



MEMO TO FILE

March 22, 2021

Subject: Zoning Administrator Rules, Regulations, and Interpretations

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Background

Pursuant to Planning Code Section 307(a), the Zoning Administrator (ZA) issues rules, regulations, and interpretations they deem necessary to administer and enforce the provisions of the Code. Formal interpretations are listed within the Planning Code, as well as a series of topical bulletins (e.g. neighborhood notice, bicycle parking, affordable housing, etc.).

Amendments

The attached document details numerous ZA determinations to amend, repeal, or adopt new rules, regulations, and interpretations. Such determinations are typically issued in an ad hoc manner over time. However, these determinations are being issued together as part of a larger effort by the ZA to collect, analyze, and reflect on existing interpretations, document interpretations that have already been in use for some time, and establish new interpretations necessary to implement more recent Planning Code amendments.

Many updates in the attached document are technical and/or minor in nature. However, some of them are more substantive and will have greater impact on the day-to-day implementation of the Planning Code. These include, but are not limited to:

1. Defining a kitchen per the definition of a Dwelling Unit;
2. Repealing ZA Bulletin No. 1 - Developing Ground Floor Accessory Rooms in Residential Buildings (aka Rooms Down);
3. Clarifying permitted dwelling unit exposure for atypical configurations;
4. Clarifying permitted obstructions within the required rear yard;
5. Clarifying certain exemptions from neighborhood notification per Planning Code Section 311; and
6. Interpretations consistent with recent decisions by the Board of Appeals.

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While these updates are numerous, additional clean-up is still needed to address other Planning Code amendments, and the ZA intends to continue working to provide these updates in the future to provide more clarity to Department staff and the public. These include, but are not limited to:

1. Updating outdated references created by large ordinances like the Article 2 reorganization;
2. Updating and/or deleting outdated references created by the removal of parking requirements;
3. Updating ZA bulletins to respond to recent Planning Code Amendments, such as:
 - a. ZA Bulletin No. 2 – Curb Cuts;
 - b. ZA Bulletin No. 4 - Public Notification for Building Permits in Residential and Neighborhood Commercial Districts;
 - c. ZA Bulletin No. 5 - Buildable Area for Lots in RH, RM, RC, and RTO Districts; and
 - d. ZA Bulletin No. 9 - Bicycle Parking Requirements: Design and Layout.
4. Updating the Alphabetical Interpretations in the Planning Code to respond to updates in the Interpretations by Code Section.

Appeals

Each individual ZA determination in the attached document is separately appealable to the Board of Appeals within 15 days of issuance. A single appeal may not be filed to encompass two or more separate determinations.

Attachments:

Amendments to Zoning Administrator Rules, Regulations, and Interpretations of the Planning Code – Issued March 22, 2021

cc: Rich Hillis, Director of Planning
Planning Commission
Historic Preservation Commission
Board of Appeals
Elizabeth Watty, Director of Current Planning
Scott Sanchez, Deputy Zoning Administrator
Citywide Neighborhood Groups

Amendments to Zoning Administrator Rules, Regulations, and Interpretations of the Planning Code – March 22, 2021

NOTE: Additions are *single-underline italics Times New Roman*;
Deletions are ~~*strike-through italics Times New Roman*~~.

PLANNING CODE - INTERPRETATIONS

Office of the Zoning Administrator
The San Francisco Planning Department
~~1660 Mission Street 49 South Van Ness Ave, Suite 1400~~
San Francisco, California 94103-~~2414~~

These Planning Code Interpretations include changes through 2021~~10~~

PREFACE TO THE PLANNING CODE INTERPRETATIONS

ORGANIZATION: The Interpretations are organized in two ways: according to the Planning Code Section to which they relate and alphabetically. The Interpretations by Code Section are organized with the associated Planning Code Section at the left margin followed by the subject, the effective date, and text of the interpretation. Therefore, this document is most easily understood if it is used in combination with a current copy of the Planning Code.

TEXT STYLE: Within an Interpretation, key words or phrases may be bolded as an aid in locating the correct interpretation. **The bolding has no special significance.** It is not necessarily the core of, or the most important part of the interpretation. It is only an aid in distinguishing an individual interpretation and locating it. In the Interpretations, emphasis of meaning is expressed by ALL CAPITAL LETTERS except where Planning Code text is quoted with emphasis added, which text is underlined.

INTERPRETATIONS BY CODE SECTION

Code Section: 101.1

Subject: Change in use defined

Effective Date: /95 (Revised 3/21)

Interpretation: This Section states that Priority General Plan Policy findings need to be made whenever there is a change of use. What constitutes a "change of use" pursuant to this Section **is a change from one category of use to another category of use listed in the use table for the zoning use district of the subject lot.** Therefore, what constitutes a change of use could vary with the use district. For example:

~~Changing from one unit to two units in the RH-2 District is a change in use because a one-unit house and a two-family house are listed individually in the use table for that district. This would not constitute a change of use in the South of Market Districts because those use charts only list "Dwelling Units" and don't separately list one and two family houses.~~

~~Adding a dwelling unit to a building in an RM-2 District would not be a change in use unless the building previously had an RM-1 density (1:800) and the addition of the one unit would take the density beyond the RM-1 density.~~

Changing from a large, fast-food restaurant Limited Restaurant to a small, self-service restaurant Restaurant would be a change of use in the Neighborhood Commercial Districts *since because* these districts make a distinction between the two types of restaurants, ~~but~~ the same physical changes to a restaurant in the C-2 District would not be a change of use because the C-2 District does not make this distinction.

Adding a general advertising sign to a building currently containing only business signs would be a change of use *since because* general advertising signs are not allowed in some districts.

Developing anything on a vacant lot constitutes a change of use.

Code Section: 102

Subject: "Dwelling unit," developing ground floor accessory rooms in residential buildings

Effective Date: (Revised 3/21)

Interpretation:

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—See Appendix The Zoning Administrator bulletin regarding “developing ground floor accessory rooms in residential buildings” located in the Appendix was repealed on March X, 2021.

