





Date Filed: March 4, 2024

**CITY & COUNTY OF SAN FRANCISCO  
BOARD OF APPEALS**

**PRELIMINARY STATEMENT FOR APPEAL NO. 24-021**

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I / We, **Felix Wai**, hereby appeal the following departmental action: **ISSUANCE of Notice of Violation & Penalty Decision (Complaint Number: 2022-01112ENF)** by the **Zoning Administrator** which was issued or became effective on: **February 16, 2024**, for the property located at: **1618-1620 McAllister Street**.

**BRIEFING SCHEDULE:**

Appellant's Brief is due on or before: 4:30 p.m. on **April 18, 2024, (no later than three Thursdays prior to the hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy shall be emailed to: [boardofappeals@sfgov.org](mailto:boardofappeals@sfgov.org), [julie.rosenberg@sfgov.org](mailto:julie.rosenberg@sfgov.org), [corey.teague@sfgov.org](mailto:corey.teague@sfgov.org), and [tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **May 2, 2024, (no later than one Thursday prior to hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be doubled-spaced with a minimum 12-point font. An electronic copy shall be emailed to: [boardofappeals@sfgov.org](mailto:boardofappeals@sfgov.org), [julie.rosenberg@sfgov.org](mailto:julie.rosenberg@sfgov.org), and [ttunny@reubenlaw.com](mailto:ttunny@reubenlaw.com)

Hard copies of the briefs do NOT need to be submitted to the Board Office or to the other parties.

Hearing Date: **Wednesday, May 8, 2024, 5:00 p.m., Room 416 San Francisco City Hall, 1 Dr. Carlton B. Goodlett Place**. The parties may also attend remotely via Zoom. Information for access to the hearing will be provided before the hearing date.

All parties to this appeal must adhere to the briefing schedule above, however if the hearing date is changed, the briefing schedule MAY also be changed. Written notice will be provided of any changes to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should email all documents of support/opposition no later than one Thursday prior to hearing date by 4:30 p.m. to [boardofappeals@sfgov.org](mailto:boardofappeals@sfgov.org). Please note that names and contact information included in submittals from members of the public will become part of the public record. Submittals from members of the public may be made anonymously.

**Please note** that in addition to the parties' briefs, any materials that the Board receives relevant to this appeal, including letters of support/opposition from members of the public, are distributed to Board members prior to hearing. All such materials are available for inspection on the Board's website at [www.sfgov.org/boa](http://www.sfgov.org/boa). You may also request a hard copy of the hearing materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

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**The reasons for this appeal are as follows:**

See attachment to the Preliminary Statement of Appeal.

**Appellant or Agent:**

Signature: Via Email

Print Name: Tom Tunny, attorney for appellant

This is an appeal of a portion of the decision described in the attached Notice of Violation and Penalty Decision. In particular, we are appealing the portion of the decision that concludes that an unauthorized group housing use exists at 1618 McAllister Street.



## NOTICE OF VIOLATION AND PENALTY DECISION

February 16, 2024

**Property Owner**

Attn: Lucky Stewart  
McAllister Street LLC  
246 Grand View Avenue  
San Francisco, CA 94114

**Site Address:** 1618-1620 McAllister Street  
**Assessor's Block/Lot:** 1156 / 011  
**Complaint Number:** 2022-011112ENF  
**Zoning:** RM-1 (Residential, Mixed – Low Density) Zoning District  
40-X Height and Bulk District  
**Code Violation:** Section 175, Unauthorized Construction Work  
Section 202.10, Unauthorized Intermediate Length Occupancy  
Section 209.2, Unauthorized Group Housing  
**Time and Materials Fee:** \$3,960.21 (Current Fee for Confirmed Violation, Additional Charges May Apply)  
**Administrative Penalty:** Up to \$250 per Day for Each Violation  
**Response Due:** Within 15 Days from the Date of This Notice  
**Enforcement Planner:** Vincent W. Page II, (628) 652-7396, [vincent.w.page.ii@sfgov.org](mailto:vincent.w.page.ii@sfgov.org)  
**DECISION:** **NOTICE OF VIOLATION UPHELD WITH MODIFICATIONS**

The Planning Department finds the above referenced property to be in violation of the Planning Code. As the owner of the subject property, you are a “responsible” party to bring the above property into compliance with the Planning Code. Details of the violation are discussed below.

### Description of Violation

The violation pertains to unauthorized Group Housing and Intermediate Length Occupancy (ILO) uses, and to work undertaken without Planning Department review and approval. The specifics of the violation are described in the attached Notice of Violation, dated July 12, 2023, and are incorporated herein as though fully set forth.

### Background

On July 12, 2023, the Planning Department issued you a Notice of Violation finding the subject property in violation of the Planning Code. The Notice of Violation outlined the violation, how to correct the violation, administrative penalties, and the available processes of appeals.

On August 10, 2023, the Planning Department received a request for a Zoning Administrator Hearing to appeal the Notice of Violation.

On August 31, 2023, Zoning Administrator Corey Teague held a public hearing to consider the Notice of Violation at the Planning Department.

## Evidence Presented at the Zoning Administrator Hearing

The Zoning Administrator Hearing to consider the Notice of Violation, dated July 12, 2023, was held on August 31, 2023. The hearing was attended by Thomas Tunny, Lucky Stewart, Felix Wai, Jeff Jurow, and Dan Lowry, representatives of the responsible party. Planning Department staff in attendance included Code Enforcement Manager Kelly Wong, Vincent W. Page II, and Wesley Wong. No other members of the public were present.

Prior to the hearing, the responsible party's representatives submitted a written response to the Notice of Violation describing why they believe that a Planning Code violation does not exist at the subject property. The written response was accompanied by exhibits, including lease agreements and a spreadsheet ("Rent Roll") listing the number of people who reside in each dwelling unit at the subject property and the duration of tenancy for each tenant, as of July 31, 2023. Specifically:

- (1) **1618-1620 McAllister Street.** A lease agreement for 11 people was submitted and lists "the premises" as being 1618-1620 McAllister Street, or the entire subject property. The rental term is for one year, beginning on November 1, 2022.
- (2) **1618 McAllister Street.** A lease agreement for 1618 McAllister Street, discretely from 1620 McAllister Street, was not submitted. However, the Rent Roll did note that 11 people live in 1618 McAllister Street; that their tenancy began on November 1, 2022; and that they had, as of July 31, 2023, been living in that unit for one year and nine months. This period of tenancy, as well as the number of tenants, appears to correspond to the lease agreement for 1618-1620 McAllister Street noted above.
- (3) **1620 McAllister Street.** Four lease agreements were submitted for 1620 McAllister Street, and are consistent with information provided in the Rent Roll. The lease agreements and Rent Roll reflect that 4 people live at 1620 McAllister Street and began their tenancies, respectively, on May 31, June 5, and June 14, 2022, and on November 1, 2021.

During the hearing, the responsible party's representatives summarized the arguments set forth in the written response to the Notice of Violation, and added that the dormers identified in the Notice of Violation as being constructed in excess of the scope of approved permits were, in fact, legal because the building permit under which they had been constructed was deemed complete by and received a Certificate of Final Completion and Occupancy from the Department of Building Inspection.

No additional members of the public appeared to provide comment. After hearing from all concerned parties, the Zoning Administrator took the matter into advisement.

