

1 [Planning, Building Codes - Conditional Use Required to Remove Any Residential Unit and
2 Mandatory Legalization of Illegal Units in C-3 Districts; Permeable Surfaces and Landscaping
Requirements Citywide for Building Additions and Residential Mergers]

3
4 **Ordinance amending the Planning Code to require Conditional Use authorization for**
5 **the removal of any residential unit in a C-3 (Downtown Commercial) District (whether**
6 **legal or illegal) and to require compliance Citywide with landscaping and permeable**
7 **surfaces requirements for building additions and residential mergers, and to exempt**
8 **from the Conditional Use application requirement illegal units in C-3 Districts where**
9 **there is no legal path for legalization and residential units that have received prior**
10 **Planning approval; amending the Building Code to require that notices of violation in a**
11 **C-3 District mandate legalization of an illegal unit unless infeasible under the Building**
12 **Code or the Planning Commission approves its removal, and to require requiring re-**
13 **issuance of unabated notices of violation in a C-3 District to include the new**
14 **requirement; affirming the Planning Department’s determination under the California**
15 **Environmental Quality Act; and making findings of consistency with the General Plan,**
16 **Planning Code, Section 302, and the eight priority policies of Planning Code, Section**
17 **101.1.**

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

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

25 Section 1. Findings.

1 (a) The Planning Department has determined that the actions contemplated in this
2 ordinance comply with the California Environmental Quality Act (California Public Resources
3 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
4 Supervisors in File No. 150494 and is incorporated herein by reference. The Board affirms
5 this determination.

6 (b) On December 10, 2015, the Planning Commission, in Resolution No. 19532,
7 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
8 with the City's General Plan and the eight priority policies of Planning Code Section 101.1.
9 The Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk
10 of the Board of Supervisors in File No. 150494, and is incorporated herein by reference.

11 (c) Pursuant to Planning Code Section 302, this Board finds that these Planning
12 Code amendments will serve the public necessity, convenience, and welfare for the reasons
13 set forth in Planning Commission Resolution No. 19532 and the Board incorporates such
14 reasons herein by reference.

15
16 Section 2. The Planning Code is hereby amended by revising Sections 132 and 317
17 adding Section 317.1, to read as follows:

18 **SEC. 132. FRONT SETBACK AREAS, RTO, RH AND RM DISTRICTS AND FOR**
19 **REQUIRED SETBACKS FOR PLANNED UNIT DEVELOPMENTS.**

20 The following requirements for minimum front setback areas shall apply to every
21 building in all RH, RTO, and RM Districts, in order to relate the setbacks provided to the
22 existing front setbacks of adjacent buildings. Buildings in RTO Districts which have more than
23 75 feet of street frontage are additionally subject to the Ground Floor Residential Design
24 Guidelines, as adopted and periodically amended by the Planning Commission. Planned Unit
25

1 Developments or PUDs, as defined in Section 304, shall also provide landscaping in required
2 setbacks in accord with Section 132(g).

3 * * * *

4 (g) **Landscaping and Permeable Surfaces.** The landscaping and permeable
5 surface requirements of this ~~Section~~ Subsection (g) and ~~Section~~ Subsection (h) below shall be
6 met by the permittee in the case of construction of a new building; the addition of a new
7 Dwelling Unit, a garage, or additional parking; *any addition to a structure that would result in an*
8 *increase of 20% or more of the existing Gross Floor Area, as defined in Section 102; a Residential*
9 *Merger, as defined in Section 317; or paving or repaving more than 200 square feet of the front*
10 *setback. All front setback areas required by this Section 132 shall be appropriately*
11 *landscaped, meet any applicable water use requirements of Administrative Code Chapter 63,*
12 *and in every case not less than 20% ~~percent~~ of the required setback area shall be and remain*
13 *unpaved and devoted to plant material, including the use of climate appropriate plant material*
14 *as defined in Public Works Code Section 802.1. For the purposes of this Section 132,*
15 *permitted obstructions as defined by Section 136(c)(6) chimneys, Section 136(c)(14) *steps**
16 *~~stairs~~, and Section 136(c)(26) (~~27~~) underground garages, shall be excluded from the front*
17 *setback area used to calculate the required landscape and permeable surface area. If the*
18 *required setback area is entirely taken up by one or more permitted obstructions, the Zoning*
19 *Administrator may allow the installation of sidewalk landscaping that is compliant with*
20 *applicable water use requirements of Chapter 63 of the Administrative Code to satisfy the*
21 *requirements of this Section 132, subject to permit approval from the Department of Public*
22 *Works in accordance with Public Works Code Section 810B.*

