



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment

INITIATION HEARING DATE: JULY 28, 2016

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Project Name: **Initiation of Planning Code Text Amendments Related to Academy of Art University (AAU).** Planning Department Proposal: Reject AAU's Two Proposed Ordinances and Instead Initiate an Ordinance Developed by the Planning Department for a Limited Conversion to Student Housing Use for Two Specific Properties

Case Numbers: **2012.0646PCA, 2016-000559PCA, and 2016-007198PCA**
[Board File No. pending]

Initiated by: Planning Commission

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Recommendation: **Recommend Initiation of an Adoption Hearing on or after 9/22/16**

The action before the Commission is initiation of the Code amendments described below. Initiation does not involve a decision on the substance of the amendments; it merely begins the required 20 day notice period, after which the Commission may hold a hearing and take action on the proposed Code amendments and providing for the expiration of the provision by operation of law three years after its effective date.

PLANNING CODE TEXT AMENDMENT

The proposed Ordinance would waive the applicability of the prohibition on conversion of Residential Units to Student Housing set forth in Planning Code Section 317(e) for the properties at 2209 Van Ness Avenue (Lot 029 in Assessor's Block 0570) and 2211 Van Ness Avenue (Lot 005 in Assessor's Block 0570); establishing criteria for conditional use criteria.

The Way It Is Now:

Planning Code Section 102 defines Student Housing as follows:

Student Housing. A Residential Use characteristic defined as a living space for students of accredited Post-Secondary Educational Institutions that may take the form of Dwelling Units, Group Housing, or SRO Unit and is owned, operated, or otherwise controlled by an accredited Post-Secondary Educational Institution. Unless expressly provided for elsewhere in this Code, the use of Student Housing is permitted where the form of housing is permitted in the underlying Zoning District in which it is located. Student Housing may consist of all or part of a building, and Student Housing owned, operated, or controlled by more than one Post-Secondary Educational Institution may be located in one building.

Planning Code Section 317 regulates the loss of residential units. Subsection (e) expressly prohibits the conversion of existing residential units into Student Housing as follows:

Conversion to Student Housing. The conversion of Residential Units to Student Housing is prohibited. For the purposes of this subsection, Residential Units that have been defined as such by the time a First Certificate of Occupancy has been issued by the Department of Building Inspection for new construction shall not be converted to Student Housing.

However, notwithstanding the foregoing, Planning Code Section 317(g)(3)(3)A-D¹ establishes four specific criteria which, if met, would enable conversion of existing residential units to Student Housing without Commission approval. Specifically, this Section states:

Planning Commission approval shall not be required for the change of use or occupancy of a dwelling unit, group housing, or SRO to Student Housing if the dwelling unit, group housing or SRO will be Student Housing owned, operated or otherwise controlled by a not for profit post-secondary Educational Institution and

- (A) it was built by the post-secondary Educational Institution;
- (B) it is in a convent, monastery, or similar religious order facility;
- (C) it is on an adjoining lot (i.e., sharing the same lot line) to the post-secondary Educational Institution, so long as the lot has been owned by the post-secondary Educational Institution for at least ten years as of the effective date of Ordinance 188-12; or
- (D) as of August 10, 2010, it was owned, operated or otherwise controlled by a post-secondary Educational Institution that had an Institutional Master Plan on file with the Planning Commission, and where the occupancy by those other than students at that date was less than 20% of the total occupants. For purposes of determining occupancy, the post-secondary Educational Institution shall present to the Planning Department verified information regarding its rental or lease of units as of that date.

The Way It Would Be:

The proposed Ordinance developed by the Planning Department would waive the prohibition on conversion of Residential Units to Student Housing set forth in Planning Code section 317(e) for two specific properties at 2209 Van Ness Avenue and 2211 Van Ness Avenue, and would sunset after three (3) years. Under the proposed Ordinance, each such property shall be permitted to apply for all Conditional Use Authorizations, permits and approvals as are required under the Planning and Building Codes to legalize their current use as Student Housing and to obtain permits for previous unpermitted improvements and changes in use. Nothing in this Ordinance requires the Planning Commission, the Planning Department, Department of Building Inspection, the Board of Supervisors, or the Historic Preservation Commission to grant any such Conditional Use Authorizations, permits

¹ The Publisher of the Planning Code has added the following Codification Note concerning the designations of this text. The note reads as follows: "As currently codified, this Section includes two divisions designated as (g)(3). The first division so designated was added as new material as part of the extensive amendment and reorganization of this Section effected by Ord. [33-16](#). The second division so designated was, prior to Ord. [33-16](#), codified herein as division (f)(3). Former division (f)(3) was not explicitly shown in Ord. [33-16](#) as deleted, redesignated, or otherwise altered. In accordance with that ordinance's "Scope of Ordinance" clause, see Ord. [33-16](#) § 7, former division (f)(3) is retained here, now designated as the second division (g)(3), as shown."

or approvals. The final approvals would be left to the sole discretion of each such City agency, board or commission. The proposed Ordinance would establish criteria for this conversion and would provide for the expiration of the provisions within the ordinance by operation of law three years after the effective date.