Code Section: 102

Subject: "Dwelling Unit," definition of a kitchen

Effective Date: 3/21

Interpretation:

The definition of a Dwelling Unit states that it is “designed for, or is occupied by, one family doing its own cooking therein and having only one kitchen.” However, the Planning Code provides no specific definition or parameters for a “kitchen.” Similarly, the Building Code also requires a Dwelling Unit to contain a kitchen but provides no specific definition.

For the purpose of defining a new Dwelling Unit in the Planning Code, the required kitchen shall consist of a room containing a full-size oven (gas or electric), a counter sink with each dimension greater than 15 inches, and a refrigerator/freezer of at least 12 cubic feet. For the purpose of defining a second kitchen within a Dwelling Unit, such a space may **not** contain a full-size oven (gas or electric) or cooktop range with more than two burners, but may contain a counter sink of any size and/or a refrigerator/freezer of any size. Stand-alone laundry sinks shall not be considered for the purpose of defining a kitchen in either scenario.

On a case-by-case basis, as determined by the Zoning Administrator, “Permanently Supportive Housing,” as defined in the Administrative Code, may be determined to be Dwelling Units even when providing only limited cooking facilities due to the unique nature of such housing.

Code Section: 124.1(d)

Subject: FAR and use size limit, Chinatown *SUD* Mixed Use Districts

Effective Date: 10/93

Interpretation:

This paragraph says that the floor area ratios normally applying to the Chinatown Mixed Use Districts shall not apply to uses which must relocate as a result of acquisition by the City. **This exemption shall apply as well to the use size limit imposed by Section 121.4** so that no conditional use authorization would be needed for such use with a floor area normally requiring a CU and such use with a floor area exceeding the amount that would normally be allowed by CU would be allowed as a permitted use pursuant to the conditions of this paragraph.

Code Section: 133

Subject: Side yard measurement

Effective Date: 1/86 *(Revised 3/21)*

Interpretation:

This Section provides for side yards in the RH-1(D) District based upon the width of the lot. Where a lot is wider at one end than at the other end, the side yard requirement at a given point is based upon the width of the lot at that cross section. As illustrated, that portion of a lot wider than 50 feet, for example, requires two side yards of five feet each. In another example, where a lot with a 40-foot frontage immediately becomes narrower than 40 feet, the side yard requirement applicable to lots of 40 feet to 50 feet in width does not apply but rather the side yard applicable to a lot between 31 feet and 40 feet in width applies.

Alternatively, a A side yard can be averaged pursuant to Section 130(e) to produce one consistent side yard requirement for lots that are generally triangular in shape (that is they either become wider or narrower over the depth of the lot). In this ~~in which~~ case, the width of the lot in the required rear yard and required front setback depth is disregarded and the average lot width is based upon the lot width at the rear of the required front setback and frontage and the lot width at the front of the required rear yard (the area of the lot in which the side yard requirement applies under Sections 130 and 133).

Code Section: 134

Subject: Fill-ins under nonconforming projections

Effective Date: 6/90 *(Revised 3/21)*

Interpretation:

It is an established policy to allow the enclosure of the void under a legal nonconforming enclosed projection extending into the required rear yard. Noting that a fence could not exceed a height of 10 feet, **this policy could not be applied to a situation where the void extends higher than ~~the equivalent of one story~~ 10 feet above existing grade at any point.** Such void could not be enclosed without a variance.

Code Section: 134

Subject: Rear yards, two buildings on a lot

Effective Date: 11/86 *(Revised 3/21)*

Interpretation:

Section 134(f)(e)(4)(C) states that is a through lot having both its front and its rear lot line along Streets, Alleys, or a Street and an Alley, and where an adjoining lot contains a residential or other lawful structure that fronts at the opposite end of the lot, the subject through lot may also have two buildings according to such established pattern, each fronting at one end of the lot, provided that all the other requirements of this Code are met. indicates that a through lot surrounded by through lots that are developed with buildings on both ends can also have a building on either end but that the depths of the adjacent buildings shall determine the depth of a yard which is to exist between the two buildings on the subject lot and that this yard shall be at least as deep as 25 percent of the subject lot's depth or 15 feet, whichever is greater. It further states that in such cases, the rear yard required for the subject lot shall be located in the central portion of the lot, between the two buildings on such lot, the depth of the rear wall of each building from the Street or Alley on which it fronts shall be established by the average of the depths of the rear building walls of the adjacent buildings fronting on that Street or Alley, or where there is only one adjacent building, by the depth of that building, and shall the total minimum rear yard for the subject lot be thus reduced to less than a depth equal to 30% of the total depth of the subject lot or to less than 15 feet, whichever is greater.

There is nothing in the Planning Code *which-that* addresses the yard requirements when a dwelling legally exists at the rear of a lot that is not a through lot and there is a proposal to build another structure in the "buildable area" of this lot. The Code places a greater requirement on a through lot than on a lot that is not a through lot. A minimum rear yard depth is required for the subject situation to correct this inequity and to fulfill the intent of the rear yard provisions. The minimum rear yard required for any residential development under the Planning Code is 25 percent of the subject lot's depth or 15 feet, whichever is greater. Therefore, **the minimum depth of a yard between two buildings on a lot in the subject situation is 25 percent of the subject lot's depth or 15 feet, whichever is greater.** (It is noted that Section 140 of the Planning Code [titled, "All Dwelling Units In All Use Districts To Face On An Open Area"] will normally require a minimum of 25 feet in most situations that conform to the description of the subject situation.)

