



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change

HEARING DATE: FEBRUARY 06, 2014

Project Name: **Amendments allowing the reconstruction of structures that are non-complying with regard to Floor Area Ratio within the C-3-R District**

Case Number: 2013.1695T [Board File No. 13-1059]

Initiated by: Supervisor Chiu / Introduced October 29, 2013

Staff Contact: Elizabeth Watty, Current Planning
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Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
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Recommendation: **Recommend Approval with Modifications**

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PLANNING CODE AMENDMENT

The proposed Ordinance would amend Planning Code Section 188 (Noncomplying Structures: Enlargements, Alterations and Reconstruction), to allow noncomplying secondary structures located within the C-3-R (Downtown Retail) Zoning District that exceed a property's maximum floor area ratio limit to be reconstructed after a voluntary demolition or partial demolition, if certain findings can be made by the Planning Commission through the Downtown Project Authorization process (Planning Code Section 309). The Ordinance would not modify other existing restrictions relating to the demolition of buildings, including processes relating to historic properties.

The Way It Is Now:

Planning Code Section 188 prohibits the reconstruction of noncomplying structures after a voluntary demolition, even if the proposed reconstruction would result in a net decrease in the property's floor area ratio (FAR).

The Way It Would Be:

The proposed Ordinance would allow through the Downtown Project Authorization process, noncomplying secondary structures¹ located within the C-3-R Zoning District to be removed, in whole or in part, and reconstructed pursuant to the following criteria:

1. The project would promote and enhance the C-3-R District as a retail destination;
2. The project would result in an increased benefit to the public and the adjacent properties;
3. The project would enhance the aesthetic qualities and/or character of the property;

¹ For the purposes of this legislation, a secondary structure means a structure located on a lot with two or more structures that has no more than one-quarter of the gross floor area of the primary structure on the lot.

4. The project would result in a net decrease of gross floor area of all structures on the property;
5. The project would result in a structure that more closely conforms to the floor area ratio limit;
6. The project would not result in an adverse impact to a historic resource;
7. The project would not cause significant shadows or wind impacts on public sidewalks or parks;
8. The project would not obstruct significant public view corridors; and
9. The Project would not significantly impair light and air to abutting properties.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department recommends modifying the scope of this legislation so that it will only affect Lot 016 of Assessor's Block 0295, which is occupied by the Grand Hyatt Hotel and a retail store, most recently occupied by Levi Strauss, and has a current proposal to replace the Levi Strauss store with a retail store for Apple Inc. As currently drafted, the legislation would only apply to those properties in the C-3-R District that contain a secondary structure. In effect, this narrows the legislation's applicability down to one parcel: Lot 016 of Assessor's Block 0295. No other properties within the C-3-R District have a secondary structure. The Department believes that adding the block and lot number of the one affected parcel helps to clarify the applicability of the legislation and provide certainty that its effect is limited to this one parcel within the C-3-R District.

BASIS FOR RECOMMENDATION

Section 188 states that a noncomplying structure may be enlarged, altered or relocated, or undergo a change or intensification of use in conformity with the use limitations of this Code, provided that with respect to such structure there is no increase in any discrepancy, or any new discrepancy, at any level of the structure, between existing conditions on the lot and the required standards for new construction set forth in the Planning Code. However, a noncomplying structure that is voluntarily razed – in whole or in part – may only be reconstructed in full conformity with the requirements of the Planning Code.

The City's Downtown Retail District (C-3-R) is a regional center for retail shopping and includes many supporting uses, such as tourist hotels and other consumer services. It covers a compact area with the City, generally bounded by Bush Street to the north (with the exception of a few parcels that extend to Bush Street), the west side of Powell Street to the west, the north side of Mission Street to the south, and the west side of Third/Kearny Street to the east. It includes many properties that pre-date the Downtown Plan, which established the current FAR limits, thereby resulting in 38 parcels that exceed the current FAR controls.

Within the C-3-R District, there are 238 parcels, of which, 38 sites – or 16% - are noncomplying with regard to floor area ratio (FAR).

