

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Tom Hui, Director, Department of Building Inspection  
Sonya Harris, Secretary, Building Inspection Commission

FROM: Erica Major, Assistant Clerk  
Land Use and Transportation Committee

DATE: July 31, 2018

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, introduced by Supervisor Safai on July 24, 2018:

**File No. 180778**

**Ordinance amending the Building Code to modify the penalty for constructing an impervious surface in the front yard setback without a permit; affirming the Planning Department's determination under the California Environmental Quality Act; and directing the Clerk of the Board of Supervisors to forward the Ordinance to the California Building Standards Commission upon final passage.**

The proposed ordinance is being transmitted pursuant to Charter, Section D3.750-5, for public hearing and recommendation. It is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Please forward me the Commission's recommendation and reports at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: [alisa.somera@sfgov.org](mailto:alisa.somera@sfgov.org).

c: William Strawn, Department of Building Inspection  
Carolyn Jayin, Department of Building Inspection

1 [Building Code - Penalties for Constructing an Impervious Surface in the Front Yard Setback  
2 Without the Required Permit]

3 **Ordinance amending the Building Code to modify the penalty for constructing an**  
4 **impervious surface in the front yard setback without a permit; affirming the Planning**  
5 **Department's determination under the California Environmental Quality Act; and**  
6 **directing the Clerk of the Board of Supervisors to forward the Ordinance to the**  
7 **California Building Standards Commission upon final passage.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
11 **Board amendment additions** are in double-underlined Arial font.  
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
13 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
14 subsections or parts of tables.

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

16 Section 1. Findings.

17 (a) The Planning Department has determined that the actions contemplated in this  
18 ordinance comply with the California Environmental Quality Act (California Public Resources  
19 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
20 Supervisors in File No. \_\_\_\_\_ and is incorporated herein by reference. The Board affirms this  
21 determination.

22 (b) On \_\_\_\_\_, the Building Inspection Commission considered this ordinance at  
23 a duly noticed public hearing pursuant to Charter Section D3.750-5.

24 Section 2. California Health and Safety Code Section 17958.7. No findings under  
25 Section 17958.7 of the California Health and Safety Code are required for this ordinance

1 because it is not amending a “building standard,” as defined in Health and Safety Code  
2 Section 18909.

3  
4 Section 3. The Building Code is hereby amended by revising Section 106A.1.13, to  
5 read as follows:

6 **106A.1.13 Permits and fees for construction of an impervious surface in a front yard**  
7 **setback; penalties for violation of requirements.**

8 (a) 1. **General.** It shall be unlawful for any person, firm, or corporation to commence or  
9 proceed with the construction of an impervious surface in a front yard setback area, other than  
10 a driveway as defined in ~~the~~ Planning Code Section 136(c)(30), unless a permit is first  
11 obtained. See Section 110A, Table 1A-F – Specialty Permit Fees – for applicable fee.

12 (b) 2. **Referral to Planning Department.** The Department shall refer all applications  
13 for a permit pursuant to this ~~s~~Section 106A.1.13 to the Planning Department for a determination  
14 regarding the proposed construction's compliance with Sections 132(g) and 136(c)(30) of the  
15 Planning Code. The Department may not issue the permit unless Planning determines the  
16 proposed construction to be compliant with the Planning Code requirements.

17 (c) 3. **Verification of compliance during inspections.** In performing the inspections required  
18 under Section 108A.1 of this Code, the inspector shall also verify that an impervious surface has not  
19 been constructed in the front yard setback area in violation of this Section 106A.1.13. If the inspector  
20 finds that there is a violation of Section 106A.1.13, the violation shall be required to be corrected under  
21 that existing permit.

22 (d) 3. **Penalties Penalty for violation.**

23 1. Notice of Municipal Code Violation (“NOV”). The Department shall issue an NOV  
24 pursuant to Section 102A.4 of this Code to Any person, the owner of the property firm or corporation  
25 determined to be in violation of violating the provisions of subsection (a) above this Section shall be

1 ~~guilty of an infraction. Every violation determined to be an infraction is punishable by (1) a fine not~~  
2 ~~exceeding \$100 for a first violation, (2) a fine not exceeding \$200 for a second violation within one~~  
3 ~~year, and (3) a fine not exceeding \$500 for a third violation within one year. The NOV shall require the~~  
4 ~~owner or the owner's authorized representative to apply for and obtain a permit to bring the existing~~  
5 ~~surface in the front yard setback area into compliance with current Municipal Code requirements,~~  
6 ~~including but not limited to the Building and Planning Codes.~~

7 2. **Investigation Fees.** Violations of this Section 102A.1.13 shall be subject to the fees  
8 set forth in Table 1A-K of this Code for either work without permit or work exceeding the scope of the  
9 approved permit.

