

1 [Requirement of Conditional Use authorization for any permit application to remove dwelling  
2 units.]

3 **Ordinance amending the Planning Code by amending Section 317 to require**  
4 **Conditional Use authorization for any elimination of existing dwelling units through**  
5 **mergers, conversions, or demolitions of residential units.**

6 Note: Additions are *single-underline italics Times New Roman*;  
7 deletions are ~~*strikethrough italics Times New Roman*~~.  
8 Board amendment additions are double underlined.  
9 Board amendment deletions are ~~strikethrough normal~~.

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

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

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

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

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

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

23 (C) The provision of housing affordable to low- and moderate-income households  
24 requires the cooperation of all levels of government.  
25

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

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

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

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

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

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

17 (4) San Francisco faces a continuing shortage of affordable housing for very low and  
18 low-income residents. The San Francisco Planning Department reported that for the past ten  
19 years, 3,199 units of low and very low-income housing were built in San Francisco out of a  
20 total need of 15,103 units for the same period. According to the state Department of Housing  
21 and Community Development, there will be a regional need for 230,743 new housing units in  
22 the nine Bay Area counties from 1999—2006. Of that amount, at least 58 percent, or 133,164  
23 units, are needed for moderate, low and very low-income households. The Association of Bay  
24 Area Governments (ABAG) is responsible for dividing the total regional need numbers among  
25

1 its member governments, which includes both counties and cities. ABAG estimates that San  
2 Francisco's low and very low-income housing production need through 2006 is 7,370 units out  
3 of a total new housing need of 20,372 units. Within the past ten years, less than 25% of the  
4 previously projected housing need was produced in San Francisco.

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

17 (6) There is a great need for affordable rental and owner-occupied housing in the City.  
18 The vacancy rate for residential rental property has dropped significantly since 1990 when the  
19 U.S. Census showed a 6.9 percent vacancy rate. Data from the 2000 US Census showed a  
20 residential rental vacancy rate of 2.5 percent. Data from the San Francisco rental market from  
21 RealFacts for 2000 indicates a vacancy rate of 1.9 percent. Rents on newly occupied  
22 residential units have risen dramatically. Housing cost burden is one of the major standards  
23 for determining whether a locality is experiencing inadequate housing conditions. The  
24 Consolidated Plan defines a household expending 30 percent or more of its gross income for  
25

1 housing costs as experiencing a cost burden. According to the 2000 Census, 35 percent of  
2 San Franciscans experienced a cost burden in 2000.

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

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

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

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

25

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

7 (12) The Planning Commission on December 11, 2003, adopted Resolution No.  
8 16700, which modified a previously established policy requiring mandatory discretionary  
9 review of applications for demolition of residential structures. Said Resolution and its findings  
10 are incorporated herein by reference.

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

15 (14) For the reasons stated above, the Board of Supervisors intends to prohibit the  
16 loss of dwelling units unless Conditional Use authorization is granted by the Planning  
17 Commission.

18 (b) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this  
19 Ordinance will serve the public necessity, convenience and welfare for the reasons set forth in  
20 Planning Commission Resolution No. \_\_\_\_\_ and incorporates said Resolution  
21 herein by reference. A copy of said resolution is on file with the Clerk of the Board of  
22 Supervisors in File No. \_\_\_\_\_.

23 (c) This Board of Supervisors finds that this Ordinance is consistent with the General  
24 Plan and Priority Policies of Section 101.1(b) of the Planning Code for the reasons set forth in  
25

1 the 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 (d) Environmental Findings. The Planning Department has determined that the  
5 actions contemplated in this Ordinance are in compliance with the California Environmental  
6 Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is  
7 on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and is  
8 incorporated herein by reference.

9 Section 2. The San Francisco Planning Code is hereby amended by adding Section  
10 317, to read as follows:

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

12 (a) Findings. San Francisco faces a continuing shortage of affordable housing. There  
13 is a high ratio of rental to ownership tenure among the City's residents. The General Plan  
14 recognizes that existing housing is the greatest stock of rental and financially accessible  
15 residential units, and is a resource in need of protection. Therefore, a public hearing will be  
16 held prior to approval of any permit that would remove existing housing, with certain  
17 exceptions, as described below. The Planning Commission shall develop a Code  
18 Implementation Document setting forth procedures and regulations for the implementation of  
19 this Section 317 as provided further below. The Zoning Administrator shall modify economic  
20 criteria related to property values and construction costs in the Implementation Document as  
21 warranted by changing economic conditions to meet the intent of this Section.

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

24  
25

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

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

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

8 (B) A major alteration of a Residential Building that proposes the Removal of more  
9 than 50% of the sum of the Front Façade and Rear Façade and also proposes the Removal of  
10 more than 65% of the sum of all exterior walls, measured in lineal feet at the foundation level,  
11 or

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

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

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

22 (4) "Front Façade" shall mean the portion of the Façade fronting a right-of-way, or the  
23 portion of the Façade most closely complying with that definition, as in the case of a flag lot.

