing resources.

12 Section 2. The Planning Code is hereby amended by revising Section 181, to read as  
13 follows:

14 **SEC. 181. NONCONFORMING USES: ENLARGEMENTS, ALTERATIONS AND**  
15 **RECONSTRUCTION.**

16 The following provisions shall apply to ~~non-conforming~~ nonconforming uses with respect  
17 to enlargements, alterations and reconstruction:

18 (a) Increases in nonconformity. A nonconforming use, and any structure occupied by  
19 such use, shall not be enlarged, intensified, extended, or moved to another location, with the  
20 exception of the construction of a mezzanine within a live/work unit and expansion of dwelling  
21 units in PDR Districts, unless the result will be elimination of the nonconforming use, except  
22 as provided ~~in Paragraph (b)(3) and (i)~~ below and in Section 186.1 of this Code. A  
23 nonconforming use shall not be extended to occupy additional space in a structure, or  
24 additional land outside a structure, or space in another structure, or to displace any other use,  
25 except as provided in Sections 182 and 186.1 of this Code.

1 (b) **Permitted alterations.** A structure occupied by a nonconforming use shall not be  
2 constructed, reconstructed or altered, unless the result will be elimination of the  
3 nonconforming use, except as provided in Section 186.1 of this Code and in Subsections (a)  
4 above and (d), (e), (f), ~~(g)~~, (h) and (i) below, and except as follows:

5 (1) Ordinary maintenance and minor repairs shall be permitted where necessary  
6 to keep the structure in sound condition, as well as minor alterations, where such work is  
7 limited to replacement of existing materials with similar materials placed in a similar manner.

8 (2) Minor alterations shall be permitted where ordered by an appropriate public  
9 official to correct immediate hazards to health or safety, or to carry out newly enacted  
10 retroactive requirements essential to health or safety.

11 (3) Alterations otherwise allowed by this Code shall be permitted for any portion  
12 of the structure that will not thereafter be occupied by the nonconforming use, provided the  
13 nonconforming use is not enlarged, intensified, extended, or moved to another location.

14 (4) All other alterations of a structural nature shall be permitted only to the extent  
15 that the aggregate total cost of such other structural alterations, as estimated by the  
16 Department of Building Inspection ~~Public Works~~, is less than ½ of the assessed valuation of the  
17 improvements prior to the first such alteration, except that structural alterations required to  
18 reinforce the structure to meet the standards for seismic loads and forces of the Building Code  
19 shall be permitted without regard to cost.

20 (c) **Dwellings nonconforming as to density.**

21 (1) A dwelling or other housing structure exceeding the permitted density of  
22 dwelling units or other housing units set forth in Sections 207.5, 208, 209.1, 209.2, or 215 of  
23 this Code for the district in which it is located shall be classified as a nonconforming use under  
24 Section 180 of this Code, but only to the extent that such dwelling or other housing structure  
25 exceeds the permitted density.

1           (2) In districts where a dwelling unit is a principally permitted use, this ~~This~~ Section  
2 181 shall not apply with respect to enlargements, alterations and reconstruction of the  
3 nonconforming portion of such dwelling or other housing structure, consisting of those  
4 dwelling units or other housing units which exceed the permitted density, so long as such  
5 enlargements, alterations, or reconstruction do not otherwise extend beyond the building envelope as it  
6 existed on January 1, 2013.

7           (3) No such enlargements, alterations, or reconstruction shall be permitted  
8 under Subsection (c)(2) for any dwelling unit if any tenant has been evicted ~~where a tenant~~  
9 ~~was served with a notice of eviction pursuant to San Francisco Administrative Code Sections~~  
10 ~~37.9(a)(8) 37.9(a)(9) through 37.9(a)(14) where the tenant was served with the notice of~~  
11 ~~eviction after October 24, 2013 December 10, 2013 and if the notice was served within ten~~  
12 ~~(10) years prior to filing an application to enlarge, alter or reconstruct such dwelling or other~~  
13 ~~housing unit.~~ Additionally, no such enlargements, alterations, or reconstruction shall be  
14 permitted for any dwelling unit if any tenant has been evicted pursuant to Administrative Code  
15 Section 37.9(a)(8) where the tenant was served with a notice of eviction after December 10,  
16 2013 if the notice was served within five (5) years prior to filing an application to enlarge, alter  
17 or reconstruct such dwelling or other housing unit. This Subsection (c)(3) shall not apply  
18 provided that if an eviction has taken place if the tenant was evicted under Section  
19 37.9(a)(11), 37.9(a)(12) or 37.9(a)(14), then and the applicant(s) shall certify that either (A)  
20 have certified that the original tenant reoccupied the unit after the temporary eviction or (B)  
21 have submitted to the Planning Commission a declaration from the property owner or the  
22 tenant certifying that the property owner or the Rent Board notified the tenant of the tenant's  
23 right to reoccupy the unit after the temporary eviction and that the tenant chose not to  
24 reoccupy it.