The table below identifies the 38 parcels in the C -3-R District that are noncomplying with regard to FAR:

STREET NO.	STREET	LOTAREA	BLDGSQFT	FAR
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450-464	Sutter St	23,597	294,416	12.48
390-390	Stockton St	3,528	34,215	9.70
433	Powell St	3,792	48,713	12.85
201-209	Post St	7,838	99,223	12.66
281	Geary St	6,073	104,872	17.27
55-65	Stockton St	2,287	100,715	44.04
321-323	Grant St	2,105	23,100	10.97
201-209	Grant St	8,865	96,870	10.93
132-140	Geary St	5,474	56,933	10.40
750-780	Market St	31,368	327,339	10.44
77-79	O'farrell St	7,219	68,472	9.49
701-703	Market St	5,218	94,519	18.11
50	03 rd St	39,594	490,000	12.38
432-462	Powell St	15,976	232,984	14.58
70-76	Geary St	6,118	120,334	19.67
37-45	Geary St	5,926	55,584	9.38
201-225	Powell St	9,577	97,137	10.14
77	O'farrell St	2,250	68,472	30.43
785	Market St	8,481	90,896	10.72
350-360	Post St	10,313	110,893	10.75
345	Stockton St	35,894	610,645	17.01
73-77	Geary St	13,931	132,356	9.50
170	O'farrell St	12,052	114,468	9.50
55-59	Stockton St	2,266	100,715	44.44
41 -55	Stockton St	6,046	100,715	16.66
55	04 th St	128,263	1,194,693	9.31
555	Pine St	20,631	356,820	17.30
340	Stockton St	8,142	92,000	11.30
300-330	Geary St	56,250	508,714	9.04
234-240	Stockton St	4,200	45,260	10.78
60	Maiden Lane	6,498	59,786	9.20

101	Stockton St	26,048	264,780	10.17
188	O'farrell St	7,599	81,360	10.71
281	Geary St	6,066	104,872	17.29
201-221	Powell St	1,854	97,137	52.40
111	O'farrell St	4,546	100,715	22.15
799	Market St	16,963	155,871	9.19
166-170	Geary St	5,378	48,600	9.04
233	Geary St	19,033	243,612	12.80

The Ordinance is further limited in scope by tying the controls to those sites with "Secondary Structures." With the Secondary Structure limitation, this Ordinance appears to apply to only one parcel: 345 Stockton Street (aka 300 Post Street), which is the site of the pending Apple Inc., retail store. The Apple store project would require the approval of this Ordinance in order to be approved. The Department's recommendation, discussed above, does not change the effect of the proposed Ordinance as drafted, but rather makes it more explicit that this Ordinance will only affect one parcel (Lot 016 of Assessor's Block 0295), now and in the future. The Department's recommendation has shifted since this item was originally scheduled for hearing, in response to concerns raised by several Commissioners about the unintended consequences that could result from applying this Ordinance to all of the properties that are noncomplying with regard to FAR within the C-3-R District, not just those with secondary structures. The Department appreciates those concerns, and has since modified our recommendation to support the legislation as drafted, with minor modifications to clarify its applicability within the C-3-R District.

The Department supports this Ordinance since nine other findings would have to be made by the Planning Commission at a public hearing through a Downtown Project Authorization process (Section 309), in order to grant the reconstruction of floor area that exceeds the site's maximum FAR. The Commission would need to make the findings that the project would promote and enhance the C-3-R District as a retail destination; result in an increased benefit to the public and the adjacent properties; enhance the aesthetic qualities and/or character of the property; result in a net decrease of gross floor area of all structures on the property; result in a structure that more closely conforms to the floor area ratio limit; would not result in an adverse impact to a historic resource; would not cause significant shadows or wind impacts on public sidewalks or parks; would not obstruct significant public view corridors; and would not significantly impair light and air to abutting properties. The project would also be subject to a public hearing by the Zoning Administrator, in order to grant a variance from the transparency requirements along Stockton Street.