24

25

1 Where a lot has more than one frontage on rights-of-way, all such frontages shall be  
2 considered Front Façades except where a façade meets the definition of "Rear Façade."

3 (5) "Horizontal Elements" shall mean all roof areas and all floor plates, except floor  
4 plates at 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 (67) "Merger" shall mean the combining of two or more legal Residential Units,  
9 resulting in a decrease in the number of Residential Units within a building, or the  
10 enlargement of one or more existing units while substantially reducing the size of others by  
11 more than 25% of their original floor area, even if the number of units is not reduced. The  
12 Planning Commission may reduce the numerical element of this criterion by up to 20% of its  
13 value should it deem that adjustment is necessary to implement the intent of this Section 317,  
14 to conserve existing housing and preserve affordable housing.

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

17 (89) "Removal" shall mean, with reference to a wall, roof or floor structure, its  
18 dismantling, its relocation or its alteration of the exterior function by construction of a new  
19 building element exterior to it. Where a portion of an exterior wall is removed, any remaining  
20 wall with a height less than the Building Code requirement for legal head room shall be  
21 considered demolished. Where exterior elements of a building are removed and replaced for  
22 repair or maintenance, in like materials, with no increase in the extent of the element or  
23 volume of the building, such replacement shall not be considered Removal for the purposes of  
24  
25



1 this Section. The foregoing does not supersede any requirements for or restrictions on  
2 noncomplying structures and their reconstruction as governed by Article 1.7 of this Code.

3 (910) "Removal" shall mean, with reference to a Residential Unit, its Conversion,  
4 Demolition, or Merger.

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

7 (112) "Residential Unit" shall mean a legal conforming or non-conforming dwelling unit  
8 as defined in Planning Code Section 102.7, or a legal non-conforming Live/Work Unit as  
9 defined in Planning Code Section 102.13.

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

13 (c) Applicability. Where an application for a permit that would result in the loss of one  
14 or more Residential Units is required to obtain Conditional Use authorization by other sections  
15 of this Code, the application for a replacement building or alteration permit shall also be  
16 subject to Conditional Use requirements. Any application for a permit that would result in the  
17 loss or Removal of ~~three~~ one or more Residential Units, notwithstanding any other sections of  
18 this Code, shall require a Conditional Use authorization for the Removal and replacement of  
19 the units. In addition to the findings and requirements for conditional use approval provided in  
20 Planning Code Section 303, the Planning Commission shall apply the criteria set forth below when  
21 considering conditional use applications required by this Section 317. Approval of any other  
22 application that would result in the loss or Removal of up to two Residential Units is prohibited unless  
23 the Planning Commission approves such permit application and the replacement structure permit  
24 application at a Mandatory Discretionary Review hearing, with certain exceptions specified below.

25

1 (d) Loss of Residential Units through Demolitions.

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

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

19 (3) For those applications to Demolish a Residential Building *in districts* that require  
20 conditional use authorization~~Mandatory Discretionary Review~~, administrative review criteria shall  
21 ensure that only applications to demolish single family Residential Buildings that are  
22 demonstrably not affordable or financially accessible housing, or Residential Buildings of two  
23 units or fewer that are found to be unsound housing, are exempt from the requirement to obtain  
24 a conditional use permit~~Mandatory Discretionary Review hearings~~. Specific numerical criteria for  
25

1 ~~such~~ analyses of affordable or financially accessible housing as well as for a determination of  
2 unsound housing, shall be adopted by the Planning Commission in the Code Implementation  
3 Document, in accordance with this Section 317, and shall be adjusted periodically by the  
4 Zoning Administrator based on established economic real estate and construction indicators.

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

16 (B) The Planning Commission, in the Code Implementation Document, shall adopt  
17 criteria and procedures for determining the soundness of a structure proposed for demolition,  
18 where "soundness" is an economic measure of the feasibility of upgrading a residence that is  
19 deficient with respect to habitability and Housing Code requirements, due to its original  
20 construction. The "soundness factor" for a structure shall be the ratio of a construction  
21 upgrade cost (i.e., an estimate of the cost to repair specific habitability deficiencies) to the  
22 replacement cost (i.e., an estimate of the current cost of building a structure the same size as  
23 the existing building proposed for demolition), expressed as a percent. A building is unsound  
24  
25

1 if its soundness factor exceeds 50%. A Residential Building that is unsound may be approved  
2 for demolition without requiring conditional use authorization.

