

1 [Planning Code - Creating a Definition for Fractional Ownership of a Building Containing Two
or More Dwelling Units]

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3 **Draft Ordinance amending the Planning Code by creating a definition for ownership of**
4 **a building containing two or more dwelling units, or possession thereof under a written**
5 **contract to purchase or transfer ownership, by persons, firms, companies,**
6 **corporations or partnerships, where persons, firms, companies, corporations or**
7 **partnerships have or may have an undivided ownership interest in the property; by**
8 **agreement have an exclusive right of occupancy to an individual dwelling unit; where**
9 **the dwelling unit have not been mapped as a condominium, community apartment or**
10 **stock cooperative per Subdivision Code, Article 9; creating a requirement for the**
11 **Planning Department to review the proposed project for compliance with the Planning**
12 **Code and any applicable design guidelines approved by the Planning Commission;**
13 **requiring any application for conversion of an existing building from One Ownership to**
14 **Fractionalized Ownership to meet all applicable provisions of the City's Housing,**
15 **Building and City Planning Codes including standards for fire and life safety consistent**
16 **with new construction, pending Board approval.**

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18 NOTE: Additions are *single-underline italics Times New Roman*;
19 deletions are ~~*strike-through italics Times New Roman*~~.
20 Board amendment additions are double-underlined;
21 Board amendment deletions are ~~strike-through normal~~.

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

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Section 1. Findings.

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(a) The supply of housing in the City and County of San Francisco is one of the oldest in
25 on the West Coast. A majority of the City's rental housing is over sixty years old and

1 public resources to support renovation and code upgrades privately owned housing is
2 insufficient to address the long term need. The City's aging housing stock, its relative
3 density compared to other cities, and the risk of significant seismic event create a clear
4 and compelling public interest in assuring that the City maximizes opportunities to
5 upgrade housing to contemporary standards for fire prevention and life safety, including
6 seismic strengthening.

7 (b) The City and County of San Francisco has adopted a comprehensive program of
8 regulations to assure that rental housing converted to individual ownership as
9 condominiums meet housing, building, and fire code standards prior to their conversion
10 and sale as condominiums. Those regulations also addresses additional concerns to
11 minimize displacement of existing residents and to assure the public notice and review
12 of applications for conversion.

13 (c) In recent years, the real estate industry and certain financial institutions have
14 developed instruments and private contracts that create saleable interests in individual
15 apartment units, including fractionalized loans, that are marketed to mimic
16 condominiums but are not subject to the stringent consumer protection, public notice
17 and review, and health/life safety controls placed on condominium conversions. Such
18 units, a specialized form of Tenancies in Common (TICs) and herein described as
19 "Fractionalized Ownership Units," are often sold to the public at prices approaching
20 those prices of condominiums but without the code upgrades that would enable the
21 units to endure a major seismic event or other major natural disaster.

22 (d) At present, the City and County of San Francisco has no mechanism to measure or
23 track the number or location of apartment units converted to "Fractionalized Ownership
24 Units." It is reported that many converted units are ultimately used only for
25 nonresidential tourist or corporate use with adverse impacts on neighborhood

1 cohesiveness and character. Requiring developers to apply for and report upon the
2 conversion of apartments to Fractionalized Ownership Units would enable the City to
3 monitor and regulate future nonresidential uses.

4 (e) Furthermore, many Fractionalized Ownership Unit purchasers cannot afford to retrofit
5 and/or upgrade because of the burden of purchasing their unit at today's record prices
6 for such housing. This places owners at financial and physical risk and reduces the
7 resiliency of San Francisco's neighborhoods in event of catastrophes.

8 (f) The current lack of regulation over Fractionalized Ownership Units's also forgoes San
9 Francisco's last best chance to upgrade neighborhoods' housing stock while
10 simultaneously preserving their physical form/character.

11 Section 2. The San Francisco Planning Code is hereby amended by amending
12 Sections 102, 311, and 312 to read as follows:

13 **SEC. 102.18. ONE OWNERSHIP.**

14 Ownership of a parcel or contiguous parcels of property or possession thereof under a
15 contract to purchase by a person or persons, firm, corporation or partnership, individually,
16 jointly, in common, or in any other manner whereby such property is under single or unified
17 control. The term shall include condominium ownership. The term "owner" shall mean the
18 person, firm, corporation or partnership exercising one ownership as herein defined.

