



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Planning Code Text Change

HEARING DATE: JUNE 9<sup>TH</sup>, 2015

*Project Name:* **Requiring Mandatory Discretionary Review to Remove Unauthorized Units in Single-family Homes**

*Case Number:* 2016-006360PCA [Board File No. 160185]

*Initiated by:* Supervisor Wiener / Duplicated February 22, 2016

*Staff Contact:* Kimia Haddadan, Legislative Affairs  
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*Reviewed by:* Aaron Starr, Manager Legislative Affairs  
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*Recommendation:* **Recommend Approval with Modification**

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### PLANNING CODE AMENDMENTS

#### **Amendments from the Original Adopted Ordinance:**

The adopted Ordinance amended the Planning Code to require Conditional Use authorization for the removal of any residential unit (whether authorized or unauthorized) and to exempt from the Conditional Use application requirement Unauthorized Units where there is no legal path for legalization, residential units that have received prior Planning approval, and single-family homes that are demonstrably unaffordable or unsound; amending the Building Code to require that notices of violation order the filing of an application to legalize an Unauthorized Unit unless infeasible under the Building Code, the Planning Commission approves its removal, or a serious and imminent hazard exists on the property; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, Planning Code, Section 302, and the eight priority policies of Planning Code, Section 101.1. This Ordinance was duplicated for further amendments.

#### **Proposed Amendments to the Duplicated Ordinance:**

The proposed Ordinance would amend the Planning Code to require Mandatory Discretionary Review for the removal of an Unauthorized Unit in a single-family home instead of the current Conditional Use Authorization requirement.

#### **The Way It Is Now:**

The Planning Code requires a Conditional Use authorization to remove Unauthorized Units for all residential buildings types.

#### **The Way It Would Be:**

The Planning Code would require a Mandatory Discretionary Review (Mandatory DR) process to remove Unauthorized Units in single-family homes. Removing Unauthorized Units in any other

type of residential buildings will remain subject to the Conditional Use Authorization (CU) process.

## **BACKGROUND**

### **Ordinance History**

This Ordinance was first introduced by Supervisor Avalos on May 12, 2015. It was heard at the Planning Commission on December 10, 2015. The Commission recommended approval to the Board of Supervisors. After multiple hearings at the Land Use Committee and the full Board, the original Ordinance moved forward and was effective April 10, 2016. However, the legislation was also duplicated on February 22, 2016 at the request of Supervisor Wiener due to some concerns from property owners on requiring CU for removing Unauthorized Units in single-family homes. The item before the Commission on June 9<sup>th</sup> is the duplicate legislation. It is important to note that the language of the Ordinance has not been revised, and still maintains the original text that the Commission already adopted and is currently in effect. Supervisor Wiener sent his proposed amendments in a memo to the Commission dated May 25, 2016 which is attached in Exhibit B.

### **Unauthorized Units in San Francisco**

Anecdotally, Unauthorized Units constitute a large portion of San Francisco's housing stock. While the City does not maintain any database on these units, estimates range between 30,000 and 50,000 of such units in San Francisco. These units are generally affordable to lower income households as they offer lower rates of rent.<sup>1</sup> In May 2014, the City established a new program that created a path to legalize Unauthorized Units. This voluntary program provides waivers from many of the Planning Code requirements, including exceeding density limits to legalize one Unauthorized Unit per lot. To date the City has received 314 applications of which about 200 have completed the Planning review process and the rest are under review.

This program was a turning point in the City's approach towards Unauthorized Units. Previously, if the City was made aware of such unit, DBI would issue a NOV requiring removal of the unit. In the past ten years (2004-2014), over 225 of such units were removed<sup>2</sup>.

More recently legislation was passed to further advance the City's goal of preserving existing units. Effective April 10, 2016, the Planning Code includes a definition for Unauthorized Units, and requires CU for removal of all units including Unauthorized Units. Sponsored by Supervisor Avalos, the legislation required the highest bar in reviewing applications to remove existing housing stock. Strict protection of the existing housing stock first and foremost helps prevent evictions and displacement due to unwarranted demolition and merger of dwelling units.