## Decision

**NOTICE OF VIOLATION UPHELD WITH MODIFICATIONS.** The Notice of Violation states that the subject property is in violation of the Planning Code for unauthorized Group Housing and ILO uses, and for construction work not authorized by the Planning Department. Evidence submitted by the responsible party prior to and reviewed at the Zoning Administrator Violation Appeal Hearing reflects that an ILO use does not exist at the subject property. However, the evidence is not sufficient to confirm that a Group Housing use is not present at the subject property, nor that the dormer windows named in the Notice of Violation were constructed with Planning Department review and approval. Specifically:

- (1) **Unauthorized Group Housing.** The subject property is authorized for Residential use with two (2) dwelling units. Pursuant to Planning Code Section 102, a dwelling unit must be designed for or occupied by only one Family that does its own cooking in the unit and has only one kitchen; and a Family may not be comprised of more than five unrelated persons unless they have certain attributes of a Family, including that they must have mutual control over the membership of the “Family” (household) of which they are a part. At least 15 people unrelated by blood, marriage or adoption are residing in the two units in a manner that does not meet the Planning Code’s definition for Family. Eleven of those 15 people hold tenancy under a lease agreement for the entire building, while the each of the other 4 each have a lease agreement for a single room. Pursuant to Planning Code Section 102, a dwelling unit occupied by people who do not meet the definition for Family is considered to have a Group Housing use. There is no record of Planning Department Approval to establish a Group Housing use at the subject property.
- (2) **Unauthorized Construction Work.** Building Permit (“BP”) No. 201209250604 was issued on October 1, 2012, to allow an interior remodel and the addition of six (6) dormer windows. The permit drawings submitted with this BPA were approved by the Planning Department. However, they did not indicate where the dormers would be located. The drawing set did not include a proposed roof plan or proposed elevations. In its approval of the application, the Planning Department stipulated that the dormers would “meet the standards of Zoning Administrator Bulletin No. 3.” Pursuant to Zoning Administrator Bulletin No. 3, dormer windows (a) are limited in size to no more than 8 feet by 8 feet; (b) must be set back by at least 3 feet from side property lines; (c) must be set back by at least 10 feet from the front building wall; (d) must be separated from each other by at least 3 feet; (e) shall not exceed the height of the peak roof line of the subject building; and (f) shall be limited in total plan area such that all dormer windows shall be equal to no more than 20 percent of the existing horizontal area of the roof in order to avoid the 30-day public notice required for building permits proposing alterations in Residential Zoning Districts. The dormer windows at the subject property fail to comply with the requirements of Zoning Administrator Bulletin No. 3 because they do not retain setbacks of 3 feet from each other and exceed 20 per cent of the subject roof’s horizontal area.

Pursuant to Planning Code Section 176, the Zoning Administrator has a duty in administration and enforcement of the Planning Code. Accordingly, the Zoning Administrator upholds the Notice of Violation, issued on July 12, 2023, as the property owner has failed to demonstrate compliance with the Planning Code as described above.

**The responsible party shall abate the violation as follows:** Obtain Planning Department authorization in the form of a Planning Approval Letter and any associated building permits to legalize the unauthorized construction work; and to either legalize Group Housing bedrooms at the subject property, or to revert the

subject property to its authorized use. This will require that you submit the following:

- (1) **Project Application (PRJ):** [sfplanning.org/resource/PRJ-application](https://sfplanning.org/resource/PRJ-application). In the Project Description, you will need to clarify how each violation would be addressed. Specifically, note if the Group Housing use would be legalized, and whether the dormer windows would be legalized in their present form, removed from the building, or brought into compliance with the controls of Zoning Administrator Bulletin No. 3.
- (2) **Permit Drawings (Plans).** These must be prepared in accordance with the Planning Department's Plan Submittal Guidelines ([sfplanning.org/resource/plan-submittal-guidelines](https://sfplanning.org/resource/plan-submittal-guidelines)) and must include the following:

- (a) **Three Conditions.** The drawings must document what work was undertaken without authorization, and must show how this work would be legalized, modified to comply with the Planning Code, or removed. Accordingly, the drawings must represent the subject property in three distinct, separate conditions: (1) Existing (prior to unpermitted construction), (2) As Built (as it is today), and (3) Proposed. For the site plan and for each floor plan, elevation, and section, the three conditions must be shown together.

If the proposal is to legalize all unpermitted work, then only two conditions would be required: (1) Existing (prior to unpermitted construction), and (2) As Built and Proposed. However, if any required changes are identified subsequent to submittal, then three conditions would be required, as noted above.

- (b) **Photos.** Provide two photo surveys of the subject property showing its Existing and As-Built conditions. Please provide dates for all photos.
- (c) **Details and Notes.** Provide construction details and notes throughout the drawings, as required to show the scope of work.
- (d) **Window and Door Schedules.** Show clearly any windows and/or doors that are to be replaced, or whose past replacement is to be legalized. The schedule should correspond to elevation drawings and floor plans, and should include section cut details for all exterior windows and doors showing the materials, finish, and profile of sash. Please provide a product data sheet for all window and door products, for Department review.
- (e) **Site Plans.** Show the subject property, adjacent properties, sidewalks, street trees, planted areas, and the location of all structures. Identify the address of each building and the number of stories. Provide dimensions for all significant measurements, including the lot depth and width; the distance of buildings (and building massings if of differing height) from each other and from property lines; the width of sidewalks and curb cuts. Show the front setback pursuant to Planning Code Section 132; and the rear yard requirement pursuant to Planning Code Section 134.
- (f) **Floor and Roof Plans.** For all floor and roof plans, show partial outline of both adjacent properties. Show all rooms, walls, stairs, doors, windows, plumbing fixtures, and kitchen

appliances. Identify operation type and/or opening direction of all windows and doors. Annotate the use of all rooms and label each unit number. Provide dimensions for all significant measurements.

- (g) **Exterior Elevations.** Indicate the type of building materials on all exterior wall surfaces and the roof. Identify and the operation type and construction material of all windows and doors. Provide dimensions for all significant measurements, including the maximum building height from grade, the height of each floor level from grade (finished floor/roof), and the ceiling height of each story (clear).
  - (i) **For side (east/west) elevations,** show the grade plane to confirm if the lot slopes up or down. Show the entire length of the lot, with the rear yard and front setback indicated as vertical lines. Show the outline/full profile of the adjacent building, as well as any window openings and/or light wells that face the project site.
  - (ii) **For front and rear (north/south) elevations,** show the profile of both adjacent properties and whether the lot slopes laterally.
- (h) **Sections.** At least two sections—one long and one lateral—are required. Show the building as it relates to grade, including foundation footings and grade slope, if any. Provide dimensions for all significant measurements, including the maximum building height from grade; the height of each floor level from grade (finished floor/roof); and the ceiling height of each story (clear).

For questions regarding the Planning Code or any Planning Department review processes, please contact the Planning counter at the Permit Center at:

49 South Van Ness Avenue, 2<sup>nd</sup> Floor  
San Francisco, CA 94103  
Phone: (628) 652-7300  
Email: [pic@sfgov.org](mailto:pic@sfgov.org)  
Website: [www.sfplanning.org](http://www.sfplanning.org)

To obtain copies of approved Building Permit Applications or plans, please contact the Department of Building Inspection (“DBI”) – Records Management Division at:

49 South Van Ness Avenue, 4<sup>th</sup> Floor  
San Francisco, CA 94103  
Phone: (628) 652-3420  
Email: [dbi.records3r@sfgov.org](mailto:dbi.records3r@sfgov.org)  
Website: [sf.gov/requestbuildingrecords](http://sf.gov/requestbuildingrecords)

For questions regarding the building permit application process, please contact the Department of Building Inspection (“DBI”) at:

49 South Van Ness Avenue, 2<sup>nd</sup>/5<sup>th</sup> Floor



San Francisco, CA 94103  
Phone: (628) 652-3200  
Email: [permitcenter@sfgov.org](mailto:permitcenter@sfgov.org)  
Website: [sf.gov/departments/departments-building-inspection](https://sf.gov/departments/departments-building-inspection)  
Website: [www.sfplanning.org](http://www.sfplanning.org)

**For questions about this enforcement case, please email the assigned Enforcement Planner as noted above. For questions about the Building Code or building permit process, please email DBI at the email address noted above.**

## Timeline to Respond

The Responsible Party has **fifteen (15) days from the date of this notice** to either;

- (1) Take steps to correct the violation as noted above; or
- (2) Appeal this Notice of Violation and Penalty Decision as noted below.