BACKGROUND

The Academy of Art University (hereinafter, "AAU"), located within the City and County of San Francisco (City), is a private for-profit post-secondary academic institution that occupies buildings throughout the City (predominantly in the northeast quadrant) for its existing art programs. AAU plans on expanding its facilities and programs to accommodate a projected on-site student enrollment of approximately 17,282 students by 2020, resulting in a total increase of approximately 6,100 students (or five percent a year) as compared to a 2010 on-site student enrollment of 11,182. In addition, AAU also anticipates an increase of 1,220 faculty and staff, beyond the 2,291 faculty and staff that were employed by AAU in 2010, resulting in 3,511 faculty and staff by 2020. In order to accommodate AAU's increased enrollment, AAU plans on expanding its existing facilities and shuttle service. Note, most recently AAU's enrollment and staffing has fallen slightly and is reported at 8,649 students and 1,954 staff in the November 2015 IMP Update.

The Proposed Project under study for the Draft Environmental Impact Report consists of four general components: program-level growth, project-level growth, legalization of prior unauthorized changes, and shuttle expansion.

The draft Ordinance now being proposed by staff for initiation by the Commission addresses only the AAU applications for legalizing student housing at two specific properties where the Department is recommending legalization through the proposed Planning Code Text Amendment process.

ISSUES AND CONSIDERATIONS.

AAU Applications for Planning Code Amendments. AAU has submitted two applications to amend the Planning Code.

1. **Case No. 2012.0646PCA relating to 601 Brannan Street.** This legislative application² from AAU seeks to amend Planning Code Section 175.5(b)³ to permit existing projects to be continued for which an EIR has been filed within 48 months of the effective date of the Western SoMa Controls. This legislation would enable the legalization of 601 Brannan Street.
2. **Case No. 2016-000559PCA relating to 1080 Bush Street, 1153 Bush Street, 1916 Octavia Street, 1055 Pine Street, 860 Sutter Street, 2209 Van Ness Avenue, and 2211 Van Ness Avenue.** This

² This application is associated with record identification number 2012.0646PCA and was filed on April 7, 2016.

³ Planning Code Section 175.5(b) establishes the applicability of the controls for the SALI district by grandfathering certain projects with pending applications filed before June 20, 2012, provided that entitlements are secured within 36 months of the effective date of the Section.

legislative application⁴ from AAU seeks to amend Planning Code Section 317(e) such that the prohibition on the conversion of existing Residential Units to Student Housing would be lifted for projects which had filed for Planning entitlements prior to October 11, 2012. As proposed by AAU, this requested Planning Code text amendment could enable the legalization of seven (7) properties.

Alternative Planning Department Recommendation for Planning Code Text Amendments. As described in this report, the Planning Department recommends that the Commission initiate a more limited ordinance that would only enable the legalization of two (2) properties; the Department recommends that the Commission not initiate the two ordinances requested by AAU.

Case No. 2016-007198PCA relating to: 2209 Van Ness Avenue and 2211 Van Ness Avenue. Staff recommends that the Commission not initiate the broader pieces of legislation requested by AAU, but waive the prohibition on conversion to Student Housing set forth in Planning Code section 317(e) with respect to the properties located at 2209 and 2211 Van Ness Avenue. The proposed amendment would not relieve AAU of any requirements to apply for permits, Conditional Use Authorizations or other approvals required to legalize the Student Housing uses at 2209 and 2211 Van Ness following the amendment to the Planning Code. Rather, the Ordinance would permit AAU to seek required approvals to legalize the existing use as Student Housing. Without a text amendment to the Planning Code, the legalization of Student Housing would be prohibited where the legal use is an existing Residential Use.

Student Housing

There are two policy mandates regarding Student Housing in San Francisco applicable here. The first is that institutions that generate a need or demand for student housing also have a responsibility to provide sufficient housing to meet their generated need. The second is that San Francisco's existing housing stock is critical for its residents, and that this existing housing must be protected from conversion to a use that would be limited to serve only students.

The Housing Element of the General Plan provides the following guidance:

Produce New Student Housing:

Policy 1.9 Require (emphasis added) new commercial developments and higher educational institutions to meet the housing demand they generate, particularly the need for affordable housing for lower income workers and students.

Retain Existing Affordable Housing:

OBJECTIVE 2 Retain existing housing units, and promote safety and maintenance standards, without jeopardizing affordability.

POLICY 2.1 Discourage the demolition of sound existing housing, unless the demolition results in a net increase in affordable housing.

OBJECTIVE 3 Protect the affordability of the existing housing stock, especially rental units.

⁴ This application is associated with record identification number 2016-000559PCA and was filed on January 13, 2016.

POLICY 3.1 Preserve rental units, especially rent controlled units, to meet the City's affordable housing needs.

POLICY 3.5 Retain permanently affordable residential hotels and single room occupancy (SRO) units.

The Need for Student Housing in San Francisco.

The City has a housing crisis. Availability of Student Housing is one aspect of that crisis. There are over thirty (30) educational institutions that draw people to The City with an estimated enrollment of 80,000 students. At a February 29, 2016 Land Use and Transportation Committee hearing of the Board of Supervisors, it was reported that the following local post-secondary educational institutions provided housing for their students at the following rates:

University of San Francisco	38%
University of California, Hastings	30%
University of California, San Francisco	14%

And, according to the University of San Francisco Institutional Master Plan, dated August 2013, peer institutions in other dense, urban cities provide the following amounts of housing for their students:

Boston College	98%
Georgetown, DC	78%
Loyola Marymount, Los Angeles	57%
Fordham, New York City	55%
University of Portland	54%
University of San Diego	48%

In 2016, AAU had an on-site enrollment of 8,649, including undergraduate and graduate students. Student enrollment has fallen since 2010, when AAU had an on-site enrollment of 11,182. The combination of all 34 AAU existing sites totals includes 485,703 square feet of residential use within 17 residential buildings, and with a total capacity of 1,810 beds. AAU plans on expanding its facilities and programs to accommodate a projected on-site student enrollment of approximately 17,282 students by 2020.

