

File No. 130783

Committee Item No. 3

Board Item No. 14

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date December 9, 2013

Board of Supervisors Meeting Date 12.17.13

Cmte Board

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Completed by: Andrea Ausberry Date December 6, 2013

Completed by: A. A Date 12.12.13

1 [Planning Code - Nonconforming Uses; Enlargements and Alterations]

2
3 **Ordinance amending the Planning Code to permit the enlargement, alteration or**
4 **reconstruction of a dwelling or other housing structure that exceeds the permitted**
5 **density of the district if dwelling units are principally permitted in the district and the**
6 **enlargement, alteration or reconstruction does not extend beyond the building**
7 **envelope as it existed on January 1, 2013 and if no tenants were evicted under certain**
8 **provisions of the Rent Ordinance; making environmental findings and findings of**
9 **consistency with the General Plan and the eight priority policies of Planning Code**
10 **Section 101.1.**

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

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

19 Section 1. Findings.

20 (a) The Planning Department has determined that the actions contemplated in this
21 ordinance comply with the California Environmental Quality Act (California Public Resources
22 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
23 Supervisors in File No. 130783 and is incorporated herein by reference.

24 (b) On September 19, 2013, the Planning Commission, in Resolution No. 18967,
25 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
with the City's General Plan and eight priority policies of Planning Code Section 101.1. The

1 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
2 the Board of Supervisors in File No. 130783, and is incorporated herein by reference.

3 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code
4 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth
5 in Planning Commission Resolution No. 18967 and the Board incorporates such reasons
6 herein by reference.

7 (d) This Board intends to allow the enlargement, alteration and reconstruction of non-
8 conforming uses, as long as such permission does not result in additional tenant evictions in
9 order to use these benefits. Accordingly, this Board intends to strike a balance between
10 allowing the non-conforming uses to be altered as described and the need to protect
11 important housing resources.

12 Section 2. The Planning Code is hereby amended by revising Section 181, to read as
13 follows:

14 **SEC. 181. NONCONFORMING USES: ENLARGEMENTS, ALTERATIONS AND**
15 **RECONSTRUCTION.**

16 The following provisions shall apply to ~~non-conforming~~ *nonconforming* uses with respect
17 to enlargements, alterations and reconstruction:

18 (a) ***Increases in nonconformity.*** A nonconforming use, and any structure occupied by
19 such use, shall not be enlarged, intensified, extended, or moved to another location, with the
20 exception of the construction of a mezzanine within a live/work unit and expansion of dwelling
21 units in PDR Districts, unless the result will be elimination of the nonconforming use, except
22 as provided *in Paragraph (b)(3) and (i)* below and *in* Section 186.1 of this Code. A
23 nonconforming use shall not be extended to occupy additional space in a structure, or
24 additional land outside a structure, or space in another structure, or to displace any other use,
25 except as provided in Sections 182 and 186.1 of this Code.

1 (b) Permitted alterations. A structure occupied by a nonconforming use shall not be
2 constructed, reconstructed or altered, unless the result will be elimination of the
3 nonconforming use, except as provided in Section 186.1 of this Code and in Subsections (a)
4 above and (d), (e), (f), ~~and (g)~~, (h) and (i) below, and except as follows:

5 (1) Ordinary maintenance and minor repairs shall be permitted where necessary
6 to keep the structure in sound condition, as well as minor alterations, where such work is
7 limited to replacement of existing materials with similar materials placed in a similar manner.

8 (2) Minor alterations shall be permitted where ordered by an appropriate public
9 official to correct immediate hazards to health or safety, or to carry out newly enacted
10 retroactive requirements essential to health or safety.

11 (3) Alterations otherwise allowed by this Code shall be permitted for any portion
12 of the structure that will not thereafter be occupied by the nonconforming use, provided the
13 nonconforming use is not enlarged, intensified, extended, or moved to another location.

14 (4) All other alterations of a structural nature shall be permitted only to the extent
15 that the aggregate total cost of such other structural alterations, as estimated by the
16 Department of Building Inspection ~~Public Works~~, is less than 1/2 of the assessed valuation of the
17 improvements prior to the first such alteration, except that structural alterations required to
18 reinforce the structure to meet the standards for seismic loads and forces of the Building Code
19 shall be permitted without regard to cost.

