

REVISED LEGISLATIVE DIGEST

(2/8/2016, Amended in Committee)

[Planning, Building Codes - Conditional Use Required to Remove Any Residential Unit; Mandatory Legalization of Illegal Units; Permeable Surfaces and Landscaping Requirements]

Ordinance amending the Planning Code to require Conditional Use authorization for the removal of any residential unit (whether legal or illegal) and compliance with landscaping and permeable surfaces requirements for building additions and residential mergers, and to exempt from the Conditional Use application requirement illegal units where is no legal path for legalization, residential units that have received prior Planning approval, and single family structures that are demonstrably unaffordable or unsound; amending the Building Code to require that notices of violation mandate legalization of an illegal unit unless infeasible under the Building Code or the Planning Commission approves its removal, and requiring re-issuance of unabated notices of violation to include the new requirement; affirming the Planning Department’s determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, Planning Code, Section 302, and the eight priority policies of Planning Code, Section 101.1.

Existing Law

Planning Code Section 132 imposes requirements for landscaping and permeable surfaces in all RH, RTO, and RM Districts when (1) constructing a new building, (2) adding a new dwelling unit, a garage, or additional parking or (3) paving or repaving more than 200 square feet of the front setback.

Planning Code Section 317 regulates the removal of “Residential Units,” as defined, through demolition, merger, or conversion. A Conditional Use authorization is required for the removal of any Residential Unit in RTO, RTO-M, NCT, and Upper Market NCD zoning districts, for the loss of any Residential Unit above the ground floor in C-3 districts, and for the loss or removal of three or more Residential Units in other zoning districts. A Conditional Use authorization is also required for a replacement building.

Building Code Section 102A.3 establishes the process for the Department of Building Inspection’s investigation and citation of code violations.

Amendments to Current Law

Planning Code Section 132 is amended to impose the requirements for landscaping and permeable surfaces on a “Residential Merger” as defined in Section 317 and where any addition to a structure would result in an increase of 20% or more of the existing Gross Floor Area.

Planning Code Section 317 is amended to require a Conditional Use authorization for the loss or removal of any Residential Unit, whether or not the unit is authorized and legal or is unauthorized and illegal. If the Planning Commission denies an application to remove an Unauthorized Unit, the property owner is required to apply for a building permit to legalize the unit. The Conditional Use requirement shall apply to (1) any building or site permit issued for Removal of an Unauthorized Unit on or after March 1, 2016 and (2) any permit issued for Removal of an Unauthorized Unit prior to March 1, 2016 that has been suspended by the City or in which the applicant's rights have not vested. The removal of a Residential or Unauthorized Unit that has received approval from the Planning Department through administrative approval or the Planning Commission through a Discretionary Review or Conditional Use authorization prior to the effective date of the Conditional Use requirement of this ordinance is not required to apply for an additional approval. Removal of an Unauthorized Unit does not require a Conditional Use authorization if the Department has determined that there is no legal path for legalization. The Demolition of a single-family home that meets specified requirements may be approved by the Department without requiring a Conditional Use authorization.

The Building Code is also amended to require a Notice of Violation for an Unauthorized Unit to order the property owner to apply for a building permit to legalize the unit unless legalization of the unit is not permitted under the Building Code or removal of the unit is approved by the Planning Commission. Any Notice of Violation that was issued prior to the effective date of this ordinance and remains unabated shall be re-issued in compliance with the requirements of this ordinance.

An "Unauthorized Unit" is defined as "one or more rooms within a building that have been used, without the benefit of a building permit, as a separate and distinct living or sleeping space independent from Residential Units on the same property." "Independent" means that (1) the space has independent access that does not require entering a Residential Unit on the property and (2) there is no open, visual connection to a Residential Unit on the property. Twenty days before the Conditional Use hearing, notice of the hearing must be mailed to all Residential Units and, if known, to any Unauthorized Units in the building. The prohibitions against conversion to Student Housing and the merger of Residential Units not subject to a Conditional Use requirement have been retained and relocated. Conditional Use criteria are all in one subsection; the existing criteria have been retained and new criteria added for the removal of Unauthorized Units.

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