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<sup>1</sup> Karen Chapple, Jake Wegmann, Alison Nemirow, Colin Dentel-Post; *Yes to My Back Yard, Mobilizing the Market for Secondary Units*; Center for Community Innovation at the Institute of Urban and Regional Development, June 2012.

<sup>2</sup> San Francisco Housing Element 2014 Part I (Table I-54) and Housing Inventory 2014 (Table 8)

Secondly, it helps the City to retain the housing stock, especially given the current housing crisis when demand for housing increasingly surpasses new housing development.

## **ISSUES AND CONSIDERATIONS**

### **Policy Goals for Preserving Unauthorized Units**

The goal of the current controls is to impose a high scrutiny over removal of Unauthorized Units first and foremost to protect their tenants from eviction, and second to preserve our existing housing stock. These units are usually subject to rent control. Compared to other rent-control units or other rental units, they maintain a more affordable rent due to physical characteristics or long-term tenancy. If these tenants were to be evicted due to removal of the unit, finding replacement housing at the same affordability rate in the same neighborhood could prove difficult. The displacement of tenants would transform the neighborhoods and weaken the social ties and resources that people shape during the years of living in one place. Preserving these units therefore is also a strategy for neighborhood stabilization at the time when displacement and gentrification are the highest concerns of San Franciscans.

### **Unauthorized Units in Single-Family Homes**

A snapshot of the Department's alteration permits filed over about 1.5 years<sup>3</sup> includes over 180 permits filed for removal of illegal units of which at least 110 are located in single-family homes. Similar pattern is also present in permits to legalize Unauthorized Units: approximately 60% of the applications received are for Unauthorized Units located in single-family homes. Based on this data, it is safe to assume that single-family homes are the most common building types where Unauthorized Units exist.

### **Mandatory Discretionary Review vs. Conditional Use Authorization**

**Review Process and Timeline-** Both of these processes require the application to be reviewed and voted by the Planning Commission. For a Mandatory DR application, the Planning Commission only relies on specified findings for unit removal listed in Section 317 of the Planning Code including findings related to the current and future uses proposed, tenancy status, and so forth. A CU authorization, in addition to those findings also includes findings from Section 303 which would help determine whether the proposed unit removal is necessary and desirable to the neighborhood.

**Approval-** The Mandatory DR process is an easier option for removing a unit based on the way the approval decision is structured. If the Planning Commission could not make a decision (tie vote), the DR would be deemed approved, and the unit could then be removed. But for a CU, if the Planning Commission reaches a tie vote, removal of the unit would be denied.

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<sup>3</sup> The timeline for this snapshot is May 2014 until end of October 2015. This analysis was done for the original legislation sponsored by Supervisor Avalos. The reason staff chose May 2014 as the start date for this timeline to create the snapshot is because the legalization program was effective since May 2014. This snapshot shows the number of permits filed to remove an Unauthorized Unit despite the fact that the City did allow legalization for the unit but the property owners still chose to remove their unit.

**Fees-** Currently, the fee for the Mandatory DR application is a flat fee of \$3,867 while a CU fee is based on construction costs. For projects costing under \$10,000 the application fee is currently based at \$1,567. Any amount higher than \$10,000 would be multiplied by 0.656 and added to the base fee. Higher multipliers are used as the cost goes above \$1,000,000. Therefore, applications for removing an Unauthorized Unit would most likely cost less through a CU than a Mandatory DR.