The proposed Ordinance is very limited in scope and would affect only one parcel. It enables an irregularly-shaped building at 300 Post Street (345 Stockton Street) to be regularized in form, lowered in height, and reduced in overall square footage. This rezoning serves the public interest by enabling an improved and regularized building form at 300 Post Street, strengthening the street wall along Stockton Street, and by reducing the degree of noncompliance relating to FAR at 300 Post Street. This Ordinance gives the property owner of this one parcel more flexibility in how they can alter and improve the property, while ensuring that a noncomplying structure is becoming more in compliance with the spirit of Planning Code Section 188.

In sum, the Department supports the proposed Ordinance to permit a noncomplying structure on Lot 016 of Assessor's Block 0295 to be removed and reconstructed, with review by the Planning Commission through the Downtown Project Authorization process.

ENVIRONMENTAL REVIEW

On January 28, 2014, pursuant to CEQA Guidelines Section 15302, a Certificate of Determination of Categorical Exemption from Environmental Review was published by the Environmental Planning division of the Planning Department (Case No. 2013.0628E).

PUBLIC COMMENT

As of the date of this report, the Planning Department has received comments from the Service Employees International Union – United Service Workers West (“SEIU-USWW”) expressing opposition to this Ordinance. The Department has also received a letter in support of the proposed Apple, Inc. retail store project – which relies on this Ordinance – from the Union Square Business Improvement District.

RECOMMENDATION:	Recommendation of Approval with Modifications
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Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 13-1695T
- Exhibit C: Map of Potentially Affected Properties



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. XXXX

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Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
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Recommendation: **Recommend Approval with Modifications**

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE SECTION 188 (NONCOMPLYING STRUCTURES: ENLARGEMENTS, ALTERATIONS AND RECONSTRUCTION), TO ALLOW NONCOMPLYING SECONDARY STRUCTURES LOCATED WITHIN THE C-3-R (DOWNTOWN RETAIL) ZONING DISTRICT THAT EXCEED A PROPERTY'S MAXIMUM FLOOR AREA RATIO ("FAR") LIMIT TO BE DEMOLISHED, IN WHOLE OR IN PART, AND RECONSTRUCTED, IF CERTAIN FINDINGS CAN BE MADE BY THE PLANNING COMMISSION THROUGH THE DOWNTOWN AUTHORIZATION PROCESS (SECTION 309).

PREAMBLE

Whereas, on October 29, 2013, Supervisor Chiu introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 13-1059 which would amend Planning Code Section 188 (Noncomplying Structures: Enlargements, Alterations and Reconstruction), to allow noncomplying secondary structures located within the C-3-R (Downtown Retail) Zoning District that exceed a property's maximum floor area ratio limit to be demolished, in whole or in part, and reconstructed, if certain findings can be made by the Planning Commission through the Downtown Project Authorization process (Planning Code Section 309); and

Whereas, on December 19, 2013, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, on December 19, 2013, the Commission continued the public hearing to January 16, 2014; and

Whereas, on January 16, 2014, the Commission continued the public hearing to February 06, 2014; and

Whereas, on January 28, 2014, pursuant to CEQA Guidelines Section 15302, a Certificate of Determination of Categorical Exemption from Environmental Review was published by the Environmental Planning division of the Planning Department (Case No. 2013.0628E); and

Whereas, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties; and

Whereas, the all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

Whereas, the Commission has reviewed the proposed Ordinance; and

MOVED, that the Commission hereby recommends that the Board of Supervisors recommends *approval of the proposed Ordinance with modifications* and adopts the attached Draft Resolution to that effect.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. As a result of the adoption of the Downtown Plan, 38 existing buildings within the C-3-R District became noncomplying with regard to FAR.
2. Out of the 38 existing buildings that are noncomplying with regard to FAR, only one property appears to contain a Secondary Structure; this is Lot 016 of Assessor's Block 0295. Since only one parcel is affected by this Ordinance, the Planning Commission recommends that the Ordinance be amended to clearly limit its affect to this one Parcel.
3. Planning Code Section 188 prohibits the demolition and reconstruction of any portion of a noncomplying structure, which significantly limits a property owner's ability to modify a parcel to accommodate changing tenant needs and improve a building's overall aesthetics.
4. This Ordinance allows a property owner within the C-3-R District the ability to reconstruct a noncomplying secondary structure after voluntary razing all or a portion of it, so long as the project would promote and enhance the C-3-R District as a retail destination; result in an increased benefit to the public and the adjacent properties; enhance the aesthetic qualities and/or character of the property; result in a net decrease of gross floor area of all structures on the property; result in a structure that more closely conforms to the floor area ratio limit; not result in an adverse impact to a historic resource; not cause significant shadows or wind impacts on public sidewalks or parks; not obstruct significant public view corridors; and would not significantly impair light and air to abutting properties. The Ordinance would not otherwise alter the approval of requirements for a demolition,

