



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Planning, and Building Code Text Change

HEARING DATE: DECEMBER 10<sup>TH</sup>, 2015

*Project Name:* **Requiring Conditional Use Authorization to Remove Residential Units Including Unauthorized Units**

*Case Number:* 2015-006712PCA [Board File No. 150494]

*Initiated by:* Supervisor Avalos / Introduced May 12, 2015

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

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### PLANNING & BUILDING CODE AMENDMENTS

The Proposed Ordinance would amend the Planning Code to require Conditional Use authorization for the removal of any residential unit, whether legal or illegal, and compliance with landscaping and permeable surfaces requirements for building additions and residential mergers; amending 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.

#### The Way It Is Now:

1. The loss of one or more Residential Units requires Conditional Use authorization in the RTO, RTO-M, NCT, and Upper Market NCD Zoning Districts, and above the ground floor of the C-3 Zoning Districts.
2. In all other districts, the loss of three or more Residential Units requires Conditional Use authorization, and the loss of one to two Residential Units requires Mandatory Discretionary Review; however, interim controls require a Conditional Use authorization in case of loss through merger.
3. For Residential Units that are demonstrably not affordable or financially accessible housing, the Planning Code allows administrative approval for loss of the unit through merger, demolition, or conversion; however, interim controls require CU authorization for loss of any unit through merger regardless of affordability.
4. Unauthorized Units - units constructed without proper permits - are not defined in the Planning Code.
5. Loss of Unauthorized Units in buildings of three or more legal units requires a Mandatory Discretionary Review per the Mayor's Executive Directive in January 2014. Loss of such units in buildings of one or two legal units is permitted administratively over the counter.

6. The requirements for landscaping and permeable surfaces in front setback are triggered in cases of new construction, the addition of a new dwelling unit, or the addition of parking.

**Building Code**

7. A Department of Building Inspection (DBI) Notice of Violation (NOV) for an Unauthorized Unit requires the property owner to remove the unit. The property owner can also voluntarily legalize the unit but the discretion is up to the owner.

**The Way It Would Be:**

1. The loss of one or more Residential Units would still require Conditional Use authorization in the RTO, RTO-M, NCT, and Upper Market NCD Zoning Districts, and above the ground floor of the C-3 Zoning Districts.
2. CU authorization would be required in all zoning districts for loss of any Residential Units, through all three ways of removal( demolition, conversion, or merger).
3. Administrative approval would no longer be available for Residential Units that are demonstrably unaffordable. Such Units would be subject to similar requirements for removal as all other Residential Units.
4. The Ordinance would create a definition for Unauthorized Units.
5. In zoning districts where residential use is allowed, CU authorization would be required for the loss of any Unauthorized Units through demolition, conversion, or merger. Establish criteria for CU authorization when removing Unauthorized Units.
6. Add new triggers for requiring landscaping and permeable surfaces in the front setback when the Gross Floor Area is increased by 20% and when a Residential Merger occurs.

**Building Code Modifications:**

7. A DBI NOV for an Unauthorized Unit would require the property owner to file a permit to legalize the unit unless the Planning Commission approves removal of the unit through CU authorization.

**BACKGROUND**

San Francisco has been experiencing a boom in development in the past couple years. Over 3,500 units were completed in 2014; approximately 70% over the 10-year average of 2,075 units added per year. Additionally, over 7,000 units are currently either under construction or are entitled by the Planning Department. Despite this increase in development, housing production has not kept up with population growth and the rising demand for housing due to an economic boom in the

Bay Area as a region. Rental prices in San Francisco remained the most expensive market in the country with median 1-bedroom rents rising to \$3,670 according to Zumper<sup>1</sup>.

In the midst of such housing shortage, since 2010, the City has lost an average of about 240<sup>2</sup> units a year due to demolition, conversion, or merger of legal units or removal of Unauthorized Units.

The City's Housing Element calls for preserving the existing housing stock and promoting the safety standards of residential buildings. In several policies the Housing Element discourages demolition or merger of existing residential units. Responding to this policy direction, the Planning Code generally requires a public process for removing residential units through either a Conditional Use authorization or a Mandatory Discretionary review.

### **Interim Controls for Restricting Unit Loss**

In early 2015, Supervisor Avalos proposed interim controls to further restrict the loss of existing residential units. Effective July 3, 2015, the interim controls require Conditional Use authorization for the merger of all residential units regardless of the zoning district or the affordability level of units being merged. Since then, the Department was tasked with looking into additional controls to help retain our existing housing stock and address the loss of what are referred to as Unauthorized Units, units added without the benefit of a permit. The goal is 1) to prevent eviction of tenants due to demolition and removal of units and 2) to retain the existing housing stock.

### **Legalizing Unauthorized Units**

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 to 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>3</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. Since then the City has received 238 applications of which about 130 permits are issued 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>4</sup>. Given the housing crisis in San Francisco the City is shifting its approach to instead encourage the retention of Unauthorized Units.

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<sup>1</sup> Zumper National Rent Report: February 2015, Retrieved at <https://www.zumper.com/blog/2015/11/zumper-national-rent-report-november-2015/> on November 19<sup>th</sup>

<sup>2</sup> Ranging from 140 units in 2014 to 539 in 2013 (San Francisco 2014 Housing Inventory Published by the San Francisco Planning Department)

<sup>3</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>4</sup> San Francisco Housing Element 2014 Part I (Table I-54) and Housing Inventory 2014 (Table 8)

### **The Mayor's Executive Directive**

In December 2013, the Mayor published an Executive Directive to all Departments, to implement processes for protecting existing residential units as well as prioritizing affordable housing. One new process established in response to this direction called for requiring a Mandatory Discretionary Review for removal of Unauthorized Units in buildings of three units or more. This new process aimed to ensure that property owners have made every effort to maintain a housing unit before pursuing removal of the unit.

## **ISSUES AND CONSIDERATIONS**

### **Loss of residential units: Implications**

San Francisco has about 379,600 residential units, representing a valuable resource in addressing housing demand in the city and region. Analysis of a one year data indicates a 3.5% turnover for sales and over 10% turnover for rental<sup>5</sup>, both of which are higher than the net increase in number of housing units over the last year<sup>6</sup> (1%). This indicates a stronger role for the existing housing stock to address the housing demand compared to the new housing developed.

With the rising demand for housing in the region, protecting our existing housing stock remains a crucial long-term housing strategy. The high cost of construction makes replacing units lost through demolition or merger extremely expensive incurring additional financial burden on the City's resources. Higher construction costs also translate into higher rental and sales prices for the replacement unit and a wider gap in housing available to low to middle income households.