**Appeal-** Overall, a DR appeal process is easier than a CU appeal process. With a fee paid, the Board of Appeals will consider a DR appeal. Four out of five votes are needed to uphold the appeal. A CU appeal is through the Board of Supervisors. For the application to be even considered at the Board, either 20% of adjacent property owners or four board members need to sign the application. Once the application is considered, a 2/3 majority vote is necessary to uphold the appeal (lower than the Board of Appeal vote). The DR appeal process could be both favorable and unfavorable for the appellant, whether owner or tenant: favorable if owner is appealing a denial of the removal, or if the tenant is appealing the approval of the removal. Similarly, the CU appeal process could be both favorable and unfavorable for both owners and tenants: favorable for owner if CU is approved for removal, as it would be harder for tenants to potentially appeal; and favorable for tenant if CU is denied for the removal, as it would be harder for the owner to potentially appeal.

**Other examples-** Currently, the only other permit types that uses a staff initiated DR process (similar to Mandatory DR) is applications for medical cannabis dispensaries. All other residential removals are currently reviewed under the CU process.

### **Restrictions on the Legalization Program**

Currently the legalization program only allows one unit per lot to be legalized. Based on this restriction, property owners with more than one Unauthorized Unit per parcel can remove those units over the counter. These Unauthorized Units could potentially be healthy and safe units, or could be renovated to meet the life and safety standards with minimal charges. Given San Francisco's housing crisis, the City should preserve as many units as possible. The cost of building new unit is significantly higher than renovating and preserving existing units.

Another restriction in the legalization program is a prohibition on legalization if there have been certain no-fault evictions in the building in the prior years. The eviction types that would trigger this prohibition include: Ellis Act, Owner move-in, and temporary evictions if the tenants have not been offered the unit. The intent of this prohibition was to protect the tenants: allowing the owner to legalize and renovate the unit could potentially create an incentive to evict the long standing tenant to later rent out the unit at market rate. Additionally, this prohibition does not keep owner from exercising these evictions subsequent to the legalization. At the same time, coupled with the new CU controls for removing an Unauthorized Unit, these prohibitions could actually create a higher incentive for the owner to evict their tenant: if the owner uses any of the eviction types listed above, the building would not be eligible for the legalization program, and can be removed over the counter without going through a CU process.

### Administrative Approval for Demolition

Currently the Code provides an exemption for demolition of a single-family home in RH-1 or RH-1(D) from the CU under two circumstances: a) if the single-family home is found demonstrably not affordable or financially accessible; or b) if the building is found unsound. However, after several iterations during multiple hearings for the original legislation sponsored by Supervisor Avalos, the Code language remains unclear. The intention of the discussions at the Board was to maintain the demonstrably not affordable and soundness exemptions for single-family homes; Yet, Section 317(d)(3) only directly states that removing demonstrably not affordable single-family homes are exempt from CU process, while subsection 317(d)(3)(B) further down implies that the removal of unsound single-family homes is exempt from CU authorization. The Board intended to exempt them both from CU authorization. To do this Section 317(d)(3) should be amended to include the removal of unsound single-family homes .

Additionally, this exemption only applies to single-family homes located in RH-1 or RH-1(D). Staff finds that single-family homes in all zoning districts should be subject to the same controls in terms of removal.

The proposed amendments would look like this (underlined and italicized text is proposed to be added while ~~strikethrough and italicized text~~ is proposed to be deleted):

“(3) An application to demolish a Single-Family Residential Building ~~on a site in a RH-1 or RH-1(D) District~~ that is demonstrably not affordable or financially accessible housing or determined to be unsound housing is exempt from the Conditional Use authorization requirement of Subsection (c)(1). Specific numerical criteria for such analyses shall be adopted by the Planning Commission in the Code Implementation Document, in accordance with this Section 317, and shall be adjusted periodically by the Zoning Administrator based on established economic real estate and construction indicators.