including the requirement for Historic Preservation Commission approval of a Permit to Demolish for buildings rated under Articles 10 or 11.

5. By allowing this parcel within the C-3-R District the ability to be modified, this Ordinance empowers the property owner of buildings within the City's regional shopping center with the ability to renovate, replace one retail building with another retail building, and remain competitive with the changing needs of future retail tenants.
6. The Commission believes that by allowing such noncomplying retail structure to be modified within the aforementioned constraints, it will provide the Commission with greater tools to encourage a well-designed alteration, which benefits the public realm within the City's regional retail destination.
7. By requiring that any such alteration remains below the existing building's FAR and by clearly limiting the scope of this Ordinance to one parcel, it minimizes the potential for this Ordinance to have any adverse effects on the neighborhood, since any such project would bring a building closer into conformity with the current Planning Code regulations.
8. The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendment in order to allow for an improved urban form and public plaza at a an important corner of the City's regional retail shopping district. Without the proposed amendment, the existing triangular-shaped store could not be replaced by a retail store that is rectangular in shape and that holds the corner of Post and Stockton Streets, which would be detrimental to the character of the district.
9. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

COMMERCE & INDUSTRY ELEMENT

OBJECTIVE 1

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT

Policy 1.1

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

Policy 1.2

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

OBJECTIVE 3

PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.

Policy 3.1

Promote the attraction, retention and expansion of commercial and industrial firms which provide employment improvement opportunities for unskilled and semi-skilled workers.

DOWNTOWN PLAN

OBJECTIVE 1

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT

Policy 1.1

Encourage development which produces substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences which cannot be mitigated.

OBJECTIVE 3

IMPROVE DOWNTOWN SAN FRANCISCO'S POSITION AS THE REGION'S PRIME LOCATION FOR SPECIALIZED RETAIL TRADE.

Policy 3.1

Maintain high quality, specialty retail shopping facilities in the retail core.

The proposed Ordinance provides substantial net benefits and minimizes undesirable consequences by providing an unusually-shaped legal noncomplying structure on Lot 016 of Assessor's Block 0295 with increased renovation options, making the C-3-R District a more attractive location for retail establishments to do business.

10. The proposed replacement project is consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

- A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

The proposed Ordinance will affect only one parcel within the City's Downtown Retail District. This Ordinance will allow an alteration and redesign of an irregularly-shaped building, thereby enhancing the aesthetic character of the retail shopping District.

- B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

The proposed Ordinance requires the Planning Commission to consider nine criteria before allowing any noncomplying structure to be reconstructed, in whole or in part. The Commission must determine through the Downtown Project Authorization process that any project utilizing the provisions in this Ordinance would occur only on Lot 016 of Assessor's Block 0295, would promote and enhance the C-3-R District as a retail destination; result in an increased benefit to the public and the adjacent properties; would not cause significant shadows or wind impacts on public sidewalks or parks; would not obstruct significant public view corridors; would not significantly impair light and air to abutting properties; would not result in an adverse impact to a historic resource; and would result in a net decrease in the building's floor area ratio. The Downtown Project Authorization process will ensure that existing housing – which there's very little of in the C-3-R District – and the neighborhood character will be conserved and protected.

- C) The City's supply of affordable housing will be preserved and enhanced:

This Ordinance will not affect the City's supply of affordable housing, as it targets projects that will promote and enhance the C-3-R District as a retail destination.

- D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

The proposed Ordinance would not adversely affect the industrial or service sectors, nor would it affect future opportunities for resident employment or ownership in these sectors. The Ordinance does not change the permitted uses within the C-3-R District, which promote retail uses, particularly at the ground floor.