AAU Housing for Existing Students..... **21%***

*Note: The existing housing numbers above that AAU is providing includes some Student Housing that is legally permitted, some Student Housing that is not yet permitted but has a path to legalization, and some Student Housing that currently has no path to legalization without enabling legislation. While other institutions of higher learning can and do build Student Housing—even in expensive urban markets—to help meet their need, AAU has yet to do so. The result is that all of the demand created by AAU, is currently being met through the conversion of existing buildings and primarily by conversions of The City's existing housing stock.

IMPLEMENTATION

The Department has determined that this Ordinance will not impact our current implementation procedures.

REQUIRED COMMISSION ACTION

The proposed Ordinance developed by the Planning Department is before the Commission so that it may initiate the proposed Ordinance and schedule a time for the Ordinance to be heard for adoption.

RECOMMENDATION

The Department recommends that the Commission recommend approval of the resolution to initiate the Planning Code amendments for consideration on or after September 22, 2016.

BASIS FOR RECOMMENDATION

There is a need for housing to accommodate AAU students. The General Plan simply and strongly states that The City should require that this need be met through the production of new housing. While AAU has refused to comply with City policies mandating that institutions meet the housing demand they generate with new construction to date, the City can build on past precedent by generally prohibiting the conversion of existing housing to Student Housing and by protecting lands intended for PDR use from conversion to post-secondary educational institution uses. This forms the bedrock for our recommendations. At the same time, there are two sites that have converted a relatively low-intensity Residential Use into a high intensity Student Housing Use. Where this conversion serves a large number of students and would relieve a greater pressure on existing housing supply than if the low-density Residential Use remained, the Department believes that enabling the Commission to consider this limited exemption from the prohibition on the conversion is warranted. This does not indicate that the Department would take a similar position should AAU or other institutions engage in unauthorized conversions in the future, or seek to convert existing lower intensity housing to Student Housing at other sites. Rather, this recommendation is limited to two properties on Van Ness Avenue where the supporting transit service is high and that represent a limited exception.

AAU Applications for Planning Code Amendments. The Department recommends against initiation of the AAU applications to amend the Planning Code for the following reasons:

1. **601 Brannan Street (Case No. 2012.0646PCA).** The first legislative application⁵ from AAU seeks to amend Planning Code Section 175.5(b) to permit existing projects to be continued for which an EIR has been filed within 48 months of the effective date of the Western SoMa Controls. This legislation would enable the legalization of 601 Brannan Street. This property has a legal use of 73,666 sf of Industrial Use and the current use is Institutional with 37 classrooms, studios, a library and recreational space. Planning Code Section 175.5 is intended to “provide for an orderly transition from prior zoning and planning requirements to the requirements imposed in implementing the Western SoMa Controls, without impairing the validity of prior actions by the City, or frustrating completion of actions authorized prior to the effective date of those Controls”. This Section provides a grandfathering for certain projects *if* they receive a first building permit or site permit within 36 months of the effective date of the Western SoMa Controls. These controls established the SALI (Service/Arts/Light Industrial) district upon the effective date of April 27, 2013. The new SALI zoning district “is designed to protect and facilitate the expansion of existing general commercial, manufacturing, home and business service, and light industrial

⁵ This application is associated with record identification number 2012.0646PCA and was filed on April 7, 2016.

activities, with an emphasis on preserving and expanding arts activities.” In establishing a policy framework for reviewing AAU’s legalization requests concerning the conversion of Industrial to Institutional uses, the Department is inclined to be unsupportive of conversions that detract from the goal of preserving industrial space dedicated to production, distribution, and repair in certain districts. **Because the existing legal use of this site is an Industrial use and because the intent of the SALI district is to preserve space for such uses, the Department recommends that the Commission not initiate this legislation requested by AAU.**

2. **2209 Van Ness Avenue, 2211 Van Ness Avenue, 1080 Bush Street, 1153 Bush Street, 1055 Pine Street, 860 Sutter Street, and 1916 Octavia Street (Case No. 2016-000559PCA).** The second legislative application⁶ from AAU seeks to amend Planning Code Section 317(f) such that the prohibition on the conversion of existing Residential Units to Student Housing would be lifted for projects which had filed for planning entitlements prior to October 11, 2012. As proposed by AAU, this requested Planning Code amendment could enable the legalization of seven (7) properties. **Because of the Planning Commission’s past strong statements that existing residential uses should not be converted to Student Housing but instead that institutions should be encouraged to build housing to meet the housing need that they generate, the Department recommends that the Commission not initiate this legislation requested by AAU.**

Planning Department Recommendation for Planning Code Amendments. As described in this report, the Planning Department recommends that the Commission initiate a more limited Ordinance that would only enable the legalization of two properties: 2209 Van Ness Avenue and 2211 Van Ness Avenue, and that the Commission not initiate the broader pieces of legislation requested by AAU. The Ordinance recommended by the Department would not authorize the use of Student Housing at either location. Instead, the draft Ordinance would enable the Commission to consider legalization. Without an amendment to the Planning Code, legalization of Student Housing would be prohibited where the legal use is an existing Residential Use.