(A) The Planning Commission shall determine a level of affordability or financial accessibility, such that Single-Family Residential Buildings on sites in RH-1 and RH-1(D) Districts that are demonstrably not affordable or financially accessible, that is, housing that has a value greater than at least 80% of the combined land and structure values of single-family homes in San Francisco as determined by a credible appraisal, made within six months of the application to demolish, are not subject to a Conditional Use hearing. The demolition and replacement building applications shall undergo notification as required by other sections of this Code. The Planning Commission, in the Code Implementation Document, may increase the numerical criterion in this Subsection by up to 10% of its value should it deem that adjustment is necessary to implement the intent of this Section 317, to conserve existing housing and preserve affordable housing.

(B) The Planning Commission, in the Code Implementation Document, shall adopt criteria and procedures for determining the soundness of a structure proposed for demolition, where "soundness" is an economic measure of the feasibility of upgrading a residence that is deficient with respect to habitability and Housing Code requirements, due to its original construction. The "soundness factor" for a structure shall be the ratio of a construction upgrade cost (i.e., an estimate of the cost to repair specific habitability deficiencies) to the replacement cost (i.e., an estimate of the current cost of building a structure the same size as the existing building proposed for demolition), expressed as a percent. A building is unsound if its soundness factor exceeds 50%. A Residential Building that is unsound may be approved for demolition.”

### REQUIRED COMMISSION ACTION

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

## RECOMMENDATIONS

The Department recommends that the Commission recommend approval with modifications of the proposed Ordinance with the following recommendations and adopt the attached Draft Resolution to that effect. The proposed modifications include:

1. Maintain CU for removing Unauthorized Units in single-family homes.
2. Allow more than one unit to be legalized per lot.
3. Clarify in Planning Code Section 317(d)(3) that the exemption from the CU process based on soundness of a single-family home still applies.
4. Amend Planning Code Section 317(d)(3) to apply the two exemptions from the CU process to single-family homes in all zoning districts.
5. Remove prohibition on legalization in buildings with eviction history.

### Basis for Recommendations:

1. **Maintain CU for removing Unauthorized Units in single-family homes:** The Mandatory DR process would create controls with lesser scrutiny and provide an easier path to remove Unauthorized Units from a single-family home compared to other types of residential buildings. The current CU controls regarding removal of Unauthorized Units exercise the highest level of scrutiny. These controls have two major goals: to protect tenants, and also to maintain existing housing stock as long as life & safety standards are met. Based on the intent, and since most of the Unauthorized Units are located in single-family homes, simplifying controls to remove Unauthorized Units in single-family homes is not justified. Furthermore, the mandatory DR process could easily be a more expensive process for homeowners. Staff recommends maintaining the CU process for removing Unauthorized Units in single-family homes to remain consistent with the controls of all other building types, and to stay true to the intent of controls for preserving Unauthorized Units.
2. **Allow more than one unit to be legalized per lot -** Removing the cap on how many units can be legalized per parcel would help the City to maintain the existing units that can be updated to life and safety standards with minimal costs. It would also help protect the tenants of those units.
3. **Clarify in Planning Code Section 317(d)(3) that the exemption from the CU process based on soundness of a single-family home still applies-** As described on page 5, this clarification would help meet the intent of the Board of Supervisors in the proposed modifications, which were added to the ordinance at the Board hearing for the original legislation sponsored by Supervisor Avalos.
4. **Amend Planning Code Section 317(d)(3) to apply the two exemptions from the CU process to single-family homes in all zoning districts-** This modification is also shown on page 5. The Planning Department does not find that there is policy rational for only limiting these exceptions to single-family homes in single-family districts. Removing

single-family homes should be subject to same controls regardless of the zoning district. In fact, there is likely more justification for allowing the demolition of single-family homes in districts other than RH-1 because the replacements building could contain more dwelling units. Further, this modification would make the Code's controls consistent for single-family homes as a use type.