23 * * * *

1 **SEC. 317.1. LOSS OF RESIDENTIAL AND UNAUTHORIZED UNITS IN C-3 DISTRICTS**
2 **THROUGH DEMOLITION, MERGER, AND CONVERSION.**

3 (a) **Definitions.** For the purposes of this Section 317.1, the terms below shall be as
4 defined below. Capitalized terms not defined below are defined in Section 102 of this Code.

5 "Removal" shall mean, with reference to a Residential or Unauthorized Unit, its
6 Conversion, Demolition, or Merger.

7 "Residential Conversion" shall mean the removal of cooking facilities, change of
8 occupancy (as defined and regulated by the Building Code), or change of use (as defined and
9 regulated by the Planning Code), of any Residential Unit or Unauthorized Unit to a Non-
10 Residential or Student Housing use.

11 "Residential Demolition" shall have the meaning set forth in Section 317(b)(2) of this
12 Code.

13 "Residential Merger" shall mean the combining of two or more Residential or
14 Unauthorized Units, resulting in a decrease in the number of Residential Units and
15 Unauthorized Units within a building, or the enlargement of one or more existing units while
16 reducing the size of other units by more than 25% of their original floor area, even if the
17 number of units is not reduced. The Planning Commission may reduce the numerical element
18 of this criterion by up to 20% of its value should it deem that adjustment necessary to
19 implement the intent of this Section 317.1, to conserve existing housing and preserve
20 affordable housing.

21 "Residential Unit" shall mean a legal conforming or legal nonconforming Dwelling Unit,
22 or a legal nonconforming Live/Work Unit or Group Housing.

23 "Unauthorized Unit" shall mean one or more rooms within a building that have been
24 used, without the benefit of a building permit, as a separate and distinct living or sleeping
25 space independent from Residential Units on the same property. In this context,

1 “independent” shall mean that (A) the space has separate access that does not require
2 entering a Residential Unit on the property and (B) there is no open, visual connection to a
3 Residential Unit on the property.

4 (b) **Applicability; Exemption for Unauthorized Unit.**

5 (1) Any application for a permit that would result in the Removal of one or
6 more Residential Units or Unauthorized Units in a C-3 (Downtown Commercial) District is
7 required to obtain Conditional Use authorization. The application for a replacement building or
8 alteration permit shall also be subject to Conditional Use requirements.

9 (2) The Conditional Use requirement of Subsection (b)(1) shall apply to (A)
10 any building or site permit for Removal of an Unauthorized Unit issued on or after March 1,
11 2016, and (B) any permit for Removal of an Unauthorized Unit issued prior to March 1, 2016,
12 that has been suspended by the City or in which the applicant’s rights have not vested.

13 (3) The Removal of a Residential Unit that has received approval from the
14 Planning Department through administrative approval or the Planning Commission through
15 Discretionary Review or Conditional Use authorization prior to the effective date of this
16 Section 317.1 is not required to apply for an additional approval under Subsection (b)(1).

17 (4) The Removal of an Unauthorized Unit does not require a Conditional Use
18 authorization pursuant to Subsection (b)(1) if the Department has determined that there is no
19 legal path for legalization.

20 (c) **Demolition.**

21 (1) No permit to Demolish a Residential Building in a C-3 District shall be
22 issued until a building permit for the replacement structure is finally approved, unless the
23 building is determined to pose a serious and imminent hazard as defined in the Building Code.
24 A building permit is finally approved if the Board of Appeals has taken final action for approval
25

1 on an appeal of the issuance or denial of the permit or if the permit has been issued and the
2 time for filing an appeal with the Board of Appeals has lapsed with no appeal filed.