19 (Amended by Ord. 443-78, App. 10/6/78; Ord. 412-88, App. 9/10/88; Ord. 115-90, App.
20 4/6/90)

21 **SEC. 102.37. FRACTIONALIZED OWNERSHIP.**

22 Ownership of a building containing two or more dwelling units, or possession thereof under
23 a written contract to purchase or transfer ownership, by persons, firms, companies,
24 corporations or partnerships, where persons, firms, companies, corporations or partnerships
25 have or may have 1) an undivided ownership interest in the property, and 2) by agreement

1 have an exclusive right of occupancy to an individual dwelling unit, and 3) where the dwelling
2 unit have not been mapped as a condominium, community apartment or stock cooperative per
3 Article 9 of the Subdivision Code.

4 SEC. 311. RESIDENTIAL PERMIT REVIEW PROCEDURES FOR RH, RM, AND RTO
5 DISTRICTS.

6 (a) **Purpose.** The purpose of this Section is to establish procedures for reviewing building
7 permit applications for lots in R Districts in order to determine compatibility of the proposal
8 with the neighborhood and for providing notice to property owners and residents neighboring
9 the site of the proposed project and to interested neighborhood organizations, so that
10 concerns about a project may be identified and resolved during the review of the permit.

11 (b) **Applicability.** Except as indicated herein, all building permit applications for demolition
12 and/or new construction, and/or alteration of residential buildings in RH, RM, and RTO
13 Districts shall be subject to the notification and review procedures required by this Section.
14 Subsection 311(e) regarding demolition permits and approval of replacement structures shall
15 apply to all R Districts.

16 (1) For the purposes of this Section, an alteration in RH and RM Districts shall be defined
17 as any change in use or change in the number of dwelling units of a residential building,
18 including a change from One Ownership to Fractionalized Ownership as defined by Section
19 102, removal of more than 75 percent of a residential building's existing interior wall framing
20 or the removal of more than 75 percent of the area of the existing framing, or an increase to
21 the exterior dimensions of a residential building except those features listed in Section
22 136(c)(1) through 136(c)(24) and 136(c)(26).

23 (2) For the purposes of this Section, an alteration in RTO Districts shall be defined as a
24 change of use described in Section 312(c) or a change in the number of dwelling units of a
25 building, including a change from One Ownership to Fractionalized Ownership as defined by

1 Section 102, removal of more than 75 percent of a building's existing interior wall framing or
2 the removal of more than 75 percent of the area of the existing framing, or an increase to the
3 exterior dimensions of a building except those features listed in Section 136(c)(1) through
4 136(c)(24) and 136(c)(26).

5 (c) **Building Permit Application Review for Compliance and Notification.** Upon
6 acceptance of any application subject to this Section, the Planning Department shall review
7 the proposed project for compliance with the Planning Code and any applicable design
8 guidelines approved by the Planning Commission. Applications determined not to be in
9 compliance with the standards of Articles 1.2, 1.5, 2 and 2.5 of the Planning Code, Residential
10 Design Guidelines, including design guidelines for specific areas adopted by the Planning
11 Commission, or with any applicable conditions of previous approvals regarding the project,
12 shall be held until either the application is determined to be in compliance, is disapproved or a
13 recommendation for cancellation is sent to the Department of Building Inspection.

14 In addition, any application for conversion of an existing building from One Ownership
15 to Fractionalized Ownership shall not be approved unless or until the applicant demonstrates
16 that the building meets all applicable provisions of the City's Housing, Building and City
17 Planning Codes including standards for fire and life safety consistent with new construction.