20 (c) Dwellings nonconforming as to density.

21 (1) A dwelling or other housing structure exceeding the permitted density of
22 dwelling units or other housing units set forth in Sections 207.5, 208, 209.1, 209.2, or 215 of
23 this Code for the district in which it is located shall be classified as a nonconforming use under
24 Section 180 of this Code, but only to the extent that such dwelling or other housing structure
25 exceeds the permitted density.

1 (2) In districts where a dwelling unit is a principally permitted use, this This Section
2 181 shall not apply with respect to enlargements, alterations and reconstruction of the
3 nonconforming portion of such dwelling or other housing structure, consisting of those
4 dwelling units or other housing units which exceed the permitted density, so long as such
5 enlargements, alterations, or reconstruction do not otherwise extend beyond the building envelope as it
6 existed on January 1, 2013.

7 (3) No such enlargements, alterations, or reconstruction shall be permitted
8 under Subsection (c)(2) for any dwelling unit if any tenant has been evicted where a tenant
9 was served with a notice of eviction pursuant to San Francisco Administrative Code Sections
10 37.9(a)(8), 37.9(a)(9) through 37.9(a)(14) where the tenant was served with the notice of
11 eviction after October 24, 2013-December 10, 2013 and if the notice was served within ten
12 (10) years prior to filing an application to enlarge, alter or reconstruct such dwelling or other
13 housing unit. Additionally, no such enlargements, alterations, or reconstruction shall be
14 permitted for any dwelling unit if any tenant has been evicted pursuant to Administrative Code
15 Section 37.9(a)(8) where the tenant was served with a notice of eviction after December 10,
16 2013 if the notice was served within five (5) years prior to filing an application to enlarge, alter
17 or reconstruct such dwelling or other housing unit. This Subsection (c)(3) shall not apply
18 provided that if an eviction has taken place if the tenant was evicted under Section
19 37.9(a)(11), 37.9(a)(12) or 37.9(a)(14), then and the applicant(s) shall certify that either (A)
20 have certified that the original tenant reoccupied the unit after the temporary eviction or (B)
21 have submitted to the Planning Commission a declaration from the property owner or the
22 tenant certifying that the property owner or the Rent Board notified the tenant of the tenant's
23 right to reoccupy the unit after the temporary eviction and that the tenant chose not to
24 reoccupy it.

1 (4) Any dwelling unit or other housing unit coming within the density limit shall
2 not be affected by this Section 181. Except as provided in Sections 181(h) and 182(e), no
3 dwelling or other housing structure exceeding the permitted density of dwelling units or other
4 housing units shall be altered to increase the number of dwelling units or other housing units
5 therein, or to increase or create any other nonconformity with respect to the dwelling unit or
6 other housing unit density limitations of Section 209.1 or Section 209.2.

7 (d) Structures damaged or destroyed by calamity. Notwithstanding the foregoing provisions
8 of this Section 181, a structure occupied by a nonconforming use that is damaged or
9 destroyed by fire, or other calamity, or by Act of God, or by the public enemy, may be restored
10 to its former condition and use; provided that such restoration is permitted by the Building
11 Code, and is started within eighteen months and diligently prosecuted to completion. The age
12 of such a structure for the purposes of Sections 184 and 185 shall nevertheless be computed
13 from the date of the original construction of the structure. Except as provided in Subsection (e)
14 below, no structure occupied by a nonconforming use that is voluntarily razed or required by
15 law to be razed by the owner thereof may thereafter be restored except in full conformity with
16 the use limitations of this Code.

17 For purposes of this Subsection (d), "started within eighteen months" shall mean that
18 within eighteen months of the fire or other calamity or Act of God, the structure's owner shall
19 have filed a building permit application to restore the structure to its former condition and use.

