

**REVISED LEGISLATIVE DIGEST**

(Substituted, 5/7/2019)

[Planning, Building Codes - Controls on Residential Demolition, Merger, Conversion, and Alteration; Review of Additional Non - Residential Changes of Use and Alterations]

**Ordinance amending the Planning Code to increase penalties for violations of the Planning Code and change the administrative enforcement procedure; provide new definitions for Residential Demolitions and Residential Flats, expand definitions of Alteration and Removal, expand definitions of, require additional notice, and impose new conditional use criteria for Residential Demolitions, Mergers, and Conversions; require additional review for changes of use to Child Care Facilities that propose an increase in the exterior dimension of the building; expand definition of change of use for Residential, NC and NCT Districts; add new notification requirements; add requirements for replacement structures; establish definitions, criteria and procedures for approvals of Major Expansions of Existing Residential Buildings in certain residential districts; amending the Building Code to make the definition of Residential Demolition consistent with the Planning Code, 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, Penalties and Abatement**

Planning Code Section 176 establishes methods of enforcement for violations of the Planning Code, as well as administrative, civil and criminal penalties.

**Administrative Penalties:** Current law permits the Zoning Administrator to assess administrative penalties on the responsible party in an amount up to \$250 for each day the violation continues unabated. 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.

**Civil Penalties:** 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. 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.

**Enforcement Methods:** Instead of administrative proceedings before the Zoning Administrator, the responsible party 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. Civil penalties shall be recovered in a civil action brought by the City Attorney.

**Abatement:** Generally, work performed without a permit, or work performed beyond the authorized scope of a permit can be legalized so long as it complies with applicable Code provisions.

### **Notice Requirements and Permit Review Procedures**

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. Neighborhood notification is required for most building expansions and for specific land uses in Residential and Neighborhood Commercial Districts. Certain building features - typically those that are small or less prominent - are exempt from this requirement.

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.

#### **Residential Demolitions**

The current Planning Code defines Residential Demolition as the removal of either (a) two-thirds of a building's foundation or (b) the majority of a building's walls and floors. Excepting unsound or unaffordable single-family homes, Demolition requires Conditional Use authorization. Below Market Rate or rent-controlled units that are demolished as part of a new project containing 10 or more units must be replaced.

#### **Residential Mergers**

Under current law, combining two or more units into a single unit or reducing the size of one unit by at least 25% to make another unit larger requires Conditional Use Authorization.

### **Residential Conversions**

Current law limits additions to residential buildings to specific depths, widths, and heights set forth in the Planning Code, as further restricted by the Residential Design Guidelines.

### **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, Penalties and Abatement**

**Administrative Penalties:** This ordinance would increase the daily amounts for administrative penalties to \$1000 per day. Additional fines would be as follows:

- Unlawful Merger or Conversion: up to \$50,000 per violation;
- Unlawful Alteration or Demolition of a historic or architecturally significant building: up to \$500,000 per violation;
- Unlawful Demolition or Unlawful Major Expansion: Penalties equal to any increase in the value of the property resulting from the unlawful conduct.

In any appeal of the Zoning Administrator's determination under the proposed new section 176, 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.

**Civil Penalties:** This ordinance would increase the daily amounts for civil and criminal penalties to \$1000 per day.

The ordinance confirms that each real property address, each Dwelling Unit within a real property address, and each separate violation of the Planning Code is a distinct violation for calculation of applicable administrative and civil penalties.

**Enforcement Methods:** This ordinance would delete Section 176.1 from the Code.

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 or, in the alternative, permits the Zoning Administrator to require the property owner to restore the building or the feature demolished without or in excess of permit to its previous condition.

### **Notice Requirements and Permit Review Procedures**

This ordinance would expand the application of Section 311 notice requirements, revises the definition of Alterations, provides new definitions of Demolition, New Construction and Removal of Residential Units. Under this ordinance, additional building features or land uses that do not currently require notification would require public notification and could no longer be approved over-the-counter. These features include the addition of a garage, roof deck, or penthouse, or the infilling of a lightwell that blocks the windows on an adjacent building.

The Ordinance would provide that a change of use to a Child Care Facility, as defined in Section 102, would not be subject to the review requirements of Section 311, provided there is no increase in the exterior dimensions of the building. The ordinance expands the categories of changes in use in Residential, NC and NCT Districts subject to Section 311 notice requirements to add Health Service uses. For all Residential Uses, the Ordinance expands the definition of a change of use to a change of occupancy, as defined and regulated by the Building Code, or any change in use, as defined and regulated by the Planning Code, of any Residential Unit(s) or Unauthorized Unit(s) to a Non-Residential or Student Housing use, even if cooking facilities are not removed.