1           (4) Any dwelling unit or other housing unit coming within the density limit shall  
2 not be affected by this Section 181. Except as provided in Sections 181(h) and 182(e), no  
3 dwelling or other housing structure exceeding the permitted density of dwelling units or other  
4 housing units shall be altered to increase the number of dwelling units or other housing units  
5 therein, or to increase or create any other nonconformity with respect to the dwelling unit or  
6 other housing unit density limitations of Section 209.1 or Section 209.2.

7           (d) Structures damaged or destroyed by calamity. Notwithstanding the foregoing provisions  
8 of this Section 181, a structure occupied by a nonconforming use that is damaged or  
9 destroyed by fire, or other calamity, or by Act of God, or by the public enemy, may be restored  
10 to its former condition and use; provided that such restoration is permitted by the Building  
11 Code, and is started within eighteen months and diligently prosecuted to completion. The age  
12 of such a structure for the purposes of Sections 184 and 185 shall nevertheless be computed  
13 from the date of the original construction of the structure. Except as provided in Subsection (e)  
14 below, no structure occupied by a nonconforming use that is voluntarily razed or required by  
15 law to be razed by the owner thereof may thereafter be restored except in full conformity with  
16 the use limitations of this Code.

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

20           (e) Unreinforced masonry buildings. In order that major life safety hazards in structures  
21 may be eliminated as expeditiously as possible, a structure containing nonconforming uses  
22 and constructed of unreinforced masonry that is inconsistent with the requirements of the  
23 UMB Seismic Retrofit Ordinance, Ordinance No. 227-92, may be demolished and  
24 reconstructed with the same nonconforming use or a use as permitted by Planning Code  
25 Section 182; provided that:

1           (1) there is no increase in any nonconformity, or any new nonconformity, with  
2 respect to the use limitations of this Code;

3           (2) ~~provided further that~~ the current requirements of the Building Code, the  
4 Housing Code and other applicable portions of the Municipal Code are met; and

5           (3) ~~provided further that~~ such restoration or reconstruction is started within one  
6 year after razing or other demolition work on the structure and diligently prosecuted to  
7 completion.

8           (f) **Nighttime Entertainment Uses in certain Mixed-Use Districts.** A nighttime entertainment  
9 use within the RSD, MUG, MUR, or SLR Districts may be enlarged, intensified, extended or  
10 expanded, including the expansion to an adjacent lot or lots, provided that:

11           (1) the enlargement, intensification, extension or expansion is approved as a  
12 conditional use pursuant to Sections 303 and 316 of this Code;

13           (2) the use as a whole meets the parking and signage requirements, floor area  
14 ratio limit, height and bulk limit, and all other requirements of this Code which would apply if  
15 the use were a permitted one; and

16           (3) the provisions of Section 803.5(b) of this Code are satisfied.

17           (g) **Automotive Sales and Service Signs in the Automotive Special Use District.** Automotive  
18 sales and service signs within the Automotive Special Use District which have all required  
19 permits but which do not comply with the controls for new signs established in Section 607.3  
20 of this Code shall be permitted to remain as nonconforming uses and shall be permitted to  
21 modify the signage text to describe new automobile ownerships and dealerships that may  
22 occur from time to time.

23           (h) **Dwellings in PDR and M-2 Districts.** In PDR *and* M-2 Districts, no building containing  
24 a residential use shall be altered to increase the number of dwelling units or other housing  
25 units therein. However, individual dwelling units or other housing units may be expanded,

1 subject to height, bulk, and all other provisions of this Code which would otherwise be  
2 applicable to dwelling units or other housing units in the Urban Mixed Use District.

3 (i) Nonconforming Non-Residential Uses in the Eastern Neighborhoods Mixed Use, PDR-1-  
4 D, and PDR-1-G Districts. In the Eastern Neighborhoods Mixed Use, PDR-1-D, and PDR-1-G  
5 Districts, a non-residential nonconforming use may expand in gross floor area by no more  
6 than 25 percent with conditional use authorization pursuant to Section 303 of this Code. Such  
7 conditional use authorization may not be granted for any subsequent or additional expansion  
8 beyond the initial 25 percent.

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

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

22 By: \_\_\_\_\_  
23 KATE H. STACY  
24 Deputy City Attorney

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