18 (1) **Residential Design Guidelines.** The construction of new residential buildings and
19 alteration of existing residential buildings in R Districts shall be consistent with the design
20 policies and guidelines of the General Plan and with the "Residential Design Guidelines" as
21 adopted and periodically amended for specific areas or conditions by the Planning
22 Commission. The design for new buildings with residential uses in RTO Districts shall also be
23 consistent with the design standards and guidelines of the "Ground Floor Residential Units
24 Design Guidelines" as adopted and periodically amended by the Planning Commission. The
25 Planning Director may require modifications to the exterior of a proposed new residential

1 building or proposed alteration of an existing residential building in order to bring it into
2 conformity with the "Residential Design Guidelines" and with the General Plan. These
3 modifications may include, but are not limited to, changes in siting, building envelope, scale
4 texture and detailing, openings, and landscaping. (2) **Notification.** Upon determination that an
5 application is in compliance with the development standards of the Planning Code, the
6 Planning Department shall cause a notice to be posted on the site pursuant to rules
7 established by the Zoning Administrator and shall cause a written notice describing the
8 proposed project to be sent in the manner described below. This notice shall be in addition to
9 any notices required by the Building Code and shall have a format and content determined by
10 the Zoning Administrator. It shall include a description of the proposal compared to any
11 existing improvements on the site with dimensions of the basic features, elevations and site
12 plan of the proposed project including the position of any adjacent buildings, exterior
13 dimensions and finishes, and a graphic reference scale. The notice shall describe the project
14 review process and shall set forth the mailing date of the notice and the expiration date of the
15 notification period.

16 Written notice shall be mailed to the notification group which shall include the project
17 sponsor, tenants of the subject property, relevant neighborhood organizations as described in
18 Subparagraph 311(c)(2)(C) below, all individuals having made a written request for notification
19 for a specific parcel or parcels pursuant to Planning Code Section 351 and all owners and, to
20 the extent practical, occupants, of properties in the notification area.

21 (A) The notification area shall be all properties within 150 feet of the subject lot in the
22 same Assessor's Block and on the block face across from the subject lot. When the subject lot
23 is a corner lot, the notification area shall further include all property on both block faces across
24 from the subject lot, and the corner property diagonally across the street.

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1 (B) The latest City-wide Assessor's roll for names and addresses of owners shall be
2 used for said notice.

3 (C) The Planning Department shall maintain a list, available for public review, of
4 neighborhood organizations which have indicated an interest in specific properties or areas.
5 The organizations having indicated an interest in the subject lot or its area shall be included in
6 the notification group for the proposed project.

7 (3) **Notification Period.** All building permit applications shall be held for a period of 30
8 calendar days from the date of the mailed notice to allow review by residents and owners of
9 neighboring properties and by neighborhood groups.

10 (4) **Elimination of Duplicate Notice.** The notice provisions of this Section may be
11 waived by the Zoning Administrator for building permit applications for projects that have
12 been, or before approval will be, the subject of a duly noticed public hearing before the
13 Planning Commission or Zoning Administrator, provided that the nature of work for which the
14 building permit application is required is both substantially included in the hearing notice and
15 is the subject of the hearing.

16 (5) **Notification Package.** The notification package for a project subject to notice under
17 this Section 311 shall include a written notice and reduced-size drawings of the project.

18 (A) The written notice shall compare the proposed project to the existing conditions at
19 the development lot. Change to basic features of the project that are quantifiable shall be
20 disclosed on the written notice. The basic features of existing and proposed conditions shall
21 include, where applicable, front setback, building depth, rear yard depth side setbacks,
22 building height, number of stories, dwelling unit count and use of the building.

23 (B) The written notice shall describe whether the project is a demolition, new
24 construction or alteration project. If the project is an alteration, the type of alteration shall be
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1 described: horizontal, vertical or both horizontal and vertical additions and where the alteration
2 is located.

3 (C) Written project description shall be part of the notice. In addition, the notice shall
4 describe the project review process, information on how to obtain additional information and
5 the contact information of the Planning Department.

6 (D) The building permit application number(s) shall be disclosed in the written notice.
7 The start and expiration dates of the notice shall be stated. A description about the recipient's
8 rights to request additional information, to request Discretionary Review by the Planning
9 Commission and to appeal to other boards or commissions shall be provided.

10 (E) 11x17 sized or equivalent drawings to scale shall be included with the Section 311
11 written notice. The drawings shall illustrate the existing and proposed conditions in
12 relationship to the adjacent properties. All dimensions and text throughout the drawings shall
13 be legible. The drawings shall include a site plan, floor plans and elevations documenting
14 dimensional changes that correspond to the basic features included in the written notice.

15 (F) The existing and proposed site plan shall illustrate the project including the full lots
16 and structures of the directly adjacent properties.

