

Court Defers to City's Interpretation of the Building Code

A city's interpretation of the building code is entitled to significant deference in light of the city's expertise regarding land-use determinations. *Harrington v. City of Davis*, 16 Cal. App. 5th 420 (2017). The City of Davis approved a conditional use permit for a property owner to use a home in a residential neighborhood as professional office space for three therapists. A previous owner had obtained a conditional use permit to use the property for massage services, but the conditional use permit had lapsed. Petitioner contended that the issuance of the conditional use permit effectuated a change in occupancy that triggered the requirements for new construction under the Building Code, including additional parking. In support, petitioner argued that when the prior owner's conditional use permit expired, the occupancy had reverted from business to residential. Consequently, issuance of the new conditional use permit changed the occupancy to commercial and required compliance with the accessible parking requirements for new construction. The City maintained that, under the Building Code, changes in occupancy occur only when a building has been made to comply with Building Code requirements and a certificate of occupancy has been issued. Because the City building official did not issue a certificate of occupancy when the previous conditional use permit expired, the City concluded that the occupancy did not change, and the Building Code's accessible parking requirements were not triggered. The court began its analysis by observing that the City's construction of the Building Code was entitled to significant deference, as the City was the agency charged with the code's enforcement and had significant expertise in land-use determinations. Construing the relevant provisions, the court held that the Building Code places the responsibility for determining whether a change in occupancy has occurred in the hands of the building official. Thus, the court said, where the building official has not made such a determination, no change has occurred because a "change in occupancy can[not] occur sub silentio, without the building official's authorization or approval." The court also noted that the City's conclusion that a change in occupancy had not occurred was supported by substantial evidence. The administrative record demonstrated that the City carefully considered the relevance of the previous permit's expiration, the period of residential use following the expiration, and the issuance of the new conditional use permit when it determined that the occupancy of the structure did not change.

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