



SAN FRANCISCO PLANNING DEPARTMENT

New Planning and Building Code Summary:

Requiring Conditional Use Authorization to Remove Residential Units Including Unauthorized Units

Amended Sections:	317 and 209.1, 209.2, 209.3, 209.4, 210.1, 210.2, 210.3, 210.4, 710 through 748, and 810 through 818
Case Number:	2015.006712PCA
Board File/Enactment #:	150494 & 160115/ 023-16 and 033-16
Initiated by:	Supervisor Avalos
Effective Date:	April 4, 2016 and April 10, 2016

The proposed changes to the Planning Code include two ordinances, one which mainly impacts the C-3 Districts (Board File 150494) and one that impacts the rest of the City (Board File 160115). Board File 150494 becomes effective on April 3, 2016, but some aspects of this ordinance are superseded by Board File 160115 on April 10. Given the very short time Board File 150494 will be effective the following summary covers only the permanent changes to the Planning Code. Planners should review the Planning Code for current requirements when they approve any permit during this seven day period.

The proposed Ordinance amended the Planning Code Sections 317 as well as zoning control tables 209.1, 209.2, 209.3, 209.4, 210.1, 210.2, 210.3, 210.4, 710 through 748, and 810 through 818, to require a Conditional Use authorization for removal of all residential units as well as unauthorized units with certain exemptions. The Ordinance also amended the Building Code to require that notices of violation order the filing of an application to legalize an unauthorized unit unless the Planning Commission approves its removal.

The Way It Was:

Landscaping and Permeable Surfaces

1. The requirements for landscaping and permeable surfaces in front setback were only triggered in cases of new construction, the addition of a new dwelling unit, or the addition of parking.

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Applicability

2. The loss of one or more Residential Units required Conditional Use authorization in the RTO, RTO-M, NCT, Upper Market NCD Zoning Districts, and on the ground floor in C-3 Zoning Districts.
3. In all other districts, the loss of three or more Residential Units required Conditional Use authorization, and the loss of one to two Residential Units required Mandatory Discretionary Review; however, interim controls required a Conditional Use authorization in case of loss through merger.

Administrative Approval

4. The demolition of single-family buildings located in RH-1 and RH-1(D) districts that are demonstrably not affordable or financially accessible housing could be administratively approved.
5. For residential units that are demonstrably not affordable or financially accessible housing, the Planning Code allowed administrative approval for loss of the unit through merger; however, interim controls required CU authorization for loss of any unit through merger regardless of affordability.
6. For buildings of two units or fewer that are found to be unsound housing, the Planning Code allowed administrative approval for loss of the unit through demolition.

Planning Commission Findings for Removal

7. There were seven findings for residential mergers that the Planning Commission was required to consider in their review of applications to merge residential units. One of these findings was whether the removal of the unit(s) would bring the building closer to conformance with prescribed zoning.
8. There were 16 findings for residential demolitions that the Planning Commission was required to consider in their review of applications to demolish residential units.

Unauthorized Units

9. Unauthorized Units - units constructed without proper permits - were not defined in the Planning Code.

10. Loss of Unauthorized Units in buildings of three or more legal units required a Mandatory Discretionary Review per the Mayor's Executive Directive in January 2014. Loss of such units in buildings of one or two legal units was permitted administratively over the counter.

Building Code

11. A Department of Building Inspection (DBI) Notice of Violation (NOV) for an Unauthorized Unit required the property owner to remove the unit. The property owner could also voluntarily legalize the unit but the discretion was up to the owner.

The Way It Is Now:

Landscaping and Permeable Surfaces

1. For all zoning districts, there are two new triggers in addition to the existing triggers that require landscaping and permeable surfaces in the front setback: 1) when the Gross Floor Area is increased by 20%, and 2) when a Residential Merger occurs. (Permanent control, effective on April 3, 2016).

Applicability

2. The loss of one or more Residential Units would still require Conditional Use authorization in the RTO, RTO-M, NCT, and Upper Market NCD; however the loss of any residential unit, regardless of what floor it is on, in a C-3 Zoning District would require Conditional Use authorization (permanent control, effective on April 3, 2016).
3. CU authorization is required in all zoning districts for loss of any Residential Units, whether through demolition, conversion, or merger.

Administrative Approval

4. The demolition of single-family buildings located in RH-1 or RH-1(D) districts that are demonstrably not affordable or financially accessible housing are still allowed to be approved administratively.
5. Administrative approval process is no longer available for the loss of units through merger.

6. Only the demolition of single-family buildings located in RH-1 or RH-1(D) districts that are found to be unsound are allowed to be approved administratively.

Planning Commission Findings for Removal

7. The finding for residential mergers related to bringing a building closer in conformity with prescribed zoning is no longer in the Code. Instead two new findings have been added under residential merger, including: 1) How recently the unit being removed was occupied by tenants, and 2) The appraised value of the least expensive unit proposed for removal.
8. In addition to the 16 findings required for residential demolition, two new findings have been added: 1) Whether the replacement project would maximize density on subject lot, and 2) If the proposed replacement project replaces all of the existing units with new units of similar size and with the same number of bedrooms.

Unauthorized Units

9. The Planning Code Section 317 now has the following definition for Unauthorized Units.

Unauthorized Units - One or more rooms within a building that:

- a. have been used, without the benefit of a building permit, as a separate and distinctive living or sleeping space; and
 - b. is independent from Residential Units on the same property, meaning that (i) the space has independent access that does not require entering a Residential Unit on the property, and (ii) there is no open or visual connection to a Residential Unit on the property.
10. In zoning districts where residential uses are allowed, CU authorization is required for the loss of any Unauthorized Unit whether through demolition, conversion, or merger. There are also new findings for CU authorization when removing Unauthorized Units, which include: 1) whether the cost to legalize is reasonable compared to the average cost to legalize unit; 2) whether it's financially feasible: the added valued to the property is equal or greater than the

cost to legalize; and 3) in cases where the City funds are not available, whether legalization demonstrates a financial hardship to the property owner.

Building Code Modifications:

11. A DBI NOV for an Unauthorized Unit would require the property owner to file a permit to legalize the unit unless the Planning Commission approves removal of the unit through CU authorization. Property owners with a NOV for an unauthorized unit have one year to abate the violation either through legalization or removal of the unit. Additionally, DBI can find that an unauthorized unit is exempt from the CU process after performing a screening to determine that the unauthorized units is not able to be legalized per Section 106A.3.1.3(a) of the Building Code.

Grandfathering

12. For removal of an Unauthorized Unit, the new requirements apply to any building permit issued on or after March 1, 2016. Removal of unauthorized units that have been approved by the Planning Department but a building permit is not yet issued prior to March 1, 2016 would be subject to the CU authorization.
13. Removal of Residential Units that have received approval from the Planning Department through administrative approval or Planning Commission through a DR or a CU prior to April 10 are not subject to the requirements of this Ordinance.

Link to Signed Legislation:

BF No. 160115 <http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances16/o0033-16.pdf>

BF No: 150494 <http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances16/o0023-16.pdf>