

1 [Stipulation of Conditional Use authorization or Mandatory Discretionary Review of any permit
2 application to remove dwelling units, where the Planning Code does not already require
3 Conditional Use authorization.]

4 **Ordinance amending the Planning Code by adding Section 317 to stipulate Conditional**
5 **Use or Mandatory Discretionary Review of any Building Permit applications that would**
6 **eliminate existing dwelling units through mergers, conversions, or demolitions of**
7 **residential units, and requiring certain affordability and soundness findings, with**
8 **certain administrative exceptions allowed; making findings as to the need to preserve**
9 **affordable housing in San Francisco, environmental findings and findings of**
10 **consistency with the priority policies of Planning Code Section 101.1 and the General**
11 **Plan.**

12 Note: Additions are *single-underline italics Times New Roman*;
13 deletions are ~~*strikethrough italics Times New Roman*~~.
14 Board amendment additions are double underlined.
15 Board amendment deletions are ~~strikethrough normal~~.

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

17 Section 1. Findings. The Board of Supervisors of the City and County of San Francisco
18 hereby finds and determines that:

19 (a) There is a need to preserve affordable housing in San Francisco for the following
20 reasons:

21 (1) Affordable housing is a paramount statewide concern. In 1980, the Legislature
22 declared in Government Code Section 65580 that:

23 (A) The availability of housing is of vital statewide importance, and the early attainment
24 of decent housing and a suitable living environment for every California family is a priority of
25 the highest order.

1 (B) The early attainment of this goal requires the cooperative participation of
2 government and the private sector in an effort to expand housing opportunities and
3 accommodate the housing needs of Californians of all economic levels.

4 (C) The provision of housing affordable to low- and moderate-income households
5 requires the cooperation of all levels of government.

6 (D) Local and state governments have a responsibility to use the powers vested in
7 them to facilitate the improvement and development of housing to make adequate provision
8 for the housing needs of all economic segments of the community.

9 (2) The Legislature further stated in Government Code Section 65581 that it was the
10 intent of the Legislature to:

11 (A) Assure that counties and cities recognize their responsibilities in contributing to the
12 attainment of the state housing goal.

13 (B) Assure that counties and cities will prepare and implement housing elements that
14 will move toward attainment of the state housing goal.

15 (C) Recognize that each locality is best capable of determining what efforts are
16 required by it to contribute to the attainment of the state housing goal.

17 (3) The California Legislature requires each local government agency to develop a
18 comprehensive long-term general plan establishing policies for future development. As
19 specified in the Government Code the plan must "conserve and improve the condition of the
20 existing affordable housing stock, which may include addressing ways to mitigate the loss of
21 dwelling units demolished by public or private action."

22 (4) San Francisco faces a continuing shortage of affordable housing for very low and
23 low-income residents. The San Francisco Planning Department reported that for the past ten
24 years, 3,199 units of low and very low-income housing were built in San Francisco out of a
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1 total need of 15,103 units for the same period. According to the state Department of Housing
2 and Community Development, there will be a regional need for 230,743 new housing units in
3 the nine Bay Area counties from 1999—2006. Of that amount, at least 58 percent, or 133,164
4 units, are needed for moderate, low and very low-income households. The Association of Bay
5 Area Governments (ABAG) is responsible for dividing the total regional need numbers among
6 its member governments, which includes both counties and cities. ABAG estimates that San
7 Francisco's low and very low-income housing production need through 2006 is 7,370 units out
8 of a total new housing need of 20,372 units. Within the past ten years, less than 25% of the
9 previously projected housing need was produced in San Francisco.

10 (5) The 2000 Consolidated Plan for July 1, 2000 - June 30, 2005, issued by the
11 Mayor's Office of Community Development and the Mayor's Office of Housing establishes that
12 extreme housing pressures face San Francisco, particularly in regard to low-and moderate-
13 income residents. Many elements constrain housing production in the City. This is especially
14 true of affordable housing. San Francisco is largely built out, and its geographical location at
15 the northern end of a peninsula inherently prevents substantial new development. Because
16 the cities located on San Francisco's southern border are also dense urban areas, San
17 Francisco has no available adjacent land to be annexed. Thus, new construction of housing
18 is limited to areas of the City not previously designated as residential areas, infill sites, or to
19 areas with increased density. New market-rate housing absorbs a significant amount of the
20 remaining supply of land and other resources available for development and thus limits the
21 supply of affordable housing, including rental housing.