Removal of residential units is also a major cause of tenant eviction in those units. Eviction rates have increased by 45% Citywide from 2010-2014. Of approximately 4,500 no-fault evictions from 2005-2015, about 500 (11%) were due to demolition<sup>7</sup>.

Preserving the housing stock is also an effective tool for neighborhood stabilization. The tenants in the existing rental housing stock- especially in rent controlled units- pay much lower rents compared to current asking rent on the market. 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 infeasible. 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.

### **Types of Approval for Unit Loss**

Currently, for applications to remove residential units, the Planning Code requires different types of approval decisions in different zoning districts and based on the number of units being removed. The table below summarizes the existing, interim, and proposed controls:

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<sup>5</sup> Analysis of Zillow data, April 2014 to March 2015 for sales, March 2014 to April 2015 for rentals, and 2013 households by tenure from an analysis of Census Public Use Microdata Sample (PUMS) data, accessed via IPUMS USA.

<sup>6</sup> From 2013 to 2014, Housing Inventory 2014, SF Planning

<sup>7</sup> Housing Balance Report, September 2015, SF Planning

| Subcategories of Controls  | Existing Planning Code Requirements   | Existing Interim Controls   | Proposed Controls |
|--|---|---|-------------------|
| RTO, RTO-M, NCT, and Upper Market NCD Zoning Districts, and above the ground floor of the C-3 Zoning Districts                                       | CU  | CU  | CU                |
| All Other Zoning Districts   | <ul style="list-style-type: none"> <li>▪ CU for three or more units</li> <li>▪ Mandatory DR for one or two units</li> </ul> | <ul style="list-style-type: none"> <li>▪ CU for all mergers</li> <li>▪ CU for demolition or conversion of three or more units</li> <li>▪ Mandatory DR for demolition or conversion of one or two units</li> </ul> | CU                |
| Single Family buildings and condos that are demonstrably unaffordable or financially inaccessible or Buildings of two or less units that are unsound | <ul style="list-style-type: none"> <li>▪ Administrative approval for loss through demolition or merger</li> </ul>           | <ul style="list-style-type: none"> <li>▪ Administrative approval for loss through demolition</li> <li>▪ CU for loss through merger</li> </ul>   | CU                |
| Loss of Unauthorized Units   | Mandatory DR for buildings with three or more legal units   | N/A   | CU                |

The interim controls in place since July aimed to apply stricter levels of scrutiny for unit removal applications. The CU authorization requirement per the interim controls only applies to unit removal as a result of unit merger. The interim controls did not change the controls for loss of residential units through demolition or conversion; the controls also did not regulate loss of Unauthorized Units. The proposed legislation would make the interim controls permanent and expand its scope to apply the controls consistently based on different types of unit loss: demolition, merger, or conversion.

**Loss of Residential Units: Administrative Approval**

As listed in the table above, the Planning Code currently allows administrative approval for removal of a single family building that is demonstrably unaffordable or financially inaccessible, and also for buildings of two or less units that are unsound. The Planning Code further defines demonstrably unaffordable as “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” The Department defines a numerical value for this threshold through an appraisal process every year.

The interim controls removed the administrative approval process in cases of a unit merger, subjecting all unit merger application to a CU authorization. The Planning Code still allows administrative approval for removal applications through demolition. The proposed legislation would expand the stricter review process to demolition applications even for buildings that may be demonstrably unaffordable. The goal for this proposal is to ensure retaining the existing housing stock for two main reasons: 1) the existing residential units are generally larger in size compared to the newly constructed residential units. Of the rental units built since 2010, only about 10% are 3 or more bedrooms, while about 33% of rental units built before 2010 are 3 or more bedrooms<sup>8</sup>; 2) the existing housing stock is generally more affordable than the new residential units being built. Newly constructed rental units on the market (since 2005) ask for higher rent premium of about \$300 to \$600 compared to the rental units built before 2005<sup>9</sup>.

By entirely removing the administrative approval process from the Planning Code, the proposed Ordinance aims to achieve the goal of retaining the housing stock but may also subject development projects that would not inherently override this goal to the CU authorization. Examples are when a single family unit not subject to rent control is being replaced by more than one residential units to maximize the allowable density; or the a rundown single family unit not subject to rent control is being replaced by another single family unit of similar size. Additional finding criteria for the CU authorization for demolition would help evaluate the net gain that a replacement project would provide for demolition permits.

### **Loss of Unauthorized Units: Challenges of Existing Controls**

The only existing control to regulate loss of Unauthorized Units was established as a response to the Mayor's Executive Directive discussed above: the City required a Mandatory Discretionary review for removal of Unauthorized Units in buildings of three or more legal units. However, to date the Department has not received any such application even though many Unauthorized Units have been removed or are slated for removal.

This challenge is due to the narrow scope of this policy. A snapshot of the Department's alteration permits filed since May 2014<sup>10</sup> includes over 180 permits filed for removal of illegal units of which at least 120 are located in single family or two unit buildings. Similar pattern is also present in permits to legalize Unauthorized Units: approximately 75% of the applications received are one or two unit buildings. Based on this data, it is safe to assume that Unauthorized Units in the City are mostly in one or two unit buildings not in building with three or more, which are the buildings covered under the Mayor's Executive Order.

Approval for removing Unauthorized Units in buildings with one or two legal units is administrative and can be approved at the Department's Planning Information Center (The PIC).

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<sup>8</sup> San Francisco Planning Housing Database, made summer 2015

<sup>9</sup> Analysis of Padmapper rental listings, collected January to August 2015 and San Francisco Assessor-Recorder office data.

<sup>10</sup> The program that allows legalizing Unauthorized Units was adopted in May 2014. The reason staff chose this date to create the snapshot is to look at a window in time that the City did allow legalization and the property owners chose to remove their unit despite the available voluntary program to legalize.

Most of these permits seek to remove an illegal kitchen on the ground floor of a single family or duplex building, merging the Unauthorized Unit with an existing legal unit. The proposed legislation would rely on the intent of the Mayor's Executive Directive, but would expand unit removal controls to apply to all Unauthorized Units. The proposed legislation would require any application to remove Unauthorized Units, regardless of the number of the legal units in the building, to seek a Conditional Use Authorization at the Planning Commission.