The Ordinance would require that building permit applications be reviewed for compliance with all applicable design guidelines, expand application requirements for proposed Removal of Residential Units, and provide that no permit for demolition of a Residential building would 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, including verification under oath of the accuracy and completeness of those plans and calculations. The ordinance also would expand the requirements for materials to be included in required notification packets 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 for Demolition, Merger or Conversion of a Residential Unit or the Demolition of a Residential Building that has received final approval from the Planning Department through administrative approval or the Planning Commission through a Discretionary Review or Conditional Use authorization prior to the effective date of the

Conditional Use requirement of the ordinance unless the construction activity exceeds the Conditions of Approval or scope of work under a building permit, and for projects proposed on the following property:

- (i) owned by the United States or any of its agencies, with the exception of such property not used exclusively for a governmental purpose;
- (ii) owned by the State of California or any of its agencies, with the exception of such property not used exclusively for a governmental purpose;
- (iii) under the jurisdiction of the Port of San Francisco or the Successor Agency to the Redevelopment Agency of the City and County where the application of this Section is prohibited by State law; or
- (iv) where demolition of the building or Removal of a Residential Unit or Unauthorized Unit is necessary to comply with a court order that directs the owner to demolish the building or remove the unit due to conditions that present an imminent threat to life safety, or where the Director of the Department of Building Inspection or the Chief of the Bureau of Fire Prevention and Public Safety has issued a written determination that an imminent safety hazard exists, and that the proposed demolition or alteration of the structure, feature, or part thereof, is the only feasible means to correct the condition and secure the public safety; provided, however, that only such work as is necessary to correct the unsafe or dangerous condition may be performed.

With these exceptions, the ordinance 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 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, described above.

### **Residential Demolitions**

For all projects that include the demolition or any residential unit and that would require structural retrofit or foundation upgrade, Planning Department staff may require plans for the structural work prepared by a California licensed structural engineer who shall attest, under penalty of perjury, to their accuracy and completeness. Planning Department staff may request the Department of Building Inspection to review these plans and provide further structural or engineering review or review of proposed construction means and methods to be included in the Planning Department staff report for the Conditional Use authorization hearing

before the Planning Commission. The ordinance defines Residential Demolition as loss of residential housing, including any one or more of the following:

- (A) The total tearing down of an existing Residential Building; or
- (B) Removal of one or more Residential Units or Unauthorized Units; or
- (C) Removal of existing above grade elements, external walls, or internal structural framework in amounts equal to or greater than the percentages set forth in Building Code Section 103A.3.3, which are:
  - (1) Removal of more than 50% of the sum of all existing above-grade external elements from their function as all external elements; or
  - (2) Removal of more than 25% of the surface of all external walls facing a public street or streets; or
  - (3) Removal of more than 75% of the building’s existing internal structural framework, interior bearing elements and/or floor plates.

**Residential Flats Defined**

The ordinance defines “Residential Flats” as a housing typology consisting of two or more Dwelling Units in a single building that have exposure onto open areas at the front and rear of the property,

**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. The purpose of the new Section 319 is to ensure that all large residential projects proposed in the RH-1(D), RH-1, RH-2, and RH-3 Districts are reviewed by the Planning Commission, in an effort to achieve the objectives and policies of the General Plan, the applicable Design Guidelines, and the purposes of this Code.

**Major Expansions**

The ordinance defines a Major Expansion in terms of the Floor Area Ratio (“FAR”) set forth in the following table or, for Residential Buildings already in excess of the FAR set forth in the table, an expansion greater than a Minor Expansion, as defined in the ordinance:

<u>Zoning</u>	<u>FAR Triggers</u>
<u>RH-1(D)</u>	<u>0.6</u>
<u>RH-1</u>	<u>0.7</u>

<u>RH-2</u>	<u>0.8</u>	<u>1.2 (2 units)</u>	
<u>RH-3</u>	<u>0.9 (1 unit)</u>	<u>1.3 (2 units)</u>	<u>1.7 (3 units)</u>

The new section 319 would require, for all Major Expansions, that the square footage of the smallest unit must be equal to at least 3/4 of the square footage of the largest unit, exclusive of parking and common spaces shared by all tenants of the building.

**Minor Expansions**

The ordinance defines Minor Expansions to Existing Residential Buildings as a Dwelling Unit expansion that is 10% or less of the Gross Floor Area of the existing Residential Building. Such expansions will be reviewed cumulatively, based on building permit applications filed within the previous ten years.

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 Section 311. 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 would prohibit the Planning Department from approving any permit that legalizes an Unlawful Expansion. The Ordinance would also provide a penalty for an unlawful expansion in addition to the penalties set forth in Section 176 of this Code, equal to any increase in the value of the property as a result of the responsible party’s illegal or wrongful conduct as measured by the difference in fair-market value of the property prior to and after the illegal conduct.

**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 authorizing the construction or alteration of any building or structure for any site of an unlawful residential demolition for five years following such unlawful demolition, except for a permit for the construction or alteration of a building or structure with the same number of Residential Units, with the same proportion of residential to nonresidential units, and with the same or fewer square feet as the building or structure that was unlawfully demolished. The ordinance

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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.

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