17 (G) The existing and proposed floor plans shall illustrate the location and removal of
18 interior and exterior walls. The use of each room shall be labeled. Significant dimensions shall
19 be provided to document the change proposed by the project.

20 (H) The existing and proposed elevations shall document the change in building
21 volume: height and depth. Dimensional changes shall be documented, including overall
22 building height and also parapets, penthouses and other proposed vertical and horizontal
23 building extensions. The front and rear elevations shall include the full profiles of the adjacent
24 structures including the adjacent structures' doors, windows and general massing. Each side
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1 elevation shall include the full profile of the adjacent building in the foreground of the project,
2 and the adjacent windows, lightwells and general massing shall be illustrated.

3 (d) **Requests for Planning Commission Review.** A request for the Planning Commission
4 to exercise its discretionary review powers over a specific building permit application shall be
5 considered by the Planning Commission if received by the Planning Department no later than
6 5:00 p.m. of the last day of the notification period as described under Subsection (c)(3) above,
7 subject to guidelines adopted by the Planning Commission. The project sponsor of a building
8 permit application may request discretionary review by the Planning Commission to resolve
9 conflicts between the Director of Planning and the project sponsor concerning requested
10 modifications to comply with the Residential Design Guidelines.

11 (1) **Scheduling of Hearing.** The Zoning Administrator shall set a time for hearing
12 requests for discretionary review by the Planning Commission within a reasonable period.

13 (2) **Notice.** Mailed notice of the discretionary review hearing by the Planning
14 Commission shall be given not less than 10 days prior to the date of the hearing to the
15 notification group as described in Paragraph 311(c)(2) above. Posted notice of the hearing
16 shall be made as provided under Planning Code Section 306.8.

17 (e) **Demolition of Dwellings, Approval of Replacement Structure Required.** Unless the
18 building is determined to pose a serious and imminent hazard as defined in the Building Code
19 an application authorizing demolition in any R District of an historic or architecturally important
20 building or of a dwelling shall not be approved and issued until the City has granted final
21 approval of a building permit for construction of the replacement building. A building permit is
22 finally approved if the Board of Appeals has taken final action for approval on an appeal of the
23 issuance or denial of the permit or if the permit has been issued and the time for filing an
24 appeal with the Board has lapsed with no appeal filed.

1 (1) The demolition of any building whether or not historically and architecturally important
2 may be approved administratively where the Director of the Department of Building Inspection
3 or the Chief of the Bureau of Fire Prevention and Public Safety determines, after consultation
4 with the Zoning Administrator, that an imminent safety hazard exists, and the Director of the
5 Department of Building Inspection determines that demolition or extensive alteration of the
6 structure is the only feasible means to secure the public safety.

7 (f) **Wireless Telecommunications Services Facility as Accessory Use, Notification**
8 **and Review Required.** Building permit applications for new construction of a wireless
9 telecommunications services facility as an accessory use under Article 2 of the Planning Code
10 in RH and RM Districts shall be subject to the notification and review procedures required by
11 this Section.

12 SEC. 312. PERMIT REVIEW PROCEDURES FOR ALL NC, RED, AND EASTERN
13 NEIGHBORHOODS MIXED USE DISTRICTS.

14 (a) **Purpose.** The purpose of this Section is to establish procedures for reviewing building
15 permit applications for lots in NC, RED, and Eastern Neighborhoods Mixed Use Districts in
16 order to determine compatibility of the proposal with the neighborhood and for providing notice
17 to property owners, occupants and residents neighboring the site of the proposed project and
18 to interested neighborhood organizations, so that concerns about a project may be identified
19 and resolved during the review of the permit.

20 (b) **Applicability.** Except as indicated herein, all building permit applications for demolition,
21 new construction, changes in use to a formula retail use as defined in Section 703.3 of this
22 Code or alterations which expand the exterior dimensions of a building shall be subject to the
23 notification and review procedures required by Subsection 312(d). For the purposes of this
24 Section, an alteration shall include a change from One Ownership to Fractionalized
25 Ownership as defined by Section 102. Subsection 312(f) regarding demolition permits and

1 approval of replacement structures shall apply to all NC, RED, and Eastern Neighborhoods
2 Mixed Use Districts. For the purposes of this Section, addition to a building of the features
3 listed in Section 136(c)(1) through 136(c)(24) and 136(c)(26) shall not be subject to
4 notification under this Section.