5. **Remove prohibition on legalization in buildings with certain eviction history-** This modification would help avoid unfortunate circumstances where an owner can exercise any of these eviction types in the building (see page 4) in order to exempt the removal of the Unauthorized Unit from the CU process. While the original intent of this prohibition was to protect tenants from eviction, together with the new CU controls, the prohibition could in fact incentivize owners to exercise evictions. In addition, for certain evictions, such as the Ellis Act eviction, staff does not anticipate that allowing legalization of an Unauthorized Unit would incentivize Ellis Act eviction. Subsequent to an Ellis Act Eviction, the property would be withdrawn from the rental market, and therefore re-renting the legalized unit at a higher price would already be in violation of the Ellis Act law for five years.

## **Environmental Review**

The proposed Ordinance is identified not a project under CEQA guidelines Sections 15060(c) and 15378.

## **PUBLIC COMMENT**

As of the date of this report, the Planning Department has received no public comment about this Ordinance.

**Recommendation: Approval with Modifications**

### **Attachments:**

Exhibit A: Draft Resolution

Exhibit B: Memo from Supervisor Weiner

Exhibit C: Draft Ordinance [Board of Supervisors File No. 160185]



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Resolution No. Planning Code Text Change

HEARING DATE: JUNE 9, 2016

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*Project Name:* **Requiring Mandatory Discretionary Review to Remove Unauthorized Units in Single-family Homes**

*Case Number:* 2016-006360PCA [Board File No. 160185]

*Initiated by:* Supervisor Wiener / Duplicated February 22, 2016

*Staff Contact:* Kimia Haddadan, Legislative Affairs  
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*Reviewed by:* Aaron Starr, Manager Legislative Affairs  
[aaron.starr@sfgov.org](mailto:aaron.starr@sfgov.org), 415-558-6362

*Recommendation:* **Recommend Approval with Modification**

**RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO REQUIRE MANDATORY DISCRETIONARY REVIEW FOR THE REMOVAL OF AN UNAUTHORIZED UNIT IN A SINGLE-FAMILY HOME INSTEAD OF THE CURRENT CONDITIONAL USE AUTHORIZATION REQUIREMENT ; AND MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, PLANNING CODE SECTION 302, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE SECTION 101.1.**

WHEREAS, on April 10, 2016, an Ordinance originally sponsored by Supervisor Avalos under Board of Supervisors (hereinafter "Board") become effective, which amended the Planning Code to require Conditional Use authorization for the removal of any residential unit, whether legal or illegal, and would amended the Building Code to require that notices of violation mandate legalization of an illegal unit unless infeasible under the Building Code or the Planning Commission approves its removal; and

WHEREAS, on February 22, 2016, Supervisor Wiener duplicated the original Ordinance sponsored by Supervisor Avalos in response to concerns from homeowners requesting a Mandatory Discretionary Review instead of a Conditional Use authorization when removing an Unauthorized Unit in single-family homes; and

WHEREAS, on May 28, 2016, Supervisor Wiener sent a memo to the Planning Commission describing his intended amendment to the Ordinance; and

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on June 9, 2016; and,



WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c); 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 the Planning Commission hereby recommends that the Board of Supervisors approve with modifications the proposed ordinance. The proposed modifications include:

- 1. Maintain CU for removing Unauthorized Units in single-family homes.**
- 2. Allow more than one unit to be legalized per lot.**
- 3. Clarify in Planning Code Section 317(d)(3) that the exemption from the CU process based on soundness of a single-family home still applies.**
- 4. Amend Planning Code Section 317(d)(3) to apply the two exemptions from the CU process to single-family homes in all zoning districts.**
- 5. Remove prohibition on legalization in buildings with eviction history.**