Code Section: 135(c) and 136(c)(21)

Subject: Usable Open Space – Landscaping

Effective Date: 3/21

Interpretation:

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Section 135 requires minimum amounts of private and common usable open space for dwelling units and group housing and allows certain permitted obstructions as outlined in Section 136. Section 136(c)(21) generally allows “landscaping and garden furniture” within required usable open space. In order for landscaping to count towards the usable open space requirement, it must be usable and accessible. In the case of landscaping provided in large raised planters that are not readily accessible from adjacent usable open space, only that portion within the first 3 feet of the usable open space shall be counted towards the usable open space requirement. Larger, inaccessible areas of landscaping shall not be counted towards the usable open space requirement.

~~Code Section: 136(e)(23)~~

~~Subject: Permitted obstruction in rear yard~~

~~Effective Date: 1/88~~

~~Interpretation:~~

~~—Despite the plural construction of the language in this paragraph, only one such shed or structure allowed by this paragraph will be allowed per lot.~~

Code Section: 136(c)(23)

Subject: Permitted obstruction in rear yard

Effective Date: 3/21

Interpretation:

The interpretation of Planning Code Section 136(c)(23) dated 1/88 is hereby revoked and superseded by this interpretation. Section 136(c)(23) allows “Other structures commonly used in gardening activities, such as greenhouses and sheds for storage of garden tools, if no more than eight feet in height above grade and covering no more than 100 square feet of land.” The previous interpretation found that despite the plural construction of the language in this paragraph, only one shed or structure allowed by this paragraph will be allowed per lot. On October 6, 2020, the Board of Appeals released a Notice of Decision and Order in Appeal No. 20-010 that overruled a Zoning Administrator Letter of Determination citing the previous interpretation. In their findings, the Board of Appeals determined that Section 136(c)(23) does not specify the number of structures that are allowed and ruled that more than one structure is allowed provided that the structures are contiguous with a maximum area of 100 square feet.

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~~Code Section: 136(c)(25)(B)(ii)~~

~~Subject: Obstruction into 12-foot extension's side yard~~

~~Effective Date: 1/91~~

~~Interpretation:~~

~~—This Paragraph allows a two-story, 12-foot extension of a deck or building into the required rear yard if a five-foot side yard is provided on both sides of the feature. Previous interpretations have treated this side yard differently than open areas required by other sections of the Code and have not allowed all the Section 136 obstructions into them. Such interpretations have determined that these side yards must be unobstructed from the ground up except for a deck within 3 feet of grade and that any other pre-existing obstructions must be removed before this feature would be 1/6 (10 inches) into the five-foot allowed. Another exception permitted in these side yards is an eave not extending more than side yard dimension. The 1/6 concept is borrowed from Paragraph 136(c)(1)(B) which limits obstructions such as eaves into other open areas.~~

Code Section: 136(c)(25)(C)

Subject: Railings on 12-foot Obstructions

Effective Date: 3/21

Interpretation:

This subsection regulates the height and location of fences and windscreens on top of permitted 12-foot obstructions. However, it does not provide standards for railings on top of such obstruction that may be required in order for that area to be used as useable open space. Therefore, any such railing may be solid, such as a firewall along a property line, but shall be no higher than 42 inches above the roof of such obstruction.

Code Section: 136(c)(26)

Subject: Underground Structures within Required Yards

Effective Date: 3/21

Interpretation:

This subsection permits garages to be underground, or under decks conforming to the requirements of Sections 136(c)(24) or (c)(25) if their top surfaces are developed as usable open space, provided that no such garage shall occupy any area within the rear 15 feet of the depth of the lot. However, it is long-standing Planning Department practice to permit such obstruction into required yards for any type of underground building that meets these provisions, and not

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limit them to garages. Therefore, any building that meets the strict provisions of Section 136(c)(26) may be permitted within required yards, and such obstruction is not limited to only garages.

Code Section: 140(a)

Subject: Dwellings to “face directly” onto an open area

Effective Date: 3/21

Planning Code Section 140 regulates exposure requirements for dwelling units and group housing. Exposure may be satisfied by having required windows (as defined by Section 504 of the San Francisco Housing Code) in a room of at least 120 square feet “face directly” onto a qualifying open area. These windows must “face directly” on the street, rear yard, or open area. A question arose as to what qualifies as facing directly onto one of these features. The Building Code contains provisions for depth of structural projections over windows in habitable rooms. The Building Code states that these shall not project greater than 9 feet from the required window and that the height of these projections shall not be less than 7 feet measured from the floor to the lowest projection above. A window(s) required to satisfy Section 140 may be located beneath such a projection and still be considered to “face directly” onto the street, rear yard, or open area. However, such area beneath a projection will not count towards the minimum dimensions for a qualifying open area.

Code Section: 140(a)(1)

Subject: Dwellings to face an open area

Effective Date: 3/90 (Revised 3/21)

Interpretation:

This Section says that each dwelling unit or group housing use must face a public right-of-way or ~~an~~ qualifying open area on the subject lot ~~with certain minimum widths for certain of these areas~~. It was clarified that in order to satisfy this requirement, the public alley must be open areas mentioned in this paragraph that need to be at least 25 20 feet in width and the side yard must be at least 25 feet in width are the public alley and side yard. By definition, a A public street is ~~by definition~~ at least 30 feet in width. The rear yard need not be 25 feet in width and depth as long as it complies with the Code.

Code Section: 140(a)(1)

Subject: Exposure – Side Yard and Outer Court

Effective Date: 3/21

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Interpretation:

This Section requires each dwelling unit or group housing use to face a qualifying right-of-way or open area. It was clarified that in order to be considered a side yard for purposes of this Section, it must be both at least 25 feet wide AND extend the entire depth of the lot. If a side yard is less than 25 feet wide or does not extend for the entire depth of the lot, it will be treated as an outer court.