Further, the draft Ordinance recommended by the Department for initiation establishes three safeguards to ensure that even these limited conversions of existing Residential Use to Student Housing Use would occur within the bounds of good public policy. The three safeguards include 1) establishing reasonable criteria for the Commission’s consideration of conversion; 2) limiting the authority of the Ordinance to ensure timely resolution of the matter by imposing a 3-year sunset provision; and 3) establishing by Ordinance appropriate conditions of operation.

First, the conversion criteria in the proposed Ordinance would follow criteria currently established in Planning Code Section 317 that regulate the conversion of existing residential uses, with adaptations made that are tailored to the issues of converting existing housing to Student Housing. Conversion of 2209 and 2211 Van Ness Student Housing shall require Conditional Use Authorization under Planning Code 303. The proposed criteria include the following:

Conversion of 2209 Van Ness and 2211 Van Ness to Student Housing shall require Conditional Use Authorization under Planning Code section 303. When considering such authorization, the Planning Commission shall not consider the criteria set forth in Planning Code section 317(g)(3), but rather shall consider the conditional use criteria set forth in Planning Code Section 303 and the following additional criteria:

⁶ This application is associated with record identification number 2016-000559PCA and was filed on January 13, 2016.

- (a) Whether legalization of the Student Housing use would eliminate only owner occupied housing, and if so, for how long the unit(s) proposed to be removed were owner occupied;
- (b) Whether the legalization would provide desirable new Student Housing at sufficient densities to warrant the loss of the existing residential use;
- (c) Whether legalization would bring the building closer into conformance with the uses permitted in the zoning district;
- (d) Whether legalization of the Student Housing use would be detrimental to the City's housing stock;
- (e) Whether legalization of the Student Housing use would remove Affordable Housing, or units subject to the Residential Rent Stabilization and Arbitration Ordinance;
- (f) Whether the location for proposed Student Housing use would reduce greenhouse gas emissions relative to other potential locations for the students of the post-secondary Educational Institution; and
- (g) Whether the Student Housing would be owned, operated or otherwise controlled by a post-secondary Educational Institution that has an up-to-date Institutional Master Plan on file with the Department and accepted by the Planning Commission.

Second, the proposed Ordinance would offer a limited window of effectiveness. Under the proposal, AAU would need to secure Planning entitlements and building permits within three years of the enactment date of the Ordinance. If entitlements are obtained during this timeframe, the Student Housing use would be a legally permitted use. If entitlements are not obtained during this time period, there would be no path to legalization.

Third, the proposed Ordinance would establish the following conditions for the operation of the facilities:

Student Housing Operating Conditions. Such uses permitted by this Ordinance shall operate in accordance with the following conditions:

- (1) **The institution shall establish and maintain a community liaison.** Prior to issuance of a building permit to legalize and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.
- (2) **Prohibition of Short-Term Rentals.** Student Housing shall not be used for Short-Term Residential Rentals under Chapter 41A of the Administrative Code, which restriction shall be recorded as a Notice of Special Restriction on the subject lot.

ENVIRONMENTAL REVIEW

The Environmental Review will be completed prior to the Commission taking action on this Ordinance.

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

RECOMMENDATION: Initiation on July 28, 2016 and Consider Adoption on or after September 22, 2016

Attachments:

Exhibit A: Draft Planning Commission Resolution
Exhibit B: Draft Ordinance



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Draft Resolution

INITIATION HEARING DATE: JULY 28, 2016

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Project Name: **Initiation of Planning Code Text Amendments Related to Academy of Art University (AAU). Planning Department Proposal: Reject AAU's Two Proposed Ordinances and Instead Initiate an Ordinance Developed by the Planning Department for a Limited Conversion to Student Housing Use for Two Specific Properties**

Case Number: **2012.0646PCA, 2016-007198PCA, and 2016-000559PCA**
[Board File No. pending]

Initiated by: Planning Commission

Staff Contact: Tina Chang, Planner
Tina.Chang@sfgov.org, 415-575-9197

Reviewed by: AnMarie Rodgers, Senior Policy Advisor
AnMarie.Rodgers@sfgov.org, 415-558-6395

Recommendation: **Initiation of an Adoption Hearing on or after 9/22/26**

INITIATING AMENDMENTS TO THE PLANNING CODE TO WAIVE APPLICABILITY OF THE PROHIBITION ON CONVERSION OF RESIDENTIAL UNITS TO STUDENT HOUSING SET FORTH IN PLANNING CODE SECTION 317(e) TO 2209 VAN NESS AVENUE (LOT 005 IN ASSESSOR'S BLOCK 0570) AND 2211 VAN NESS AVENUE (LOT 029 IN ASSESSOR'S BLOCK 0570); ESTABLISHING CRITERIA FOR CONDITIONAL USE AUTHORIZATION APPLICABLE TO CONVERSIONS TO STUDENT HOUSING FOR 2209 VAN NESS AVENUE AND 2211 VAN NESS AVENUE; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1; AND PROVIDING FOR EXPIRATION OF THE PROVISION BY OPERATION OF LAW THREE YEARS AFTER ITS EFFECTIVE DATE.

WHEREAS, on August 10, 2010, Supervisor Dufty introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 10-1095 to add a definition for Qualified Student Housing to the Planning Code so that particular student housing projects would be exempt from the Inclusionary Housing Program.

WHEREAS, on November 23, 2010, the Planning Commission considered the proposed Ordinance and made the following findings and recommendations in Resolution No. 18218:

Exhibit A: Draft Resolution

CASE NO. 2012.0646PCA, 2016-007198PCA, and 2016-000559PCA

Hearing Date: July 28, 2016

Limited Waiver of Planning Code Section 317(e)

“[The Commission] understands the unique situation that large Educational Institutions have in San Francisco and supports the concept of allowing an exemption from the Inclusionary Housing Program to create an incentive for the production of new student housing.