## **FINDINGS**

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

1. The goal of the current controls is to impose a high scrutiny over removal of Unauthorized Units first and foremost to protect their tenants from eviction, and second to preserve our existing housing stock. These units are usually subject to rent control. Compared to other rent-control units or other rental units, they maintain a more affordable rent due to physical characteristics or long-term tenancy. If these tenants were to be evicted due to removal of the unit, finding replacement housing at the same affordability rate in the same neighborhood could prove difficult. The displacement of tenants would transform the neighborhoods and weaken the social ties and resources that people shape during the years of living in one place. Preserving these units therefore is also a strategy for neighborhood stabilization at the time when displacement and gentrification are the highest concerns of San Franciscans.
2. The Mandatory DR process would create controls with lesser scrutiny and provide an easier path to remove Unauthorized Units from a single-family home compared to other types of residential buildings. The current CU controls regarding removal of Unauthorized Units exercise the highest level of scrutiny. These controls have two major goals: to protect tenants, and also to maintain existing housing stock as long as life & safety standards are met. Based on the intent, and since

most of the Unauthorized Units are located in single-family homes, simplifying controls to remove Unauthorized Units in single-family homes is not justified. Furthermore, the mandatory DR process could easily be a more expensive process for homeowners. Staff recommends maintaining the CU process for removing Unauthorized Units in single-family homes to remain consistent with the controls of all other building types, and to stay true to the intent of controls for preserving Unauthorized Units.

3. Currently the legalization program only allows one unit per lot to be legalized. Based on this restriction, property owners with more than one Unauthorized Unit per parcel can remove those units over the counter. These Unauthorized Units could potentially be healthy and safe units, or could be renovated to meet the life and safety standards with minimal charges. Given San Francisco's housing crisis, the City should preserve as many units as possible. The cost of building new unit is significantly higher than renovating and preserving existing units.
4. Another restriction in the legalization program is a prohibition on legalization if there have been certain no-fault evictions in the building in the prior years. The eviction types that would trigger this prohibition include: Ellis Act, Owner move-in, and temporary evictions if the tenants have not been offered the unit. The intent of this prohibition was to protect the tenants: allowing the owner to legalize and renovate the unit could potentially create an incentive to evict the long standing tenant to later rent out the unit at market rate. However, this concern may not necessarily be a real potential. For example, subsequent to an Ellis Act eviction, the property would not legally be able to enter the rental market, which means that an incentive to evict the tenant to legalize the unit and re-rent at a higher price is already not a legal option and is subject to Rent Board enforcement. Additionally, this prohibition does not keep owner from exercising these evictions subsequent to the legalization. At the same time, coupled with the new CU controls for removing an Unauthorized Unit, these prohibitions could actually create a higher incentive for the owner to evict their tenant: if the owner uses any of the eviction types listed above, the building would not be eligible for the legalization program, and can be removed over the counter without going through a CU process.
5. Currently the Code provides an exemption for demolition of a single-family home in RH-1 or RH-1(D) from the CU under two circumstances: a) if the single-family home is found demonstrably not affordable or financially accessible; or b) if the building is found unsound. However, after several iterations during multiple hearings for the original legislation sponsored by Supervisor Avalos, the Code language remains unclear. The intention of the discussions at the Board was to maintain the demonstrably not affordable and soundness exemptions for single-family homes; Yet, Section 317(d)(3) only directly states that removing demonstrably not affordable single-family homes are exempt from CU process, while subsection 317(d)(3)(B) further down implies that the removal of unsound single-family homes is exempt from CU authorization. The Board intended to exempt them both from CU authorization. To do this Section 317(d)(3) should be amended to include the removal of unsound single-family homes.
1. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are is consistent with the following Objectives and Policies of the General Plan:

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.**

*The proposed Ordinance would provide the highest scrutiny for removal of Unauthorized Units through demolition. The recommendations would also remove the cap on how many units can be legalized per lot, which would help preserve Unauthorized Units as long as life and safety standards of the City codes are met.*

**POLICY 2.2**

**Retain existing housing by controlling the merger of residential units, except where a merger clearly creates new family housing.**

*The proposed Ordinance would provide the highest scrutiny for removal of Unauthorized Units through merger. The recommendations would also remove the cap on how many units can be legalized per lot, which would help preserve Unauthorized Units as long as life and safety standards of the City codes are met.*

2. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

*The proposed Ordinance would encourage retaining the existing housing stock and would help preserve the neighborhood character.*

3. That the City's supply of affordable housing be preserved and enhanced;

*The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing and would help retain existing housing stock.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

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

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

*The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.*

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

*The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.*

7. That the landmarks and historic buildings be preserved;

*The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.*

8. That our parks and open space and their access to sunlight and vistas be protected from development;

*The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.*

- 8. Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance with modifications as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on June 9, 2016.