The corrective actions shall be taken as early as possible. Any unreasonable delays in abatement of the violation will result in assessment of administrative penalties at \$250 per day for each violation. The Department may also report any licensed professional responsible for the violation(s) to the appropriate local, state, or federal licensing boards.

Please contact the assigned Enforcement Planner noted above with any questions, to submit evidence of correction, and discuss the corrective steps to abate the violation. Should you need additional time to respond to and/or abate the violation, please discuss this with the assigned Enforcement Planner, who will assist you in developing a reasonable timeline.

## Administrative Penalties

If a Responsible Party does not request any appeal process and does not take corrective action to abate the violation **within fifteen (15) days**, this Notice of Violation and Penalty Decision will become final. However, **administrative penalties will not begin to accrue until the fifteen-day period to respond expires**, as detailed above. Beginning on the following day, administrative penalties of up to **\$250 per day for each violation** to the Responsible Party will start to accrue for each day the violation continues unabated. If such penalties are assessed, the Planning Department will issue a Notice of Penalty and Fee, and the penalty amount shall be paid **within thirty (30) days** from the issuance date of that notice. Please be advised that payment of penalty does not excuse failure to correct the violation or bar further enforcement action. Additional penalties will continue to accrue until corrective action is taken to abate the violation.

## Enforcement Time and Materials Fee

Pursuant to Planning Code Section 350(g)(1), the Planning Department shall charge for “Time and Materials” to recover the cost of correcting Planning Code violations. Accordingly, a fee of **\$3,960.21** for “Time and Materials” cost associated with the Code Enforcement investigation is now due to the Planning Department. **Please**

**submit a check payable to “Planning Department Code Enforcement Fund” within thirty (30) days from the date of this notice.** Additional fees will continue to accrue until the violation is abated. **This fee is separate from the administrative penalties as described above and is not appealable.**

## Failure to Pay Penalties and Fees

If the Responsible Party fails to pay the “Administrative Penalties” and “Time and Materials” fee to the Planning Department within 30 days of the issuance of Notice of Penalty and Fee, the Zoning Administrator may take such actions to collect the “Penalties” and any unpaid “Time and Materials” fee owed to the Department, including:

- (1) Referral of the matter to the Bureau of Delinquent Revenue Collection under Chapter 10, Article V, Section 10.39 of the San Francisco Administrative Code. The BDR may apply a 25% surcharge for their collection services. Please note that such surcharge will be considered part of the cost of correcting the violation, and the Responsible Party will be responsible for such charges.
- (2) Initiation of lien proceedings under Chapter 10, Article XX, Section 10.230 et seq. of the San Francisco Administrative Code; and
- (3) Requesting the San Francisco Office of City Attorney to pursue collection of the “Administrative Penalties” and “Time and Materials” imposed against the Responsible Party in a civil action.

## Recordation of Order of Abatement

Upon the expiration of 90 days following the finality of this Notice of Violation and Penalty Decision, an Order of Abatement may be recorded against the property's records in the Office of the Recorder of the City and County of San Francisco.

The obligation to correct the violation as set forth in the Order of Abatement shall be Planning Code conditions pursuant to Planning Code Section 174 that run with title to the property. Further, such recordation shall provide notice to each Responsible Party and any subsequent “successor” or “assign of title” to the property that the failure to perform such obligations is a violation of the Planning Code and may be enforced pursuant to Planning Code Section 176.

Any fees associated with recordation of an Order of Abatement will be assessed to the Responsible Party and added to the “Time and Materials” fee discussed above.

## Appeal

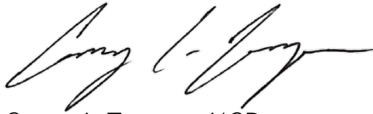
This Violation and Penalty Decision and any assessed penalties may be appealed to the **Board of Appeals within fifteen (15) days** from the date of this Violation and Penalty Decision at:

49 South Van Ness Avenue, Suite 1475  
San Francisco, CA 94103  
Phone: (628) 652-1150  
Email: [boardofappeals@sfgov.org](mailto:boardofappeals@sfgov.org)

Website: [sf.gov/departments/board-appeals](https://sf.gov/departments/board-appeals)

The Board of Appeals may not reduce the amount of penalty below \$200 per day for each day that the violation exists, excluding the period of time that the matter has been pending either before the Zoning Administrator or before the Board of Appeals.

Sincerely,



Corey A. Teague, AICP  
Zoning Administrator

**Attachments:**

Notice of Zoning Administrator Violation Appeal Hearing for Multiple Addresses, dated August 15, 2023  
Notice of Violation, dated July 12, 2023

CC: Lucky Stewart, via email: [lstewart@structureproperties.com](mailto:lstewart@structureproperties.com)  
Thomas Tunny, via email: [ttunny@reubenlaw.com](mailto:ttunny@reubenlaw.com)



## NOTICE OF SPECIAL ZONING ADMINISTRATOR VIOLATION APPEAL HEARING FOR MULTIPLE ADDRESSES

August 15, 2023

John Wai  
c/o Lucky Stewart  
Electronically Delivered: [lstewart@structureproperties.com](mailto:lstewart@structureproperties.com)

**Site Address:** **965-969 Dolores Street**  
Assessor's Block/Lot: 3631 / 021  
Complaint Number: 2022-011109ENF  
Zoning District: RM-1 (Residential, Mixed – Low Density)  
Code Violation: 202.10, Unauthorized Intermediate Length Occupancy  
Staff Contact: Wesley Wong – (628) 652-7466  
[wesley.a.wong@sfgov.org](mailto:wesley.a.wong@sfgov.org)

**Property Owner**  
Two to Four LLC  
246 Grand View Avenue  
San Francisco, CA 94114

**Site Address:** **1618-1620 McAllister Street**  
Assessor's Block/Lot: 1156 / 011  
Complaint Number: 2022-011112ENF  
Zoning District: RM-1 (Residential, Mixed – Low Density)  
Code Violation: Section 175, Work Beyond Scope of Approved Permits  
Section 202.10, Unauthorized Intermediate Length Occupancy  
Section 209.2, Unauthorized Group Housing  
Staff Contact: Vincent W. Page II – (628) 652-7396  
[vincent.w.page.ii@sfgov.org](mailto:vincent.w.page.ii@sfgov.org)

**Property Owner**  
McAllister Street LLC  
246 Grand View Avenue  
San Francisco, CA 94114

**Site Address:** **550-558 Guerrero Street**  
Assessor's Block/Lot: 3578 / 009  
Complaint Number: 2022-011107ENF  
Zoning District: RM-2 (Residential, Mixed – Moderate Density)  
Code Violation: Section 202.10, Unauthorized Intermediate Length Occupancy  
Staff Contact: Vincent W. Page II – (628) 652-7396  
[vincent.w.page.ii@sfgov.org](mailto:vincent.w.page.ii@sfgov.org)

**Property Owner**  
MFR Apartments LLC  
246 Grand View Avenue  
San Francisco, CA 94114

**Site Address:** **1371-1373 Broadway**  
Assessor's Block/Lot: 0154 / 044  
Complaint Number: 2022-011110ENF  
Zoning District: RH-3 (Residential, House – Three-Family)

