

## LEGISLATIVE DIGEST

[Planning Code - Illegal and Unauthorized Units; Demolition of Single-Family Homes]

**Ordinance amending the Planning Code by revising Section 207.3 to delete the limits on the number of illegal dwelling units allowed to be legalized on a single lot, to provide that the exceptions to Code requirements require a discretionary waiver by the Zoning Administrator if more than one dwelling unit on a single lot is being legalized, and to delete the prohibition on legalization of dwelling units in buildings with an eviction history; by revising Section 317 to clarify that the demolition of a single-family home determined to be unsound is exempt from the Conditional Use authorization requirement; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code Section 101.1; and making a finding of public necessity, convenience, and welfare under Planning Code, Section 302.**

### Existing Law

Planning Code Section 207.3 authorizes the legalization of existing dwelling units constructed prior to January 1, 2013 without benefit of permit in an existing building that is located in a district where residential use is principally permitted or in an ancillary structure on the same lot. Only one unit is allowed to exceed the permitted density for the lot and only one unit may be legalized per lot regardless of the density limits. However, the unit may not be legalized if any tenant was served with a notice of eviction after March 13, 2014 and within 10 years prior to filing the application for legalization.

Planning Code Section 307(l) authorizes the Zoning Administrator to grant a complete or partial waiver of specified Code requirements in order to facilitate the construction of new Accessory Dwelling Units under Planning Code Section 207(c)(4).

Planning Code Section 317 requires a Conditional Use authorization to remove any "Residential Unit," as those terms are defined, through demolition, merger or conversion whether the Unit is legal or illegal. Demolition of a single-family home on a site in an RH-1 or RH-1(D) District that is demonstrably not affordable or financially accessible housing is exempt from the Conditional Use requirement.

### Amendments to Current Law

Planning Code Section 207.3 is amended to delete the provisions that (1) put a cap on the number of illegally constructed units that may be legalized per lot and (2) prohibit legalization of units if a tenant in the building has been served with a notice of eviction. Section 207.3 is amended to provide that if more than one dwelling unit is being legalized on a single lot, the exceptions to the specified Code requirements require a discretionary waiver or partial waiver

by the Zoning Administrator, and 307(l) is amended to add this to the Zoning Administrator's authority. Section 317 is amended to clarify that the demolition of a single-family home determined by the Planning Commission to be "unsound" is also exempt from the requirement to obtain a Conditional Use authorization.

### Background

On April 10, 2016, an ordinance sponsored by Supervisor Avalos (Board of Supervisors File No. 160185) became effective. Among other things, it amended the Planning Code to require Conditional Use authorization to remove any residential unit, whether legal or illegal. On February 22, 2016, the original ordinance was duplicated and an additional amendment was proposed by Supervisor Wiener to require Mandatory Discretionary Review instead of a Conditional Use authorization to remove an Unauthorized Unit in a single-family home.

At a hearing held on June 9, 2016, the Planning Commission considered Supervisor Wiener's proposed amendment, recommended retaining the Conditional Use requirement for the removal of an Unauthorized Unit from a single-family home, and proposed the amendments described above for the reasons set forth in Planning Commission Resolution No. 19660.

The City Attorney's Office is currently prosecuting a code enforcement action in which a married couple has illegally converted 10 single-family homes in the Bayview that are zoned RH-1 and RH-2 into properties with a combined total of 39 separate dwelling units. Two other buildings owned by the same couple have an additional five units above the authorized density that were constructed without permits. If the proposed legislation is enacted, the only limits on legalization for the properties currently in litigation, as well as an unknown number of properties owned by others in this area and Citywide, would be: (1) the requirement in Planning Code Section 207.3(b)(1) that the illegal units must have been constructed prior to January 1, 2013 and whatever evidence to that effect the Planning Department finds acceptable, (2) the Zoning Administrator's discretion whether or not to grant a partial or complete waiver of Code requirements for the legalization of more than one dwelling unit on a single lot, and (3) the property's ability to comply with other City codes such as the Building, Electrical, Plumbing, Mechanical, Fire, or other applicable Code.

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