22 (6) There is a great need for affordable rental and owner-occupied housing in the City.
23 The vacancy rate for residential rental property has dropped significantly since 1990 when the
24 U.S. Census showed a 6.9 percent vacancy rate. Data from the 2000 US Census showed a
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1 residential rental vacancy rate of 2.5 percent. Data from the San Francisco rental market from
2 RealFacts for 2000 indicates a vacancy rate of 1.9 percent. Rents on newly occupied
3 residential units have risen dramatically. Housing cost burden is one of the major standards
4 for determining whether a locality is experiencing inadequate housing conditions. The
5 Consolidated Plan defines a household expending 30 percent or more of its gross income for
6 housing costs as experiencing a cost burden. According to the 2000 Census, 35 percent of
7 San Franciscans experienced a cost burden in 2000.

8 (7) The San Francisco residential real estate market is one of the most expensive in
9 the United States. The National Association of Realtors has found that San Francisco has
10 one of the highest median prices of existing homes in the United States. In the 1980's
11 average home prices in San Francisco rose nearly three times as fast as the overall cost of
12 living in San Francisco according to data from the Bay Area Council and 1990 Census.
13 Available data on housing sales demonstrates that the majority of market-rate homes for sale
14 in San Francisco are priced out of the reach of low and moderate-income households.

15 (8) The Board readopts the findings of Planning Code Section 313.2 for the Jobs-
16 Housing Linkage Program, Planning Code Sections 313 et seq., and Section 315.2 for the
17 Residential Inclusionary Affordable Housing Program, Planning Code Sections 315 et seq.,
18 including those that relate to the shortage of affordable housing, the low vacancy rate of
19 housing affordable to persons of lower and moderate income, and the decrease in
20 construction of affordable housing in the City.

21 (9) A substantial portion of residential rental buildings contain affordable housing that
22 is subject to the City's Residential Rent Stabilization and Arbitration Ordinance (Administrative
23 Code Chapter 37). New housing, however, is not subject to the Residential Rent Stabilization
24 and Arbitration Ordinance. Accordingly, the demolition of residential buildings in the absence
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1 of Planning Commission review and oversight could lead to the elimination or continuing loss
2 of affordable housing.

3 (10) Whether existing dwellings are rental or ownership tenure, they represent housing
4 that is generally more affordable or financially accessible than newly-constructed units of
5 comparable size.

6 (11) The City also has an interest in avoiding or minimizing blighting conditions, such
7 as litter, unsightly conditions, growth and spread of weeds, and airborne dust, that result when
8 a building is demolished and the underlying property remains vacant. For this reason, the City
9 believes approval of the replacement structure as part of its consideration concerning
10 demolition of an existing residential structure provides the property owner, neighborhood, and
11 community stakeholders greater certainty as to future use of the property.

12 (12) The Planning Commission on December 11, 2003, adopted Resolution No.
13 16700, which modified a previously established policy requiring mandatory discretionary
14 review of applications for demolition of residential structures. Said Resolution and its findings
15 are incorporated herein by reference.

16 (13) The Planning Commission, on June 15, 2006, adopted Resolution No. 17264,
17 which modified a previously established policy requiring mandatory discretionary review of
18 applications that would result in the loss of dwelling units through merger. Said Resolution
19 and its findings are incorporated herein by reference.

20 (14) For the reasons stated above, the Board of Supervisors intends to prohibit the
21 loss of dwelling units unless Conditional Use authorization or approval at a Mandatory
22 Discretionary Review hearing is granted by the Planning Commission.

23 (b) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this
24 Ordinance will serve the public necessity, convenience and welfare for the reasons set forth in
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1 Planning Commission Resolution No. _____ and incorporates said Resolution
2 herein by reference. A copy of said resolution is on file with the Clerk of the Board of
3 Supervisors in File No. _____.

4 (c) This Board of Supervisors finds that this Ordinance is consistent with the General
5 Plan and Priority Policies of Section 101.1(b) of the Planning Code for the reasons set forth in
6 the Planning Commission Resolution No. _____ and incorporates said Resolution
7 herein by reference. A copy of said resolution is on file with the Clerk of the Board of
8 Supervisors in File No. _____.

9 (d) Environmental Findings. The Planning Department has determined that the
10 actions contemplated in this Ordinance are in compliance with the California Environmental
11 Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is
12 on file with the Clerk of the Board of Supervisors in File No. _____ and is
13 incorporated herein by reference.

14 Section 2. The San Francisco Planning Code is hereby amended by adding Section
15 317, to read as follows:

16 Section 317. Loss of Dwelling Units through Merger, Conversion, and Demolition.

17 (a) Findings. San Francisco faces a continuing shortage of affordable housing. There is a
18 high ratio of rental to ownership tenure among the City's residents. The General Plan recognizes that
19 existing housing is the greatest stock of rental and financially accessible residential units, and is a
20 resource in need of protection. Therefore, a public hearing will be held prior to approval of any permit
21 that would remove existing housing, with certain exceptions, as described below. The Planning
22 Commission shall develop a Code Implementation Document setting forth procedures and regulations
23 for the implementation of this Section 317 as provided further below.