**Property Owner**  
Two to Four LLC  
246 Grand View Avenue  
San Francisco, CA 94114

2022-011109ENF – 965-969 Dolores Street  
2022-011112ENF – 1618-1620 McAllister Street  
2022-011107ENF – 550-558 Guerrero Street  
2022-011110ENF – 1371-1373 Broadway  
2022-011105ENF – 7-19 Leroy Place

**Notice of Zoning Administrator  
Violation Appeal Hearing  
for Multiple Addresses**

August 15, 2023

Code Violation: Section 202.10, Unauthorized Intermediate Length Occupancy  
Staff Contact: Vincent W. Page II – (628) 652-7396  
[vincent.w.page.ii@sfgov.org](mailto:vincent.w.page.ii@sfgov.org)

**Site Address: 7-19 Leroy Place**

Assessor's Block/Lot: 0247 / 029  
Complaint Number: 2022-011105ENF  
Zoning District: RH-3 (Residential, House – Three-Family)  
Code Violation: Section 202.10, Unauthorized Intermediate Length Occupancy  
Staff Contact: Vincent W. Page II – (628) 652-7396  
[vincent.w.page.ii@sfgov.org](mailto:vincent.w.page.ii@sfgov.org)

**Property Owner**

MFR Apartments LLC  
246 Grand View Avenue  
San Francisco, CA 94114

The Planning Department has received your request for a Zoning Administrator Hearing to consider the Notices of Violation, dated July 12, 2023, issued pursuant to Planning Code Section 176 for the following properties:

2022-011109ENF – 965-969 Dolores Street  
2022-011112ENF – 1618-1620 McAllister Street  
2022-011107ENF – 550-558 Guerrero Street  
2022-011110ENF – 1371-1373 Broadway  
2022-011105ENF – 7-19 Leroy Place

Notice is hereby given that the Zoning Administrator or their designee will hold a hearing to consider the Notices of Violation, issued on July 12, 2023. The hearing has been scheduled as follows:

Hearing Date and Time: **Thursday, August 31, at 1:30 p.m.**  
Hearing Location: **Virtual Meeting via WebEx**

The responsible party or their representative must appear personally and bring evidence to demonstrate that the Notices of Violation were issued in error and that the subject property is in full compliance with Planning Code. Two copies of any evidence presented during the hearing must be submitted for Planning Department records. Such evidence may also be submitted prior to the hearing date. Such evidence must include additional and/or new information that was obtained after the Notices of Violation were issued, on July 12, 2023. The requestor has the right to bring an interpreter, witnesses, legal representation, or other representative to the hearing. However, legal representation is not required. To request a sign language interpreter, reader, materials in alternative formats, or other accommodation of disability, please contact the staff member noted above no less than 48 hours prior to the hearing. If you have any questions about the hearing process, please contact the staff noted above.

CC: John Adamson, Electronically Delivered: [jadamson@reubenlaw.com](mailto:jadamson@reubenlaw.com)  
Thomas Tunny, Electronically Delivered: [ttunny@reubenlaw.com](mailto:ttunny@reubenlaw.com)



## AMENDED NOTICE OF VIOLATION

July 12, 2023

**Property Owner**

Attn: Lucky Stewart  
McAllister Street LLC  
246 Grand View Avenue  
San Francisco, CA 94114

**Site Address:** 1618-1620 McAllister Street  
**Assessor's Block/Lot:** 1156 / 011  
**Complaint Number:** 2022-011112ENF  
**Zoning:** RM-1 (Residential, Mixed – Low Density) Zoning District  
40-X Height and Bulk District  
**Code Violation:** Section 175, Work Completed in Excess of the Scope of Approved Permits  
Section 202.10, Unauthorized Intermediate Length Occupancy  
Section 209.2, Unauthorized Group Housing  
**Time and Materials Fee:** \$1,853.79 (Current Fee for Confirmed Violation, Additional Charges May Apply)  
**Administrative Penalty:** Up to \$250 per Day for Each Violation  
**Response Due:** Within 15 Days from the Date of This Notice  
**Enforcement Planner:** Vincent W. Page II, (628) 652-7396, [vincent.w.page.ii@sfgov.org](mailto:vincent.w.page.ii@sfgov.org)

The Planning Department received a complaint that a Planning Code violation exists on the above referenced property that must be resolved. As the owner of the subject property, you are a responsible party. The purpose of this notice is to inform you about the Planning Code Enforcement process so you can take appropriate action to bring your property into compliance with the Planning Code. Details of the violation are discussed below.

### Description of Violation

The subject property is authorized for Residential use with two (2) Dwelling Units. The violation pertains to the following:

- (1) **Unauthorized Group Housing.** At least twelve people unrelated by blood, marriage or adoption are residing within each principally permitted dwelling unit in a manner that does not meet the definition for Family in Planning Code Section 102.
- (2) **Unauthorized Intermediate Length Occupancy.** The occupants of each unit have terms of tenancy for periods of more than 30 days but less than one year.
- (3) **Work was undertaken in excess of the scope of approved permits.** Building Permit Application

("BPA") No. 201209250604 was issued on October 1, 2012, to allow an interior remodel and the addition of six (6) dormer windows. The permit drawings submitted with this BPA were approved by the Planning Department; however, they did not indicate where the dormers would be located. The drawing set failed to include a proposed roof plan and proposed elevations. The Planning Department in its approval of the application stipulated that the dormers would "meet the standards of Zoning Administrator Bulletin No. 3" (See Enclosures).

Pursuant to Zoning Administrator Bulletin No. 3 ([sfplanning.org/resource/zoning-administrator-bulletin-3-dormer-windows](https://sfplanning.org/resource/zoning-administrator-bulletin-3-dormer-windows)), in order to avoid the 30-day public notice required for building permits proposing Alterations in Residential Zoning Districts, dormer windows:

- (a) Are limited in size to no more than 8 feet by 8 feet;
- (b) Must be set back by at least 3 feet from side property lines;
- (c) Must be set back by at least 10 feet from the front building wall;
- (d) Be separated from each other by at least 3 feet;
- (e) Shall not exceed the height of the peak roof line of the subject building;
- (f) Shall be limited in total plan area such that all dormer windows, existing or proposed, combined with all other rooftop features exempt from the height limit, shall be equal to no more than 20 per cent of the existing horizontal area of the roof; and, if a building's roof has multiple levels, then each level of roof shall be calculated separately.

**The dormer windows at the subject property fail to comply with the requirements of Zoning Administrator Bulletin No. 3 because they do not retain setbacks of 3 feet from each other and exceed 20 per cent of the subject roof's horizontal area.**

Pursuant to Planning Code Section 102:

- Dwelling Unit is defined as a Residential Use defined as a room or suite of two or more rooms that is designed for, or is occupied by, one family doing its own cooking therein and having only one kitchen. A housekeeping room as defined in the Housing Code shall be a Dwelling Unit for purposes of this Code. For the purposes of this Code, a Live/Work Unit, as defined in this Section, shall not be considered a Dwelling Unit.
- Group Housing is defined as a Residential Use that provides lodging or both meals and lodging, without individual or limited cooking facilities or kitchens, by prearrangement for 30 days or more at a time and intended as Long-Term Housing, in a space not defined in the Planning Code as a Dwelling Unit. Except for Group Housing that also qualifies as Student Housing as defined in this Section 102, 100% Affordable Housing as defined in Planning Code Section 315, or housing operated by an organization with tax-exempt status under 26 United States Code Section 501(c)(3) providing access to the unit in furtherance of its primary mission to provide housing, the residential square footage devoted to Group Housing shall include both common and private space in the following amounts: for every gross square foot of private space (including bedrooms and individual bathrooms), 0.5 gross square feet of common space shall be provided, with at least 15% of the common space devoted to communal kitchens with a minimum of one kitchen for every 15 Group Housing units. Group Housing shall include, but not necessarily be limited to, a Residential Hotel, boardinghouse, guesthouse, rooming house, lodging house, residence

club, commune, fraternity or sorority house, monastery, nunnery, convent, or ashram. It shall also include group housing affiliated with and operated by a medical or educational institution, when not located on the same lot as such institution, which shall meet the applicable provisions of Section 304.5 of the Planning Code concerning institutional master plans.

