



NEW PLANNING CODE SUMMARY

Planning, Building Codes - Penalties for Code Enforcement

Amended Sections:	Various
Case Number:	2022-009366PCA
Board File/Enactment #:	220878/040-23
Initiated by:	Supervisor Ronen
Effective Date:	April 27, 2023

The proposed Ordinance amended the Planning and Building Codes to increase fines and penalties for violations of Planning and Building Code provisions; clarifying that violations affecting more than one unit in a building constitute multiple violations for purposes of assessing penalties; requiring the Planning Commission and the Historic Preservation Commission to adopt factors for the Zoning Administrator to consider in determining the appropriate amount of civil penalties; establishing penalties for residential units merged, constructed, or divided without required permits or approvals; establishing penalties for violations involving illegal demolition and enhancement of penalty amounts for certain buildings by age or historic status; providing additional notices for Responsible Parties.

The Way It Was and the Way It Is Now:

The Zoning Administrator has the authority through Planning Code Sec. 176 and Sec. 350 to enforce violations of the Planning Code and collect penalties and Time and Materials(T&M) costs related to enforcement against responsible parties. The Ordinance altered the notices served, methods for serving notices, penalty amounts, and other methods of enforcement as follows:

1.

Violations of the Planning Code (except Short-Term Rentals)			
		The Way It Was	The Way It Is Now
1	Serving Administrative Notices	Notice is mailed to the owners at their address listed with the Assessor	Notice must be mailed to “Responsible Party” or placed in a conspicuous place on the subject property
2	Daily Administrative Penalty Amount	Up to \$250	Up to \$1,000
3	Daily Civil Penalty Amount	No less than \$200	No less than \$200 and no more than \$1,000
4	Violation Counts	Separate units committing separate violations <i>may</i> be enforced as separate counts.	Each unit, each type of violation, and each common space are separate counts for calculating daily penalties
5	“Responsible Party”	Owners	Owners of the property. In addition, when information is available: leaseholders, architects, builders, contractors or any other person who commits/assists in the violation may be served notice as a “Responsible Party”
6	Notices	<p>Only one is required, however Department practice is as follows:</p> <p>Notice of Complaint (NOC) – <i>mailed when case is assigned.</i></p> <p>Notice of Enforcement (NOE) – <i>mailed when violation is confirmed and if no/little contact from responsible party/resistant to comply; states steps needed for compliance.</i></p> <p>Notice of Violation (NOV) – <i>mailed when continued resistance to comply/ no contact. States steps needed for compliance. Fines begin on the 16th day after mailed out.</i></p> <p>Notice of Violation & Penalty Decision (NOVPD) Letter – <i>Decision of ZA from appeal hearing which outlines how much fines/penalties are owed.</i></p> <p>Notice of Penalty & Fee (NOPF) – <i>mailed if NOV is not appealed within 15</i></p>	<p>We will still issue the NOC and NOE to work with the Responsible Party.</p> <p>Notice of Violation (NOV) – <i>The ZA must record NOV’s where penalties are assessed against the title to the property.</i></p> <p>Notice of Additional Compliance Actions and Accrued Penalties (NAC) – <i>Optional notice. May be sent periodically to inform parties of necessary steps to come into compliance and total penalties accrued so far. When a property title transfers, if an open violation with an NOV or NOVDP has not been recorded as an Order of Abatement, Dept. may issue this notice to new title holders.</i></p> <p>Notice of Violation and Penalty Decision (NOVPD) – <i>Decision of ZA from appeal hearing which outlines how much fines/penalties are owed.</i></p>