3 (C) The Planning Commission shall consider the following additional criteria in the  
4 review of applications for conditional use permits to demolish Residential Buildings:

- 5 (i) whether the property is free of a history of serious, continuing code violations;
- 6 (ii) whether the housing has been maintained in a decent, safe, and sanitary condition;
- 7 (iii) whether the property is an "historical resource" under CEQA;
- 8 (iv) whether the removal of the resource will have a substantial adverse impact under  
9 CEQA;
- 10 (v) whether the project converts rental housing to other forms of tenure or occupancy;
- 11 (vi) whether the project removes rental units subject to the Rent Stabilization and  
12 Arbitration Ordinance;
- 13 (vii) whether the project conserves existing housing to preserve cultural and economic  
14 neighborhood diversity;
- 15 (viii) whether the project conserves neighborhood character to preserve neighborhood  
16 cultural and economic diversity;
- 17 (ix) whether the project protects the relative affordability of existing housing;
- 18 (x) whether the project increases the number of permanently affordable units as  
19 governed by Section 315;
- 20 (xi) whether the project locates in-fill housing on appropriate sites in established  
21 neighborhoods;
- 22 (xii) whether the project creates quality, new family housing;
- 23 (xiii) whether the project creates new supportive housing;

24  
25

1 (xiv) whether the project promotes construction of well-designed housing to enhance  
2 existing neighborhood character;

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

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

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

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

15 (e) Loss of Residential Units through Merger.

16 (1) The Merger of Residential Units ~~not otherwise subject to Conditional Use authorization~~  
17 ~~by this Code,~~ shall be prohibited, unless the Planning Commission approves a conditional use  
18 permit the building permit application at a Mandatory Discretionary Review hearing, applying  
19 criteria in subsection (2) below, or the project qualifies for administrative approval and the  
20 Planning Department approves the project administratively in accordance with subsections (3)  
21 and (4) below.

22 (2) In addition to the criteria for conditional use authorization set forth in Planning Code  
23 section 303, the Planning Commission shall consider these criteria in the review of applications  
24 to merge Residential Units:

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

3 (ii) whether removal of the unit(s) and the merger with another is intended for owner  
4 occupancy;

5 (iii) whether removal of the unit(s) will bring the building closer into conformance with  
6 the prevailing density in its immediate area and in the same zoning district;

7 (iv) whether removal of the unit(s) will bring the building closer into conformance with  
8 prescribed zoning;

9 (v) whether removal of the unit(s) is necessary to correct design or functional  
10 deficiencies that cannot be corrected through interior alterations.

11 (3) Administrative review criteria shall ensure that only those Residential Units  
12 proposed for Merger that are demonstrably not affordable or financially accessible housing  
13 are exempt from *the requirement to obtain conditional use authorization Mandatory Discretionary*  
14 *Review hearings*. Applications for which the least expensive unit proposed for merger has a  
15 value greater than at least 80% of the combined land and structure values of single-family  
16 homes in San Francisco, as determined by a credible appraisal, made within six months of the  
17 application to merge, *shall not be required to obtain conditional use authorization*~~are not subject to a~~  
18 ~~*Mandatory Discretionary Review hearing*~~. The Planning Commission, in the Code  
19 Implementation Document, may increase the numerical criterion in this subsection by up to  
20 10% of its value should it deem that adjustment is necessary to implement the intent of this  
21 Section 317, to conserve existing housing and preserve affordable housing.

22 ~~*(4) Projects that meet a supermajority of the merger criteria, in subsection (d)(2) above, may*~~  
23 ~~*be approved administratively by the Planning Department, consistent with this Section 317.*~~

24 (f) Loss of Residential Units through Conversion.

25

1 (1) Conversion of Residential Units not otherwise subject to Conditional Use  
2 authorization by this Code, shall be prohibited, unless the Planning Commission approves the  
3 building permit application at a Mandatory Discretionary Review hearing.

4 (2) In addition to the criteria set forth in Planning Code Section 303, the Planning  
5 Commission shall consider these criteria in the review of applications for Conversation of  
6 Residential Units;

7 (i) whether conversion of the unit(s) would eliminate only owner occupied housing, and  
8 if so, for how long the unit(s) proposed to be removed were owner occupied;

9 (ii) whether conversion of the unit(s) would provide desirable new non-residential  
10 use(s) appropriate for the neighborhood and adjoining district(s);

11 (iii) whether conversion of the unit(s) will bring the building closer into conformance  
12 with the prevailing character of its immediate area and in the same zoning district;

13 (iv) whether conversion of the unit(s) will be detrimental to the City's housing stock;

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

16 (g) This Section 317 shall not apply to property:

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

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

20 (3) Under the jurisdiction of the Port of San Francisco or the San Francisco  
21 Redevelopment Agency where the application of this ordinance is prohibited by State or local  
22 law; or

23  
24  
25

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

4 Section 3. This section is uncodified. This ordinance shall apply to all residential  
5 building permit applications that would remove dwellings, for which public notice of the  
6 demolition, as required under the Planning Code or Planning Commission Resolution 16700,  
7 has not been mailed by the effective date of this legislation.

8  
9 APPROVED AS TO FORM:  
10 DENNIS J. HERRERA, City Attorney

11  
12 By: \_\_\_\_\_  
13 Kate H. Stacy  
14 Deputy City Attorney

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25