

Removal Of Housing Units (Legal Or Not) Becomes Even Harder In San Francisco

Under a new law effective in March 2016, conditional use approval by the Planning Commission is now required for the removal of most housing units *even if the unit is illegal*. Under the former law, conditional use approval was required only for removal of legal units, and only if they existed in certain zoning districts, or if three or more units were proposed for removal.

For units that are discovered to be illegal, the Building Department will now issue a Notice of Violation ordering the property owner to file a building permit application to legalize the unauthorized unit unless it can be shown it is "infeasible" to do so under the Building Code, or a serious and imminent hazard exists on the property due to the illegal unit.

A property owner is now required to obtain a building permit to legalize the unit unless the removal is proven to be "infeasible." The term "infeasible" has not been clearly defined as of yet. But certainly an inability to provide even one window in a bedroom, or to provide the Building Code required ceiling height, would be good examples of infeasibility. The need to spend a considerable amount of money would not generally show infeasibility. The Building Department is the agency that will decide.

Exceptions that used to allow Planning Department staff to approve the removal of a unit without a hearing also have been narrowed under the new ordinance. Approval by Staff without a Planning Commission hearing is now permitted only if the property owner can prove the illegal unit cannot be legalized (see above) or in the case of demolition, if the owner can show the unit is "unaffordable", which means it has a value of \$1,630,000 or higher. (The least expensive unit must meet the threshold regardless of the number of units in the building.) Under the new law, the approval by Staff for these "unaffordable units" is limited to properties in single family zoning districts.

Decisions made by the Planning Commission on Conditional Use Applications may be appealed to the Board of Supervisors.

The law is yet another device that the City is starting to use to reduce the number of residential tenant evictions in the City. Proponents of the new ordinance point out that illegal units often are occupied by tenants at below market rents who, after



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evictions, are typically unable to find replacement housing at the same rental rate. They conclude that restricting the removal of units will protect the less expensive housing stock. Although illegal units tend to be at lower rents, those who promote the new required legalization should keep in mind that once an owner pays the City fees, building code upgrades, consultants fees and more to legalize units, rent may have to go up.

Those who are in favor of producing badly needed new housing have concerns about the ordinance's impact on the production of new housing by slowing down removal of housing for construction of a higher number of housing units. Most importantly, even though the City may force an owner to legalize a unit, it cannot require someone to rent it out.

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