20 (e) Unreinforced masonry buildings. In order that major life safety hazards in structures
21 may be eliminated as expeditiously as possible, a structure containing nonconforming uses
22 and constructed of unreinforced masonry that is inconsistent with the requirements of the
23 UMB Seismic Retrofit Ordinance, Ordinance No. 227-92, may be demolished and
24 reconstructed with the same nonconforming use or a use as permitted by Planning Code
25 Section 182; provided that:

1 (1) there is no increase in any nonconformity, or any new nonconformity, with
2 respect to the use limitations of this Code;

3 (2) ~~provided further that~~ the current requirements of the Building Code, the
4 Housing Code and other applicable portions of the Municipal Code are met; and

5 (3) ~~provided further that~~ such restoration or reconstruction is started within one
6 year after razing or other demolition work on the structure and diligently prosecuted to
7 completion.

8 (f) Nighttime Entertainment Uses in certain Mixed-Use Districts. A nighttime entertainment
9 use within the RSD, MUG, MUR, or SLR Districts may be enlarged, intensified, extended or
10 expanded, including the expansion to an adjacent lot or lots, provided that:

11 (1) the enlargement, intensification, extension or expansion is approved as a
12 conditional use pursuant to Sections 303 and 316 of this Code;

13 (2) the use as a whole meets the parking and signage requirements, floor area
14 ratio limit, height and bulk limit, and all other requirements of this Code which would apply if
15 the use were a permitted one; and

16 (3) the provisions of Section 803.5(b) of this Code are satisfied.

17 (g) Automotive Sales and Service Signs in the Automotive Special Use District. Automotive
18 sales and service signs within the Automotive Special Use District which have all required
19 permits but which do not comply with the controls for new signs established in Section 607.3
20 of this Code shall be permitted to remain as nonconforming uses and shall be permitted to
21 modify the signage text to describe new automobile ownerships and dealerships that may
22 occur from time to time.

23 (h) Dwellings in PDR and M-2 Districts. In PDR and M-2 Districts, no building containing
24 a residential use shall be altered to increase the number of dwelling units or other housing
25 units therein. However, individual dwelling units or other housing units may be expanded,

1 subject to height, bulk, and all other provisions of this Code which would otherwise be
2 applicable to dwelling units or other housing units in the Urban Mixed Use District.

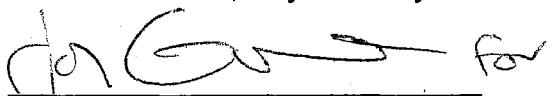
3 (i) Nonconforming Non-Residential Uses in the Eastern Neighborhoods Mixed Use, PDR-1-
4 D, and PDR-1-G Districts. In the Eastern Neighborhoods Mixed Use, PDR-1-D, and PDR-1-G
5 Districts, a non-residential nonconforming use may expand in gross floor area by no more
6 than 25 percent with conditional use authorization pursuant to Section 303 of this Code. Such
7 conditional use authorization may not be granted for any subsequent or additional expansion
8 beyond the initial 25 percent.

9 Section 3. Effective Date. This ordinance shall become effective 30 days after
10 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
11 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
12 of Supervisors overrides the Mayor's veto of the ordinance.

13 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
17 additions, and Board amendment deletions in accordance with the "Note" that appears under
18 the official title of the ordinance.

19
20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22 By:


23 KATE H. STACY
24 Deputy City Attorney

25 n:\egana\as2013\1300041\00890927.doc

REVISED LEGISLATIVE DIGEST

(12/10/2013, Amended in Board)

[Planning Code - Nonconforming Uses; Enlargements and Alterations]

Ordinance amending the Planning Code to permit the enlargement, alteration or reconstruction of a dwelling or other housing structure that exceeds the permitted density of the district if dwelling units are principally permitted in the district and the enlargement, alteration or reconstruction does not extend beyond the building envelope as it existed on January 1, 2013 and if no tenants were evicted under certain provisions of the Rent Ordinance; making environmental findings and findings of consistency with the General Plan and the eight priority policies of Planning Code Section 101.1.

Existing Law

Planning Code Section 181 prohibits the enlargement, alteration, and reconstruction of a structure occupied by a nonconforming use unless the result will be elimination of the nonconforming use except as specified in Section 181.