3 (2) Conditional Use authorization is required for approval of the permit for
4 Residential Demolition in a C-3 District, and the Commission shall consider the replacement
5 structure as part of its decision on the Conditional Use application. If Conditional Use
6 authorization is required for the replacement structure by other sections of this Code, the
7 Commission shall consider the demolition as part of its decision on the Conditional Use
8 application.

9 (3) Nothing in this Section 317.1 is intended to exempt buildings or sites
10 where demolition is proposed from undergoing review with respect to Articles 10 and 11 of the
11 Planning Code, where the requirements of those Articles apply. Notwithstanding the definition
12 of "Residential Demolition" in this Section 317.1 and as further described in the Code
13 Implementation Document with regard to Residential Demolition, the criteria of Section 1005
14 shall apply to projects subject to review under the requirements of Article 10 with regard to the
15 structure itself.

16 (d) **Conversion to Student Housing.** The conversion of Residential Units to
17 Student Housing is prohibited in C-3 Districts. For the purposes of this subsection (d),
18 Residential Units that have been defined as such by the time a First Certificate of Occupancy
19 has been issued by the Department of Building Inspection for new construction shall not be
20 converted to Student Housing.

21 (e) **Conditional Use Criteria.** When considering whether to grant Conditional Use
22 authorization for the loss or Removal of Residential or Unauthorized Unit(s) in C-3 Districts, in
23 lieu of the criteria set forth in Planning Code Section 303, consideration shall be given to the
24 adverse impact on the public health, safety, and general welfare of the loss of housing stock
25 in the zoning district and to any unreasonable hardship to the applicant if the permit is denied.

1 (1) Residential Merger. In addition to the criteria set forth in Section 317(e)
2 of this Code, the Planning Commission shall consider the following criteria in the review of
3 applications to merge Residential Units or Unauthorized Units in C-3 Districts:

4 (A) how recently the unit being removed was occupied by a tenant or
5 tenants; and

6 (B) the appraised value of the least expensive Residential Unit
7 proposed for merger, when the merger does not involve an Unauthorized Unit.

8 The Planning Commission shall not approve an application for Residential Merger if
9 any tenant has been evicted pursuant to Administrative Code Sections 37.9(a)(9) through
10 37.9(a)(14) where the tenant was served with a notice of eviction after December 10, 2013, if
11 the notice was served within 10 years prior to filing the application for merger. Additionally, the
12 Planning Commission shall not approve an application for Residential Merger if any tenant
13 has been evicted pursuant to Administrative Code Section 37.9(a)(8) where the tenant was
14 served with a notice of eviction after December 10, 2013, if the notice was served within five
15 years prior to filing the application for merger. The restriction of this paragraph shall not apply
16 if the tenant was evicted under Section 37.9(a)(11) or 37.9(a)(14) and the applicant(s) either
17 (A) have certified that the original tenant reoccupied the unit after the temporary eviction or (B)
18 have submitted to the Planning Commission a declaration from the property owner or the
19 tenant certifying that the property owner or the Rent Board notified the tenant of the tenant's
20 right to reoccupy the unit after the temporary eviction and that the tenant chose not to
21 reoccupy it.

22 (2) Residential Conversion. The Planning Commission shall consider the
23 criteria set forth in Section 317(f)(1) through (4) of this Code in the review of applications for
24 Residential Conversion in C-3 Districts.

1 (3) Residential Demolition. In addition to the criteria set forth in Section
2 317(d) of this Code, the Planning Commission shall also consider the following criteria in the
3 review of applications for Residential Demolition in C-3 Districts:

4 (A) whether the replacement project would maximize density on the
5 subject lot; and

6 (B) if replacing a building not subject to the Residential Rent
7 Stabilization and Arbitration Ordinance, whether the new project replaces all of the existing
8 units with new Dwelling Units of a similar size and with the same number of bedrooms or
9 more.