10 3. **Civil and criminal penalties.** Any person, including the owner or the owner's  
11 authorized representative, who violates, disobeys, omits, neglects, or refuses to comply with, or resists  
12 or opposes the execution of the provisions of this Section 106A.1.13 shall be subject to the civil penalty  
13 of up to \$500 per day and the criminal penalties that are set forth in Section 103A of this Code.

14 4. **Costs of Abatement.** In addition to any monetary penalties authorized by Section  
15 103A of this Code, the Department shall be entitled to recover its costs of abatement pursuant to  
16 Section 102A.7(d).

17  
18 Section 4. Effective Date. This ordinance shall become effective 30 days after  
19 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
20 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
21 of Supervisors overrides the Mayor's veto of the ordinance.

22  
23 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
24 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
25 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal

1 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
2 additions, and Board amendment deletions in accordance with the "Note" that appears under  
3 the official title of the ordinance.  
4

5 Section 6. Directions to Clerk. The Clerk of the Board of Supervisors is hereby directed  
6 to forward a copy of this ordinance to the California Building Standards Commission upon final  
7 passage.  
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9 APPROVED AS TO FORM:  
10 DENNIS J. HERRERA, City Attorney

11 By:

  
12 JUDITH A. BOYAJIAN  
13 Deputy City Attorney

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## LEGISLATIVE DIGEST

[Building Code - Penalties for Constructing an Impervious Surface in the Front Yard Setback Without the Required Permit]

**Ordinance amending the Building Code to modify the penalty for constructing an impervious surface in the front yard setback without a permit; affirming the Planning Department's determination under the California Environmental Quality Act; and directing the Clerk of the Board of Supervisors to forward the Ordinance to the California Building Standards Commission upon final passage.**

### Existing Law

Building Code Section 106A.1.13 requires a permit and establishes a fee for the construction of an impervious surface in a front yard setback. Applications for construction of an impervious surface in the front yard setback are required to be referred to the Planning Department for a determination whether the proposed construction complies with Sections 132(g) and 136(c)(30) of the Planning Code. Violation of the permit requirement is an infraction that can result in a criminal penalty of up to \$100 for a first violation, up to \$200 for a second violation within one year, and up to \$500 for a third violation within one year.

### Amendments to Current Law

This ordinance provides the following additional enforcement tools to achieve compliance with the front yard setback permit requirements:

- The civil penalty of up to \$500 per day and criminal penalties that are set forth in Section 103A of the Building Code will apply;
- The Department will issue a Notice of Municipal Code Violation (NOV) pursuant to Section 102A.4 of the Building Code that requires the owner or owner's agent to apply for and obtain a permit to bring the existing surface in the front yard setback area into compliance with current Municipal Code requirements, including but not limited to the Building and Planning Codes.
- Violations are expressly subject to the Building Code's investigation fees for work without permit or work exceeding the scope of an approved permit, and the Department will be entitled to recover its costs of abatement pursuant to Section 103A of the Building Code.
- During inspections required for work performed under permits issued by the Department, the inspector will verify compliance with the front yard setback permit

requirements, and any violation will be required to be corrected under that existing permit.

### Background Information

Planning Code Section 132(g) sets forth the requirements for landscaping and permeable surfaces in the front setback area. It provides that the front setback shall be appropriately landscaped, meet any applicable water use requirements of Chapter 63 of the Administrative Code, and in every case not less than 20% of the required setback area shall be and remain unpaved. These requirements are triggered by (1) construction of a new building, (2) the addition of a new dwelling unit, garage, or additional parking; (3) any addition to a structure that would result in an increase of 20% or more of the existing gross floor area; (4) a residential merger; or (6) paving or repaving more than 200 square feet of the front setback. Pursuant to Section 132(h), the front setback area shall be at least 50% permeable so as to increase stormwater infiltration. Section 136(c)(30), also referenced in Building Code Section 106A.1.13, allows driveways meeting specified requirements as obstructions in required setback areas.

In Chapter 63 of the Administrative Code (the “Water Efficient Irrigation Ordinance”), the Board of Supervisors found that irrigated landscapes contribute significantly to the quality of life of the people of San Francisco. They provide areas for active and passive recreation and as an enhancement to the environment by cleaning air and water, and add to the natural beauty of San Francisco’s commercial, industrial, and residential neighborhoods. This ordinance will provide additional tools to enforce the Code requirements.

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