

LEGISLATIVE DIGEST

[Planning, Building Codes - Controls on Residential Demolition, Merger, Conversion, and Alteration]

Ordinance amending the Planning Code to increase penalties for violations of the Planning Code; provide new definitions for Residential Demolitions and Residential Flats, revise definitions for Alterations and Removal, require additional notice and impose new conditional use criteria for Residential Demolitions, Mergers, and Conversions; establish criteria for Major Expansions of Existing Residential Buildings; amending the Building Code to conform the definition of Residential Demolition, require pre-permit inspections and additional application requirements; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; adopting findings of public convenience, necessity, and welfare under Planning Code, Section 302; and instructing the Clerk to forward this Ordinance to the California Building Standards Commission upon final passage.

Existing Law

Enforcement of Violations

Planning Code Section 176 establishes methods of enforcement for violations of the Planning Code, as well as administrative, civil and criminal penalties. Current law provides that, in the notice requiring cessation of Planning Code violations, the Zoning Administrator may assess administrative penalties on the responsible party in an amount up to \$250 for each day the violation continues unabated. A responsible party may request a Zoning Administrator's hearing to challenge the notice and assessment of penalties, or may request that the Zoning Administrator terminate abatement proceedings and refer the matter to the Director for enforcement under the process set forth in Section 176.1 of the Code. In any appeal of the Zoning Administrator's determination, if the Board of Appeals upholds the Zoning Administrator's decision in whole or in part, it may not reduce the penalty below \$100 for each day the violation exists.

The City may also recover civil penalties in an amount of not less than \$200 for each day the violation is committed or permitted to continue, which penalty shall be recovered in a civil action brought by the City Attorney. Violation of the Planning Code is a misdemeanor subjecting violators to a fine in an amount of not less than \$200 or imprisonment for a period not exceeding six months, or both.

Permit Review Procedures

Planning Code Section 311 establishes procedures for reviewing building permit applications to determine compatibility with the neighborhood and providing notice to specified individuals

and organizations of the proposed project so that concerns about a project may be identified and resolved during permit review. Section 311 identifies the applications to which neighborhood notice and review requirements apply, defines Changes of Use, Alterations, and other uses subject to Section 311 review, and provides guidelines for building permit review. Where a project would remove an historic or architecturally important building or a dwelling, Section 311 prohibits issuance of a demolition permit until a building permit for a replacement structure has been finally approved. Section 311 allows administrative approval of a permit to demolish a building when the Director of the Department of Building Inspection, the Chief of the Bureau of Fire Prevention and Investigation or the Director of Public Works determines that an imminent safety hazard exists and the proposed demolition is the only means to secure the public safety.

Loss of Residential and Unauthorized Units by Demolition, Merger and Conversion

Current law requires conditional use authorization for the removal of any residential unit, for both legal and illegal existing units, with limited exceptions.

Permit Issuance; Residential Demolition

The Building Code defines Demolition, sets forth requirements for building permit applications, and prohibits construction for five years following the date of an unlawful demolition.

Amendments to Current Law

Enforcement of Violations

This ordinance would increase the daily amounts for administrative, civil and criminal penalties to \$1000 per day. If the responsible party requests a Zoning Administrator hearing on the notice or penalties, the Zoning Administrator shall consider, among other factors, whether the responsible party has violated any provision of new Sections 317 or 319. Thereafter, in any appeal of the Zoning Administrator's determination, if the Board of Appeals upholds the Zoning Administrator's decision in whole or in part, it may not reduce the penalty below \$500 for each day the violation exists.

The ordinance would provide that the penalty provisions of Section 176 are not exclusive. Any penalties imposed for violations under Section 176 would be in addition to those required by new Sections 317 and 319.

This ordinance would delete Section 176.1 from the Code.

Permit Review Procedures

This ordinance clarifies the application of and exemption from Section 311 notice requirements, revises the definition of Alterations, provides new definitions of Demolition, New

Construction and Removal of Residential Units. The Ordinance clarifies the requirement that building permit applications be reviewed for compliance with all applicable design guidelines, expands application requirements for proposed Removal of Residential Units, and clarifies that no permit for demolition of a Residential building shall be issued until a Conditional Use authorization for a replacement structure has been finally approved. The ordinance requires project applicants to submit additional plans and calculations with project applications, and requires that all proposed projects that would result in the Demolition of a Residential Unit or Removal of a Residential Building, or the Removal of a Residential Unit or Unauthorized Unit through Demolition, Merger or Conversion, or would result in a Major Expansion of a Residential Building (as defined in the ordinance), must obtain Conditional Use authorization. The ordinance also clarifies and expands the requirements for notification packets required for proposed projects.

Loss of Residential and Unauthorized Units by Demolition, Merger and Conversion

This ordinance revises the definitions of Residential Conversion, Residential Demolition, Residential Merger, Removal and Residential Unit, and adds new defined terms to the Code for Residential Flats, Unlawful Demolition, Unlawful Merger and Unlawful Conversion. The ordinance expands the applicability of Section 317's Conditional Use requirement, and provides limited exemptions. The ordinance requires that the Planning Department request Department of Building Inspection review of specified projects, and provides that no permit to for a Residential Demolition shall be issued until a Conditional Use authorization for a replacement structure has been finally approved. The ordinance also provides new criteria for Conditional Use authorizations reviewed under Section 317.

This ordinance prohibits the Planning Department from approving any permit to legalize work performed without a required Conditional Use authorization, or beyond the scope or in violation of a Conditional Use authorization or building permit. In addition, the ordinance imposes new penalties for Unlawful Demolitions, Unlawful Mergers and Unlawful Conversions. In the case of Unlawful Mergers and Unlawful Conversions, the ordinance also requires responsible parties to restore the original Residential or Unauthorized Units to their original condition, with the original number of units, in their original square footage and location. For Unlawful Demolition or Alteration of historic buildings, the ordinance provides new administrative penalties.

Major Expansion of an Existing Residential Building

This ordinance would add a new Section 319 to the Planning Code to define and regulate Major Expansions and Unlawful Expansions of Residential Buildings. Any project that qualifies as a Major Expansion under this code section would require a Conditional Use authorization and be subject to notice under Planning Code Sections 311 and/or 312. The ordinance provides limited exceptions to its applicability, establishes conditional use criteria applicable to Major Expansions, and creates enforcement procedures and penalties for

Unlawful Expansions. The ordinance provides new administrative penalties for unlawful alterations to historic buildings.

Permit Issuance; Residential Demolition

The ordinance would amend the Building Code to conform the definition of Residential Demolition with that in the revised Planning Code; require that a building inspector shall inspect the building and site to confirm existing conditions prior to commencement of a project involving Residential Demolition; prohibit demolitions to remove dry rot without prior inspection; and require that project sponsors provide additional materials and information in connection with building permit applications.

The ordinance would prohibit the Department of Building Inspection from issuing a permit to legalize work previously conducted without a permit or beyond the scope of an issued permit even if such work would comply with the requirements of applicable codes. Before such a permit may be issued, the property owner must obtain a permit to remove the illegal work and return the building or site to its pre-existing condition.

Before the Department of Building Inspection would issue a permit for work on a building classified as a Residential Group R Occupancy to any person or entity with a prior violation for performing work without or beyond the scope of an issued permit, the ordinance would require the department to inspect the building and the site to verify existing conditions.