



# SAN FRANCISCO PLANNING DEPARTMENT

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October 25, 2013

Ms. Angela Calvillo, Clerk  
Honorable Supervisor Avalos  
Board of Supervisors  
City and County of San Francisco  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

**Re: Transmittal of Planning Department Case Number 2013.0134T:  
Conversion, Demolition, Merger, and Conformity of Units  
Board File No. 13-0041  
Planning Commission Recommendation: Approval with Modifications**

Dear Ms. Calvillo and Supervisor Avalos,

On October 24, 2013, the San Francisco Planning Commission conducted a duly noticed public hearing at its regularly scheduled meeting to consider the proposed modifications to Section 317 that may be made by Supervisor Avalos as further amendments to the above referenced Board File in advance of the Land Use Committee's consideration of the item. At the October 24<sup>th</sup> hearing, the Planning Commission recommended approval with modifications.

Specifically, the modifications recommended by the Commission include:

1. that the prohibition be triggered by no-fault evictions that occur as of October 24, 2013; and,
2. that the prohibition last for ten years, as Supervisor Avalos recommends in his proposed language; and,
3. that Supervisor Avalos consider so-called "Owner Move-In" and other no-fault evictions differently than "Ellis Act" evictions.

The proposed amendments have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2). Pursuant to San Francisco's Administrative Code Section 8.12.5 "Electronic Distribution of Multi-page Documents," the Department is sending electronic documents and one hard copy. Additional hard copies may be requested by contacting Sophie Hayward at 558-6372.

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission. Please find attached documents relating to the action of the Planning Commission. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

Handwritten signature of AnMarie Rodgers in black ink, consisting of stylized initials 'AM' followed by a surname 'Rodgers' and a long horizontal line extending to the right.

AnMarie Rodgers  
Manager of Legislative Affairs

cc:

Supervisor John Avalos  
Judy Boyajian, Deputy City Attorney  
Jason Elliot, Mayor's Director of Legislative & Government Affairs

Attachments (two hard copies of the following):

Planning Commission Resolution No. 19009  
Planning Department Executive Summary



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Resolution No. 19009 Planning Code Text Change

HEARING DATE: OCTOBER 24, 2013

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Planning  
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*Project Name:* **Conversion, Demolition, Merger, and Conformity of Residential Units**  
*Case Number:* 2013.0134T [Board File No. 130041]  
*Initiated by:* Supervisor Avalos / Introduced January 15<sup>th</sup>, 2013  
*Staff Contact:* Sophie Hayward, Legislative Affairs  
sophie.hayward@sfgov.org, 415-558-6372  
*Reviewed by:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395  
*Recommendation:* **Recommend Approval with Modifications**

**RECOMMENDING THAT THE BOARD OF SUPERVISORS APPROVE WITH MODIFICATIONS ADDITIONAL AMENDMENTS TO A PROPOSED ORDINANCE THAT WOULD PROHIBIT THE COMMISSION FROM APPROVING THE LOSS OF ONE OR MORE DWELLING UNIT(S) THROUGH DEMOLITION, MERGER, OR CONVERSION IF THE BUILDING BEEN SUBJECT TO A "NO-FAULT" EVICTION WITHIN THE LAST TEN YEARS.; AND ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE PRIORITY POLICIES OF PLANNING CODE SECTION 101.**

WHEREAS, on January 22, 2013, Supervisors Avalos introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 13-0041, which would amend Sections 207.7, 212(e), and 317 of the Planning Code regarding the loss of dwelling units, would amend Sections 180 and 181 regarding nonconforming units, and would make various amendments to consolidate criteria and references in the Planning Code;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on July 18, 2013; and,

WHEREAS, The Commission adopted Resolution No. 18927 recommending approval with modifications of the components of the draft Ordinance that address the criteria for evaluation of the loss of dwelling units; and,

WHEREAS, Supervisor Avalos accepted the modifications and has incorporated them into the current draft Ordinance; and,

WHEREAS, Supervisor Avalos introduced the current draft Ordinance as substitute legislation on July 30<sup>th</sup>, 2013; and,

WHEREAS, Supervisor Avalos has expressed the intent to further amend the draft Ordinance to include language that would prohibit the demolition, conversion, or merger of units in buildings that have had a no-fault eviction within ten years; these additional amendments are substantive and the Commission had not previously considered them; and,

WHEREAS, the proposed Ordinance has been determined to be exempt from environmental review under the General Rule Exclusion, California Environmental Quality Act Section 15060(c)(2); 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 Commission hereby recommends that the Board of Supervisors *approve with modifications* the draft Ordinance and the additional language that Supervisor Avalos intends to include that would prohibit the demolition, merger, or conversion of a unit in a building that has had a no-fault eviction within ten years, and adopts the attached Resolution to that effect. The Planning Commission recommends the following modifications, described in detail in the attached Executive Summary:

1. That the prohibition be triggered by no-fault evictions that occur as of October 24, 2013; and,
2. That the prohibition last for ten years, as Supervisor Avalos recommends in his proposed language; and,
3. That Supervisor Avalos consider so-called "Owner Move-In" and other no-fault evictions differently than "Ellis Act" evictions.