Another challenge with the existing controls is related to notification of tenants residing in the Unauthorized Units slated for removal. Removing an unwarranted unit often results in eviction of the tenant. Currently there is no requirement to notify the tenant that their home is slated for removal. Therefore, often the tenant is not aware of such permit and only finds out when the eviction notice is served after the permit is approved and the appeal period for the permit (15 days) has ended. Staff is aware of at least eight cases, dating back only to May of this year, filed with the Board of Appeals for a Jurisdiction Request<sup>11</sup> by tenants that were evicted because of the removal of an Unauthorized Unit. Most of these cases were denied by the Board of Appeals. Currently there is a pending ordinance<sup>12</sup>, sponsored by Supervisor Weiner, that would require mailed notification as well as on site notice when removing an Unauthorized Unit in order to allow adequate time for the tenant to appeal or secure an alternative housing option. The proposed legislation would also require notification for at least 20 days before the CU authorization is heard at the Planning Commission. This legislation will become effective by the end of the year.

Lastly, another challenge in the existing controls relates to the enforceability of the Planning Commission decisions with regards to retaining Unauthorized Units. If a tenant appeals a permit for removal to the Planning Commission through a Discretionary Review, the Planning Commission can determine that the unit shall not be removed. However, the existing controls do not require the property owner to legalize the unit which would raise a challenge if the property owner is not willing to legalize the unit. The proposed legislation would amend the Building Code so that the Notice of Violation to a property owner would require legalization of the Unauthorized Unit unless the Planning Commission approves removal of the unit.

### **Loss of Unauthorized Units: Section 317 Findings**

Section 317 of the Planning Code includes a list of findings for each type of removal: demolition, conversion, or merger. The proposed legislation would subject the merger applications of Unauthorized Units to the same findings as merger of Residential units. It would also define additional findings for removal of Unauthorized Units. These include three new findings:

First is whether or not the Unauthorized Unit is eligible to be legalized. The existing program that allows legalization of Unauthorized Units includes certain limitations. For example only one Unauthorized Unit per lot can be legalized above the density limits.

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<sup>11</sup> After the appeal period has expired, the Board of Appeals would hear the matter only in extraordinary cases where the Board finds that the City intentionally or inadvertently caused the requestor to be late in filing the appeal.

<sup>12</sup> Board File 150587 "Building and Planning Codes - Notice to Tenants of Dwelling Unit Merger or Demolition"

The second finding is whether the cost of legalization is reasonable. The cost for legalizing Unauthorized Units ranges significantly from \$2000 to \$150,000 per unit according to the applications that the City has received so far. The proposed legislation defines “reasonable cost for legalization” as cost that falls within this range, which is frequently updated based on new applications the Department receives.

The third and last finding relates to whether or not the cost for legalization is offset by the added value to the property. The proposed legislation would require an appraisal of the property for when the unit is legalized compared with when the unit remains unauthorized. If the value added to the property is equal or greater than the costs, legalization would be found financially feasible.

It is also worth noting that the proposed legislation would remove one of the findings for Residential Unit merger that determines “whether removal of the unit(s) will bring the building closer into conformance with prescribed zoning.” Since 2014, the City has increasingly emphasized the need to retain the existing residential units, even if the unit exceeds the allowed density limits. Removing this finding would further align the Planning Code with the goal of preserving our existing housing stock.

## 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 and adopt the attached Draft Resolution to that effect. The proposed modifications include:

1. **Amend the findings related to unit removal through demolition-** Staff proposes to add two findings for CU authorization in case of demolition: 1) whether or not the replacement project would maximize density on the subject lot; and 2) If replacing a residential building not subject to the Rent Ordinance, whether the new projects replaces all of the existing units with new dwelling units with the same number of bedrooms and of similar size.
2. **Amend the finding related to cost of legalization when removing Unauthorized Unit-** Staff recommend to use the average cost of legalization per unit instead of the proposed per square footage in the legislation.
3. **Amend the tables within Article 2, Article 7, and 8 of the Planning Code to reflect the proposed changes in Section 317.**

### Basis for Recommendations:

The proposed CU authorization would allow the highest level of scrutiny for applications to remove any units whether legal or unauthorized. Strict protection of the existing housing stock



would first and foremost help prevent evictions and displacement due to unwarranted demolition and merger of dwelling units. Secondly, it would also help the City to retain the housing stock, especially given the current housing crisis when demand for housing increasingly surpasses new housing development.

The proposed Ordinance would require a CU authorization for unit loss consistently across all zoning districts and building types. A CU authorization is preferred over a Mandatory DR because:

- A Mandatory DR application is deemed approved unless the Planning Commission makes a decision. A CU authorization however would not be approved unless the Planning Commission reaches consensus.
- For a Mandatory DR application, the Planning Commission only relies on specified findings for unit removal listed in Section 317 of the Planning Code while a CU authorization also includes findings from Section 303 which would determine whether the proposed unit removal is necessary and desirable to the neighborhood.
- A CU authorization can be appealed to the Board of Supervisors while a Mandatory DR is part of a building permit and can only be appealed to the Board of Appeals. The Board of Supervisors would provide a better opportunity to the tenant to justify their case as only a majority vote can overturn the building permit compared to the Board of Appeals where 4 out of 5 votes is necessary to overturn an issued building permit for removing a dwelling unit.

As for Unauthorized Units, the proposed legislation would fill the void of necessary controls for retaining this important portion of our housing stock. Many of these units are tenant occupied at lower rates of rent due to the illegal status of the unit. Removing these units only exacerbates the already critical state of evictions and displacement in San Francisco. These units can be retained and brought up to safety standards generally with small investments. To abate the cost burden on property owners, the City has also waived the required fees for legalization in order to encourage more owners to legalize their units. The proposed findings for the CU authorization would create flexibility for the Planning Commission to allow removal of units that are financially infeasible to legalize.

The proposed legislation would also expand the type of permits that would result in landscaping and permeable pavers in front yards. The proposed new triggers include expansion of building by 20% as well as unit merger. Staff supports this proposal as it aligns with the City's policies on green landscaping and storm water management.

**Recommended Modification 1: Amend the findings related to unit removal through demolition** - The proposed new findings would help the Commission understand the net gain or loss as a result of the proposed replacement project. The proposed finding regarding maximizing density would help identify whether or not the replacement project presents a net gain for the city in terms of number of units. Given the existing housing crisis and shortage, the City generally encourages development projects to maximize the development capacity. This finding would indicate and highlight if the replacement project acknowledges this policy.

The second proposed finding relates to unit size and affordability. Units not subject to the Rent Ordinance usually are offered at the market rate since increasing rent in these units does not

require any due process. It is safe to assume that a newer unit of similar size would offer similar affordability levels. If the city is gaining more units, maintaining the affordability level, while retaining the variety of unit size, the replacement project may present a net gain.