**Draft Resolution No.**  
**Hearing Date: June 9, 2016**

**CASE NO. 2015-006712PCA**  
**Requiring Mandatory Discretionary Review To**  
**Remove Unauthorized Units in Single-Family Homes**

Jonas P. Ionin  
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED:

Exhibit B

Member, Board of Supervisors  
District 8



City and County of San Francisco

**SCOTT WIENER**  
**威善高**

**Wednesday, May 25<sup>th</sup>, 2016**

Re: Removal of Unauthorized Dwelling Units

Dear Commission President Rodney Fong,

I'm writing to propose a change to Supervisor John Avalos's ordinance requesting that the mandatory Conditional Use be replaced with mandatory Discretionary Review to remove unauthorized dwelling units from single-family homes. In properties with two or more authorized units, mandatory Conditional Use shall remain the appropriate process for review.

In our current housing shortage and affordability crisis, it is unacceptable in most cases to remove existing units. With the exception of life-safety issues, many times property owners will be denied in their attempt to remove the unauthorized unit because it is contrary to the City's goal of retaining existing housing units. If this is the case, and more often than not these removals will be denied no matter what, it makes sense to allow smaller property owners with fewer resources an expedited, simplified, cheaper process with a more logical venue for appeals.

Sincerely,

Scott Wiener  
Supervisor, District 8

cc: **Dennis Richards, Commission Vice-President**  
**Michael J. Antonini, Commissioner**  
**Rich Hillis, Commissioner**  
**Christine D. Johnson, Commissioner**  
**Kathrin Moore, Commissioner**  
**Cindy Wu, Commissioner**

[Building Code - Removal of Unauthorized Residential Unit]

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**Ordinance amending the Building Code to require that notices of violation mandate order the filing of an application to legalize legalization of an unauthorized illegal-unit unless infeasible under the Building Code, ~~or the Planning Commission approves its removal, or a serious and imminent hazard exists on the property and requiring re-issuance of unabated notices of violation to include the new requirement;~~ and affirming the Planning Department's determination under the California Environmental Quality Act; ~~and making findings of consistency with the General Plan, Planning Code Section 302, and the eight priority policies of Planning Code Section 101.1.~~**

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. Findings.

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 160185 and is incorporated herein by reference. The Board affirms this determination.

(b) The Building Inspection Commission considered this ordinance on \_\_\_\_\_, 2016, at a duly noticed public hearing, pursuant to Charter Section D3.750-5.

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Section 2. The Building Code is hereby amended by revising Section 102A, to read as follows:

**SECTION 102A – UNSAFE BUILDINGS, STRUCTURES OR PROPERTY**

All buildings, structures, property, or parts thereof, regulated by this code that are structurally unsafe or not provided with adequate egress, or that constitute a fire hazard, or are otherwise dangerous to human life, safety or health of the occupants or the occupants of adjacent properties or the public by reason of inadequate maintenance, dilapidation, obsolescence or abandonment, or by reason of occupancy or use in violation of law or ordinance, or were erected, moved, altered, constructed or maintained in violation of law or ordinance are, for the purpose of this chapter, unsafe.