Amendments to Current Law

Section 181 is amended to permit enlargement, alteration, or reconstruction of a dwelling or other housing structure exceeding the permitted density for the district in which it is located where (1) the dwelling or other housing structure is located in a district where a dwelling unit is a principally permitted use and (2) the enlargement, alteration, or reconstruction does not otherwise extend beyond the building envelope as it existed on January 1, 2013. An owner who has evicted any tenants after December 10, 2013 under the "owner move-in" provision of the Rent Ordinance will not be permitted to enlarge, alter or reconstruct for 5 years following such eviction, and an owner who has evicted any tenants after December 10, 2013 under the other "no fault" provisions of the Rent Ordinance will not be permitted to enlarge, alter or reconstruct for 10 years following such eviction.

Background Information

As applied to existing housing in areas where dwelling units are principally permitted uses, the current requirement is too strict and does not conform to San Francisco's housing policies. The 10-year restriction for owners who have evicted tenants is intended to reduce the possibility that this amendment to the Planning Code would encourage more evictions of tenants in order to enlarge, alter or reconstruct a unit.

This Legislative Digest includes amendments to the tenant eviction provisions adopted by the Board at its regular meeting on December 10, 2013.

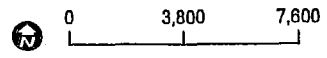
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414

Parcels where Existing Units > Theoretical Capacity

1 inch equals 4,167 feet



BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

August 7, 2013

Planning Commission and
Attn: Jonas Ionin
1660 Mission Street, 5th Floor
San Francisco, CA 94103

Dear Commissioners:

On July 30, 2013, Supervisor Avalos introduced the following proposed legislation:

File No. 130783

Ordinance amending the Planning Code to permit the enlargement, alteration or reconstruction of a dwelling or other housing structure that exceeds the permitted density of the district if dwelling units are principally permitted in the district and the enlargement, alteration or reconstruction does not extend beyond the building envelope as it existed on January 1, 2013; and making environmental findings and findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1.

The proposed ordinance is being transmitted pursuant to Planning Code Section 302(b) for public hearing and recommendation. The ordinance is pending before the Land Use & Economic Development Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

Handwritten signature of Alisa Miller in cursive.

By: Alisa Miller, Committee Clerk
Land Use & Economic Development Committee

- c: John Rahaim, Director of Planning
Scott Sanchez, Zoning Administrator
Sarah Jones, Chief, Major Environmental Analysis
AnMarie Rodgers, Legislative Affairs
Monica Pereira, Environmental Planning
Joy Navarrete, Environmental Planning

Non-Physical Exemption
CEQA Section 15062 (c)(2)

Jones 8/14/13
JOY NAVARRETE

2013.1164E



SAN FRANCISCO PLANNING DEPARTMENT

September 23, 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

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Re: Transmittal of Planning Department Case Number 2013.1164T:
Enlargement, Alteration, or Reconstruction of Nonconforming Units
Board File No. 13-0783
Planning Commission Recommendation: Approval

Dear Ms. Calvillo and Supervisor Avalos,

On September 19, 2013, the Planning Commission conducted a duly noticed public hearing at its regularly scheduled meeting to consider the proposed amendments to Planning Code Section 181 introduced by Supervisor John Avalos. At the hearing, the Planning Commission voted 6-1 to recommend approval of the draft Ordinance.

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 (415) 558-6372.

Please find attached documents relating to the actions of both Commissions. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

AnMarie Rodgers
Manager of Legislative Affairs

cc:

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

Transmittal Materials

**CASE NO. 2013.1164T
Enlargement, Alteration, or Expansion of Nonconforming Units**

Attachments (two hard copies of the following):

Planning Commission Resolution

Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 18967 Planning Code Text Change

HEARING DATE: SEPTEMBER 19, 2013

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

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415.558.6378

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Planning
Information:
415.558.6377

Project Name: Nonconforming Units: Enlargement, Alteration, or Reconstruction
Case Number: 2013.1164T [Board File No. 130783]
Initiated by: Supervisor Avalos / Introduced July 30th, 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