Code Section: 140(a)(1)

Subject: Exposure – Minimum Open Area

Effective Date: 3/21

Interpretation:

This Section says that each dwelling unit or group housing use must face a qualifying right-of-way or open area, including a Code-complying rear yard. It was noted that some zoning districts, including the Chinatown Mixed Use Districts, are subject to a site coverage requirement instead of a rear yard requirement. In these cases, an open area resulting from the site coverage requirement may be considered a qualifying open area similar to a Code-complying rear yard for purposes of Section 140. This finding may be made by the Zoning Administrator on a case-by-case basis if the open area meets all of the following:

1. The size of the open area is equal to, or greater than, the entire noncovered area requirement resulting from the site coverage requirement;
2. Each horizontal dimension of the open area is a minimum of 15 feet;
3. The open area is placed in a manner that provides optimal light and air to the subject and adjacent properties; and
4. The open area is wholly or partially contiguous to the existing midblock open space formed by the rear yards of adjacent properties.

Code Section: 140(a)(2)

Subject: Exposure – Noncomplying Structure ~~Dwelling unit exposure provision, noncomplying structure~~

Effective Date: 9/88

Interpretation:

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A lot (AB 6693/10) had a building at both the front (abutting Arlington Street) and the rear of the lot. The rear of the lot abutted a City-owned lot (Assessor's Lot No. 24) between the subject lot and San Jose street. On the City-owned lot, a sidewalk ran parallel to San Jose street and abutted the subject lot. Beyond the sidewalk, the City-owned parcel was undeveloped and sloped down to the street as if it were part of the street right-of-way. The question was whether the house at the rear of the subject lot directly faced San Jose and therefore conformed to Subparagraph (a)(1) of this Section. **The City-owned lot could not be considered to be part of the street right-of-way** and therefore, any addition to the complying house on the front of the subject lot would have to provide the open area between it and the noncomplying house at the rear per Subparagraph (a)(2) of this Section.

Code Section: 140(a)(2)

Subject: Exposure – Minimum Open Area ~~Dwelling units to face an open area~~

Effective Date: Unknown

Interpretation:

This Paragraph states that, as an alternative to facing a street or alley, a dwelling unit may face an open court which is at least 25 feet in every horizontal direction. The question arose whether the minimum dimension of such court shall be 25 feet or 25 percent of the lot depth, whichever is greater. It was clarified that **the minimum requirement is 25 feet, not 25 percent of the lot depth.**

Code Section: 140(a) and (b)

Subject: Exposure – Face Directly

Effective Date: 3/21

Interpretation:

Planning Code Section 140 regulates exposure to light and air for dwelling units and group housing. Exposure may be satisfied by having required windows (as defined by Section 504 of the San Francisco Housing Code) in a room of at least 120 square feet “face directly” onto a qualifying street, rear yard, side yard, outer court, or open area. A question arose as to what qualifies as “facing directly” onto a qualifying open area when the required windows face onto a sunken patio, most typically facing a rear yard on an upsloping lot. In these cases, the qualifying window must meet all of the following requirements to be considered to face directly onto the qualifying open area:

1. The lowest sill of the window must maintain an unobstructed access plane of 45 degrees to the edge of the qualifying open area;

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2. The highest level or sill of the window must maintain an unobstructed access plane of 45 degrees to the edge of the qualifying open area; and
3. The window must maintain an unobstructed access plane of 45 degrees in each lateral direction from each edge of the window to the edge of the qualifying open area. However, one such lateral plane is permitted to not reach the qualifying open area if it first terminates at a property line.

Any such qualifying window that provides this unobstructed 45-degree access will be considered to “face directly” onto the qualifying open area.

Code Section: 140(a) and (b)

Subject: Exposure – Required Windows

Effective Date: 3/21

Interpretation:

Planning Code Section 140 regulates exposure requirements for dwelling units and group housing. Exposure may be satisfied by having required windows (as defined by Section 504 of the San Francisco Housing Code) in a room of at least 120 square feet “face directly” onto a qualifying open area. In calculating the qualifying area of the required windows for purpose of this section, only that portion within 7 feet 6 inches of the finished floor shall be counted. If a window extends higher than 7 feet 6 inches above the finished floor level, window area above such height shall not count towards the required window area.

Code Section: 145.1(c)(6)

Subject: Fenestration and Visibility

Effective Date: 3/21

Interpretation:

Section 145.1(c)(6) requires that “frontages with active uses that are not residential or PDR must be fenestrated with transparent windows and doorways for no less than 60 percent of the street frontage at the ground level and allow visibility to the inside of the building.”

Fenestration:

To ensure that the ground level fenestration is proportional to the façade, the required fenestration should be measured as a percentage of the area of the ground level façade and not as a percentage of the linear street frontage. In addition, only the portion of the façade with active uses must be so fenestrated.

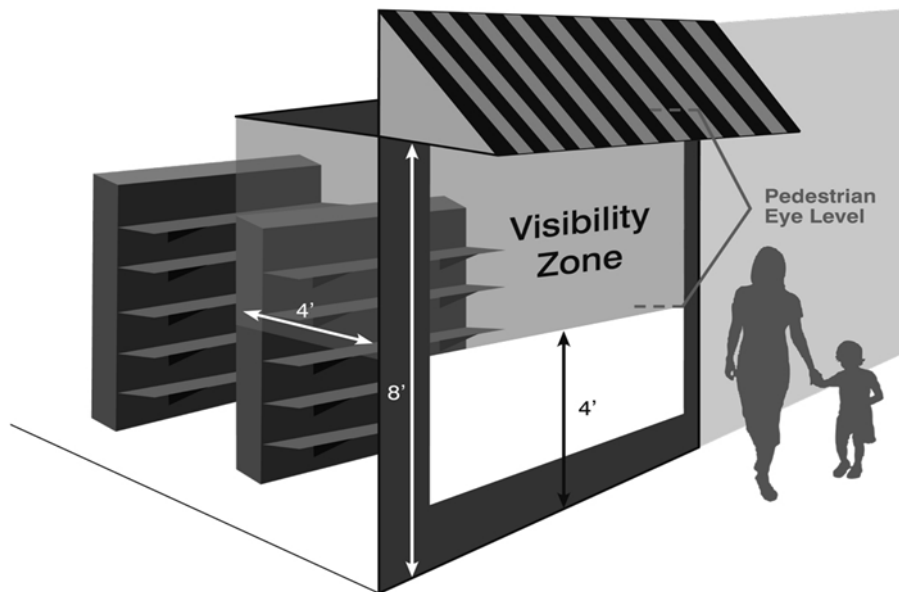
Visibility:

To ensure visibility into active spaces, any fenestration of active uses provided at pedestrian eye level must have visibility to the inside of the building. The following definitions apply:

- 1) **Pedestrian Eye Level** includes the space that is between 4 feet and 8 feet in height above the adjacent sidewalk level, following the slope if applicable.
- 2) **Visibility to the Inside of the Building** means that the area inside the building within 4 feet from the surface of the window glass at pedestrian eye level is at least 75 percent open to perpendicular view.