10 (4) Removal of Unauthorized Units. In addition to the criteria set forth in
11 Subsections (e)(1) through (e)(3) above, the Planning Commission shall also consider the
12 criteria below in the review of applications for removal of Unauthorized Units:

13 (A) whether the Unauthorized Unit or Units are eligible for legalization
14 under Section 207.3 of this Code;

15 (B) whether the costs to legalize the Unauthorized Unit or Units under
16 the Planning, Building, and other applicable Codes is reasonable based on how such cost
17 compares to the average cost of legalization per unit derived from the cost of projects on the
18 Planning Department’s Master List of Additional Dwelling Units Approved required by Section
19 207.3(k) of this Code;

20 (C) whether it is financially feasible to legalize the Unauthorized Unit or
21 Units, based on the costs to legalize the Unauthorized Unit(s) under the Planning, Building,
22 and other applicable Codes in comparison to the added value that legalizing said Units would
23 provide to the subject property. The gain in the value of the subject property shall be based on
24 the current value of the property with the Unauthorized Unit(s) compared to the value of the
25 property if the Unauthorized Unit(s) is/are legalized. The calculation of the gain in value shall

1 be conducted and approved by a California licensed property appraiser. Legalization shall be
2 deemed financially feasible if the gain in the value of the subject property is equal to or greater
3 than the cost to legalize the Unauthorized Unit.

4 (5) **Denial of Application to Remove an Unauthorized Unit; Requirement**
5 **to Legalize the Unit.** If the Planning Commission denies an application to Remove an
6 Unauthorized Unit, the property owner shall file an application for a building permit to legalize
7 the Unit. Failure to do so within a reasonable period of time, as determined by the Zoning
8 Administrator, shall be deemed a violation of the Planning Code.

9 (f) **Notice of Conditional Use Hearing.** At least 20 days prior to any hearing to
10 consider a Conditional Use authorization under Subsection (b) of this Section 317.1, the
11 Zoning Administrator shall cause a written notice containing the following information to be
12 mailed to all Residential Units and if known any Unauthorized Units in the building, in addition
13 to any other notice required under this Code:

14 (1) Notice of the time, place, and purpose of the hearing; and

15 (2) An explanation of the process for demolishing, merging, or converting
16 Residential Units or Unauthorized Units, including a description of subsequent permits that
17 would be required from the Planning Department and Department of Building Inspection and
18 how they could be appealed.

19 (g) **Exemptions.** This Section 317.1 shall not apply to property:

20 (1) Owned by the United States or any of its agencies;

21 (2) Owned by the State of California or any of its agencies, with the
22 exception of such property not used exclusively for a governmental purpose;

23 (3) Under the jurisdiction of the Port of San Francisco or the Successor
24 Agency to the Redevelopment Agency of the City and County of San Francisco where the
25 application of this Section is prohibited by State or local law; or

(4) Where demolition of the building or Removal of a Residential Unit or Unauthorized Unit is necessary to comply with a court order or order of a City agency that directs the owner to demolish the building or remove the unit, due to conditions that present an imminent threat to life safety.

Section 3. The Planning Code is hereby amended by revising Zoning Control Table 210.2, to read as follows:

**Table 210.2
ZONING CONTROL TABLE FOR C-3 DISTRICTS**

Zoning Category	§ References	C-3-O	C-3-O(SD)	C-3-R	C-3-G	C-3-S
* * * *						
RESIDENTIAL STANDARDS AND USES						
Development Standards						
Usable Open Space [Per Dwelling Unit]	§§ 135, 136	At least 36 square feet if private, and 48 square feet per dwelling unit if common.				
Residential Parking Requirements	§§ 150, 151.1, 161	None required. P up to one car for each two Dwelling Units; C up to three cars for each four Dwelling Units. NP above.				
Rear Yard Setback	§§ 130, 134	25% of the total depth lot depth, but in no case less than 15 feet for lowest story containing a dwelling unit and each succeeding story. Exceptions are permitted by § 309.				
Residential Conversion, Demolition, or Merger	§ 317 <u>317.1</u>	<u>C for Removal of one or more Residential Units or Unauthorized Units in C-3, C only for Removal above the ground floor</u> Loss of 1-2 units mandatory DR/Loss of 3 or more units C.				