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

3 (1) "Conversion of Residential Unit" shall mean the removal of cooking facilities in a
4 Residential Unit or the change of occupancy (as defined and regulated by the Building Code), or the
5 change of use (as defined and regulated by the Planning Code), of any Residential Unit to a non-
6 residential use.

7 (2) "Demolition of Residential Buildings" shall mean any of the following:

8 (A) Any work on a Residential Building for which the Department of Building Inspection
9 determines that an application for a demolition permit is required, or

10 (B) A major alteration of a Residential Building that proposes the Removal of more than 50%
11 of the sum of the Front Façade and Rear Facade and also proposes the Removal of more than 75% of
12 the sum of all exterior walls, measured in lineal feet at the foundation level, or

13 (C) A major alteration of a Residential Building that proposes the Removal of more than 50%
14 of the Vertical Envelope Elements and more than 50% of the Horizontal Elements of the existing
15 building, as measured in square feet of actual surface area.

16 (D) The Planning Commission may adjust the above numerical elements of the criteria in
17 subsections (b)(2)(B) and (b)(2)(C), plus or minus 20% should it deem that adjustment is necessary to
18 implement the intent of this Section 317, to conserve existing sound housing and preserve affordable
19 housing.

20 (3) "Façade" shall mean an entire exterior wall assembly, including but not limited to all
21 finishes and siding, fenestration, doors, recesses, openings, bays, parapets, sheathing and framing.

22 (4) "Front Façade" shall mean the portion of the Façade fronting a right-of-way, or the portion
23 of the Façade most closely complying with that definition, as in the case of a flag lot. Where a lot has
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1 more than one frontage on rights-of-way, all such frontages shall be considered Front Facades except
2 where a façade meets the definition of "Rear Façade."

3 (5) "Horizontal Elements" shall mean all roof areas and all floor plates, except floor plates at
4 or below grade.

5 (6) "Mandatory Discretionary Review" shall mean a hearing before the Planning Commission
6 that is required by this Section 317 at which the Commission will determine whether to approve, modify
7 or disapprove a permit application.

8 (7) "Merger" shall mean the combining of two or more legal Residential Units, resulting in a
9 decrease in the number of Residential Units within a building, or the enlargement of one or more
10 existing units while substantially reducing the size of others by more than 25% of their original floor
11 area, even if the number of units is not reduced. The Planning Commission may adjust the numerical
12 element of this criterion, plus or minus 20% should it deem that adjustment is necessary to implement
13 the intent of this Section 317, to conserve existing housing and preserve affordable housing.

14 (8) "Rear Façade" shall mean that portion of the Façade facing the part of a lot that most
15 closely complies with the applicable Planning Code rear yard requirements.

16 (9) "Removal" shall mean, with reference to a wall, roof or floor structure, its dismantling, its
17 relocation or its alteration of the exterior function by construction of a new building element exterior to
18 it. Where a portion of an exterior wall is removed, any remaining wall with a height less than the
19 Building Code requirement for legal head room shall be considered demolished. Where exterior
20 elements of a building are removed and replaced for repair or maintenance, in like materials, with no
21 increase in the extent of the element or volume of the building, such replacement shall not be
22 considered Removal for the purposes of this Section. The foregoing does not supersede any
23 requirements for or restrictions on noncomplying structures and their reconstruction as governed by
24 Article 1.7 of this Code.

1 (10) "Residential Building" shall be mean any structure containing one or more Residential
2 Units as a principal use, regardless of any other uses present in the building.

3 (11) "Residential Unit" shall mean a legal conforming or non-conforming dwelling unit as
4 defined in Planning Code Section 102.7, or a legal non-conforming Live/Work Unit as defined in
5 Planning Code Section 102.13.

6 (12) "Vertical Envelope Elements" shall mean all exterior walls that provide weather and
7 thermal barriers between the interior and exterior of the building, or that provide structural support to
8 other elements of the building envelope.

9 (c) Applicability. Where an application for a permit that would result in the loss of one or
10 more Residential Units is required to obtain Conditional Use authorization by other sections of this
11 Code, the application for a replacement building or alteration permit shall also be subject to
12 Conditional Use requirements. Any application for a permit that would result in the loss or Removal of
13 four or more Residential Units, notwithstanding any other sections of this Code, shall require a
14 Conditional Use authorization for the Removal and replacement of the units. Approval of any other
15 application that would result in the loss of up to three Residential Units via merger, conversion, or
16 demolition is prohibited unless the Planning Commission approves such permit application and the
17 replacement structure permit application at a Mandatory Discretionary Review hearing, with certain
18 exceptions specified below.

19 (d) Loss of Residential Units through Demolitions.