Therefore, any fenestration of frontages with active uses must have visibility to the inside of the building with at least 75 percent open to perpendicular view within a 4-foot by 4-foot “visibility zone” at pedestrian eye level. This visibility zone is located between 4 feet and 8 feet in height above sidewalk level and extends 4 feet from the surface of the window glass inside the building.

Notwithstanding the above visibility requirement, individual products for sale or used in service and on display inside the building are not restricted; and, window signs not exceeding 1/3 the area of the window on or in which the signs are located are not restricted if such signs are permitted by the Planning Code.



Code Section: 155(r)(4)

Subject: Curb Cut Restrictions

Effective Date: 3/21

Interpretation:

Section 155(r) regulates new vehicular access on protected pedestrian, bicycling, and transit-oriented streets. Ordinance No. 277-18 amended this section to expand the requirements for discretionary approvals for new vehicular access on such streets. The controls of Section 155(r)(3)(A) specifically exempt RH, M, NC-S, P, PDR, and SALI districts. The controls of Section 155(r)(4) do not specifically exempt RH, M, NC-S, P, PDR, and SALI districts. However, the text and graphics within the Planning Department's case report communicate clearly that the intent of the ordinance was to exempt RH, M, P, PDR, and SALI districts from both Subsections (3)(A) and (4). The exemption for the NC-S District was added by the Board of Supervisors. The intent to exempt these districts from both subsections is further documented in the Planning Department's Planning Code Summary document for Ordinance No. 277-18, and these exemptions have been implemented as such since the ordinance took effect on December 20, 2018.

Therefore, the RH, M, NC-S, P, PDR, and SALI districts are also exempt from the controls of Section 155(r)(4).

Code Section: 181

Subject: Alteration of a nonconforming use

Effective Date: 12/85 (Revised 3/21)

Interpretation:

This Section governs the enlargement, alteration and reconstruction of nonconforming uses and says that generally, nonconforming uses may not be enlarged, intensified or moved to another location but that alterations may be allowed "any portion of the structure that will not thereafter be occupied by the nonconforming use." A building was nonconforming because it legally contained four units which is one more unit than would be permitted in the current zoning district. The owner wanted to **enlarge three of the units by moving one** to a noncomplying building in the rear yard and expanding existing units into its space. This was allowed provided the owner thereafter **designated one unit as the nonconforming unit** which would not be able to be enlarged *beyond the existing building's envelope* or moved for as long as there were nonconforming units on the lot. (Previous rulings stated that noncomplying structures in the rear yards can be converted to dwellings provided there is no expansion of the structure.) Also, the owner must seek and justify a variance if the rear, noncomplying building does not already contain a dwelling unit because making such building a dwelling exacerbates the rear yard deficiency (see Interpretation 188(a) below). Further, the owner may not always have the option of which unit to designate as the nonconforming unit. In this case, after the unit proposed to be in the noncomplying building is established in the noncomplying building, it would have to be considered the nonconforming unit under principles established by other Zoning Administrator determinations.

Code Section: 181(c)

Subject: Expansion of Legal Nonconforming Dwelling Units

Effective Date: 3/21

Interpretation:

This Section regulates properties that are legal nonconforming with respect to density. In a case where a building has a nonconforming number of dwelling units, and the expansion of a unit(s) is proposed:

- If the proposed unit expansion is contained within the existing building envelope, then the unit is expanding in a manner consistent with Section 181(c) for units nonconforming as to density, and no Notice of Special Restrictions (NSR) is required in order to designate the conforming and nonconforming units.

- If the proposed unit expansion goes beyond the existing building envelope, an NSR must be recorded on the property to designate the conforming and nonconforming units, which is consistent with long-standing Planning Department practice.

Code Section: 186.1(b)

Subject: Nonconforming use, "significant" defined

Effective Date: 12/88, 5/98 (Revised 3/21)

Interpretation:

This Section states that a nonconforming use in a Neighborhood Commercial District cannot be significantly altered, enlarged or intensified, except upon approval of a conditional use. Subsection 178(c) places the same limitation on conditional uses. The term "significantly" is not defined in the Code and is therefore subject to the Zoning Administrator's interpretation. The list below provides examples of those proposals **which are significant** and therefore require a conditional use authorization and those which ~~are~~ are not significant.

Enlargements that are significant:

-Expansion of an existing establishment into an adjacent storefront ~~which~~ that had been occupied by a nonconforming use in a different use category.

-Expansion of more than 25 percent of the floor area or more than 500 square feet, whichever is less.

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-Expansion of an extraordinarily large development ~~over of more than~~ 500 square feet, ~~but less than 25 percent regardless of the percentage~~ of the floor area.

-Expansion of floor area in kitchens shall be considered on a case-by-case basis.

Intensifications that are significant:

-Exchange of a No. 47 ABC license (on-sale full bar with food service mandatory and minors permitted) for a No. 48 (on-sale full bar with food service optional and minors not permitted).

Enlargements that are NOT significant:

-Expansion up to 25 percent of the floor area, ~~but not exceeding or~~ 500 square feet, whichever is less.

-Expansion of an extraordinarily large development up to 500 square feet, regardless of the percentage of the floor area.