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

Preparedness against injury and loss of life in an earthquake is unaffected by the proposed amendments. Any new construction or alteration associated with a project would be executed in compliance with all applicable construction and safety measures. The Ordinance would, however, provide the property owner of one parcel with greater flexibility in seismically upgrading their property, since it would enable one property owner to remove a noncomplying portion of a building and recapture some of the space elsewhere on the property.

- G) That landmark and historic buildings will be preserved:

Landmarks and historic buildings would be unaffected by the proposed amendments. Through the Downtown Project Authorization process, the Commission must review any project utilizing this provision to ensure that it will not result in an adverse impact to a historic resource. The one parcel affected by this Ordinance is not a historic building. Although the one parcel affected by this Ordinance is located in the Kearny-Market-Mason-Sutter Conservation District, the Historic Preservation Commission will review the details of any project implementing this Ordinance for compatibility with said District.

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed amendments. Through the Downtown Project Authorization process, the Commission must review any project utilizing this provision to ensure that it will not cause significant shadows or wind impacts on public sidewalks or parks, obstruct significant public view corridors, or significantly impair light and air to abutting properties, including public open spaces.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on February 06, 2014.

Jonas P. Ionin
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: February 06, 2014

1 [Planning Code - Allowing Certain Non-Conforming Structures to be Rebuilt Under Certain
2 Conditions]

3 **Ordinance amending the Planning Code to allow non-conforming secondary structures**
4 **in a C-3-R (Downtown Retail) Zoning District to be demolished and rebuilt to the prior**
5 **non-conforming size under certain conditions; making environmental findings, and**
6 **findings of consistency with the General Plan, and the eight priority policies of**
7 **Planning Code, Section 101.1.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
11 **Board amendment additions** are in double-underlined Arial font.
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.
13 **Asterisks (* * * *)** indicate the omission of unchanged Code
14 subsections or parts of tables.

15 Be it ordained by the People of the City and County of San Francisco:

16 Section 1. Findings.

17 (a) The Planning Department has determined that the actions contemplated in this
18 ordinance comply with the California Environmental Quality Act (California Public Resources
19 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
20 Supervisors in File No. _____ and is incorporated herein by reference.

21 (b) On _____, the Planning Commission, in Resolution No. _____, adopted
22 findings that the actions contemplated in this ordinance are consistent, on balance, with the
23 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board
24 adopts these findings [OR, this determination] as its own. A copy of said Resolution is on file
25 with the Clerk of the Board of Supervisors in File No. _____, and is incorporated herein by
reference.

1 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code
2 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth
3 in Planning Commission Resolution No. _____ and the Board incorporates such reasons
4 herein by reference.

5
6 Section 2. The Planning Code is hereby amended by revising Section 188, to read as
7 follows:

8 SEC. 188. NONCOMPLYING STRUCTURES: ENLARGEMENTS, ALTERATIONS
9 AND RECONSTRUCTION.

10 (a) Within the limitations of this Article 1.7, and especially Sections 172 and 180
11 hereof, a noncomplying structure as defined in Section 180 may be enlarged, altered or
12 relocated, or undergo a change or intensification of use in conformity with the use limitations
13 of this Code, provided that with respect to such structure there is no increase in any
14 discrepancy, or any new discrepancy, at any level of the structure, between existing
15 conditions on the lot and the required standards for new construction set forth in this Code,
16 and provided the remaining requirements of this Code are met.

17 (b) A noncomplying structure that is damaged or destroyed by fire, or other calamity,
18 or by Act of God, or by the public enemy, may be restored to its former condition; provided
19 that such restoration is permitted by the Building Code, and is started within eighteen months
20 and diligently prosecuted to completion. Except as provided in Subsection (c) below, no
21 noncomplying structure that is voluntarily razed or required by law to be razed by the owner
22 thereof may thereafter be restored except in full conformity with the requirements of this Code.

23 For purposes of this Subsection (b), "started within eighteen months" shall mean that
24 within eighteen months of the fire or other calamity or Act of God, the structure's owner shall
25 have filed a building permit application to restore the structure to its former condition and use.