By creating an incentive to encourage the production of student housing while protecting the City’s existing housing stock and other vulnerable uses, the City may be able to both 1) relieve the pressure student demand for housing on the existing housing stock and 2) and encourage the creation of new housing for students within the City.

However, the Commission believes that certain potential loopholes in the legislation should be closed. Therefore, the Commission recommends the following:

1. Create a definition for student housing in the Planning Code.
2. Recapture Inclusionary fees if a “qualified student housing” project later converts to another housing type.
3. Prohibit the conversion of existing residential units including dwelling units, Single Room Occupancy, and Residential Hotel Housing as regulated by Chapter 41 of the Administrative Code, as well as Large Tourist Hotels as regulated by Chapter 41F of the Administrative Code to student housing use;
4. Allow conversions of other uses to the new “student housing use” by Conditional Use authorization; and
5. Remove the requirement that each development be occupied by students of a certain income and instead require qualified education institution to require that at least 30% of students meet the definition of “qualified students”; and
6. Encourage the placement of new student housing projects along transit-preferential corridors.

Therefore, the Commission supports the proposed legislation with the modifications listed above and recommends approval with modifications of the proposed Ordinance.”

WHEREAS, The Board of Supervisors adopted Ordinance No. 321-10, which largely incorporated the Commission’s recommendations by ensuring that Qualified Student Housing Projects would not result in the loss of existing housing;

WHEREAS, Ordinance No. 321-10 also required that such Qualified Student Housing Projects only be permitted where there is an Institutional Master Plan (§304.5) on file with the Planning Department which describes the a) type and location of housing used by students; b) plans for the provision of qualified student housing; c) the Institutions’ need for student housing to support its program; and d) the percentage of its students that receive some form of need-based assistance;

WHEREAS, the adoption of Ordinance No. 321-10 was consistent with earlier Board action in adopting Ordinance 228-08 which established an Interim Moratorium on the Conversion of Residential Rental Units to Student Housing; and

Exhibit A: Draft Resolution

CASE NO. 2012.0646PCA, 2016-007198PCA, and 2016-000559PCA

Hearing Date: July 28, 2016

Limited Waiver of Planning Code Section 317(e)

WHEREAS, similar issues were considered by the Planning Commission in 2012, when the Commission passed Resolution No. 18652 recommending that the Board of Supervisors adopt with modifications a proposed ordinance that would amend the Planning Code to add a new section 102.36 to create a definition of Student Housing, to amend the Code to create certain incentives for Student Housing, to amend section 307 to permit the conversion of student housing to residential uses that do not qualify as student housing, to amend section 317 to prohibit the conversion of residential uses to Student Housing, and to make various other amendment. At this hearing, the Commission recommended that “the proposed Ordinance generally keep the prohibition on the conversion of existing housing into student housing”; and

WHEREAS, Resolution No. 18652 included provisions allowing three permitted conversions of SROs and housing to Student Housing; and

WHEREAS, in allowing this exception to the prohibition, the Commission stated, “Allow ...the conversion of a relatively small amount of existing housing to student housing use, however, the circumstances whereby such conversions would be allowed are very limited”; and

WHEREAS, the Commission emphasized the need to further limit conversions by further seeking to, “add another exemption for Student Housing currently in existence that is operated or owned by an institution that has a Commission accepted Institutional Master Plan on file prior to August 10, 2010 and (emphasis included in original Commission resolution) where the occupancy by those other than students had been reported to be less than 20% occupied as of August 10, 2010”; and

WHEREAS, the Commission also recommended that “if the Board enacts any provisions enabling conversions via Conditional Use authorization, the Commission recommends adding protections for tenants from unfair evictions and to ensure rent control protections” and;

WHEREAS, the Commission reaffirms the two basic policy thrusts regarding Student Housing in San Francisco.

- The first policy is that institutions generate a need housing and that it is the responsibility of those institutions to meet their generated need.
- The second policy is that San Francisco's existing housing stock is critical for its residents and that this housing must be protected from conversion to a use that would be limited to only serve students.

WHEREAS, the Commission finds support for this policy in the existing Housing Element of the City's General Plan which contains the following policies and objectives:

Produce New Student Housing:

Exhibit A: Draft Resolution

CASE NO. 2012.0646PCA, 2016-007198PCA, and 2016-000559PCA

Hearing Date: July 28, 2016

Limited Waiver of Planning Code Section 317(e)

Policy 1.9 Require new commercial developments and higher educational institutions to meet the housing demand they generate, particularly the need for affordable housing for lower income workers and students.

Retain Existing Affordable Housing:

OBJECTIVE 2 Retain existing housing units, and promote safety and maintenance standards, without jeopardizing affordability.

POLICY 2.1 Discourage the demolition of sound existing housing, unless the demolition results in a net increase in affordable housing.

OBJECTIVE 3 Protect the affordability of the existing housing stock, especially rental units.

POLICY 3.1 Preserve rental units, especially rent controlled units, to meet the City's affordable housing needs.

POLICY 3.5 Retain permanently affordable residential hotels and single room occupancy (SRO) units.