RECOMMENDING THAT THE BOARD OF SUPERVISORS APPROVE A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO PERMIT THE ENLARGEMENT, ALTERATION, OR RECONSTRUCTION OF A DWELLING OR OTHER HOUSING STRUCTURE THAT EXCEEDS THE PERMITTED DENSITY OF THE DISTRICT IF DWELLING UNITS ARE PRINCIPALLY PERMITTED IN THE DISTRICT AND THE ENLARGEMENT, ALTERATION, OR RECONSTRUCTION DOES NOT EXTEND BEYOND THE BUILDING ENVELOPE AS IT EXISTED ON JANUARY 1, 2013; 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 July 30, 2013, Supervisors Avalos introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 13-0783, which would amend Section 181 of the Planning Code regarding nonconforming units;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on September 19, 2013; and,

WHEREAS, the proposed Ordinance has been determined to be exempt from environmental review under 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* the draft Ordinance and adopts the attached Resolution to that effect.

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 Ordinance would add protection and flexibility for existing nonconforming units;
2. That the proposed Ordinance includes safeguards against unintended implications to the affordability of existing nonconforming residential units.
3. Based on information from the Department's Information and Analysis group, of the approximately 360,000 dwelling units in the City, nearly 52,000 units exceed the permitted zoning of the parcel on which they are located, representing close to 14% of existing units in the City.
4. Generally speaking, these legal nonconforming units are in older buildings constructed prior to the establishment of current zoning districts.
5. The age of the structures, together with the existing prohibition to expand, means that very often nonconforming units are among the city's most affordable housing stock, and are often subject to rent control.
6. The draft Ordinance would provide increased flexibility for nonconforming units, which may encourage the improvement and expansion of existing unsubsidized affordable housing units.
7. **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 2.4

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

The draft Ordinance will allow increased flexibility to expand nonconforming units, which may encourage maintenance of existing housing stock.

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 draft Ordinance is intended to provide increased flexibility to upgrade and to improve existing nonconforming units, many of which are naturally and unsubsidized affordable units.

8. **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 increased flexibility regarding expansion and alteration of nonconforming units.

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

The proposed Ordinance would encourage the improvement and enhancement of the existing unsubsidized affordable housing stock by allowing alterations and expansion of 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 the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on September 19, 2013.

Jonas P. Ionin
Acting Commission Secretary.

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

NOES: Commissioner Antoniri

ABSENT: None

ADOPTED: September 19, 2013



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change HEARING DATE: SEPTEMBER 19, 2013

Project Name: Nonconforming Units: Enlargement, Alteration, or Reconstruction
Case Number: 2013.1164T [Board File No. 130783]
Initiated by: Supervisor Avalos / Introduced July 30th, 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

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Information:
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PLANNING CODE AMENDMENT

The proposed Ordinance was introduced by Supervisor Avalos on July 30th, 2013, and would amend the Planning Code to permit the enlargement, alteration, or reconstruction of a nonconforming dwelling unit within the building's existing envelope. The draft Ordinance would apply to those units that are located in districts in which dwellings are permitted. The draft Ordinance would also extend the existing provision for the expansion of nonconforming dwelling units in PDR Zoning Districts to nonconforming dwellings in the M-2 Zoning District.

A related – and more extensive – piece of legislation sponsored by Supervisor Avalos (Board File 130041, Planning Department Case Number 2013.0134T), 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, and a second – addressed in this report and in the attached draft Ordinance – that focuses on opportunities to expand, alter, or reconstruct legal, nonconforming units that exceed the permitted density. In the Executive Summary for the item at the July 18th Planning Commission hearing, the Department noted that while it is "...generally supportive of the amendments, careful consideration should be given to the potential for unintended implications to the affordability of existing nonconforming residential units."¹ After the July 18th hearing, Supervisor Avalos modified the proposal for nonconforming units and introduced the revised approach on July 30th, 2013.

The Way It Is Now:

Planning Code Section 181 describes the provisions for enlarging, altering, and reconstructing a nonconforming structure.²

¹ Planning Department Case Report for Case No. 2013.0134T, published on July 11, 2013 for the July 18, 2013 Hearing, "Executive Summary," Page 13. Available online at: <http://www.sfplanning.org/index.aspx?page=3534> (September 11, 2013).