- Family is defined as a single and separate living unit, consisting of either one person, or two or more persons related by blood, marriage or adoption or by legal guardianship pursuant to court order, plus necessary domestic servants and not more than three roomers or boarders; a group of not more than five persons unrelated by blood, marriage or adoption, or such legal guardianship unless the group has the attributes of a family in that it (a) has control over its membership and composition; (b) purchases its food and prepares and consumes its meals collectively; and (c) determines its own rules or organization and utilization of the residential space it occupies. A group occupying group housing or a hotel, motel, or any other building or portion thereof other than a Dwelling, shall not be deemed to be a family.
- Intermediate Length Occupancy is defined as a Residential Use characteristic that applies to a Dwelling Unit offered for occupancy by a natural person for an initial stay, whether through lease, subscription, license, or otherwise, for a duration of greater than 30 consecutive days but less than one year. This use characteristic is subject to the requirements of Planning Section 202.10.

Pursuant to Planning Code Section 202.10(b)(1)(B)(i), Intermediate Length Occupancy units are prohibited in buildings with three or fewer Dwelling Units.

Pursuant to Planning Code Section 311:

- (b)(2), an Alteration shall be defined as an increase to the exterior dimensions of a building except those features listed in Planning Code Section 136(c)(1) through (24) and (26). In addition, an Alteration in RH, RM, and RTO Zoning Districts shall also include 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.
- (d), upon determination that an application is in compliance with the development standards of the Planning Code, the Planning Department shall cause a notice to be posted on the site pursuant to rules established by the Zoning Administrator and shall cause a written notice describing the proposed project to be sent in the manner described below. This notice shall be in addition to any notices required by the Building Code and shall have a format and content determined by the Zoning Administrator. It shall include a description of the proposal compared to any existing improvements on the site with dimensions of the basic features, elevations and site plan of the proposed project including the position of any adjacent buildings, exterior dimensions and finishes, and a graphic reference scale, existing and proposed uses or commercial or institutional business name, if known. The notice shall describe the project review process and shall set forth the mailing date of the notice and the expiration date of the notification period. Further, pursuant to subsection (d)(5), all building permit applications shall be held for a period of 30 calendar days from the date of the mailed notice to allow review by residents and owners of neighboring properties and by neighborhood groups.

Pursuant to Planning Code Section 171, structures and land in any zoning district shall be used only for the purposes listed in the Planning Code as permitted in that district, and in accordance with the regulations



established for that district.

Pursuant to Planning Code Section 172, no structure shall be constructed, reconstructed, enlarged, altered, or relocated in a manner that is not permissible under the limitations set forth in the Planning Code for the district in which such structure is located.

Pursuant to Planning Code Section 175, a Building Permit is required for the construction, reconstruction, enlargement, alteration, relocation, or occupancy of any structure subject to the Planning Code.

Failure to comply with any Planning Code provision constitutes a violation of the Planning Code and is subject to an enforcement process, pursuant to Planning Code Section 176.

## Timeline of Investigation

On December 1, 2022, the Planning Department sent you a Notice of Complaint to inform you about the complaint.

On March 8, 2023, Planning Department staff Vincent W. Page II and Wesley Wong conducted a site visit and confirmed that there are more than 12 occupants in each dwelling unit. The property manager, Lucky Stewart, as well as the master tenant, verbally confirmed that most of the occupants of these units have terms of tenancy of less than one (1) year. During this site visit, Planning staff observed dormer windows. Upon review of the permit record and aerial photos of the subject property, it became clear that the dormers were not constructed as approved under BPA No. 201209250604.

On April 19, 2023, the Planning Department issued you a Notice of Enforcement. In that notice, you were notified of the alleged Planning Code violation and the process available for its abatement. You were advised to take corrective actions and provide evidence of compliance to the Planning Department within fifteen (15) days from the date of that notice.

To date, you have not contacted the Planning Department to demonstrate how you intend to bring the subject property into compliance with the Planning Code.

## How to Correct the Violation

The Planning Department requires that you immediately proceed to abate the violation as follows:

- (1) **Discontinue the unauthorized Intermediate Length Occupancy in both dwelling units and reinstate the subject property to its last authorized dwelling unit use, or seek authorization for a new use permitted under the Planning Code.** Please note that there is no path to legally establish an Intermediate Length Occupancy unit at the subject property because the property is authorized for fewer than four dwelling units.
- (2) **Obtain the proper permits to bring the subject property into compliance with the Planning Code.** This will require that you submit the following:

- (a) **Project Application (PRJ):** [sfplanning.org/resource/PRJ-application](https://sfplanning.org/resource/PRJ-application). This form must be submitted for any work requiring Planning Department review. In the Project Description (p. 3), you will need to clarify how each violation would be addressed. Specifically, note if the Group Housing use would be legalized, and whether the dormer windows would be legalized in their present form, removed from the building, or brought into compliance with the controls of Zoning Administrator Bulletin No. 3.
- (b) **Building Permit Application(s).** Please note that if more than one permit application is required, they will need to be reviewed concurrently on a single set of permit drawings (plans). These may be submitted online via Electronic Plan Review, or hard copy. For more information, please contact the Department of Building Inspection (see below).
- (c) **Permit Drawings (Plans).** These must be prepared in accordance with the Planning Department's Plan Submittal Guidelines ([sfplanning.org/resource/plan-submittal-guidelines](https://sfplanning.org/resource/plan-submittal-guidelines)) and must include the following drawings and details below. For all drawings, please provide three conditions including: (1) prior to unpermitted construction, (2) as built, and (3) proposed (all on one page, if possible).
- (i) **Site Plan.** Show the subject property, adjacent properties, sidewalks, street trees, planted areas, and the location of all structures. Label the address of each building and identify the number of storeys. All significant measurements must be dimensioned, including: the lot depth and width; the distance of buildings and building massings from each other and from property lines; the width of sidewalks and curb cuts; the front setback pursuant to Planning Code Section 132; and the rear yard requirement pursuant to Planning Code Section 134. Key the location of sections on the site plans.
- (ii) **Floor and Roof Plans.** For all floor and roof plans, show partial outline of both adjacent properties. Show all rooms, walls, stairs, doors, windows, plumbing fixtures, and kitchen appliances. Identify operation type and/or opening direction of all windows and doors. Annotate the use of all rooms. All plans must be dimensioned to show significant measurements. Each unit number must be labeled, and the use of all non-residential spaces identified. Key the location of sections on the floor and roof plans.
- (iii) **Exterior Elevations.** Elevations are needed of each building face where work is proposed for legalization. Indicate the type of building materials on all exterior wall surfaces, and the operation type and construction material of all windows and doors. For side elevations, show the entire length of the lot; the rear yard and front setback indicated as vertical lines; the full profile of the adjacent buildings; any window openings and light wells that face the project site; and whether the lot slopes up or down. For front and rear elevations, show both adjacent properties (these may be shown in less detail but must be accurate as to their height, width, and general profile); and show whether the lot slopes laterally. Show the height limit per Planning Code Section 209.2 and height datum point (center point of lot, curb level) per Section 260. All significant measurements must be dimensioned, including the maximum building

height from grade, the height of each storey from grade (finished floor/roof), and the ceiling height of each storey (clear).