5 (c) **Changes of Use.** In NC Districts, all building permit applications for a change of use to
6 a bar, as defined in Section 790.22, a liquor store, as defined in Section 790.55, a walkup
7 facility, as defined in Section 790.140, other large institutions, as defined in Section 790.50,
8 other small institutions, as defined in Section 790.51, a Limited Restaurant, as defined in
9 Section 790.90, a Restaurant, as defined in Section 790.91, a massage establishment, as
10 defined in Section 790.60, an outdoor activity, as defined in Section 790.70, an adult or other
11 entertainment use, as defined in Sections 790.36 and 790.38, a fringe financial service use,
12 as defined in Section 790.111, or Group Housing as defined in Section 790.88(b) shall be
13 subject to the provisions of Subsection 312(d); provided, however, that a change of use from
14 a Restaurant to a Limited-Restaurant shall not be subject to the provisions of Subsection
15 312(d). In all RED and Eastern Neighborhoods Mixed Use Districts all building permit
16 applications for a change of use from anyone land use category to another land use category
17 shall be subject to the provisions of Subsection 312(d). In addition, any accessory massage
18 use in the Ocean Avenue Neighborhood Commercial Transit District shall be subject to the
19 provisions of Subsection 312(d).

20 For the purposes of this Subsection, "land use category" shall mean those categories
21 used to organize the individual land uses which appear in the use tables in Article 8,
22 immediately preceding a group of individual land uses, and include the following: residential
23 use, institutional use, retail sales and service use, assembly, recreation and entertainment
24 use, office use, motor vehicle services use, industrial home and business service use, or other
25 use.

1 (d) **Building Permit Application Review for Compliance and Notification.** Upon
2 acceptance of any application subject to this Section, the Planning Department shall review
3 the proposed project for compliance with the Planning Code and any applicable design
4 guidelines approved by the Planning Commission. Applications determined not to be in
5 compliance with the standards of Articles 1.2, 1.5, 2 and 2.5 of the Planning Code, including
6 design guidelines for specific areas adopted by the Planning Commission, or with any
7 applicable conditions of previous approvals regarding the project, shall be held until either the
8 application is determined to be in compliance, is disapproved or a recommendation for
9 cancellation is sent to the Department of Building Inspection.

10 In addition, any application for conversion of an existing building from One Ownership
11 to Fractionalized Ownership shall not be approved unless or until the applicant demonstrates
12 that the building meets all applicable provisions of the City's Housing, Building and City
13 Planning Codes including standards for fire and life safety consistent with new construction.

14 (1) **Neighborhood Commercial Design Guidelines.** The construction of new buildings
15 and alteration of existing buildings in NC Districts shall be consistent with the design policies
16 and guidelines of the General Plan as adopted and periodically amended for specific areas or
17 conditions by the Planning Commission. The Director of Planning may require modifications to
18 the exterior of a proposed new building or proposed alteration of an existing building in order
19 to bring it into conformity with the General Plan. These modifications may include, but are not
20 limited to, changes in siting, building envelope, scale texture and detailing, openings, and
21 landscaping.

22 (2) **Notification.** Upon determination that an application is in compliance with the
23 development standards of the Planning Code, the Planning Department shall cause a notice
24 to be posted on the site pursuant to rules established by the Zoning Administrator and shall
25 cause a written notice describing the proposed project to be sent in the manner described

1 below. This notice shall be in addition to any notices required by the Building Code and shall
2 have a format and content determined by the Zoning Administrator. It shall include a
3 description of the proposal compared to any existing improvements on the site with
4 dimensions of the basic features, elevations and site plan of the proposed project including
5 the position of any adjacent buildings, exterior dimensions and finishes, a graphic reference
6 scale, existing and proposed uses and commercial or institutional business name, if known.
7 The notice shall describe the project review process and shall set forth the mailing date of the
8 notice and the expiration date of the notification period.

9 Written notice shall be mailed to the notification group which shall include the project
10 sponsor, tenants of the subject property, relevant neighborhood organizations as described in
11 Subparagraph 312(d)(2)(C) below, all individuals having made a written request for
12 notification for a specific parcel or parcels pursuant to Planning Code Section 351 and all
13 owners and, to the extent practical, occupants, of properties in the notification area.