1 (c) In order that major life safety hazards in noncomplying structures may be
2 eliminated as expeditiously as possible, a noncomplying structure constructed of unreinforced
3 masonry that is inconsistent with the requirements of the UMB Seismic Retrofit Ordinance,
4 Ordinance No. 227-92, may be demolished and reconstructed to the same level of
5 noncompliance; provided that:

6 (1) The current requirements of the Building, Housing and Fire Codes and, as
7 applicable, Planning Code are met, provided that the Zoning Administrator may, and is hereby
8 empowered to, permit minor modifications to Planning Code requirements (which may include
9 permitting an increase in the building envelope or a reduction in the number of parking
10 spaces) to the extent necessary and required to bring the replacement building up to such
11 applicable Code requirements and to allow replacement of the demolished building with a
12 building which contains a comparable amount of square footage or the same number of
13 residential units as that of the demolished building. The Zoning Administrator shall provide a
14 written determination regarding such permitted Planning Code modifications; and

15 (2) Such restoration or reconstruction is started within one year after razing or
16 other demolition work on the structure and diligently prosecuted to completion.

17 (d) Notwithstanding Subsection (a) of this Section, a noncomplying structure as
18 defined in Section 180, may add nonusable space. "Nonusable space" is space not used for
19 living, sleeping, eating, cooking or working. Public corridors, mechanical space, fire stairs and
20 similar areas, are nonusable space. The enlargement must:

21 (1) Facilitate the adaptive reuse or the rehabilitation of a landmark site or
22 contributory structure within a Historic District designated under Article 10 of this Code or a
23 significant structure or contributory structure within a Conservation District designated under
24 Article 11 of this Code; and

1 (A) Be necessary to comply with Building Code, Fire Code or Planning
2 Code requirements; or

3 (B) Enhance the life safety aspects of the building and/or mechanical,
4 environmental control systems; or

5 (2) Be located within a C-3 District, and:

6 (A) Be necessary to comply with Building Code, Fire Code or Planning
7 Code requirements; or

8 (B) Enhance aesthetic qualities and/or character; or

9 (C) Enhance the life safety aspects of the building and/or mechanical,
10 environmental control systems; or

11 (D) Accommodate rooftop features exempted from height limits under
12 Section 260(b) or as provided for under Sections 270, 271 or 272 of this Code.

13 (3) Application for enlargement of a non-complying structure under Subsection
14 (d)(1) shall be considered as part of an application for a Certificate of Appropriateness under
15 Article 10 or a Permit to Alter under Article 11 of this Code. Any application to enlarge a
16 noncomplying structure under Article 11 shall be considered as a major alteration under
17 Section 1111 of the Planning Code. Application to alter a noncomplying structure not
18 designated an Article 11 significant or contributory building under Subsection (d)(2) shall be
19 considered under the provisions of Section 309(b) of this Code. These applications shall be
20 subject to the following additional criteria:

21 (A) That the enlargement promote the health, safety and welfare of the
22 public; and

23 (B) That the enlargement not cause significant shadows or wind impacts
24 on public sidewalks and parks; and

1 (C) That the structure provides an appropriate transition to adjacent
2 properties, as necessary; and

3 (D) That the interior block open space formed by the rear yards of
4 abutting properties will not be adversely affected; and

5 (E) That the access of light and air to abutting properties will not be
6 significantly affected; and

7 (F) That public view corridors not be significantly affected; and

8 (4) The City Planning Commission, subject to the same application procedures
9 of Section 188(d)(3) above, may grant an exception to the Planning Code requirements rather
10 than expansion of the structure to accommodate the Planning Code requirements. The
11 exception of the Planning Code requirement shall be subject to the criteria below:

12 (A) That the exception promote the health, safety and welfare of the
13 public; and

14 (B) That the exception result in an increased benefit to the public and the
15 adjacent properties over the increase in nonconformance; and

16 (C) That the exception not be detrimental to either the occupants of the
17 proposed project or to the neighborhood.

