

REVISED LEGISLATIVE DIGEST

Amended, 2/22/16

[Building Code – Removal of Unauthorized Residential Unit]

Ordinance 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; and affirming the Planning Department’s determination under the California Environmental Quality Act.

Existing Law

Planning Code Section 317 requires 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 does not apply if (1) removal of a residential unit received Planning approval prior to the effective date of the new requirement, (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 Planning Code’s definition of housing that is demonstrably unaffordable or financially inaccessible.

Building Code Section 102A.3 establishes the process for the Department of Building Inspection’s investigation and citation of code violations. Section 102A.3.1 requires 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.

Amendments to Current Law

Building Code Section 102A.3.1 is proposed to be further amended to provide that a Notice of Violation and any associated liens recorded against the property will be rescinded if approval

of either legalization or removal of the unauthorized unit occurs within three years of issuance of the Notice of Violation.

Background Information

An ordinance previously considered by the Building Inspection Commission was passed by the Board of Supervisors on March 8, 2016 and signed by the Mayor on March 11, 2016. It will become effective on April 10. Because that ordinance will become law in less than two weeks, this ordinance shows as existing Code all the Code changes that were made by the prior ordinance.

When the ordinance was heard at the Board of Supervisors Committee, a further change was proposed that required referral back to the Building Inspection Commission. It amends the new Section 102A.3.1 to provide that a Notice of Violation and any associated liens recorded against the property will be rescinded if approval of either legalization or removal of the unauthorized unit occurs within three years of issuance of the Notice of Violation rather than the one year the Building Inspection Commission previously considered. This is a material change that requires further consideration by the Commission.

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