- (iv) **Sections.** Sections through critical points of the building are required to clarify the plans. All significant measurements must be dimensioned. Longitudinal (long) and lateral sections are required. For longitudinal sections, show the entire length of the lot; the grade plane as it relates to the building; the height limit per Section 209.2; height datum point (center point of lot, curb level) per Section 260; and the relation between the street, curb, front property line, subject building, rear yard, and rear property line. The front and rear property lines, rear yard, and front setback must be shown as vertical lines. For lateral sections, show the grade plane as it relates to the building and whether the lot slopes laterally; the height limit per Section 209.2; height datum point (center point of lot, curb level) per Section 260; and the relation between the subject building and each adjacent building. All significant measurements must be dimensioned, including the maximum building height from grade, the height of each storey from grade (finished roof), and the ceiling height of each storey (clear).

**Prior to formal submittal, you must send the prepared drawings to the Enforcement Planner noted above to confirm that they would address the violation. The Enforcement Planner will provide you with instructions to submit your Building Permit to the Planning Department.**

You will be responsible to comply with any requests for additional information, revisions, or additional applications. You will be required to pursue the corrective Building Permit Application such that it is approved, issued, and completed. The Planning Department reserves the right to determine whether you are demonstrating good faith toward addressing the violation. Your failure to demonstrate good faith, or to successfully abate the violation through the obtention of a Building Permit as noted above, will result in further enforcement action.

If you believe that the complaint was made in error, you will need to provide sufficient evidence. Evidence sufficient to demonstrate compliance may include, but is not limited to, dimensioned plans approved by the Planning Department and time-stamped photographs. A site visit will be required to verify compliance.

To obtain copies of approved Building Permit Applications or plans, please contact the Department of Building Inspection (“DBI”) – Records Management Division at:

49 South Van Ness Avenue, 4<sup>th</sup> Floor  
San Francisco, CA 94103  
Phone: (628) 652-3420  
Email: [dbi.records3r@sfgov.org](mailto:dbi.records3r@sfgov.org)  
Website: [sf.gov/requestbuildingrecords](https://sf.gov/requestbuildingrecords)

For questions regarding the Building Permit process, please contact the Department of Building Inspection (“DBI”) at:

49 South Van Ness Avenue, 2<sup>nd</sup>/5<sup>th</sup> Floor  
San Francisco, CA 94103  
Phone: (628) 652-3200  
Email: [permitcenter@sfgov.org](mailto:permitcenter@sfgov.org)  
Website: [sf.gov/departments/department-building-inspection](http://sf.gov/departments/department-building-inspection)

For questions regarding the Planning process, please contact the Planning counter at the Permit Center at:

49 South Van Ness Avenue, 2<sup>nd</sup> Floor  
San Francisco, CA 94103  
Phone: (628) 652-7300  
Email: [pic@sfgov.org](mailto:pic@sfgov.org)  
Website: [www.sfplanning.org](http://www.sfplanning.org)

## Timeline to Respond

The responsible party has **fifteen (15) days from the date of this notice to either:**

- (1) Take steps to correct the violation as noted above; or
- (2) Appeal this Notice of Violation as noted below.

The corrective actions shall be taken as early as possible. Any unreasonable delays in abatement of the violation will result in assessment of administrative penalties at \$250 per day for each violation. The Department may also report any licensed professional responsible for the violation(s) to the appropriate local, state, or federal licensing boards.

Please contact the assigned Enforcement Planner noted above with any questions, to submit evidence of correction, and discuss the corrective steps to abate the violation. Should you need additional time to respond to and/or abate the violation, please discuss this with the assigned Enforcement Planner, who will assist you in developing a reasonable timeline.

## Appeal Processes

If the responsible party believes that this order to remove a violation of the Planning Code is an abuse of discretion by the Zoning Administrator, the following appeal processes are available:

- (1) The responsible party may request a Zoning Administrator Hearing under Planning Code Section 176 within **30 days** from the date of this notice to show cause why this Notice of Violation is issued in error and should be rescinded by submitting the Request for Zoning Administrator Hearing Form and supporting evidence to the Planning Department. The Zoning Administrator shall render a decision on the Notice of Violation within 30 days of such hearing. The responsible party may then appeal the Zoning Administrator's written decision to the Board of Appeals within 15 days from the date of the decision.
- (2) The responsible party or any interested party may waive the right to a Zoning Administrator Hearing and

proceed directly to appeal the Notice of Violation within **15 days** from the date of this notice to the Board of Appeals located at:

49 South Van Ness Avenue, Suite 1475  
San Francisco, CA 94103  
Phone: (628) 652-1150  
Website: [www.sfgov.org/bdappeal](http://www.sfgov.org/bdappeal)

If Board of Appeals upholds the Notice of Violation, it may not reduce the amount of penalty below \$100 per day for each day the violation continues unabated, excluding the period of time the matter was pending either before the Zoning Administrator or before the Board of Appeals.

No penalties are assessed during the period when the matter is pending either before the Zoning Administrator or before the Board of Appeals. However, if the Responsible Party requests continuance of the appeal without a reasonable cause with the Board of Appeals, the penalties may still be assessed during the continuation period.

## Administrative Penalties

If a Responsible Party does not request any appeal process and does not take corrective action to abate the violation **within 30 days**, this Notice of Violation will become final. However, **administrative penalties will not begin to accrue until the 30-day period to respond expires**, as detailed above. Beginning on the following day, administrative penalties of up to **\$250 per day for each violation** to the Responsible Party will start to accrue for each day the violation continues unabated. If such penalties are assessed, the Planning Department will issue a Notice of Penalty and Fee, and the penalty amount shall be paid **within 30 days** from the issuance date of that notice. Please be advised that payment of penalty does not excuse failure to correct the violation or bar further enforcement action. Additional penalties will continue to accrue until corrective action is taken to abate the violation.

## Enforcement Time and Materials Fee

Pursuant to Planning Code Section 350(g)(1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting the Planning Code violations. Accordingly, the Responsible Party is currently subject to a fee of **\$1,853.79** for "Time and Materials" cost associated with the Code Enforcement investigation for confirmed violation. Additional fees will continue to accrue until the violation is abated. **This fee is separate from the administrative penalties described above and is not appealable.**

## Failure to Pay Penalties and Fees

If the Responsible Party fails to pay the "Administrative Penalties" and "Time and Materials" fee to the Planning Department within 30 days of the issuance of Notice of Penalty and Fee, the Zoning Administrator may take such actions to collect the "Penalties" and any unpaid "Time and Materials" fee owed to the Department, including:

- (1) Referral of the matter to the Bureau of Delinquent Revenue Collection under Chapter 10, Article V, Section 10.39 of the San Francisco Administrative Code. The BDR may apply a 25% surcharge for their collection services. Please note that such surcharge will be considered part of the cost of correcting the violation, and the Responsible Party will be responsible for such charges.
- (2) Initiation of lien proceedings under Chapter 10, Article XX, Section 10.230 et seq. of the San Francisco Administrative Code; and
- (3) Requesting the San Francisco Office of City Attorney to pursue collection of the “Administrative Penalties” and “Time and Materials” imposed against the Responsible Party in a civil action.

### **Recordation of Order of Abatement**

Upon the expiration of 90 days following the finality of this Notice of Violation, an Order of Abatement may be recorded against the property's records in the Office of the Recorder of the City and County of San Francisco.