WHEREAS, the Commission finds that the previous legal uses of 2209 Van Ness Avenue and 2211 Van Ness Avenue were less intense residential uses than the Student Housing uses proposed in the Ordinance considered here, and thus legalizing the conversion of these properties to Student Housing would help ease the pressure on existing housing stock otherwise created by students in need of housing; and

WHEREAS, while the Planning Commission recommends approval of this Ordinance, which permits conversion of two existing housing sites to Student Housing, the Commission's support is predicated on the very limited nature of the proposed exemptions and on the understanding that such conversions would be "very unusual"; and

WHEREAS, the Environmental Review will be completed prior to the Commission taking action on this Ordinance; and

WHEREAS, the Planning 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 Department staff and other interested parties; and

WHEREAS, 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 Planning Commission has reviewed the proposed Ordinance; and

MOVED, that pursuant to Planning Code Section 302(b), the Planning Commission Adopts a Resolution to initiate amendments to the Planning Code;

AND BE IT FURTHER RESOLVED, that pursuant to Planning Code Section 306.3, the Planning Commission authorizes the Department to provide appropriate notice for a public

Exhibit A: Draft Resolution

CASE NO. 2012.0646PCA, 2016-007198PCA, and 2016-000559PCA

Hearing Date: July 28, 2016

Limited Waiver of Planning Code Section 317(e)

hearing to consider the above referenced Planning Code amendments contained in the draft ordinance, approved as to form by the City Attorney in Exhibit A, to be considered at a publicly noticed hearing on or after **September 22, 2016**.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on July 28, 2016.

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: July 28, 2016

[Planning Code - 2209 Van Ness Avenue and 2211 Van Ness Avenue - Conversion to Student Housing Use]

Ordinance waiving applicability of the prohibition on conversion of Residential Units to Student Housing set forth in Planning Code Section 317(e) to 2209 Van Ness Avenue (Lot 005 in Assessor's Block 0570) and 2211 Van Ness Avenue (Lot 029 in Assessor's Block 0570); establishing criteria for conditional use authorization applicable to conversions to Student Housing for 2209 Van Ness Avenue and 2211 Van Ness Avenue; making findings under the California Environmental Quality Act; making findings under Planning Code Section 302 of public necessity, convenience, and welfare; making findings of consistency with the General Plan and the eight priority policies of Planning Code Section 101.1; and providing for expiration of the provision by operation of law three years after its effective date.

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

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

Section 1. Environmental and Land Use Findings.

(a) On _____, 2016, the Planning Commission conducted a duly noticed public hearing on this ordinance. The Planning Commission, by Resolution No. _____, adopted findings that the actions contemplated in this ordinance are, on balance, consistent with the City's General Plan and the eight priority policies of Planning Code section 101.1. A copy of the Planning Commission Resolution is on file with the Clerk of

1 the Board of Supervisors in File No. _____ and is incorporated herein by reference.

2 The Board adopts the Planning Commission findings as its own.

3 (b) Pursuant to Planning Code Section 302, this Board finds that this ordinance will
4 serve the public necessity, convenience, and general welfare for the reasons set forth in
5 Planning Commission Resolution No. _____,

6 (c) On July 28, 2016, the Planning Commission certified the Final Environmental
7 Impact Report for the Academy of Art University Project, Planning Department Case No.
8 2008.0586E (FEIR) by Motion No. _____, finding that the procedures through which
9 the FEIR was prepared, publicized, and reviewed complied with the California Environmental
10 Quality Act, California Public Resources Code Sections 21000 *et seq.* (CEQA), Title 14
11 California Code of Regulations Sections 15000 *et seq.* (the "CEQA Guidelines"), and Chapter
12 31 of the San Francisco Administrative Code ("Chapter 31").

13 (d) Because 2209 Van Ness Avenue and 2211 Van Ness Avenue had been previously
14 converted to Student Housing use in violation of the Planning Code, their use as Student
15 Housing is considered a baseline condition in the FEIR. To better understand the baseline
16 conditions created by the AAU's illegal conversion of buildings to new uses, the Planning
17 Department drafted an Existing Sites Technical Memorandum ("ESTM"), published on May 4,
18 2016, which analyzed a total of 28 sites including existing, but unpermitted, alterations or
19 changes in use, including the existing but unpermitted Student Housing uses at 2209 Van
20 Ness Avenue and 2211 Van Ness Avenue. Thus, the waiver of the prohibition on conversion
21 to Student Housing use at 2209 Van Ness Avenue and 2211 Van Ness Avenue proposed in
22 this ordinance is analyzed in the FEIR and in the ESTM. The FEIR and ESTM concluded that
23 legalization of the existing uses of 2209 Van Ness Avenue and 2211 Van Ness Avenue as
24 Student Housing will not result in any significant impacts on the environment.

1 (e) On _____, the Planning Commission approved Case No.
2 _____, and in so doing, adopted CEQA findings by Motion No. _____.
3 The CEQA findings contained in Planning Commission Motion No. _____ are
4 incorporated herein by reference and adopted by this Board as its own findings with regard to
5 the actions contained in this ordinance.
6

7 Section 2. Additional Findings.

8 (a) 2211 Van Ness Avenue (Lot 029 in Assessor's Block 0570) is a two-story 5,076
9 square foot building constructed in 1876, located on Van Ness Avenue between Vallejo Street
10 and Broadway. The building currently contains three apartments, as well as eight group
11 housing rooms, and has a capacity of 20 beds. The last legal use was as two residential units
12 with a ground-floor restaurant. The building is now occupied as Student Housing with both
13 apartment-style units with private kitchen and dormitory-style units with a communal kitchen
14 and laundry room. The site is zoned RC-3 (Residential-Commercial, Medium Density), which
15 provides for medium density residential buildings with supporting neighborhood-serving
16 commercial uses typically located on the ground floor.