1 * * * *

2 Section 4. The Building Code is hereby amended by revising Section 102A, to read as
3 follows:

4 **SECTION 102A – UNSAFE BUILDINGS, STRUCTURES, OR PROPERTY**

5 All buildings, structures, property, or parts thereof, regulated by this code that are
6 structurally unsafe or not provided with adequate egress, or that constitute a fire hazard, or
7 are otherwise dangerous to human life, safety, or health of the occupants or the occupants of
8 adjacent properties or the public by reason of inadequate maintenance, dilapidation,
9 obsolescence, or abandonment, or by reason of occupancy or use in violation of law or
10 ordinance, or were erected, moved, altered, constructed, or maintained in violation of law or
11 ordinance are, for the purpose of this chapter, unsafe.

12 * * * *

13 **102A.3 Inspections and Complaints.** The Building Official is hereby authorized to
14 inspect or cause the inspection of any building, structure or property for the purpose of
15 determining whether or not it is unsafe in any of the following circumstances:

16 1. Whenever the Building Official, with reasonable discretion, determines that such
17 inspection is necessary or desirable.

18 2. Whenever any person files with the Building Official a complaint from which
19 there is, in the Building Official's opinion, probable cause to believe that the building, structure,
20 or property or any portion thereof, is unsafe.

21 3. Whenever an agency or department of the City and County of San Francisco
22 transmits to the Building Official a written report from which there is, in the opinion of the
23 Building Official, probable cause to believe that the building, structure, or property, or any
24 portion thereof, is unsafe.

1 Upon the completion of any such inspection and the finding by the Building Official of
2 any condition which renders the building, structure, or property unsafe, the Building Official
3 shall, within 15 days thereafter, serve a written notice of violation upon the building owner
4 which shall contain specific allegations, setting forth each condition the Building Official has
5 found which renders the building, structure, or property unsafe. The Building Official shall,
6 within three days of mailing of such notice of violation, post a copy thereof in a conspicuous
7 place in or upon such building, structure, or property and make available a copy of the notice
8 of violation to each tenant thereof. Such notice shall also set forth the penalties for violation
9 prescribed in Section 103A of this code. In addition to the civil penalties prescribed in Section
10 103A, the Department's cost of preparation for and appearance at the hearing required by
11 Section 102A.4, and all prior and subsequent attendant and administrative costs, shall be
12 assessed upon the property owner monthly, after failure to comply with a written notice of
13 violation that has been served upon the property owner. Said violations will not be deemed
14 legally abated until the property owner makes full payment of the assessment of costs to the
15 Department of Building Inspection. See Section 110A, Table 1A-D – Standard Hourly Rates
16 and Table 1A-K – Penalties, Hearings, Code Enforcement Assessments – for the applicable
17 rate. Failure to pay the assessment of costs shall result in tax lien proceedings against the
18 property per Section 102A.18.

19 If the unsafe conditions observed on the property have not been corrected within the
20 time period provided, the matter shall be set for hearing within 60 days from the compliance
21 date specified on the notice of violation, if not substantial progress in abating the Code
22 violations has commenced.

23 102A.3.1. Dwelling Units constructed or installed without required permit(s). In the case of an
24 unauthorized Dwelling Unit constructed or installed in an existing building in a C-3 Zoning District
25 without the required permit or permits, in addition to the above requirements the written notice of

1 violation shall order the property owner to file an application for a building and other permits required
2 to legalize the unit pursuant to Building Code Section 106A.3.1.3 and Planning Code Section 207.3
3 unless removal of the unit is approved by the Planning Commission pursuant to Planning Code Section
4 317.1

5 102A.3.1.1. Re-issuance of an unabated notice of violation. Any notice of violation in a C-3
6 Zoning District issued prior to the effective date of Section 102A.3.1 and that remains unabated shall
7 be re-issued in compliance with the requirements of Section 102A.3.1.

8
9 Section 5. 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
14 Section 6. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
15 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
16 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
17 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
18 additions, and Board amendment deletions in accordance with the “Note” that appears under
19 the official title of the ordinance.

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

22 By: _____
23 JUDITH A. BOYAJIAN
24 Deputy City Attorney

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