-Expansion of floor area in kitchens shall be considered on a case-by-case basis. ~~Intensifications that are NOT significant.~~

Intensifications that are NOT significant:

-An addition of kitchen equipment and/or menu items to an existing restaurant.

-Exchange of a No. 42 ABC license (on-sale beer and wine bar) for a No. 48 (on sale full bar with food service optional and minors not permitted).

~~Code Section: 226(d)~~

~~Subject: Research and development facilities, location~~

~~Effective Date: 4/88 Zoning Bulletin dated 4/26/88~~

~~Interpretation:~~

~~—This Subsection describes where light manufacturing, industrial or chemical research or testing laboratory or experimental laboratory are allowed in the C and M Districts. A zoning bulletin dated 4/26/88 describes the various types of activities that could be involved in a research and development facility and goes on to explain which types can be permitted or conditional uses in the C-3, C-M, M-1, M-2 and proposed SOMA Districts. (See Appendix with this Subsection designation.) Uses not open to the public are not allowed in NC Districts.~~

~~Code Section: 207.7(b)~~

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Subject: Driveway access over residential lot

Effective Date: 7/91

Interpretation:

~~—This Paragraph allows, as a permitted or conditional use, a driveway in an R District to a C or M District. The definition of a C District does not include an NC District. However, the intent of this paragraph was to include such access to be also to an NC District.~~

Code Section: 260(a)(2)

Subject: Measurement of pitched roof

Effective Date: 6/96 (Revised 3/21)

Interpretation:

This Paragraph says that a pitched roof shall be measured to its midrise. This method of measurement could encourage buildings to be built that have higher roofs than would otherwise be designed in order to maximize the floor area and market potential. This could be done by placing habitable floors within the building volume above the eave line using dormer windows, skylights or windows on walls surrounded by the pitch of the roof. To neutralize this tendency, in cases where habitable floors occupy the area above the eave line, **the point that is the minimum legal ceiling height for occupancy per the Building Code shall be used as a guideline to determine the location of the bottom of the roof for purposes of this paragraph** ~~shall be taken as a point which is the minimum legal ceiling height above such floor. Additionally, it should be clarified that any portion of a building that is legally nonconforming as to height may be occupied by a use that is otherwise permitted.~~

~~This interpretation has the unintended effect of encouraging horizontal additions by making existing volume within certain buildings non-habitable, when, in the absence of this interpretation, habitable space could be developed within existing attic spaces, and with little impact on the surrounding properties. The concern expressed regarding "higher roofs than would otherwise be designed" can now be addressed by the Residential Design Guidelines where they apply, and by the Urban Design Element of the General Plan.~~

~~Therefore this interpretation is hereby revoked, and heights of sloping roofs shall be measured as described in Section 260(a) based on exterior dimensions of the building, without regard to the presence of habitable floors above the eave lines. All roof forms shall be reviewed under the Residential Design Guidelines where they apply, by the Urban Design Element of the General Plan, and/or other applicable design guidelines. Inappropriate roof forms shall be modified, and, if necessary, be brought to the Planning Commission for review.~~

Code Section: 260(b)(1)(e)

Subject: Bathrooms Above the Height Limit

Effective Date: 3/21

Interpretation:

This Section exempts enclosed space related to the recreational use of the roof not to exceed 16 feet in height. The question arose as to whether a bathroom at the roof level associated either with residential open space or a POPOS would fall under this provision. Bathrooms are permitted under this provision only when "related to the recreational use" of the roof (i.e. POPOS, residential open space, etc.) Bathrooms are not permitted as part of a commercial enterprise (i.e. rooftop restaurant/bar/event space, office building, etc.).

Code Section: 261.1

Subject: Additional Height Limits for Narrow Streets and Alleys

Effective Date: 3/21

Interpretation:

This Section regulates development patterns and setbacks for properties abutting narrow streets. The Code diagram represents a scenario where the street/alley is an improved right-of-way that is generally flat and running perpendicular to the subject property line. A question arose in a case where the street/alley is unimproved and sloped in multiple directions. This interpretation clarifies that:

- Where the street or alley is unimproved, the base datum for measurement of the 45-degree angle will be taken literally directly opposite of the subject property line, at a distance that corresponds with where the opposite property line begins, but at the same elevation as the point taken from the subject property, as though it were a level, improved right-of-way;

- Where a property subject to this provision has a laterally sloping frontage, the base datum measurement shall follow the same provisions for measuring height on laterally sloping lots as described in Section 260(a)(3), except that these provisions will apply even in height districts above 65 feet.

Code Section: 261.1(d)(4)

Subject: Narrow Streets Provisions for Mid-Block Passages

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Effective Date: 3/21

Interpretation:

This section contains two slightly conflicting subsections. Subsection (A) applies to passages between 20 and 30 feet wide, and Subsection (B) applies to passages between 30 and 40 feet wide. Because 30 feet is called out in both subsections, the question arose of which subsection applies to a passage that is exactly 30 feet wide. Relying on the general principle that the more restrictive control applies when there are conflicting provisions, a 30-foot wide passage is subject to the controls of Subsection (A) because it requires a larger setback and at a lower height. The controls of Subsection (B) apply to any passage greater than 30 feet, but no greater than 40 feet in width.

Code Section: 311(b)

Subject: Applicability of Section 311 to Neighborhood Agriculture

Effective Date: 3/21

Interpretation:

The interpretation of Section 311 issued 11/08 (Amended 06/09) concerns the notification requirement of non-residential uses and their demolition, expansion, or change in occupancy. The interpretation states that it would be inconsistent with the intent of the Planning Code for conforming uses within residential districts to be subject to Section 311 notification while demolishing, expanding, or changing the occupancy of non-residential uses would not require Section 311 notification given that these non-residential uses are typically nonconforming or conditional uses within residential districts. The interpretation states that all changes of use in RH and RM are subject to Section 311 notification.