17 (b) 2209 Van Ness Avenue (Lot 005 in Assessor's Block 0570) is a four-story, 11,897
18 square foot building constructed in 1912, located on Van Ness Avenue between Vallejo Street
19 and Broadway, next to 2211 Van Ness Avenue. The building has 22 group housing rooms,
20 with a capacity of 56 beds. The building was used for Residential use until the 1950s, after
21 which it was occupied by the International Institute of San Francisco, providing services to
22 immigrants, and various retail uses. The last legal use was as a single-family home. AAU
23 began occupancy of the site in 1998. The current use includes a recreation room, kitchen and
24 dining room, and a backyard patio. The site is zoned RC-3 (Residential-Commercial, Medium
25

1 Density), which provides for medium density residential buildings with supporting
2 neighborhood-serving commercial uses typically located on the ground floor.

3 (c) The Planning Department has recommended legalization of the existing Student
4 Housing uses at 2209 Van Ness Avenue and 2211 Van Ness Avenue as proposed in this
5 ordinance in its Executive Summary -- Planning Code Text Amendment (Initiation Hearing
6 Date: July 28, 2016; Initiation of Planning Code Amendments Related to AAU). because those
7 uses would result in higher intensity residential uses than would otherwise be located at the
8 sites. Legalizing Student Housing uses at these two properties is consistent with San
9 Francisco's policies to protect the affordability of San Francisco's housing stock and to require
10 institutions to meet the housing demand that they generate.

11 (d) While the Planning Commission recommended approval of this ordinance in
12 Planning Commission Resolution No. _____, to permit conversion of two existing
13 housing sites to Student Housing, in so doing the Commission indicated that its support was
14 predicated, in part, on the facts that the proposed exemptions were limited to two specific
15 addresses and that the ordinance expires by operation of law three years from its effective
16 date. The Planning Commission also acknowledged that such conversions would be "very
17 unusual." Additionally, the Commission found that the previous legal use of these properties
18 was a less intense residential use, and thus found that legalizing the conversion of these
19 properties to Student Housing would help ease the pressure on existing housing stock
20 otherwise created by students in need of housing.

21 (e) In December 2010, the City enacted Ordinance No. 321-10, providing an
22 Affordable Housing Program exemption for Qualified Student Housing. When the Planning
23 Commission considered Ordinance No. 321-10, the Commission recognized both the need for
24 additional Student Housing and for protections for existing forms of housing from conversion
25 to Student Housing, as described in Commission Resolution No. 18218.

1 (f) In Resolution No. 18218, the Planning Commission made the following findings:

2 “(1) It is a long-stated goal of the City that persons of all affordability be able to
3 live in San Francisco. To that end, the Inclusionary Housing Program requires developers to
4 provide funding and/or units that will be dedicated to affordable housing.

5 (2) Educational Institutions are a unique land use in that they have a transient
6 population that must be housed nearby the educational facilities.

7 (3) The Residential Nexus Analysis for the City and County of San Francisco
8 (Keyser Marston Associates April 2007) examined the impact of the consumption of
9 condominium buyers and how the goods and services these households purchase could
10 create a need for housing for lower income households, to arrive at the demand for affordable
11 housing generated by the residents of new units. The income of those condominium buyers
12 was estimated based upon the income required to purchase or rent a unit in a prototypical
13 new low-rise wood frame building. The analysis did not specifically examine the consumption
14 of students. While it would be difficult to estimate the consumption of students, given the
15 variety in their economic situations and incomes, one could reasonably assume that they
16 would, on average, have a lower impact on demand for affordable housing.

17 (4) Student housing would create a demand for affordable housing, although
18 likely lower than the demand created by typical market rate housing because students
19 typically have less disposable income. However, the lack of student housing creates pressure
20 on existing housing stock, resulting in a negative impact on existing affordable housing.
21 Therefore, there are public motives to make a policy decision to address that housing
22 pressure, given that this pressure is likely a larger impact than the direct demand they
23 generate.

24 (5) The Commission understands the unique situation that large Educational
25 Institutions have in San Francisco and supports the concept of allowing an exemption from

1 the Inclusionary Housing Program to create an incentive for the production of new student
2 housing.”

3 (g) By permitting waiver of the prohibition in Planning Code Section 317(e) on
4 converting Residential Units to Student Housing for 2209 Van Ness Avenue and 2211 Van
5 Ness Avenue, where the Student Housing use represents a more intense residential use than
6 the previous legal uses of the property, the City will be able to relieve some of the pressure of
7 student demand for housing and thereby protect the City’s existing housing stock and other
8 vulnerable uses from the demand for housing that would exist without this student housing.
9

10 Section 3. Planning Code Section 317(e) Waiver.

11 (a) The prohibition on conversion of Residential Units to Student Housing set forth in
12 Planning Code Section 317(e) shall not apply to 2209 Van Ness Avenue and 2211 Van Ness
13 Avenue. Each such property shall be permitted to apply for all conditional use authorizations,
14 permits, or approvals as are required under the Planning and Building Codes to legalize their
15 current use as Student Housing and any associated previously unpermitted improvements
16 and changes in use.

17 (b) Neither subsection (a) nor any other provision in this ordinance requires the
18 Planning Commission, the Planning Department, Department of Building Inspection, Board of
19 Supervisors, or Historic Preservation Commission, or any other board or commission to grant
20 any such conditional use authorizations, permits, or approvals, or appeals therefrom, which
21 approvals and decisions shall be left to the sole discretion of each such City agency, board, or
22 commission.