**Recommended Modification 2: Amend the finding related to cost of legalization of removing Unauthorized Unit** - The proposed recommendation would slightly change the criteria to evaluate whether the legalization cost is reasonable. This change is largely due to lack of available square footage data for the legalization permits in the format that Department tracks the data. Staff believes that the average cost of legalization is good proxy to measure cost as the database includes a variety of unit sizes.

**Recommended Modification 3: Amend the tables within Article 2, Article 7, and 8 of the Planning Code to reflect the proposed changes in Section 317-** The Planning Code includes regulations of removal of residential units throughout different zoning tables. Staff recommends amending all relevant tables and Code section to reflect the changes proposed in the legislation.

### **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.

### **Attachments:**

Exhibit A: Draft Resolution

Exhibit F: Draft Ordinance [Board of Supervisors File No. 15-0494]



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Draft Resolution Planning, and Building Code Text Change

HEARING DATE: DECEMBER 10<sup>TH</sup>, 2015

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*Project Name:* **Requiring Conditional Use Authorization to Remove Residential Units Including Unauthorized Units**

*Case Number:* 2015-006712PCA [Board File No. 150494]

*Initiated by:* Supervisor Avalos / Introduced May 12, 2015

*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**

**RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO REQUIRE CONDITIONAL USE AUTHORIZATION FOR THE REMOVAL OF ANY RESIDENTIAL UNIT, WHETHER LEGAL OR ILLEGAL, AND COMPLIANCE WITH LANDSCAPING AND PERMEABLE SURFACES REQUIREMENTS FOR BUILDING ADDITIONS AND RESIDENTIAL MERGERS; AMENDING 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; 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.**

WHEREAS, on May 12, 2015 Supervisor Avalos introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 150494, which would amend the Planning Code to require Conditional Use authorization for the removal of any residential unit, whether legal or illegal, and compliance with landscaping and permeable surfaces requirements for building additions and residential mergers; and would amend 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.

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on December 10, 2015; 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/approve with modifications the proposed ordinance. The proposed modifications include:

1. **Amend the findings related to unit removal through demolition-** Staff proposes to add two findings for CU authorization in case of demolition: 1) whether or not the replacement project would maximize density on the subject lot; and 2) If replacing a residential building not subject to the Rent Ordinance, whether the new projects replaces all of the existing units with new dwelling units with the same number of bedrooms and of similar size.
2. **Amend the finding related to cost of legalization when removing unauthorized unit-** Staff recommend to use the average cost of legalization per unit instead of the proposed per square footage in the legislation.
3. **Amend the tables within Article 2, Article 7, and 8 of the Planning Code to reflect the proposed changes in Section 317.**

## 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 proposed CU authorization would allow the highest level of scrutiny for applications to remove any units whether legal or unauthorized. Strict protection of the existing housing stock would first and foremost help prevent evictions and displacement due to unwarranted demolition and merger of dwelling units. Secondly, it would also help the City to retain the housing stock, especially given the current housing crisis when demand for housing increasingly surpasses new housing development.
2. The proposed Ordinance would require a CU authorization for unit loss consistently across all zoning districts and building types. A CU authorization is preferred over a Mandatory DR because:
  - A Mandatory DR application is deemed approved unless the Planning Commission makes a decision. A CU authorization however would not be approved unless the Planning Commission reaches consensus.

- For a Mandatory DR application, the Planning Commission only relies on specified findings for unit removal listed in Section 317 of the Planning Code while a CU authorization also includes findings from Section 303 which would determine whether the proposed unit removal is necessary and desirable to the neighborhood.
  - A CU authorization can be appealed to the Board of Supervisors while a Mandatory DR is part of a building permit and can only be appealed to the Board of Appeals. The Board of Supervisors would provide a better opportunity to the tenant to justify their case as only a majority vote can overturn the building permit compared to the Board of Appeals where 4 out of 5 votes is necessary to overturn an issued building permit for removing a dwelling unit.
3. As for unauthorized units, the proposed legislation would fill the void of necessary controls for retaining this important portion of our housing stock. Many of these units are tenant occupied at lower rates of rent due to the illegal status of the unit. Removing these units only exacerbates the already critical state of evictions and displacement in San Francisco. These units can be retained and brought up to safety standards generally with small investments. To abate the cost burden on property owners, the City has also waived the required fees for legalization in order to encourage more owners to legalize their units. The proposed findings for the CU authorization would create flexibility for the Planning Commission to allow removal of units that are financially infeasible to legalize.
  4. The proposed legislation would also expand the type of permits that would result in landscaping and permeable pavers in front yards. The proposed new triggers include expansion of building by 20% as well as unit merger. Staff supports this proposal as it aligns with the City's policies on green landscaping and storm water management.
  5. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are 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 residential units through demolition-whether legal or unauthorized. This would help discourage demolition of existing housing unless necessary findings warrant the demolition.*

**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 residential units through merger-whether legal or unauthorized. This would help discourage merger of two residential units or merging an unauthorized units unless necessary findings warrant the merger.*

6. **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 December 10, 2015.

Jonas P. Ionin  
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED:

1 [Planning, Building Codes - Conditional Use Required to Remove Any Residential Unit;  
2 Mandatory Legalization of Illegal Units; Permeable Surfaces and Landscaping Requirements]

3 **Ordinance amending the Planning Code to require Conditional Use authorization for**  
4 **the removal of any residential unit, whether legal or illegal, and compliance with**  
5 **landscaping and permeable surfaces requirements for building additions and**  
6 **residential mergers; amending the Building Code to require that notices of violation**  
7 **mandate legalization of an illegal unit unless infeasible under the Building Code or the**  
8 **Planning Commission approves its removal; affirming the Planning Department’s**  
9 **determination under the California Environmental Quality Act; and making findings of**  
10 **consistency with the General Plan, Planning Code Section 302, and the eight priority**  
11 **policies of Planning Code Section 101.1.**

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

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

20 Section 1. Findings.

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



1 (b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_,  
2 adopted findings that the actions contemplated in this ordinance are consistent, on balance,  
3 with the City's General Plan and the eight priority policies of Planning Code Section 101.1.  
4 The Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk  
5 of the Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.

6 (c) Pursuant to Planning Code Section 302, this Board finds that these Planning  
7 Code amendments will serve the public necessity, convenience, and welfare for the reasons  
8 set forth in Planning Commission Resolution No. \_\_\_\_\_ and the Board incorporates such  
9 reasons herein by reference.