		<p>days. May be mailed again periodically to update fine amount. Typically, after 3 NOPs, we can refer this to the Bureau of Delinquent Revenue (BDR), a collections agency. BDR charges 25% on top of the total amount listed in the NOP.</p>	<p>Notice of Penalty & Fee (NOP) can still be issued and forwarded to the Bureau of Delinquent Revenue (BDR) for collections.</p> <p>Order of Abatement - Finalized NOV or NOVDP may be recorded as an Order of Abatement after 90 days. Order of Abatement can include T&M, daily penalties, and any one-time penalties, and may result in a lien on the property if unpaid. Department may also report licensed professional Responsible Parties to appropriate licensing boards at this stage. Once corrected, Dept must record a "Notice of Compliance" which cancels the Order of Abatement.</p>
7	Administrative Appeal Options	<p>Responsible party may file an appeal of the NOV to the Zoning Administrator (ZA) or the Board of Appeals (BOA) within 15 days of issuance.</p> <p>After the ZA hearing, staff prepares and sends a Notice of Violation & Penalty Decision (NOVPD) Letter. After the BOA hearing, staff prepares and sends a Notice of Penalty & Fee (NOPF) Letter.</p>	<p>Responsible Party or any other identified in the notice as a violator may appeal the NOV or NAC. Must submit request in writing to ZA within 30 days of the letter being appealed.</p> <p>After the ZA hearing, staff prepares and sends a Notice of Violation & Penalty Decision (NOVPD) Letter. After the BOA hearing, staff prepares and sends a Notice of Penalty & Fee (NOPF) Letter.</p>
8	ZA Hearing Proceedings	<p>ZA must consider the following factors:</p> <ul style="list-style-type: none"> -Whether all info in the notice is accurate -Nature/duration of violation -Efforts by responsible party to abate/good faith -Impact to the community -Previous similar violations by the responsible party -Whether violation is easy to correct 	<p>ZA must consider the following factors:</p> <ul style="list-style-type: none"> -All factors currently considered PLUS -Whether the violation was willful/intentional -Whether the violation resulted in financial gain -Whether the violation displaced tenants -Whether it created a public nuisance/health hazard/dangerous condition -If the violation is reversible
10	Board of Appeals	May not reduce penalty amount to less than \$100/day	May not reduce penalty amount to less than \$200/day

In addition to the above, new considerations for the court were established for civil enforcement actions.

2. The Ordinance established a new subsection which outlines specific enforcement mechanisms and penalties for alterations, mergers, construction, or demolition of buildings with one or more Residential Unit, illegal work that violates Section 317, or work which results in the illegal removal of one or more Residential Units, or the addition of more than three Unauthorized Residential Units. The subsection also established specific enforcement actions for work that illegally alters or damages a Historic structure. A summary of these changes are as follows:

Illegal Alteration, Merger, Construction, Demolition/Addition of Residential Units or Damage to Historic Structures			
		The Way It Was	The Way It Is Now
1	Penalty Amount	Up to \$250/day	<p>The up to \$1,000/day fine:</p> <p>AND</p> <p>Up to \$250,000/unit added or lost. This applies to the loss of one or more units or the addition of more than 3 unauthorized Residential units (where the violation takes place on or after 3/1/23).</p> <p>AND</p> <p>Up to \$500,000/each structure significantly altered or damaged/demolished for historic buildings</p> <p>Within 12 months of enactment, Planning Commission must adopt factors and criteria to guide ZA on determining appropriate penalty amount for the \$250K one-time penalty.</p> <p>Within 12 months of enactment, Historic Preservation Commission must adopt definitions for “significant alteration or damage” and “demolition” as applied to historic properties for the \$500K one-time penalty.</p>
2	Violation Counts	Separate units committing separate violations <i>may</i> be enforced as separate counts.	<p>Each unit “lost” is a separate violation</p> <p>Each unit added illegally is a separate violation (however the additional fine is not triggered until more than 3 unauthorized units are added illegally)</p> <p>For historic buildings, each structure “damaged/demolished” is a separate violation</p>
3	ZA Hearing Proceedings	Same as other 176 violations (see previous chart)	<p>Same as other 176 violations (see previous chart)</p> <p>AND</p> <p>ZA shall consider: “the foregoing factors are in addition to the factors set forth in the fee schedule”</p>
4	Board of Appeals	May not reduce penalty amount to less than \$100/day	BoA may not reduce to less than \$50K/unit added or lost and no less than \$100K for each historic structure

Procedures including noticing requirements and appeal options for these types of violations will proceed through the same enforcement process as other violations of the Planning Code.

3. The Ordinance amended the Building Code to further clarify when, why, and how much penalties for violations of their code may be imposed.¹
4. The Ordinance deleted Section 176.1.

Link to Signed Legislation:

<https://sfgov.legistar.com/View.ashx?M=F&ID=11816002&GUID=9C9A056B-06FC-49ED-B9E0-96E9E87C4A98>

¹ The details of the changes to the Building Code are not discussed in this New Code Summary because they have no significant bearing on the effects to the Planning Code or the Enforcement Division's operations.