23 (c) Except for removal of the prohibition contained in section 317(e), legalization of the
24 change of use to Student Housing at 2209 Van Ness Avenue and 2211 Van Ness Avenue
25 shall be subject to all other requirements set forth in the Planning Code, including without

1 limitation the conditional use authorization requirements of Section 317(c)(1), and all
2 applicable requirements set forth in the Building Code, and may be subject to conditions of
3 approval as set forth in the ESTM or as imposed by the Planning Department, Department of
4 Building Inspection, Planning Commission, or Board of Supervisors, Historic Preservation
5 Commission, or any other board or commission.
6

7 Section 4. Conditional Use Authorization Considerations.

8 Conversion of 2209 Van Ness Avenue and 2211 Van Ness Avenue to Student Housing
9 shall require conditional use authorization under Planning Code Section 303. When
10 considering such authorization, the Planning Commission shall not consider the criteria set
11 forth in Planning Code Section 317(g)(3), but rather shall consider the conditional use criteria
12 set forth in Planning Code Section 303 and the following additional criteria:

13 (a) Whether legalization of the Student Housing use would eliminate only owner
14 occupied housing, and if so, for how long the unit(s) proposed to be removed were owner
15 occupied;

16 (b) Whether the legalization would provide desirable new Student Housing at sufficient
17 densities to warrant the loss of the existing Residential Use;

18 (c) Whether legalization would bring the building closer into conformance with the uses
19 permitted in the zoning district;

20 (d) Whether legalization of the Student Housing use would be detrimental to the City's
21 housing stock;

22 (e) Whether legalization of the Student Housing use would remove Affordable
23 Housing, or units subject to the Residential Rent Stabilization and Arbitration Ordinance, San
24 Francisco Administrative Code Chapter 37;
25

1 (f) Whether the location for proposed Student Housing use would reduce greenhouse
2 gas emissions relative to other potential locations for the students of the post-secondary
3 Educational Institution; and

4 (g) Whether the Student Housing would be owned, operated, or otherwise controlled
5 by a post-secondary Educational Institution that has an up-to-date Institutional Master Plan on
6 file with the Planning Department and accepted by the Planning Commission.

7
8 **Section 5. Student Housing Operating Conditions.**

9 In addition to any conditions imposed as conditions of approval by the Planning
10 Commission in approving a conditional use authorization or permit to legalize the existing use
11 as Student Housing at 2209 Van Ness Avenue and 2211 Van Ness Avenue, Student Housing
12 uses permitted by this ordinance shall operate in accordance with the following conditions:

13 (a) The post-secondary Educational Institution shall establish and maintain a
14 community liaison. Prior to issuance of a conditional use authorization, building permit or
15 other permit or authorization to legalize previous alterations or the conversion to Student
16 Housing use at 2209 Van Ness Avenue or 2211 Van Ness Avenue, the post-secondary
17 Educational Institution shall appoint a community liaison officer to deal with the issues of
18 concern to owners and occupants of nearby properties. The post-secondary Educational
19 Institution shall provide the Zoning Administrator with written notice of the name, business
20 address, e-mail address and telephone number of the community liaison. Should the contact
21 information change, the post-secondary Educational Institution shall make the Zoning
22 Administrator aware of such change. The community liaison shall report in writing to the
23 Zoning Administrator what issues, if any, are of concern to the community and what issues
24 have not been resolved by the post-secondary Educational Institution.

1 (b) Student Housing permitted by this ordinance shall not be used for Short-Term
2 Residential Rentals under Chapter 41A of the Administrative Code, which restriction shall be
3 recorded as a Notice of Special Restriction on the subject lot.
4

5 Section 6. The Planning Commission, Clerk of the Board of Supervisors, Planning
6 Department, Department of Building Inspection, Board of Appeals, Building Inspection
7 Commission, and Historic Preservation Commission are hereby authorized and directed to
8 take any and all actions which they or the City Attorney may deem necessary or advisable to
9 effectuate the purpose and intent of this ordinance including, without limitation, the filing of the
10 ordinance in the Official Records of the City and County of San Francisco, and processing in
11 the normal course and subject to the discretion of each City department, board or commission
12 with authority to determine any application for conditional use authorization, building permit, or
13 other permit or approval required to legalize the use of 2209 Van Ness Avenue and 2211 Van
14 Ness Avenue as Student Housing.
15

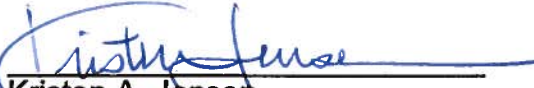
16 Section 7. Sunset Provision. This ordinance shall expire by operation of law three
17 years after its effective date, unless by the end of the three-year period the City by ordinance
18 has reenacted this ordinance. Any entitlements secured under this ordinance prior to this
19 sunset date shall not be considered in violation of the requirements of Section 317(e) as long
20 as the underlying zoning permits such uses and as long as the uses are otherwise operated
21 legally and with all required permits and approvals.
22

23 Section 8. Effective Date. This ordinance shall become effective 30 days after
24 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
25

1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
2 of Supervisors overrides the Mayor's veto of the ordinance.

3
4 APPROVED AS TO FORM:
5 DENNIS J. HERRERA, City Attorney

6 By:


7 Kristen A. Jensen
8 Deputy City Attorney

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