## **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. While specific language to be incorporated into the draft Ordinance has not yet been included, the Department is supportive of efforts to discourage displacing tenants through no-fault evictions.
2. The proposed additional modifications would create a disincentive to evict by linking no-fault evictions to a prohibition to merge, convert, or to demolish a unit.
3. The Department's proposed modification to tie the prohibition to the effective date of Ordinance is intended to clarify that the prohibition is not punitive toward no-fault evictions that have lawfully occurred in the past; rather, the prohibition is a disincentive for no-fault evictions moving forward.
4. The Department's proposed modification that the prohibition be applicable to buildings that have had no-fault evictions within five years of the date of application for the demolition, merger, or

conversion would make the prohibition last for the same five year period as the defined duration that a unit may not be re-rented pursuant to local Ellis Act restrictions.

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:

#### **I. HOUSING ELEMENT**

##### **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.

##### **POLICY 2.2**

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

##### **POLICY 2.4**

Promote improvements and continued maintenance to existing units to ensure long term habitation and safety.

*The draft Ordinance will consolidate and clarify controls for the loss of dwelling units through demolition, merger, or conversion. The additional amendments proposed by Supervisor Avalos would prohibit the loss of units in buildings in which there had been a no-fault eviction.*

##### **OBJECTIVE 3**

PROTECT THE AFFORDABILITY OF THE EXISTING HOUSING STOCK, ESPECIALLY RENTAL UNITS

##### **POLICY 3.1**

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

##### **POLICY 3.4**

Preserve "naturally affordable" housing types, such as smaller and older ownership units.

*The proposed modifications to the draft Ordinance would increase protections for existing units, and would create a disincentive for no-fault evictions.*

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 amendments will not have a negative impact on neighborhood serving retail uses and will not impact 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 is intended to protect existing housing and neighborhood character through careful review of the loss of dwellings.*

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

*The proposed Ordinance would maintain the existing criteria for the review of the loss of dwelling units. With the proposed modifications, the draft Ordinance will provide oversight intended to protect affordable housing provided through units that are nonconforming as relates to density.*

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

*The proposed Ordinance will 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 will not negatively impact the City's preparedness against injury and loss of life in an earthquake.*

7. That the landmarks and historic buildings be preserved;

*Landmarks and historic buildings would not be negatively impacted by the proposed Ordinance.*

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

*The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed Ordinance.*

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board APPROVE WITH MODIFICATIONS the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on July 24, 2013.

Jonas P. Ionin  
Acting Commission Secretary

AYES: Commissioners Borden, Fong, Hillis, Moore, Sugaya and Wu

NOES: Commissioner Antonini

ABSENT: None

ADOPTED: October 24, 2013



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## Executive Summary Planning Code Text Change

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*Project Name:* **Conversion, Demolition, Merger, and Conformity of Residential Units**  
*Case Number:* 2013.0134T [Board File No. 130041]  
*Initiated by:* Supervisor Avalos / Substituted July 30<sup>th</sup>, 2013  
*Staff Contact:* Sophie Hayward, Legislative Affairs  
sophie.hayward@sfgov.org, 415-558-6372  
*Reviewed by:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395  
*Recommendation:* **Recommend Approval with Modifications**

### PLANNING CODE AMENDMENT

The proposed Ordinance was introduced as substitute legislation by Supervisor Avalos on July 30<sup>th</sup>, 2013. The original proposal was more extensive, and was considered by the Planning Commission at its July 18, 2013 public hearing. At that hearing, Supervisor Avalos agreed to divide the legislation into two separate components: one that addresses the loss of dwelling units – the focus of this report and the attached draft Ordinance – and a second ordinance which regulates the opportunities to expand, alter, or reconstruct legal, nonconforming units that exceed the permitted density—issues this Commission considered in July. The Planning Commission considered and supported, with modifications, the proposal to expand opportunities to alter and enlarge nonconforming units at its September 19, 2013 public hearing (Case No. 2013.1164T, BF 130783, PC Resolution No. 18927—Attached here as Exhibit C).

At the July 18<sup>th</sup> hearing, the Planning Commission was supportive of the draft Ordinance, including components that would amend the criteria used to evaluate the loss of dwelling units, and recommended approval with a number of technical modifications (please see Exhibit C). Supervisor Avalos has made all of the modifications recommended by the Commission; those changes are reflected in the attached draft Ordinance.

