



# SAN FRANCISCO PLANNING DEPARTMENT

**MEMO**

**DATE:** April 20, 2017  
**TO:** Planning Commissioners  
**FROM:** John Rahaim  
**RE:** Implementation and Policy Concerns related to the Removal of Unauthorized Dwelling Units

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

## SUMMARY

In 2016, the Planning Department began regulating the removal of Unauthorized Units to provide notification for existing tenants facing evictions from units added without benefit of a building permit. The Planning Code allows a property owner to legalize one dwelling unit regardless of the permitted density, through the City's Unit Legalization Program which became effective in 2014. Property owners may only remove an Unauthorized Unit administratively when there is no path to legalize the Unauthorized Unit. Otherwise, the removal of the Unauthorized Unit requires Conditional Use Authorization under Section 317. As we have been working to implement these regulations, Planning Staff have identified several key obstacles in the current regulations, and several general policy concerns.

## CURRENT PLANNING PROCESS

An Unauthorized Unit is defined as one or more rooms that have been used, without the benefit of a permit, as separate and distinct living space independent of other residential units on the property. "Independent" means that there is direct access to the space, and does not have any open visual access to another residential unit. Note that the definition of an Unauthorized Unit is not reliant upon the existence of a kitchen.

The Department of Building Inspection (DBI) determines if it is infeasible to legalize an Unauthorized Unit and reviews the cost estimates to legalize the unit, which are usually prepared by the applicant's contractor. Additionally, an applicant cannot legalize an Unauthorized Unit if there has been a no-fault eviction on the property. If it is infeasible to legalize a unit under the current building and life-safety standards, or there has been a no-fault eviction at the property, then the Unauthorized Unit is ineligible for legalization, and may be removed without a Conditional Use Authorization. If there is a path to legalize the unit, and the property owner would like to remove it, then a Conditional Use Authorization is required pursuant to Planning Code Section 317. Thus, under the current regulation, a previous eviction actually prevents a unit from being legalized.

Upon receipt of a Conditional Use Application to remove an Unauthorized Unit, the Department also requests the following information:

1. The DBI Legalization of Dwelling Units Installed without a Permit Screening Form which indicates the cost to legalize the Unauthorized Unit;
2. Records from the Rent Board related to tenancy at the property, including eviction history; and
3. Two appraisals prepared by a licensed California appraiser: the first identifying the value of the property with the unauthorized unit, and the second identifying the value of the property with the unit legalized.

In addition to standard findings for Conditional Use Authorizations for residential demolitions or mergers, there are four criteria that the Planning Commission must consider when reviewing applications to remove an Unauthorized Unit:

1. Whether the unit is eligible for legalization;
2. Whether the cost to legalize the unit is reasonable based on the average cost to legalize<sup>1</sup>;
3. Whether it is financially feasible to legalize the unit. The Planning Commission will evaluate the gain in property value by legalizing the unit and compare this value to the cost to legalize the unit; and
4. If there are no City funds to assist the property owner with legalization costs, whether the cost to legalize would constitute a financial hardship.

## IMPLEMENTATION CHALLENGES AND STRATEGIES

To date, 258 units have been legalized, and there are a total of 443 projects in the legalization pipeline. However, several applicants seeking to remove Unauthorized Units have attempted to legalize the units but could not afford to do so. In some cases, required portions of the Conditional Use Authorization application have been too costly for the property owner to submit a completed application. In other cases, unforeseen circumstances arise from legalizing the unit, such as modified mortgage structures or greater costs of condominium conversions that make the legalization infeasible.

### *Implementation Challenges*

Planning Staff has identified the cost of appraisals, which can be between \$3,000 and \$4,000 for multi-unit buildings, to be a barrier for owners to submit a complete Conditional Use Authorization to remove the Unauthorized Unit. Given the cost of the appraisals, it is

---

<sup>1</sup> The Department maintains a master list of Additional Dwelling Units approved pursuant to Planning Code Section 207.3(k). The current average cost to legalize is approximately \$58,000.

challenging for property owners to provide them to the Department in a timely fashion, and the applications remain incomplete. Planning Staff typically do not present an incomplete application to the Planning Commission; however, if the Planner does not schedule the Case, and the sponsor is unable provide the necessary information to move the application forward; there may be life safety issues that remain unaddressed at the subject property. Furthermore, if the Planner closes the Conditional Use Authorization Case due to inactivity, they would need to open an enforcement case because a dwelling unit has been illegally constructed on the property. Open enforcement cases can become subject to daily fines. In this way, the process is cyclical, and would result in an even greater financial hardship. There has been one Case in which the Planning Commission has disapproved a building permit to remove an Unauthorized Unit, but there is no path to legalize the unit since the owner had evicted a tenant. The applicant cannot remove the unit because of the Condition of Approval included in the DR Action Memo on the property<sup>2</sup>, but also cannot legalize the Unit because of the eviction history.