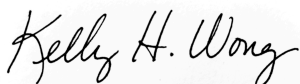
The obligation to correct the violation as set forth in the Order of Abatement shall be Planning Code conditions pursuant to Planning Code Section 174 that run with title to the property. Further, such recordation shall provide notice to each Responsible Party and any subsequent “successor” or “assign of title” to the property that the failure to perform such obligations is a violation of the Planning Code and may be enforced pursuant to Planning Code Section 176.

Any fees associated with recordation of an Order of Abatement will be assessed to the Responsible Party and added to the “Time and Materials” fee discussed above.

### **Other Applications Under Consideration**

The Planning Department requires that any pending violations be resolved prior to the approval and issuance of any separate applications for work proposed on the same property. Therefore, any applications not related to abatement of the violation on the subject property will be placed on hold until a corrective action is taken to abate the violation. We want to assist you to bring the subject property into full compliance with the Planning Code. You may contact the enforcement planner noted above for any questions on the enforcement and appeal process.

Sincerely,



Kelly Wong  
Acting Zoning Administrator

Enc.: Notice of Enforcement dated April 19, 2023

CC: Lucky Stewart, Property Manager, via email: [lstewart@structureproperties.com](mailto:lstewart@structureproperties.com)  
Daniel Lowry, Property Owner's Representative, via email: [deepdvinindan@yahoo.com](mailto:deepdvinindan@yahoo.com)  
Thomas Tunny, Partner, Reuben, Junius & Rose, LLP, via email: [ttunny@reubenlaw.com](mailto:ttunny@reubenlaw.com)



## NOTICE OF ENFORCEMENT

April 19, 2023

**Property Owner**

Attn: Lucky Stewart  
McAllister Street LLC  
246 Grand View Avenue  
San Francisco, CA 94114

**Site Address:** 1618-1620 McAllister Street  
**Assessor's Block/Lot:** 1156 / 011  
**Complaint Number:** 2022-011112ENF  
**Zoning:** RM-1 (Residential, Mixed – Low Density) Zoning District  
40-X Height and Bulk District  
**Code Violation:** Section 175, Work Completed in Excess of the Scope of Approved Permits  
Section 202.10, Unauthorized Intermediate Length Occupancy  
Section 209.2, Unauthorized Intermediate Length Occupancy  
Section 208, Unauthorized Group Housing  
**Time and Materials Fee:** \$1,580.00 (Minimum Fee for Confirmed Violation, Additional Charges May Apply)  
**Administrative Penalty:** Up to \$250 per Day of Violation per Unit  
**Response Due:** Within 15 Days from the Date of This Notice  
**Enforcement Planner:** Vincent W. Page II, (628) 652-7396, [vincent.w.page.ii@sfgov.org](mailto:vincent.w.page.ii@sfgov.org)

The Planning Department received a complaint that a Planning Code violation exists on the above referenced property that must be resolved. As the owner of the subject property, you are a responsible party. The purpose of this notice is to inform you about the Planning Code Enforcement process so you can take appropriate action to bring your property into compliance with the Planning Code. Details of the violation are discussed below.

### Description of Violation

The subject property is authorized for Residential use with two (2) Dwelling Units. The violation pertains to the following:

- (1) **Unauthorized Group Housing.** At least twelve people unrelated by blood, marriage or adoption are residing within each principally permitted dwelling unit in a manner that does not meet the definition for Family in Planning Code Section 102.
- (2) **Unauthorized Intermediate Length Occupancy.** The occupants of each unit have terms of tenancy for periods of more than 30 days but less than one year.



- (3) **Work was undertaken in excess of the scope of approved permits.** Building Permit Application (“BPA”) No. 201209250604 was issued on October 1, 2012, to allow an interior remodel and the addition of six (6) dormer windows. The permit drawings submitted with this BPA were approved by the Planning Department; however, they did not indicate where the dormers would be located. The drawing set failed to include a proposed roof plan and proposed elevations. The Planning Department in its approval of the application stipulated that the dormers would “meet the standards of Zoning Administrator Bulletin No. 3” (See Enclosures).

Pursuant to Zoning Administrator Bulletin No. 3 ([sfplanning.org/resource/zoning-administrator-bulletin-3-dormer-windows](https://sfplanning.org/resource/zoning-administrator-bulletin-3-dormer-windows)), in order to avoid the 30-day public notice required for building permits proposing Alterations in Residential Zoning Districts, dormer windows:

- (a) Are limited in size to no more than 8 feet by 8 feet;
- (b) Must be set back by at least 3 feet from side property lines;
- (c) Must be set back by at least 10 feet from the front building wall;
- (d) Be separated from each other by at least 3 feet;
- (e) Shall not exceed the height of the peak roof line of the subject building;
- (f) Shall be limited in total plan area such that all dormer windows, existing or proposed, combined with all other rooftop features exempt from the height limit, shall be equal to no more than 20 per cent of the existing horizontal area of the roof; and, if a building’s roof has multiple levels, then each level of roof shall be calculated separately.

**The dormer windows at the subject property fail to comply with the requirements of Zoning Administrator Bulletin No. 3 because they do not retain setbacks of 3 feet from each other and exceed 20 per cent of the subject roof’s horizontal area.**

Pursuant to Planning Code Section 102:

- Dwelling Unit is defined as a Residential Use defined as a room or suite of two or more rooms that is designed for, or is occupied by, one family doing its own cooking therein and having only one kitchen. A housekeeping room as defined in the Housing Code shall be a Dwelling Unit for purposes of this Code. For the purposes of this Code, a Live/Work Unit, as defined in this Section, shall not be considered a Dwelling Unit.
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- (b)(2), an Alteration shall be defined as an increase to the exterior dimensions of a building except those features listed in Planning Code Section 136(c)(1) through (24) and (26). In addition, an Alteration in RH, RM, and RTO Zoning Districts shall also include 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.
- (d), upon determination that an application is in compliance with the development standards of the Planning Code, the Planning Department shall cause a notice to be posted on the site pursuant to rules established by the Zoning Administrator and shall cause a written notice describing the proposed project to be sent in the manner described below. This notice shall be in addition to any notices required by the Building Code and shall have a format and content determined by the Zoning Administrator. It shall include a description of the proposal compared to any existing improvements on the site with dimensions of the basic features, elevations and site plan of the proposed project including the position of any adjacent buildings, exterior dimensions and finishes, and a graphic reference scale, existing and proposed uses or commercial or institutional business name, if known. The notice shall describe the project review process and shall set forth the mailing date of the notice and the expiration date of the notification period. Further, pursuant to subsection (d)(5), all building permit applications shall be held for a period of 30 calendar days from the date of the mailed notice to allow review by residents and owners of neighboring properties and by neighborhood groups.

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purposes listed in the Planning Code as permitted in that district, and in accordance with the regulations established for that district.

Pursuant to Planning Code Section 172, no structure shall be constructed, reconstructed, enlarged, altered, or relocated in a manner that is not permissible under the limitations set forth in the Planning Code for the district in which such structure is located.

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## How to Correct the Violation

The Planning Department requires that you immediately proceed to abate the violation as follows:

- (1) **Discontinue the unauthorized Intermediate Length Occupancy in both dwelling units and reinstate the subject property to its last authorized dwelling unit use, or seek authorization for a new use permitted under the Planning Code.** Please note that there is no path to legally establish an Intermediate Length Occupancy unit at the subject property because the property is authorized for fewer than four dwelling units.
- (2) **Obtain the proper permits to bring the subject property into compliance with the Planning Code.** This will require that you submit the following:
  - (a) **Project Application (PRJ):** [sfplanning.org/resource/PRJ-application](https://sfplanning.org/resource/PRJ-application). This form must be submitted for any work requiring Planning Department review. In the Project Description (p. 3), you will need to clarify how each violation would be addressed. Specifically, note if the Group Housing use would be legalized, and whether the dormer windows would be legalized in their present form, removed from the building, or brought into compliance with the controls of Zoning Administrator Bulletin No. 3.