While Neighborhood Agriculture is a non-residential use, it is principally permitted in all R districts. This is likely due to the minor nature of such use, and its size limitation. As such, it does not follow the same logic of the prior interpretation that such uses are typically a nonconforming or conditional use. Therefore, a change of use to Neighborhood Agriculture is not subject to Sec. 311 neighborhood notification.

Code Section: 311(b)(2)

Subject: Alteration – Removal of Framing

Effective Date: 3/21

Interpretation:

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This subsection states that for the purposes of this section, an alteration is defined as the removal of more than 75% of a residential building's existing interior wall framing or the removal of more than 75% of the area of the existing framing. In applying this provision, consistent Planning Department practice has been to calculate removal of framing on a linear basis on the floor plans. The question arose about how to handle specific situations where there may be a doorway, window, or pony wall (half height wall). The following describes possible scenarios and whether it constitutes the removal of framing:

- If only removing a door, then this would not count as removal (because no framing is being removed);
- If only removing a door and filling in the opening with a new wall, then this would not count as removal (because no framing is being removed);
- If removing the door and the door opening is floor to ceiling (i.e. no header above), then this would not count as removal (because no framing is being removed);
- If removing the door AND header above the door, then this would count as removal (because the header constitutes "framing" per Section 311);
- If removing a wall to add a door or window, then this would count as removal (because the wall constitutes "framing" per Section 311);
- If reducing the height of a wall (resulting in a pony wall), then this would count as removal (because the wall constitutes "framing" per Section 311);
- If moving a wall, then this would count as removal (because the wall constitutes "framing" per Section 311).

Code Section: 41A.4(d)

Subject: TSF Calculation Method for Hospitals

Effective Date: 3/21

Interpretation:

The Calculation Method for Hospitals includes a multiplier that is based on the "net increase of licensed inpatient beds created by the proposed Hospital use" and the "total number of existing licensed inpatient beds in the City and County of San Francisco" for the associated licensed hospital operator. This interpretation clarifies three points:

1. The denominator represents the total existing number of beds for a particular operator anywhere in the City, not just at the campus with new or expanded Hospital use;

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2. The value of the denominator cannot be less than 1. In the case of a new Hospital operator with no existing beds in the City, the denominator shall be set to 1
3. The resulting multiplier ratio cannot be greater than 1. In the case of a project where the number of beds being created exceeds the number of existing beds for the Hospital, this ratio shall be set to 1.

~~Code Section: 703.2(a)~~

~~Subject: NCD use category for recording studio~~

~~Effective Date: 4/91~~

~~Interpretation:~~

~~A recording studio is considered to be a business or professional service if it is a retail use. The test of retail use is whether the business caters to the individual member of the public. If the general public can use the recording studio, it is a retail use; if the facility is available only to "the trade," it is not a retail use but a nonretail service as defined by Section 790.100 and not allowed in the NC Districts. Since a nonretail studio is analogous to a wholesale establishment, it would be permitted in any C-3 District and in the C-M, M-1 and M-2 Districts.~~

Code Section: 703.2(b)

Subject: ~~No. 38~~ Residential conversion limitations

Effective Date: 3/92 (Revised 3/21)

Interpretation:

Conversion of residential use to nonresidential use is controlled in various categories of use districts and is prohibited, conditional, or permitted depending on the zoning district and floor level. It ~~was~~ is long-standing policy that **converting approximately half of a 1,450 square feet dwelling unit to nonresidential use would constitute residential conversion even though half of the original floor area would remain residential** ~~since~~ because removing this area of a dwelling unit would normally require reducing the number of bedrooms. The purpose of the limitation was to appropriately preserve living accommodations in the City. Reducing the number of bedrooms in a dwelling reduces the City's residential capacity from a per capita point of view. ~~See also "Conversion of dwellings" in the Interpretations—Alphabetical.~~

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Code Section: 703.2(b)(1)(C)

Subject: Permitted NC use as accessory use

Effective Date: 11/92

Interpretation:

—A second floor dwelling was to be used for a personal service use in the Union Neighborhood Commercial District while continuing to be used as a dwelling. Personal service is a permitted use on the second floor in this district but removal of a dwelling unit on the second floor would require a conditional use. Therefore, a personal service could operate in this dwelling unit together with the dwelling unit. If the dwelling unit were to be physically removed, it would be considered an illegal conversion requiring a conditional use authorization to abate. See Interpretation 790.84 Residential conversion, defined 5/96 for an explanation of what constitutes conversion.

APPENDIX

Certain Interpretations do not lend themselves to being incorporated into the main document. These are Interpretations that contain graphics or extensive documents that are able to stand alone. Normally such documents will be referenced in the body of the Interpretation document and placed in the appendices which follow. In the appendix, entries are found in Planning Code Section order.

102.7 and 174 "ZONING ADMINISTRATOR BULLETIN"

*DEVELOPING GROUND FLOOR ACCESSORY ROOMS IN RESIDENTIAL BUILDINGS
BULLETIN 93.1 SAN FRANCISCO DEPARTMENT OF CITY PLANNING June 1993*

*—
Section 307 of the City Planning Code mandates the Zoning Administrator to issue and adopt such rules, regulations and interpretations as are in the Zoning Administrator's opinion, necessary to administer and enforce the provisions of (the City Planning) Code." [Section 7.502 of the San Francisco Charter charges the Zoning Administrator with the responsibility of administering and enforcing the Planning Code.]
The ruling provided in this and all other bulletins can be further explained by Planners staffing the Zoning Information Counter, in Room 502, 450 McAllister Street open 10 and 1 weekdays.*

*—
TOPIC: DEVELOPING GROUND FLOOR ACCESSORY ROOMS IN RESIDENTIAL BUILDINGS.*

RELEVANT CODE SECTIONS:

102.7 (the Definition of Dwelling Unit) and 174 (Compliance with Conditions)