² Planning Code Section 180(a)(2) defines a nonconforming structure as "a structure which existed lawfully at the effective date of this Code, or of amendments thereto, and which fails to comply with one or more of the regulations for structures, including

- Section 181(c) notes that in a building that has a total number of dwelling units that exceeds the permitted density in a given zoning district, units that exceed the permitted density are considered nonconforming. Designated nonconforming units may not be enlarged, altered, or reconstructed in a manner that increases their nonconformity.
- Section 181(h) prohibits the addition of new dwelling units in the Production, Distribution, and Repair (PDR) Zoning Districts, but allows the expansion and alteration of existing units in a manner consistent with the controls applicable to the Urban Mixed Use (UMU) District.

The Way It Would Be:

Planning Code Section 181, which outlines provisions for enlargements, alterations, and reconstruction of nonconforming uses, would be amended as follows:

- Amendment to Section 181(c) would allow, in zoning districts in which dwelling units are principally permitted, units that are nonconforming as to the zoning district's permitted density to be enlarged, altered, or reconstructed, provided that the alterations not extend beyond the building's envelope as it existed on January 1, 2013.
- Amendment to Section 181(h) would add dwelling units in the M-2 Zoning District to the existing provision that allows dwellings within PDR Zoning Districts to be expanded subject to Planning Code requirements applicable in the UMU Zoning District.

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.

RECOMMENDATION

The Department recommends that the Commission recommend *approval* of the proposed Ordinance and adopt the attached Draft Resolution to that effect.

BASIS FOR RECOMMENDATION

As noted above, the Department initially had concerns regarding potential impacts to the affordability of legal, nonconforming units as a result of expansions and alterations. However, the draft Ordinance includes substantive modifications to the original proposal that reduce the likelihood that expanding nonconforming units would make them less affordable. Specifically, the draft Ordinance limits expansion to the existing building envelope, a change that the Department believes will: 1) prevent extensive alterations that could transform a small unit into a much larger and, therefore, more expensive unit; and, 2) avoid a scenario by which, through serial permits, a building could first be enlarged, and then the nonconforming unit subsequently expanded to the new envelope in order to significantly increase the size of the unit. As proposed, permitted expansions will be limited in size and scope, and may encourage the improvement of the city's existing unsubsidized affordable housing stock.

The draft Ordinance includes a provision that would extend existing controls for the expansion of dwellings in the PDR Zoning Districts to dwellings within the M-2 Zoning District. While the controls for

requirements for off-street parking and loading, under Articles 1.2, 1.5, 2.5, 6, 7 and 8 of this Code, that then became applicable to the property on which the structure is located."

the M-2 and PDR Zoning Districts do not permit the addition of new dwelling units, the Department is supportive of the draft Ordinance as it applies a consistent approach to the expansion of existing, legally constructed nonconforming units across zoning districts.

ISSUES AND CONSIDERATIONS

The Department continues to support the added flexibility that the draft Ordinance affords existing nonconforming residential units.

For the purposes of this report, nonconforming units are legal units – constructed with benefit of permits – that do not conform to current density controls. Generally speaking, these units are in older buildings constructed prior to the establishment of current zoning districts; a typical example is a three-unit building located in an RH-2 zoning district, or a larger apartment building located on a corner parcel within an RH-2 zoning district.³

Currently, buildings that contain a greater number of units than is permitted by the zoning district in which they are located must designate units as either “conforming,” or “nonconforming.” Only those units that are conforming may be expanded or otherwise altered. Building owners may choose which units to designate as conforming or nonconforming, which means that most often the smallest or least desirable units are made the nonconforming units.

Based on information from the Department’s Information and Analysis group, of the approximately 360,000 dwelling units in the City, nearly 52,000 units exceed the permitted zoning of the parcel on which they are located, representing close to 14% of existing units in the City – and, as noted above, many of these units provide unsubsidized affordable housing.

The amendments to controls for nonconforming units in Section 181(c) and Section 181(h) included in the draft Ordinance would provide increased flexibility, which could encourage the improvement, expansion, or production of family-sized housing across zoning districts.

ENVIRONMENTAL REVIEW

The proposed Ordinance reviewed and determined to be not a project pursuant to CEQA Section 15060(c)(2) on August 14, 2013. Please note that individual projects will undergo physical environmental review.