10  
11 Section 2. The Planning Code is hereby amended by revising Sections 132 and 317,  
12 to read as follows:

13 **SEC. 132. FRONT SETBACK AREAS, RTO, RH AND RM DISTRICTS AND FOR**  
14 **REQUIRED SETBACKS FOR PLANNED UNIT DEVELOPMENTS.**

15 The following requirements for minimum front setback areas shall apply to every  
16 building in all RH, RTO, and RM Districts, in order to relate the setbacks provided to the  
17 existing front setbacks of adjacent buildings. Buildings in RTO Districts which have more than  
18 75 feet of street frontage are additionally subject to the Ground Floor Residential Design  
19 Guidelines, as adopted and periodically amended by the Planning Commission. Planned Unit  
20 Developments or PUDs, as defined in Section 304, shall also provide landscaping in required  
21 setbacks in accord with Section 132(g).

22 \* \* \* \*

23 (g) **Landscaping and Permeable Surfaces.** The landscaping and permeable surface  
24 requirements of this Section and Section (h) below shall be met by the permittee in the case  
25 of construction of a new building; the addition of a new ~~d~~Dwelling ~~#~~Unit, a garage, or

1 additional parking; any addition to a structure that would result in an increase of 20% or more of the  
2 existing Gross Floor Area, as defined in Section 102; a Residential Merger, as defined in Section 317;  
3 or paving or repaving more than 200 square feet of the front setback. All front setback areas  
4 required by this Section 132 shall be appropriately landscaped, meet any applicable water use  
5 requirements of Administrative Code Chapter 63, and in every case not less than 20% ~~percent~~  
6 of the required setback area shall be and remain unpaved and devoted to plant material,  
7 including the use of climate appropriate plant material as defined in Public Works Code  
8 Section 802.1. For the purposes of this Section, permitted obstructions as defined by Section  
9 136(c)(6) chimneys, Section 136(c)(14) steps ~~stairs~~, and Section 136(c)(26) underground  
10 garages, shall be excluded from the front setback area used to calculate the required  
11 landscape and permeable surface area. If the required setback area is entirely taken up by  
12 one or more permitted obstructions, the Zoning Administrator may allow the installation of  
13 sidewalk landscaping that is compliant with applicable water use requirements of Chapter 63  
14 of the Administrative Code to satisfy the requirements of this ~~s~~Section, subject to permit  
15 approval from the Department of Public Works in accordance with Public Works Code Section  
16 810B.

17 \* \* \* \*

18 **SEC. 317. LOSS OF DWELLING UNITS THROUGH DEMOLITION, MERGER AND**  
19 **CONVERSION.**

20 \* \* \* \*

21 (b) **Definitions.** For the purposes of this Section 317, the terms below shall be  
22 defined as follows:

23 \* \* \* \*

24 (7) "Residential Merger" shall mean the combining of two or more ~~legal~~  
25 Residential Units, whether legal or illegal, resulting in a decrease in the number of Residential

1 Units within a building, or the enlargement of one or more existing units while substantially  
2 reducing the size of others by more than 25% of their original floor area, even if the number of  
3 units is not reduced. The Planning Commission may reduce the numerical element of this  
4 criterion by up to 20% of its value should it deem that adjustment is necessary to implement  
5 the intent of this Section 317, to conserve existing housing and preserve affordable housing.

6 \* \* \* \*

7 (12) "Residential Unit" shall mean a legal conforming or legal nonconforming  
8 Dwelling Unit, ~~or~~ a legal nonconforming Live/Work Unit or Group Housing, which are defined  
9 in Section 102 of this Code; provided, however, this definition shall not include a Residential  
10 Unit in a Residential Hotel, as defined and regulated by Chapter 41 of the ~~San Francisco~~  
11 Administrative Code.

12 (13) "Unauthorized Unit" shall mean one or more rooms within a building that have  
13 been used, without the benefit of a building permit, as a separate and distinct living or sleeping space  
14 independent from Residential Units on the same property. "Independent" shall mean that (i) the space  
15 has independent access that does not require entering a Residential Unit on the property and (ii) there  
16 is no open, visual connection to a Residential Unit on the property.

17 (14) "Vertical Envelope Elements" shall mean all exterior walls that provide  
18 weather and thermal barriers between the interior and exterior of the building, or that provide  
19 structural support to other elements of the building envelope.

20 \* \* \* \*

21 (c) **Applicability.** ~~Any~~ Any application for a permit that would result in the ~~loss~~  
22 Removal of one or more Residential Units or Unauthorized Units is required to obtain  
23 Conditional Use authorization; provided, however, that in the RTO, RTO-M, NCT, and Upper  
24 Market NCD Zoning Districts, as well as the loss of any residential unit above the ground floor in the  
25 C-3 Zoning District, only the Removal of a Residential Unit or Unauthorized Unit above the ground

1 floor requires a Conditional Use authorization. The application for a replacement building or  
2 alteration permit shall also be subject to Conditional Use requirements. ~~When considering~~  
3 ~~whether to grant Conditional Use authorization for the loss of dwelling unit(s) in the C-3 districts, in~~  
4 ~~lieu of the criteria set forth in Planning Code Section 303, consideration shall be given to the adverse~~  
5 ~~impact on the public health, safety, and general welfare of the loss of housing stock in the district and~~  
6 ~~to any unreasonable hardship to the applicant if the permit is denied. Any application for a permit that~~  
7 ~~would result in the loss or Removal of three or more Residential Units, notwithstanding any other~~  
8 ~~sections of this Code, shall require a Conditional Use authorization for the Removal and replacement~~  
9 ~~of the units. Approval of any other application that would result in the loss or Removal of up to two~~  
10 ~~Residential Units is prohibited unless the Planning Commission approves such permit application and~~  
11 ~~the replacement structure permit application at a Mandatory Discretionary Review hearing, with~~  
12 ~~certain exceptions specified below.~~

13 (d) **Demolition.**

14 (1) No permit to Demolish a Residential Building in any zoning district shall be  
15 issued until a building permit for the replacement structure is finally approved, unless the  
16 building is determined to pose a serious and imminent hazard as defined in the Building Code.  
17 A building permit is finally approved if the Board of Appeals has taken final action for approval  
18 on an appeal of the issuance or denial of the permit or if the permit has been issued and the  
19 time for filing an appeal with the Board of Appeals has lapsed with no appeal filed.

20 (2) ~~If~~ Conditional Use authorization is required for approval of the permit for ~~a~~  
21 Residential Demolition ~~by other sections of this Code,~~ and the Commission shall consider the  
22 replacement structure as part of its decision on the Conditional Use application. If Conditional  
23 Use authorization is required for the replacement structure by other sections of this Code, the  
24 Commission shall consider the demolition as part of its decision on the Conditional Use  
25 application. ~~In either case, Mandatory Discretionary Review is not required, although the Commission~~

1 shall apply appropriate criteria adopted under this Section 317 in addition to the criteria in Section  
2 303 of the Planning Code in its consideration of Conditional Use authorization. If neither permit  
3 application is subject to Conditional Use authorization, then separate Mandatory Discretion Review  
4 cases shall be heard to consider the permit applications for the demolition and the replacement  
5 structure.