—DATE: March 30, 1993

—RULING: In order to allow property owners to efficiently and cost effectively add livable space to their homes, but to hinder the creation of illegal residential units, proposals to develop ground floor rooms in residential buildings shall be reviewed according to a set of standards summarized in the Matrix to the right. These standards take into account 1) whether the building is proposed for new construction or is existing and

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~~proposed for alteration; 2) the type of access from the proposed rooms to the street and 3) the type of visual and spatial connection proposed between the ground floor rooms and rooms on the main floor of the unit (usually the floor above the ground floor). Terms used in the matrix are defined on Pages 2 and 3 with graphic examples and a brief explanation or how to use the matrix is found on Pages 3 and 4.~~

~~—In addition of the types of room uses listed in the matrix, which are all served by plumbing, nonhabitable storage rooms and habitable living areas not served by plumbing lines are also installed.~~

~~MATRIX DEFINITIONS~~

~~OPEN VISUAL AND SPATIAL CONNECTION BETWEEN FLOORS to a stair or other opening that allows an open, unobstructed view from habitable areas on the principal floor of occupancy to habitable rooms of the ground-level. There are no doors at either floor of the opening, nor could doors be easily added. A stairway with a completely open railing from top to bottom is a typical example. See graphics to the right.~~

~~LIMITED VISUAL AND SPATIAL CONNECTION BETWEEN FLOORS to a stair or other opening that provides direct access between the principal floor of occupancy and habitable areas of the ground floor but not necessarily an open view between these floors. Walled stairways with doors or with openings which could easily accommodate a door at one or both ends is a typical example. See graphics to the right.~~

~~TOTAL LACK OF VISUAL AND SPATIAL CONNECTION BETWEEN FLOORS to a situation where there is neither direct access nor open, unobstructed view between habitable areas of the principal floor of occupancy and habitable areas of the ground floor. Samples include stairways that lead from the principal floor to nonhabitable areas such as the garage. See graphics to the right.~~

~~ACCESSIBILITY TO THE STREET to how one exits and enters the ground floor rooms in order to get outside the building. Access is classified as either DIRECT or INDIRECT, defined below.~~

~~DIRECT ACCESS to doors which lead directly from habitable areas of the ground floor to the front yard or to the street or to rear yards or side yards when those rear yards or side yards lead directly to the street. See drawing to the right.~~

~~INDIRECT ACCESS to doors which only lead from habitable areas of the ground floor to the garage or to other interior common areas (such as laundry which serve one or more upper floor units) or to outdoor areas which do not lead directly to the street. See drawing to the right.~~

~~*NOTE there is no access from habitable ground floor rooms which lead either directly or indirectly to the street ground floor rooms can include all types of rooms listed in the Matrix.~~

~~HALF BATH to a bathroom that does not have a shower or a bathtub and which is not larger than 25 square feet in area.~~

~~WET BAR sink not exceeding 12 inches in width and length, allowed with a counter top not exceeding three feet in length.~~

~~ZONING BULLETIN—April 26, 1988~~

~~Planning Code Section 226(d), 226(e) and 226(f)~~

~~RESEARCH AND DEVELOPMENT FACILITIES PERMITTED IN C-3, C-M, M-1 and M-2 ZONING DISTRICTS~~

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Purpose: This bulletin is to clarify within which zoning districts Research and Redevelopment (R & D) facilities are permitted. A Research and Development facility has as its primary purpose scientific or technical research and development activities, including by way of example:

- 1) ~~Computer and communication equipment and facilities;~~
- 2) ~~Research and testing, equipment and facilities;~~
- 3) ~~Research laboratories support and related materials, equipment and support facilities;~~
- 4) ~~Libraries, archives, data storage and retrieval equipment and facilities;~~
- 5) ~~Limited manufacturing and production facilities and equipment ancillary to ft primary research and development activities;~~
- 6) ~~Support services and activities, such as maintenance, repair and storage, facilities and equipment;~~
- 7) ~~Administration and record keeping services needed for management of research and development and ancillary activities;~~
- 8) ~~Conference, meeting, instructional and training facilities and equipment.~~

Code Provision: Code Section 226(d) permits light manufacturing with certain exceptions as a principal use in M-1 and M-2 Zoning Districts.

- - ~~Code Section 226(e) permits an industrial or chemical research or testing laboratory, not involving any danger of explosions as a principal use In C-3, C-M, M-1 and M-2 Zoning Districts.~~
- - ~~Code Section 226(f) permits an experimental laboratory as a conditional use in C-3-S and C-M Zoning Districts and as a principal use in M-1 and M-2 Zoning Districts.~~

Determination: All aspects of a Research and Development facility may be permitted as a principal use in M-1 and M-2 Zoning Districts. An R & D facility which does not involve any danger of explosions and does not include manufacturing and production facilities may be permitted as a principal use in C-3, C-M, M-1 and M-2 Zoning Districts. An R & D facility involving explosives may be authorized as a conditional use in C-3-S and C-M Zoning Districts. An R & D facility involving manufacturing and production limited as provided by Code Section 226(a) and (b) also may be permitted as principal uses in C-3 and C-M Zoning Districts.

- - ~~All floor area within such a Research and Development facility shall be considered to be used for Research and Development activities, and not for separate functions such as educational, manufacturing, office or storage use.~~

Determination Within Proposed South of Market Zoning Districts:

- - ~~M-1 and M-2 Districts in the South of Market Area are proposed to be rezoned to HSL (Housing/Service Light Industrial), SLJ (Service/Light Industrial) and SSO (Service/Secondary Office) zoning districts. In these districts, light industrial is proposed to be listed as a use which would include light manufacturing/industrial or chemical research/testing laboratory not involving any danger of explosions. Light industrial is permitted as a principal use in the three South of Market Zoning Districts cited above, and also permitted as a principal use in the RHD (Residential Hotel) and SPD (South Park) South of Market zoning districts.~~
- - ~~Robert W. Passmore
Assistant Director of Planning Implementation
(Zoning Administrator)~~

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RWP:pno/327