- (b) **Building Permit Application(s).** Please note that if more than one permit application is required, they will need to be reviewed concurrently on a single set of permit drawings (plans). These may be submitted online via Electronic Plan Review, or hard copy. For more information, please contact the Department of Building Inspection (see below).
- (c) **Permit Drawings (Plans).** These must be prepared in accordance with the Planning Department's Plan Submittal Guidelines ([sfplanning.org/resource/plan-submittal-guidelines](https://sfplanning.org/resource/plan-submittal-guidelines)) and must include the following drawings and details below. For all drawings, please provide three conditions including: (1) prior to unpermitted construction, (2) as built, and (3) proposed (all on one page, if possible).
- (i) **Site Plan.** Show the subject property, adjacent properties, sidewalks, street trees, planted areas, and the location of all structures. Label the address of each building and identify the number of storeys. All significant measurements must be dimensioned, including: the lot depth and width; the distance of buildings and building massings from each other and from property lines; the width of sidewalks and curb cuts; the front setback pursuant to Planning Code Section 132; and the rear yard requirement pursuant to Planning Code Section 134. Key the location of sections on the site plans.
- (ii) **Floor and Roof Plans.** For all floor and roof plans, show partial outline of both adjacent properties. Show all rooms, walls, stairs, doors, windows, plumbing fixtures, and kitchen appliances. Identify operation type and/or opening direction of all windows and doors. Annotate the use of all rooms. All plans must be dimensioned to show significant measurements. Each unit number must be labeled, and the use of all non-residential spaces identified. Key the location of sections on the floor and roof plans.
- (iii) **Exterior Elevations.** Elevations are needed of each building face where work is proposed for legalization. Indicate the type of building materials on all exterior wall surfaces, and the operation type and construction material of all windows and doors. For side elevations, show the entire length of the lot; the rear yard and front setback indicated as vertical lines; the full profile of the adjacent buildings; any window openings and light wells that face the project site; and whether the lot slopes up or down. For front and rear elevations, show both adjacent properties (these may be shown in less detail but must be accurate as to their height, width, and general profile); and show whether the lot slopes laterally. Show the height limit per Planning Code Section 209.2 and height datum point (center point of lot, curb level) per Section 260. All significant measurements must be dimensioned, including the maximum building height from grade, the height of each storey from grade (finished floor/roof), and the ceiling height of each storey (clear).
- (iv) **Sections.** Sections through critical points of the building are required to clarify the plans. All significant measurements must be dimensioned. Longitudinal (long) and lateral sections are required. For longitudinal sections, show the entire length of the lot; the grade plane as it relates to the building; the height limit per Section 209.2; height datum point (center point of lot, curb level) per Section 260; and the relation between

the street, curb, front property line, subject building, rear yard, and rear property line. The front and rear property lines, rear yard, and front setback must be shown as vertical lines. For lateral sections, show the grade plane as it relates to the building and whether the lot slopes laterally; the height limit per Section 209.2; height datum point (center point of lot, curb level) per Section 260; and the relation between the subject building and each adjacent building. All significant measurements must be dimensioned, including the maximum building height from grade, the height of each storey from grade (finished roof), and the ceiling height of each storey (clear).

**Prior to formal submittal, you must send the prepared drawings to the Enforcement Planner noted above to confirm that they would address the violation. The Enforcement Planner will provide you with instructions to submit your Building Permit to the Planning Department.**

You will be responsible to comply with any requests for additional information, revisions, or additional applications. You will be required to pursue the corrective Building Permit Application such that it is approved, issued, and completed. The Planning Department reserves the right to determine whether you are demonstrating good faith toward addressing the violation. Your failure to demonstrate good faith, or to successfully abate the violation through the obtention of a Building Permit as noted above, will result in further enforcement action.

If you believe that the complaint was made in error, you will need to provide sufficient evidence. Evidence sufficient to demonstrate compliance may include, but is not limited to, dimensioned plans approved by the Planning Department and time-stamped photographs. A site visit will be required to verify compliance.

To obtain copies of approved Building Permit Applications or plans, please contact the Department of Building Inspection (“DBI”) – Records Management Division at:

49 South Van Ness Avenue, 4<sup>th</sup> Floor  
San Francisco, CA 94103  
Phone: (628) 652-3420  
Email: [dbi.records3r@sfgov.org](mailto:dbi.records3r@sfgov.org)  
Website: [sf.gov/requestbuildingrecords](https://sf.gov/requestbuildingrecords)

For questions regarding the Building Permit process, please contact the Department of Building Inspection (“DBI”) at:

49 South Van Ness Avenue, 2<sup>nd</sup>/5<sup>th</sup> Floor  
San Francisco, CA 94103  
Phone: (628) 652-3200  
Email: [permitcenter@sfgov.org](mailto:permitcenter@sfgov.org)  
Website: [sf.gov/departments/departments-building-inspection](https://sf.gov/departments/departments-building-inspection)

For questions regarding the Planning process, please contact the Planning counter at the Permit Center at:

49 South Van Ness Avenue, 2<sup>nd</sup> Floor

San Francisco, CA 94103  
Phone: (628) 652-7300  
Email: [pic@sfgov.org](mailto:pic@sfgov.org)  
Website: [www.sfplanning.org](http://www.sfplanning.org)

## Penalties and Appeal Rights

Failure to respond to this notice by abating the violation or demonstrating compliance with the Planning Code within fifteen (15) days from the date of this notice will result in the issuance of a Notice of Violation by the Zoning Administrator. Administrative penalties of up to \$250 per day will be assessed to the responsible party for each day beyond the timeline to respond provided for the Notice of Violation if the violation is not abated. The Notice of Violation provides the following appeal options:

- (1) Request for Zoning Administrator Hearing. The Zoning Administrator's final decision is then appealable to the Board of Appeals.
- (2) Appeal the Notice of Violation to the Board of Appeals. The Board of Appeals may not reduce the amount of penalty below \$100 per day for each day the violation exists, excluding the period of time the matter was pending either before the Zoning Administrator or Board of Appeals.

## Enforcement Time and Materials Fee

Pursuant to Planning Code Section 350(g)(1), the Planning Department shall charge for "Time and Materials" to recover the cost of correcting the Planning Code violations. Accordingly, the responsible party is currently subject to a fee of **\$1,580.00** for "Time and Materials" cost associated with the Code Enforcement investigation. **Please submit a check payable to "Planning Department Code Enforcement Fund" within fifteen (15) days from the date of this notice.** Additional fees may continue to accrue until the violation is abated. This fee is separate from the administrative penalties as noted above and is not appealable.

## Other Applications Under Planning Department Consideration

The Planning Department requires that pending violations be resolved prior to the approval and issuance of any separate applications for work proposed on the same property. Therefore, any applications not related to abatement of the violation will be placed on hold until a corrective action is taken to abate the violation. We want to assist you to bring the subject property into full compliance with the Planning Code. You may contact the Enforcement Planner noted above for any questions on the enforcement and appeal process.

CC: Lucky Stewart, Property Manager, via email: [lstewart@structureproperties.com](mailto:lstewart@structureproperties.com)  
Daniel Lowry, Property Owner's Representative, via email: [deepdvinindan@yahoo.com](mailto:deepdvinindan@yahoo.com)  
Thomas Tunny, Partner, Reuben, Junius & Rose, LLP, via email: [ttunny@reubenlaw.com](mailto:ttunny@reubenlaw.com)

THE PARTIES DID NOT SUBMIT BRIEFS