18 (e) Notwithstanding Subsection (a) of this Section, and in order that certain character-
19 defining architectural elements of Qualified Movie Theaters be preserved and enhanced, a
20 noncomplying Historic Movie Theater Projecting Sign, as defined in Section 602.25, and/or a
21 noncomplying Historic Movie Theater Marquee, as defined in Section 602.26, may be
22 preserved, rehabilitated, or restored. A noncomplying Historic Movie Theater Projecting Sign
23 or a noncomplying Historic Movie Theater Marquee removed from a Qualified Movie Theater
24 prior to or in absence of an application for replacement may be reconstructed.

25

1 (1) For the purposes of this Section, "Qualified Movie Theater" shall mean a
2 building that: (A) is currently or has been used as a movie theater; and (B) is listed on or
3 eligible for listing on the National Register of Historic Places or the California Register of
4 Historical Resources, designated a City Landmark or a contributor to a City Landmark District
5 under Article 10, or designated as a Significant or Contributory Building under Article 11.

6 (2) Any preservation, rehabilitation, restoration, or reconstruction permitted
7 under this Section shall be in strict conformity with the overall design, scale, and character of
8 the existing or previously existing Historic Movie Theater Sign or Historic Movie Theater
9 Marquee and:

10 (A) For a Qualified Movie Theater that retains its Historic Movie Theater
11 Projecting Sign and/or Historic Movie Theater Marquee, the signage features shall be limited
12 to the following:

13 (i) On a Historic Movie Theater Projecting Sign, the historic name
14 associated with a previous theater occupant;

15 (ii) On a Historic Movie Theater Marquee, the historic name
16 associated with a previous theater occupant and, where applicable, on the signboard, other
17 information that is an Identifying Sign, as defined in Section 602.10, provided such information
18 shall be contained within the signboard, shall not consist of any logos, and shall be in the
19 character of lettering historically found on movie theater signboards in terms of size, font, and
20 detail.

21 (B) For a Qualified Movie Theater where the Historic Movie Theater
22 Projecting Sign and/or Historic Movie Theater Marquee has been removed and is proposed to
23 be reconstructed, the overall design and signage features shall be limited to the following:

24 (i) On a Historic Movie Theater Projecting Sign, the historic name
25 associated with a previous theater occupant;

1 (ii) On a Historic Movie Theater Marquee, the historic name
2 associated with a previous theater occupant and, where applicable, on the signboard, other
3 information that is an Identifying Sign, as defined in Section 602.10, provided such information
4 shall be contained within the signboard, shall not consist of any logos, and shall be in the
5 character of lettering historically found on movie theater signboards in terms of size, font, and
6 detail.

7 (C) Any application to reconstruct shall include evidence of the
8 dimensions, scale, materials, placement, and features of the previously existing Historic Movie
9 Theater Projecting Sign and/or Historic Movie Theater Marquee, as well as any other
10 information required by the Zoning Administrator.

11 (D) General advertising signs shall not be permitted on either a Historic Movie
12 Theater Projecting Sign or a Historic Movie Theater Marquee.

13 (f) Notwithstanding Subsection (a) of this Section 188, a secondary structure that is
14 noncomplying with respect to the maximum floor area ratio limit may be removed, in whole or in part,
15 and reconstructed pursuant to the criteria below. For purposes of this Subsection (f), a secondary
16 structure means a structure located on a lot with two or more structures that has no more than one-
17 quarter of the gross floor area of the primary structure on the lot.

18 (1) The proposed removal and reconstruction shall:

19 (A) Be located within a C-3-R District;

20 (B) Promote and enhance the C-3-R District as a retail destination;

21 (C) Result in an increased benefit to the public and the adjacent properties;

22 (D) Enhance the aesthetic qualities and/or character of the lot;

23 (E) Result in a net decrease of gross floor area of all structures on the subject
24 property;

25 (F) Result in a structure that more closely conforms to the floor area ratio limit;



C-3-R Zoning District

- C-3-R parcels with a FAR < 9.0
- C-3-R parcels with a FAR > 9.0
- C-3-R parcels with a FAR > 9.0 and a secondary structure

1,000 Feet