6 (3) For those applications for a Residential Demolition in districts that require  
7 Mandatory Discretionary Review, administrative review criteria shall ensure that only applications to  
8 demolish Single-Family Residential Buildings that are demonstrably not affordable or financially  
9 accessible housing, or Residential Buildings of two units or fewer that are found to be unsound  
10 housing, are exempt from Mandatory Discretionary Review hearings. Specific numerical criteria for  
11 such analyses shall be adopted by the Planning Commission in the Code Implementation Document, in  
12 accordance with this Section 317, and shall be adjusted periodically by the Zoning Administrator based  
13 on established economic real estate and construction indicators.

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

24 (B) The Planning Commission, in the Code Implementation Document, shall  
25 adopt criteria and procedures for determining the soundness of a structure proposed for demolition,

1 where "soundness" is an economic measure of the feasibility of upgrading a residence that is deficient  
2 with respect to habitability and Housing Code requirements, due to its original construction. The  
3 "soundness factor" for a structure shall be the ratio of a construction upgrade cost (i.e., an estimate of  
4 the cost to repair specific habitability deficiencies) to the replacement cost (i.e., an estimate of the  
5 current cost of building a structure the same size as the existing building proposed for demolition);  
6 expressed as a percent. A building is unsound if its soundness factor exceeds 50%. A Residential  
7 Building that is unsound may be approved for demolition.

8 (C) ~~The Planning Commission shall consider the following additional criteria in~~  
9 ~~the review of applications for Residential Demolition:~~

10 (i) ~~whether the property is free of a history of serious, continuing Code~~  
11 ~~violations;~~

12 (ii) ~~whether the housing has been maintained in a decent, safe, and~~  
13 ~~sanitary condition;~~

14 (iii) ~~whether the property is an "historical resource" under CEQA;~~

15 (iv) ~~whether the removal of the resource will have a substantial adverse~~  
16 ~~impact under CEQA;~~

17 (v) ~~whether the project converts rental housing to other forms of tenure~~  
18 ~~or occupancy;~~

19 (vi) ~~whether the project removes rental units subject to the Rent~~  
20 ~~Stabilization and Arbitration Ordinance or affordable housing;~~

21 (vii) ~~whether the project conserves existing housing to preserve cultural~~  
22 ~~and economic neighborhood diversity;~~

23 (viii) ~~whether the project conserves neighborhood character to preserve~~  
24 ~~neighborhood cultural and economic diversity;~~

1 ~~(ix) whether the project protects the relative affordability of existing~~  
2 ~~housing;~~

3 ~~(x) whether the project increases the number of permanently affordable~~  
4 ~~units as governed by Section 415;~~

5 ~~(xi) whether the project locates in-fill housing on appropriate sites in~~  
6 ~~established neighborhoods;~~

7 ~~(xii) whether the project increases the number of family-sized units on-~~  
8 ~~site;~~

9 ~~(xiii) whether the project creates new supportive housing;~~

10 ~~(xiv) whether the project is of superb architectural and urban design,~~  
11 ~~meeting all relevant design guidelines, to enhance existing neighborhood character;~~

12 ~~(xv) whether the project increases the number of on-site dwelling units;~~

13 ~~(xvi) whether the project increases the number of on-site bedrooms.~~

14 ~~(4) (3)~~ Nothing in this Section is intended to permit Residential Demolition in  
15 those areas of the City where other sections of this Code prohibit such demolition or  
16 replacement structure.

17 ~~(5) (4)~~ Nothing in this Section is intended to exempt buildings or sites where  
18 demolition is proposed from undergoing review with respect to Articles 10 and 11 of the  
19 Planning Code, where the requirements of those articles apply. Notwithstanding the definition  
20 of "Residential Demolition" in this section and as further described in the Code  
21 Implementation Document with regard to Residential Demolition, the criteria of Section 1005  
22 shall apply to projects subject to review under the requirements of Article 10 with regard to the  
23 structure itself.

24 ~~(e) Conversion to Student Housing. The conversion of Residential Units to Student~~  
25 ~~Housing is prohibited. For the purposes of this subsection, Residential Units that have been defined as~~

1 such by the time a First Certificate of Occupancy has been issued by the Department of Building  
2 Inspection for new construction shall not be converted to Student Housing.

3 (f) **Residential Merger.** The Merger of Residential Units, not otherwise subject to  
4 Conditional Use authorization by this Code, shall be prohibited.

5 (g) **Conditional Use Criteria.**

6 (1) **C-3 Districts.** When considering whether to grant Conditional Use authorization for  
7 the loss or Removal of Residential Unit(s) in the C-3 districts, in lieu of the criteria set forth in  
8 Planning Code Section 303, consideration shall be given to the adverse impact on the public health,  
9 safety, and general welfare of the loss of housing stock in the district and to any unreasonable hardship  
10 to the applicant if the permit is denied.

11 \* \* \* \*

12 ~~(e) (2) **Residential Merger.**~~

13 ~~(1) *The Merger of Residential Units, not otherwise subject to Conditional Use*~~  
14 ~~*authorization by this Code., shall be prohibited, unless the Planning Commission approves the building*~~  
15 ~~*permit application at a Mandatory Discretionary Review hearing, applying the criteria in subsection*~~  
16 ~~*(2) below, or the project qualifies for administrative approval and the Planning Department approves*~~  
17 ~~*the project administratively in accordance with subsection (3) below.*~~

18 The Planning Commission shall consider the following criteria in the review of  
19 applications to merge Residential Units or Unauthorized Units:

20 (A) whether removal of the unit(s) would eliminate only owner occupied housing,  
21 and if so, for how long the unit(s) proposed to be removed have been owner occupied;

22 (B) whether removal of the unit(s) and the merger with another is intended for  
23 owner occupancy;



1 (C) whether the removal of the unit(s) will remove an affordable housing unit as  
2 defined in Section ~~401 415~~ of this Code or housing subject to the Residential Rent Stabilization  
3 and Arbitration Ordinance;

4 ~~(D) whether removal of the unit(s) will bring the building closer into conformance with~~  
5 ~~prescribed zoning;~~

