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## Thomas Dolan Architecture : Building Issues

### Change of Use

Change of Use is a very specific term of art in building codes which, when invoked, means that an existing building which is designated as a change of use must conform to all of current code as if it were a new building. Some cities (Oakland, for example) have viewed conversion from commercial to live/work as a change of use. Others (San Francisco, for example) have not. In earthquake or hurricane country, a change of use normally invokes a seismic or wind-load retrofit, an expensive proposition which can sometimes be a deal killer.

Certain cities such as Oakland have addressed this problem in a selective manner. There, change of use is invoked, but a special exception is made providing for seismic retrofit to a lesser degree -- in their case 75% of current code.

Other significant (and expensive) upgrades which can be triggered by a change of use can be: The addition of a second means of egress from upper floors or near property lines shared with other properties (i.e. not on a street or public way), the addition of sprinklers, upgrading the fire resistance of the buildings, etc.

The State of California has specifically passed legislation allowing relaxation of building codes in order to encourage the renovation and re-use of existing (often vacant or underutilized) commercial or industrial buildings for live/work and -- very recently -- to permit the conversion of downtown commercial buildings (often older empty office buildings), to residential use. While these state laws do take a specific position on change of use, numerous cities have either 1) ruled that such conversions are not a change of use; 2) selectively relaxed change of use provision as noted above; or 3) set a threshold percentage of the building which must be converted before change of use is involved, either in



its full or selectively altered form.

The third option above is an important choice. Under the UBC, precedent exists for ruling that if the primary use of a building remains the same and not more than 10% of the area of the building as a whole is exempt from change of use provisions. Live/work units contain residential portions, which are certainly the introduction of a new use when converted from an all-commercial building. However, only the residential portion is changing; the work portion, usually the majority of the space, remains the same use. Following this logic, the City of Oakland has developed a "10% rule," stating that as long as the aggregate live portion of the units does not exceed 10% of the area of the building as renovated (including added mezzanine space), then the building is not considered a Change of Use. An example follows.

In Oakland, residential portions of live/work spaces must not exceed 33% of the unit area, but can be as small as 240 square feet. It is these portions which -- in the aggregate -- become the area whose use is changing.

|  |          |
|--|----------|
| Building Size: . . . . .                             | 40,000   |
| On four floors of: . . . . .                         | 10,000   |
| Approximately 15% is devoted to circulation:         |          |
| stairs, corridors, lobby, etc.: . . . . .            | 6,000    |
| leaving . . . . .                                    | 34,000   |
| <br>   |          |
| The first floor remains as retail . . . . .          | 10,000   |
| leaving . . . . .                                    | 24,000   |
| <br>   |          |
| 10% of that can be devoted to live portion . . . . . | 2,400    |
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| Figuring each live portion at 240, this means        |          |
| 10 units could be accommodated in the                |          |
| building without a change of use. . . . .            | 10 UNITS |



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This could be 10 units of 2,400 square feet (quite large) or 10 units of 1200 square feet=12,000 square feet, leaving 12,000 square feet to remain as office.

Some building officials have expressed some concerns about this application of the 10% rule, because:

If the live/work units were concentrated near the top of a high-rise building, they would be in the most seismically vulnerable portion of an un-retrofitted building. One official suggests distributing units using the 10% rule on a per-floor basis throughout the floors of any multi-story building, a ruling to which the development community has reacted unfavorably because they normally would want to concentrate live/work units on a few floors to encourage a sense of community.

In a building whose egress systems (stairs, corridors, exits, etc.) were not upgraded due to a change of use exception under a 10% rule, a concern has been expressed about the actual number of occupants whose ability to get out after an earthquake or in another emergency. One solution to this (a rather technical one) is to require that the maximum number of occupants accommodated under this exception would be, say, 20 (figuring 2 occupants/240 square feet live portion) unless one fully upgraded the egress systems of the building according to today's codes -- a counter exception to the larger exemption from change of use embodied in the 10% rule.