\* \* \* \*

**102A.3 Inspections and Complaints.** The Building Official is hereby authorized to inspect or cause the inspection of any building, structure or property for the purpose of determining whether or not it is unsafe in any of the following circumstances:

- 1. Whenever the Building Official, with reasonable discretion, determines that such inspection is necessary or desirable.
- 2. Whenever any person files with the Building Official a complaint from which there is, in the Building Official's opinion, probable cause to believe that the building, structure or property or any portion thereof, is unsafe.
- 3. Whenever an agency or department of the City and County of San Francisco transmits to the Building Official a written report from which there is, in the opinion of the Building Official, probable cause to believe that the building, structure or property, or any portion thereof, is unsafe.



1           Upon the completion of any such inspection and the finding by the Building Official of  
2 any condition which renders the building, structure or property unsafe, the Building Official  
3 shall, within 15 days thereafter, serve a written notice of violation upon the building owner  
4 which shall contain specific allegations, setting forth each condition the Building Official has  
5 found which renders the building, structure or property unsafe. The Building Official shall,  
6 within three days of mailing of such notice of violation, post a copy thereof in a conspicuous  
7 place in or upon such building, structure or property and make available a copy of the notice  
8 of violation to each tenant thereof. Such notice shall also set forth the penalties for violation  
9 prescribed in Section 103A of this code. In addition to the civil penalties prescribed in Section  
10 103A, the Department's cost of preparation for and appearance at the hearing required by  
11 Section 102A.4, and all prior and subsequent attendant and administrative costs, shall be  
12 assessed upon the property owner monthly, after failure to comply with a written notice of  
13 violation that has been served upon the property owner. Said violations will not be deemed  
14 legally abated until the property owner makes full payment of the assessment of costs to the  
15 Department of Building Inspection. See Section 110A, Table 1A-D – Standard Hourly Rates  
16 and Table 1A-K – Penalties, Hearings, Code Enforcement Assessments – for the applicable  
17 rate. Failure to pay the assessment of costs shall result in tax lien proceedings against the  
18 property per Section 102A.18.

19           If the unsafe conditions observed on the property have not been corrected within the  
20 time period provided, the matter shall be set for hearing within 60 days from the compliance  
21 date specified on the notice of violation, if not substantial progress in abating the Code  
22 violations has commenced.

23           **102A.3.1. Dwelling Units constructed or installed without required permit(s).** In  
24 the case of an unauthorized Dwelling Unit constructed or installed in an existing building  
25 without the required permit or permits, in addition to the above requirements the written notice

1 of violation shall order the property owner to file an application for a building and other permits  
2 required to legalize the unit pursuant to Building Code Section 106A.3.1.3 and Planning Code  
3 Section 207.3.

4 **EXCEPTIONS:**

5 1. Removal of the unit has been approved by the Planning Commission pursuant to  
6 Planning Code Section 317; or

7 2. After performing a screening under Section 106A.3.1.3(a) of this Code, the  
8 Department has determined that the unauthorized Dwelling Unit is not able to be legalized  
9 under Section 106A.3.1.3 of this Code; or

10 3. The Building Official has determined that a serious and imminent hazard under  
11 Section 102A.16 of this Code exists on the subject property.

12 Upon submission of an application for legalization or removal of an unauthorized  
13 Dwelling Unit by the owner or the owner’s authorized agent, the Department will suspend a  
14 notice of violation issued pursuant to this Section 102A.3.1 pending a decision on the  
15 application unless the Building Official has determined that a serious and imminent hazard  
16 exists on the property. If approval of either legalization or removal of the unauthorized  
17 Dwelling Unit occurs within ~~one~~ three years of issuance of the notice of violation, the notice of  
18 violation and any liens recorded against the property with respect to the violation will be  
19 rescinded. The Building Official may extend this time if a delay in obtaining approval is not the  
20 fault of the property owner.

21  
22 Section 3. Effective Date. This ordinance shall become effective 30 days after  
23 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
24 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
25 of Supervisors overrides the Mayor’s veto of the ordinance.

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Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the “Note” that appears under the official title of the ordinance.

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

By: \_\_\_\_\_  
JUDITH A. BOYAJIAN  
Deputy City Attorney

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