6 ~~(E)~~ (D) if removal of the unit(s) removes an affordable housing unit as defined in  
7 Section 401 of this Code or units subject to the Residential Rent Stabilization and Arbitration  
8 Ordinance, whether replacement housing will be provided which is equal or greater in size,  
9 number of bedrooms, affordability, and suitability to households with children to the units  
10 being removed;

11 ~~(E) how recently the unit being removed was occupied by a tenant or tenants;~~

12 (F) whether the number of bedrooms provided in the merged unit will be equal to  
13 or greater than the number of bedrooms in the separate units;

14 (G) whether removal of the unit(s) is necessary to correct design or functional  
15 deficiencies that cannot be corrected through interior alterations;

16 ~~(H) the appraised value of the least expensive Residential Unit proposed for merger only~~  
17 ~~when the merger does not involve an Unauthorized Unit.~~

18 ~~(3) Administrative review criteria shall ensure that only those Residential Units~~  
19 ~~proposed for Merger that are demonstrably not affordable or financially accessible housing are exempt~~  
20 ~~from Mandatory Discretionary Review hearings. Applications for which the least expensive unit~~  
21 ~~proposed for merger has a value greater than at least 80% of the combined land and structure values~~  
22 ~~of single family homes in San Francisco, as determined by a credible appraisal, made within six~~  
23 ~~months of the application to merge, are not subject to a Mandatory Discretionary Review hearing. The~~  
24 ~~Planning Commission, in the Code Implementation Document, may increase the numerical criterion in~~  
25

1 ~~this subsection by up to 10% of its value should it deem that adjustment is necessary to implement the~~  
2 ~~intent of this Section 317, to conserve existing housing and preserve affordable housing.~~

3 (4) The Planning Commission shall not approve an application for Residential  
4 ~~m~~Merger if any tenant has been evicted pursuant to Administrative Code Sections 37.9(a)(9)  
5 through 37.9(a)(14) where the tenant was served with a notice of eviction after December 10,  
6 2013 if the notice was served within ~~ten~~ (10) years prior to filing the application for merger.  
7 Additionally, the Planning Commission shall not approve an application for Residential  
8 ~~m~~Merger if any tenant has been evicted pursuant to Administrative Code Section 37.9(a)(8)  
9 where the tenant was served with a notice of eviction after December 10, 2013 if the notice  
10 was served within five (5) years prior to filing the application for merger. This Subsection ~~(e)~~(4)  
11 ~~(g)(2)(B)~~ shall not apply if the tenant was evicted under Section 37.9(a)(11) or 37.9(a)(14) and  
12 the applicant(s) either (A) have certified that the original tenant reoccupied the unit after the  
13 temporary eviction or (B) have submitted to the Planning Commission a declaration from the  
14 property owner or the tenant certifying that the property owner or the Rent Board notified the  
15 tenant of the tenant's right to reoccupy the unit after the temporary eviction and that the tenant  
16 chose not to reoccupy it.

17 ~~(f)~~ (3) **Residential Conversion.**

18 ~~(1) Residential Conversion not otherwise prohibited or subject to Conditional Use~~  
19 ~~authorization by this Code, shall be prohibited, unless the Planning Commission approves the building~~  
20 ~~permit application at a Mandatory Discretionary Review hearing, or is exempted from such approval~~  
21 ~~as provided in subsections (f)(3) or (4) below. The conversion of Residential Units to Student Housing~~  
22 ~~is prohibited. For the purposes of this subsection, Residential Units that have been defined as such by~~  
23 ~~the time a First Certificate of Occupancy has been issued by the Department of Building Inspection for~~  
24 ~~new construction shall not be converted to Student Housing.~~

1           (2) The Planning Commission shall consider the following criteria in the review of  
2 applications for Residential Conversion ~~Conversation~~;

3                   (A) whether conversion of the unit(s) would eliminate only owner  
4 occupied housing, and if so, for how long the unit(s) proposed to be removed were owner  
5 occupied;

6                   (B) whether Residential Conversation would provide desirable new non-  
7 residential use(s) appropriate for the neighborhood and adjoining district(s);

8                   (C) in districts where Residential Uses are not permitted, whether  
9 Residential Conversion will bring the building closer into conformance with the uses permitted  
10 in the zoning district;

11                   (D) whether conversion of the unit(s) will be detrimental to the City's  
12 housing stock;

13                   (E) whether conversion of the unit(s) is necessary to eliminate design,  
14 functional, or habitability deficiencies that cannot otherwise be corrected;

15                   (F) whether the Residential Conversion will remove Affordable Housing,  
16 or units subject to the Rent Stabilization and Arbitration Ordinance.

17           \* \* \* \*

18                   (4) ***Residential Demolition.*** The Planning Commission shall consider the following  
19 additional criteria in the review of applications for Residential Demolition:

20                           (A) whether the property is free of a history of serious, continuing Code  
21 violations;

22                           (B) whether the housing has been maintained in a decent, safe, and sanitary  
23 condition;

24                           (C) whether the property is an "historical resource" under CEQA;  
25

- 1 (D) whether the removal of the resource will have a substantial adverse impact  
2 under CEQA;
- 3 (E) whether the project converts rental housing to other forms of tenure or  
4 occupancy;
- 5 (F) whether the project removes rental units subject to the Rent Stabilization and  
6 Arbitration Ordinance or affordable housing;
- 7 (G) whether the project conserves existing housing to preserve cultural and  
8 economic neighborhood diversity;
- 9 (H) whether the project conserves neighborhood character to preserve  
10 neighborhood cultural and economic diversity;
- 11 (I) whether the project protects the relative affordability of existing housing;
- 12 (J) whether the project increases the number of permanently affordable units as  
13 governed by Section 415;
- 14 (K) whether the project locates in-fill housing on appropriate sites in established  
15 neighborhoods;
- 16 (L) whether the project increases the number of family-sized units on-site;
- 17 (M) whether the project creates new supportive housing;
- 18 (N) whether the project is of superb architectural and urban design, meeting all  
19 relevant design guidelines, to enhance existing neighborhood character;
- 20 (O) whether the project increases the number of on-site dwelling units;
- 21 (P) whether the project increases the number of on-site bedrooms.
- 22 (5) **Removal of Unauthorized Units.** In addition to the criteria set forth in subsections  
23 (g)(1) through (g)(4) above, the Planning Commission shall consider the criteria below in the review of  
24 applications for removal of Unauthorized Units:
- 25

1 (A) whether the Unauthorized Unit or Units are eligible for legalization under  
2 Section 207.3 of this Code;

3 (B) whether the costs to legalize the Unauthorized Unit or Units under the  
4 Planning, Building, and other applicable Codes is reasonable based on how such cost compares to the  
5 average cost of legalization per square foot derived from the cost of projects on the Planning  
6 Department's Master List of Additional Dwelling Units Approved required by Section 207.3(k) of this  
7 Code;

8 (C) whether it is financially feasible to legalize the Unauthorized Unit or Units.  
9 Such determination will be based on the costs to legalize the Unauthorized Unit(s) under the Planning,  
10 Building, and other applicable Codes in comparison to the added value that legalizing said Units  
11 would provide to the subject property. The gain in the value of the subject property shall be based on  
12 the current value of the property with the Unauthorized Unit(s) compared to the value of the property if  
13 the Unauthorized Unit(s) is legalized. The calculation of the gain in value shall be conducted and  
14 approved by a California licensed property appraiser. Legalization would be deemed financially  
15 feasible if gain in the value of the subject property is equal to or greater than the cost to legalize the  
16 Unauthorized Unit.

