

REVISED LEGISLATIVE DIGEST

(3/1/2016, Amended in Board)

[Planning, Building Codes - Conditional Use Required to Remove Any Residential Unit; including an Unauthorized Unit]

Ordinance amending the Planning Code to require Conditional Use authorization for the removal of any residential unit (whether authorized or unauthorized) and to exempt from the Conditional Use application requirement unauthorized units where there is no legal path for legalization, residential units that have received prior Planning approval, and single-family homes that are demonstrably unaffordable or unsound; amending the Building Code to require that notices of violation order the filing of an application to legalize an unauthorized unit unless infeasible under the Building Code, the Planning Commission approves its removal, or a serious and imminent hazard exists on the property; 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 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. Section 317.1, recently approved by the Board, enacted demolition, merger, and conversion requirements for the C-3 Districts.

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 317 is amended to require 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. Section 317.1 is deleted and the requirements for C-3 Districts included in Section 317.

The Conditional Use requirement applies 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 Conditional Use requirement does not apply if (1)

Removal of a Residential Unit received Planning approval prior to the effective date of this ordinance, (2) the Department of Building Inspection has determined that there is no legal basis for legalization of an Unauthorized Unit under Section 106A.3.1.3 of the Building Code, or (3) the Demolition of a single-family home meets the definition of housing that is demonstrably unaffordable or financially inaccessible.

The Planning Code defines an "Unauthorized Unit" 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.

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 (1) removal of the Unit has been approved by the Planning Commission, (2) the Department has determined, after performing the screening prescribed by Section 106A.3.1.3(a), that legalization of the unit is not permitted under the Building Code, or (3) the Building Official has determined that a serious and imminent hazard under Section 102A.16 of the Building Code exists on the subject property. Upon submission of an application for legalization or removal of an Unauthorized Unit, the Department of Building Inspection will suspend the Notice of Violation pending a decision on the application unless the Building Official has determined that a serious and imminent hazard exists. If approval of either legalization or removal of the Unauthorized Unit occurs within one year of issuance of the Notice of Violation, the Notice of Violation and any associated liens recorded against the property will be rescinded.

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