In addition to the cost to provide appraisals, several applicants have indicated that there are other financial hardships which would result from their inability to remove the Unauthorized Unit. Such hardships have taken several forms in active cases; one sponsor would need to refinance their mortgage for a multi-unit building with over three units, which they cannot afford to maintain. In another case, the sponsor would be ineligible for the two-unit bypass program for condominium conversions, which increases the application fee and requires additional analysis and review. Planning Staff have had little guidance on how to best present these financial hardships without delving deeply into the personal finances of the applicant.

### *Implementation Strategy for Active Applications*

To address some of these issues, staff is proposing the following: If a property owner is unable to provide appraisals that meet the requirements of Section 317, staff would like to nonetheless bring the project to the Planning Commission without the appraisals. Property owners will be encouraged to provide any subjective information they may have that will assist Planning Commission make a decision on the Application to remove the Unauthorized Unit.

When a property owner claims that legalizing the unauthorized unit will result in a financial hardship, Department Staff will request other subjective information including but not limited to letters from lenders, cost estimates from contractors, and fee schedules for condominium conversions. The Department will also request additional information on how many properties are owned by the current owner, tenant history, eviction history, information about who constructed the unit and when it was constructed, and if the unit is currently vacant or

---

<sup>2</sup> DR Action Memo No DRA-0389, Case No. 2014.0958D at 3826-3828 Cesar Chavez

occupied. Planners will be instructed to provide as much background information on the property as is available, and to attach any supportive documents to the Case Report.

## **POLICY CONCERNS**

Planning staff have identified two policy concerns with the current regulation. First, any Unauthorized Unit on a lot where there has been a no-fault eviction is not eligible for legalization. Although the removal of an Unauthorized Unit would require that existing tenants be notified, the current program may encourage property owners to evict tenants from the property thereby making the Unauthorized Unit ineligible for legalization resulting in administrative removal with notification and the possibility for public-initiated requests for Discretionary Review. Furthermore, there is no specified timeframe for the eviction history, so the current property owner may not be able to legalize an Unauthorized Unit if a former property owner had evicted a tenant any time in the past.

Second, only one unit on each property may be legalized. Although the property owner may seek to add additional units under the Accessory Dwelling Unit (ADU) program, existing properties containing Unauthorized Units may not be eligible to add ADU units based on the location of the property, number of legal units, and allowable density. The inability to legalize more than one unit may result in further evictions from units that are not able to be legalized. Any evictions resulting from the inability to legalize a unit may also harm a property owner's ability to add an Accessory Dwelling Unit in the future.

## **LEGISLATIVE PROPOSAL**

In February, 2016, former Supervisor John Avalos introduced legislation (Board File No. 160185) that would permit the legalization of more than one unit on a given property. The legislation would also remove the prohibition on legalizing units in a building with a history of no-fault evictions. The Planning Commission conducted a public hearing on the item on June 16, 2016, and recommended approval with modifications (Resolution No. 19532). There has been no further action on the item since June 2016. Avalos' term as District 11 Supervisor ended in January 2017. The legislation remains active, although none of the current District Supervisors have taken up Board File No. 160185.

The legislation would achieve two primary objectives that the Department views as unintended consequences of the current regulations: it would close the loophole that has encouraged no-fault evictions for owners who want to remove the Unauthorized Units, and it would enable the legalization of more than one unit thereby protecting tenants living on lots with more than one Unauthorized Unit.

## **REQUIRED ACTION**

No formal action from the Commission is required at this time, but Department staff is seeking feedback from the Planning Commission regarding the implementation issues outlined in this memo. The Department also recommends that a member of the Board of Supervisors sponsor Board File No. 160185 to the act on the legislation that was initiated by former Supervisor Avalos.