17 **(6) Denial of Application to Remove an Unauthorized Unit; Requirement to Legalize**  
18 **the Unit.** If the Planning Commission denies an application to Remove an Unauthorized Unit, the  
19 property owner shall file an application for a building permit to legalize the Unit. Failure to do so  
20 within a reasonable period of time, as determined by the Zoning Administrator, shall be deemed to be a  
21 violation of the Planning Code.

22 (h) **Notice of Conditional Use Hearing.** At least twenty days prior to any hearing to  
23 consider a Conditional Use authorization under Subsection (g)(2), (g)(3), g(4), or (g)(5), the Zoning  
24 Administrator shall cause a written notice containing the following information to be mailed to all  
25

1 Residential Units and if known any Unauthorized Units in the building, in addition to any other notice  
2 required under this Code:

3 (1) Notice of the time, place, and purpose of the hearing; and

4 (2) An explanation of the process for demolishing, merging, or converting Residential  
5 Units or Unauthorized Units, including a description of subsequent permits that would be required  
6 from the Planning Department and Department of Building Inspection and how they could be appealed.

7 ~~(g)~~ (i) **Exemptions.** This Section 317 shall not apply to property:

8 (1) Owned by the United States or any of its agencies;

9 (2) Owned by the State of California or any of its agencies, with the exception of  
10 such property not used exclusively for a governmental purpose;

11 (3) Under the jurisdiction of the Port of San Francisco or the Successor Agency  
12 to the Redevelopment Agency of the City and County ~~of~~ where the application of this Section  
13 is prohibited by State or local law; or

14 (4) Where demolition of the building or Removal of a Residential Unit or  
15 Unauthorized Unit is necessary to comply with a court order or City order that directs the  
16 owner to demolish the building or remove the unit, due to conditions that present an imminent  
17 threat to life safety.

18  
19 Section 3. The Building Code is hereby amended by revising Section 102A, to read as  
20 follows:

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

22 All buildings, structures, property, or parts thereof, regulated by this code that are  
23 structurally unsafe or not provided with adequate egress, or that constitute a fire hazard, or  
24 are otherwise dangerous to human life, safety or health of the occupants or the occupants of  
25 adjacent properties or the public by reason of inadequate maintenance, dilapidation,

1 obsolescence or abandonment, or by reason of occupancy or use in violation of law or  
2 ordinance, or were erected, moved, altered, constructed or maintained in violation of law or  
3 ordinance are, for the purpose of this chapter, unsafe.

4 \* \* \* \*

5 **102A.3 Inspections and Complaints.** The Building Official is hereby authorized to  
6 inspect or cause the inspection of any building, structure or property for the purpose of  
7 determining whether or not it is unsafe in any of the following circumstances:

8 1. Whenever the Building Official, with reasonable discretion, determines that such  
9 inspection is necessary or desirable.

10 2. Whenever any person files with the Building Official a complaint from which there is,  
11 in the Building Official's opinion, probable cause to believe that the building, structure or  
12 property or any portion thereof, is unsafe.

13 3. Whenever an agency or department of the City and County of San Francisco  
14 transmits to the Building Official a written report from which there is, in the opinion of the  
15 Building Official, probable cause to believe that the building, structure or property, or any  
16 portion thereof, is unsafe.

17 Upon the completion of any such inspection and the finding by the Building Official of  
18 any condition which renders the building, structure or property unsafe, the Building Official  
19 shall, within 15 days thereafter, serve a written notice of violation upon the building owner  
20 which shall contain specific allegations, setting forth each condition the Building Official has  
21 found which renders the building, structure or property unsafe. The Building Official shall,  
22 within three days of mailing of such notice of violation, post a copy thereof in a conspicuous  
23 place in or upon such building, structure or property and make available a copy of the notice  
24 of violation to each tenant thereof. Such notice shall also set forth the penalties for violation  
25 prescribed in Section 103A of this code. In addition to the civil penalties prescribed in Section

1 103A, the Department's cost of preparation for and appearance at the hearing required by  
2 Section 102A.4, and all prior and subsequent attendant and administrative costs, shall be  
3 assessed upon the property owner monthly, after failure to comply with a written notice of  
4 violation that has been served upon the property owner. Said violations will not be deemed  
5 legally abated until the property owner makes full payment of the assessment of costs to the  
6 Department of Building Inspection. See Section 110A, Table 1A-D – Standard Hourly Rates  
7 and Table 1A-K – Penalties, Hearings, Code Enforcement Assessments – for the applicable  
8 rate. Failure to pay the assessment of costs shall result in tax lien proceedings against the  
9 property per Section 102A.18.

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

14 All such unsafe buildings, structures, property, or portions thereof, are hereby declared  
15 to be public nuisances and shall be vacated, repaired, altered or demolished as hereinafter  
16 provided.

17 102A.3.1. Dwelling units constructed or installed without required permit(s). In the case of an  
18 unauthorized dwelling unit constructed or installed in an existing building without the required permit  
19 or permits, in addition to the above requirements the written notice of violation shall order the property  
20 owner to file an application for a building and other permits required to legalize the unit pursuant to  
21 Building Code Section 106A.3.1.3 and Planning Code Section 207.3 unless removal of the unit is  
22 approved by the Planning Commission pursuant to Planning Code Section 317.

23  
24 Section 4. Effective Date. This ordinance shall become effective 30 days after  
25 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the



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 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
5 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
6 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
7 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
8 additions, and Board amendment deletions in accordance with the "Note" that appears under  
9 the official title of the ordinance.

10  
11 APPROVED AS TO FORM:  
12 DENNIS J. HERRERA, City Attorney

13 By: \_\_\_\_\_  
14 JUDITH A. BOYAJIAN  
15 Deputy City Attorney

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