20 (1) No permit to Demolish a Residential Building in any zoning district shall be issued until a
21 building permit for the replacement structure is finally approved, unless the building is determined to
22 pose a serious and imminent hazard as defined in the Building Code. A building permit is finally
23 approved if the Board of Appeals has taken final action for approval on an appeal of the issuance or

1 denial of the permit or if the permit has been issued and the time for filing an appeal with the Board of
2 Appeal has lapsed with no appeal filed.

3 (2) If Conditional Use authorization is required for approval of the permit to Demolish a
4 Residential Building by other sections of this Code, the Commission shall consider the replacement
5 structure as part of its decision on the Conditional Use application. If Conditional Use authorization is
6 required for the replacement structure by other sections of this Code, the Commission shall consider
7 the demolition as part of its decision on the Conditional Use application. In either case, Mandatory
8 Discretionary Review is not required, although the Commission shall apply appropriate criteria
9 adopted under this Section 317 in addition to the criteria in Section 303 of the Planning Code in its
10 consideration of Conditional Use authorization. If neither permit application is subject to Conditional
11 Use authorization, then separate Mandatory Discretion Review cases shall be heard to consider the
12 permit applications for the demolition and the replacement structure.

13 (3) For those applications to Demolish a Residential Building in districts that require
14 Mandatory Discretionary Review, administrative review criteria shall ensure that only applications to
15 demolish single family Residential Buildings that are demonstrably not affordable or financially
16 accessible housing, or Residential Buildings of three units or fewer that are found to be unsound
17 housing, are exempt from Mandatory Discretionary Review hearings. Specific numerical criteria for
18 such analyses shall be adopted by the Planning Commission in the Code Implementation Document, in
19 accordance with this Section 317, and shall be adjusted periodically by the Zoning Administrator based
20 on established economic real estate and construction indicators.

21 (A) The Planning Commission shall determine a level of affordability or financial accessibility,
22 such that single-family Residential Buildings on sites in RH-1 Districts that are demonstrably not
23 affordable or financially accessible, that is, housing that has a value greater than at least 80% of the
24 combined land and structure values of single-family homes in San Francisco as determined by a
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1 credible appraisal, made within six months of the application to demolish, are not subject to a
2 Mandatory Discretionary Review hearing. The demolition and replacement building applications shall
3 undergo notification as required by other sections of this Code. The Planning Commission, in the Code
4 Implementation Document, may adjust the numerical criterion in this subsection by up to a 20%
5 increase or decrease should it deem that adjustment is necessary to implement the intent of this Section
6 317, to conserve existing housing and preserve affordable housing.

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

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

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

24 (d) Loss of Residential Units through Merger or Conversion of Residential Units.
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1 (1) The Merger of Residential Units or Conversion of Residential Units not otherwise subject to
2 Conditional Use authorization by this Code, shall be prohibited, unless the Planning Commission
3 approves the building permit application at a Mandatory Discretionary Review hearing, applying
4 criteria adopted by the Planning Commission, or unless the project is found to meet criteria for
5 administrative review, as adopted by the Planning Commission in the Code Implementation Document,
6 consistent with this Section 317.

7 (2) Administrative review criteria shall ensure that only those Residential Units proposed for
8 Merger that are demonstrably not affordable or financially accessible housing are exempt from
9 Mandatory Discretionary Review hearings. The Planning Commission shall adopt specific numerical
10 criteria for such analyses and shall provide for periodic adjustments by the Zoning Administrator
11 based on established economic indicators. The Planning Commission shall determine a level of
12 affordability or financial accessibility, such that properties that are demonstrably not affordable or
13 financially accessible, that is, housing that has a value greater than at least 80% of the values of
14 comparably sized homes in San Francisco, as determined by a credible, recent appraisal, made within
15 six months of the application to remove the residential unit, are not subject to a Mandatory
16 Discretionary Review hearing. The Planning Commission, in the Code Implementation Document, may
17 adjust the numerical criterion in this subsection by up to a 20% increase or decrease should it deem
18 that adjustment is necessary to implement the intent of this Section 317, to conserve existing housing
19 and preserve affordable housing.

20 (e) This Section 317 shall not apply to property:

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

22 (2) Owned by the State of California or any of its agencies, with the exception of such property
23 not used exclusively for a governmental purpose;
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1 (3) Under the jurisdiction of the Port of San Francisco or the San Francisco Redevelopment
2 Agency where the application of this ordinance is prohibited by State or local law; or
3 (4) Where demolition of the building or Removal of a Residential Unit is necessary to comply
4 with a court order or City order that directs the owner to demolish the building or remove the unit, due
5 to conditions that present an imminent threat to life safety.

6 Section 3. This section is uncodified. This ordinance shall apply to all residential
7 building permit applications that would remove dwellings, for which public notice of the
8 demolition, as required under the Planning Code or Planning Commission Resolution 16700,
9 has not been mailed on or prior to December 31, 2007.

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

13 By: _____
14 Elaine C. Warren
15 Deputy City Attorney
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