Supervisor Avalos has expressed in writing his intent to further amend the draft Ordinance to include language that would prohibit the Commission from approving the loss of one or more dwelling unit(s) through demolition, merger, or conversion if the units had been subject to a “no-fault” eviction within the last ten years. **This substantive change, which has not yet been included in the draft Ordinance but may be added in advance of the Board of Supervisor’s review, is the focus of the Commission’s review at this time.**

#### The Way It Is Now:

**Planning Code Section 317** defines the terms, the controls, and the criteria for evaluation associated with the loss of dwelling units through *demolition*, *merger*, and *conversion*.

Project proposals that would result in the loss or removal of three or more dwelling units require Conditional Use authorization by the Planning Commission. Projects that would result in the loss of up



to two dwelling units require a Mandatory Discretionary Review hearing before the Planning Commission. Section 317 provides certain exceptions from the requirement for public hearings; Section 317(e)(4) allows an administrative review in lieu of a public hearing for proposed mergers that meet four out of the five specific criteria used to evaluate the loss of residential units through the merging of two or more units into a single, larger unit.

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

Overall, the draft Ordinance proposes amendments that would consolidate the location in the Planning Code of controls for the loss of dwelling units, and amend the criteria for their review. In addition, the further amendments proposed by Supervisor Avalos (expressed in writing at the July 18<sup>th</sup> Planning Commission hearing, but not yet incorporated into the draft Ordinance), would prohibit the Commission from approving a demolition, merger, or conversion if one or more of the units had been subject to a no-fault eviction within the last ten years.

**Planning Code Sections 317(d), (e), and (f)** would be amended to prohibit demolition, merger, and conversion of units in buildings with “no-fault” evictions within the past ten years. This change has been described by the supervisor (See Exhibit D) but is not yet drafted nor shown in the attached draft Ordinance.

#### **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. The Commission passed Resolution 18927 on July 18<sup>th</sup> recommending approval with modification to the Board of Supervisors. At the July 18<sup>th</sup> public hearing, the Commission did not discuss the proposed additional modification that would prohibit the approval of demolition, mergers, or conversions in buildings with “no-fault” evictions in the last ten years, and may recommend adoption, rejection, or modification of that – or any other component of the draft Ordinance – at the October 24<sup>th</sup> public hearing.

#### **RECOMMENDATION**

Overall, the Department recommends that the Commission recommend *approval with modifications* of both the proposed Ordinance as drafted, and the additional modification that would prohibit demolitions, mergers, and conversions in buildings with no-fault evictions within the last ten years, and recommends that the Commission adopt the attached Draft Resolution to that effect.

The Department recommends two specific modifications:

- That the prohibition be triggered by no-fault evictions that occur as of the effective date of the Ordinance (and not those no-fault evictions that pre-date the Ordinance); and,
- That the prohibition last for five years rather than ten years.

#### **BASIS FOR RECOMMENDATION**

While specific language to be incorporated into the draft Ordinance has not yet been included, the Department is supportive of efforts to discourage displacing tenants through no-fault evictions. The proposed additional modifications would create a disincentive to evict by linking no-fault evictions to a prohibition to merge, convert, or to demolish a unit: preserving existing rental units is a policy supported by Objective 3, Policy 3.4 of the City’s Housing Element.

The Department's proposed modification to tie the prohibition to the effective date of Ordinance is intended to clarify that the prohibition is not punitive toward no-fault evictions that have lawfully occurred in the past; rather, the prohibition is a disincentive for no-fault evictions moving forward.

The Department's proposed modification that the prohibition be applicable to buildings that have had no-fault evictions within five years of the date of application for the demolition, merger, or conversion would make the prohibition last for the same five year period as the defined duration that a unit may not be re-rented pursuant to local Ellis Act restrictions.<sup>1</sup>

## **ISSUES AND CONSIDERATIONS**

The draft Ordinance consolidates the controls and criteria for review for the loss of dwelling units in a single location in the Planning Code. The Department is supportive of this amendment and is hopeful that this will help to improve consistency of review and public understanding of the controls. The Planning Commission considered the content of the draft Ordinance in July, and again in September when it re-reviewed the separated file that addressed expansion of nonconforming units.

The Department is providing a recommendation to the Commission based on language that has not been drafted, but that has been suggested by Supervisor Avalos. If language that is incorporated into the draft Ordinance includes substantive changes from the language outlined in the Supervisor's July 18, 2013 memo to the Commission, the Ordinance will be re-referred to the Commission for re-review.

## **ENVIRONMENTAL REVIEW**

The proposed Ordinance reviewed and determined to be not a project pursuant to CEQA Section 15060(c)(2) on January 22, 2013. Please note that individual projects will undergo physical environmental review.

## **PUBLIC COMMENT**

Staff has received no public comment at the time of the publication of this report.

<b>RECOMMENDATION:</b>	<b>Recommendation of Approval with Modifications</b>
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<sup>1</sup> The full text of the Ellis Act (California Government Code Section 7060) is available online at: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=07001-08000&file=7060-7060.7> (October 15, 2013).