14 (A) The notification area shall be all properties within 150 feet of the subject lot in the
15 same Assessor's Block and on the block face across from the subject lot. When the subject lot
16 is a corner lot, the notification area shall further include all property on both block faces across
17 from the subject lot, and the corner property diagonally across the street.

18 (B) The latest City-wide Assessor's roll for names and addresses of owners shall be
19 used for said notice.

20 (C) The Planning Department shall maintain a list, updated every six months with
21 current contact information, available for public review, and kept at the Planning Department's
22 Planning Information Counter, and reception desk, as well as the Department of Building
23 Inspection's Building Permit Counter, of neighborhood organizations which have indicated an
24 interest in specific properties or areas. The organizations having indicated an interest in the
25 subject lot or its area shall be included in the notification group for the proposed project.

1 Notice to these groups shall be verified by a declaration of mailing signed under penalty of
2 perjury. In the event that such an organization is not included in the notification group for a
3 proposed project as required under this subsection, the proposed project must be re-noticed.

4 (3) **Notification Period.** All building permit applications shall be held for a period of 30
5 calendar days from the date of the mailed notice to allow review by residents, occupants,
6 owners of neighboring properties and by neighborhood groups.

7 (4) **Elimination of Duplicate Notice.** The notice provisions of this Section may be
8 waived by the Zoning Administrator for building permit applications for projects that have
9 been, or before approval will be, the subject of a duly noticed public hearing before the
10 Planning Commission or Zoning Administrator, provided that the nature of work for which the
11 building permit application is required is both substantially included in the hearing notice and
12 is the subject of the hearing.

13 (e) **Requests for Planning Commission Review.** A request for the Planning Commission
14 to exercise its discretionary review powers over a specific building permit application shall be
15 considered by the Planning Commission if received by the Planning Department no later than
16 5:00 p.m. of the last day of the notification period as described under Subsection (d)(3) above,
17 subject to guidelines adopted by the Planning Commission.

18 The project sponsor of a building permit application may request discretionary review by
19 the Planning Commission to resolve conflicts between the Director of Planning and the project
20 sponsor concerning requested modifications to comply with relevant design guidelines of the
21 General Plan.

22 (1) **Scheduling of Hearing.** The Zoning Administrator shall set a time for hearing
23 requests for discretionary review by the Planning Commission within a reasonable period.

24 (2) **Notice.** Mailed notice of the discretionary review hearing by the Planning
25 Commission shall be given not less than 10 days prior to the date of the hearing to the

1 notification group as described in Paragraph 312(d)(2) above. Posted notice of the hearing
2 shall be made as provided under Planning Code Section 306.8.

3 (f) **Demolition of Dwellings, Approval of Replacement Structure Required.** Unless the
4 building is determined to pose a serious and imminent hazard as defined in the Building Code
5 an application authorizing demolition in any NC or Eastern Neighborhoods Mixed Use District
6 of an historic or architecturally important building or of a dwelling shall not be approved and
7 issued until the City has granted final approval of a building permit for construction of the
8 replacement building. A building permit is finally approved if the Board of Appeals has taken
9 final action for approval on an appeal of the issuance or denial of the permit or if the permit
10 has been issued and the time for filing an appeal with the Board has lapsed with no appeal
11 filed.

12 (1) The demolition of any building whether or not historically and architecturally important
13 may be approved administratively where the Director of the Department of Building Inspection
14 or the Chief of the Bureau of Fire Prevention and Public Safety determines, after consultation
15 with the Zoning Administrator, that an imminent safety hazard exists, and the Director of the
16 Department of Building Inspection determines that demolition or extensive alteration of the
17 structure is the only feasible means to secure the public safety.

18 (g) **Wireless Telecommunications Services Facility as Accessory Use, Notification
19 and Review Required.** Building permit applications for new construction of a wireless
20 telecommunications services facility as an accessory use under Article 7 or 8 of the Planning
21 Code in all NC, RED, or Eastern Neighborhoods Mixed Use Districts shall be subject to the
22 notification and review procedures required by this Section.

1 APPROVED AS TO FORM:
2 DENNIS J. HERRERA, City Attorney

3 By: _____
4 John D. Malamut
5 Deputy City Attorney

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