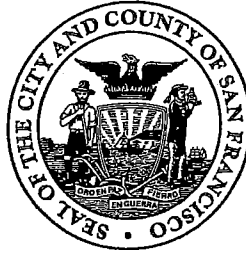
PUBLIC COMMENT

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

RECOMMENDATION: Recommendation of Approval

³ The age of the structure, together with the prohibition to expand, means that very often nonconforming units are among the city’s most affordable housing stock, and are often subject to rent control. While these units are affordable, they are not, by definition, so-called “secondary units,” or “illegal in-law” units, as they were legally constructed with permits.

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

LAND USE AND ECONOMIC DEVELOPMENT COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Scott Wiener, Chair
Land Use and Economic Development Committee

FROM: Andrea Ausberry, Committee Clerk

DATE: December 10, 2013

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**
Tuesday, December 10, 2013

The following files should be presented as a **COMMITTEE REPORT** at the Board meeting, Tuesday, December 10, 2013. These items were acted upon at the Committee Meeting on December 9, 2013, at 1:30 p.m., by the votes indicated.

Item No. 34 File No. 130041

Ordinance amending the Planning Code to revise the criteria for residential demolition, merger and conversion, and to standardize those definitions across use districts and prohibit residential mergers where certain evictions of tenants have occurred; establish a strong presumption in favor of preserving dwelling units in enforcement of code requirements; and making environmental findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

REFERRED WITHOUT RECOMMENDATION AS A COMMITTEE REPORT

Vote: Supervisor Scott Wiener - Aye
Supervisor Jane Kim - Aye
Supervisor David Chiu - Aye

Item No. 35 File No. 130783

Ordinance amending the Planning Code to permit the enlargement, alteration or reconstruction of a dwelling or other housing structure that exceeds the permitted density of the district if dwelling units are principally permitted in the district and the enlargement, alteration or reconstruction does not extend beyond the building envelope as it existed on January 1, 2013, and if no tenants were evicted under certain provisions of the Rent Ordinance; and making environmental findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

REFERRED WITHOUT RECOMMENDATION AS A COMMITTEE REPORT

Vote: Supervisor Scott Wiener - Aye
Supervisor Jane Kim - Aye
Supervisor David Chiu - Aye

Item No. 36 File No. 130998

Ordinance amending the Planning Code, by adding Section 102.37 and amending Section 204.1, to allow Cottage Food Operation as an accessory use for dwelling units and increase the allowable area for accessory uses in dwelling units; and making environmental findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

RECOMMENDED AS A COMMITTEE REPORT

Vote: Supervisor Scott Wiener - Aye
Supervisor Jane Kim - Aye
Supervisor David Chiu - Aye

Item No. 37 File No. 131149

Resolution adding the name "Donaldina Cameron Alley" to Old Chinatown Lane in recognition of Donaldina Cameron and her many contributions to San Francisco.

This item did not come out as a Committee Report.

Item No. 38 File No. 131150

Resolution adding the name "Harold 'Bud' Moose Lane" to Merchant Street in recognition of Bud Moose and his many contributions to San Francisco.

This item did not come out as a Committee Report.

Item No. 39 **File No. 131151**

Resolution adding the name "Enid Ng Lim Alley" to Bartol Street in recognition of Enid Ng Lim and her many contributions to San Francisco.

This item did not come out as a Committee Report.

c: Board of Supervisors
 Angela Calvillo, Clerk of the Board
 Rick Caldeira, Deputy Legislative Clerk
 Jon Givner, Deputy City Attorney

Dear Supervisors (Weiner; Avalos, Campos, Cohen & Chiu):

Re: 130783 Planning Code - Nonconforming Uses; Enlargement, Alteration or Reconstruction

I have a story that relates to this new ordinance.

- I have a building with (4) units which was built 34 years ago before the new planning code went into effect. All units were permitted and inspected as installed.
- It is zoned R2H, Meaning it can have 2 units with 2 granny units.
- A month after the new planning code was adopted in 1979 the Planning department inspected and found four units. They said O.K. so long as it is only two families we don't care how many units it has.
- Today 34 years later the property is rent controlled and has still has the same (4) affordable units.

However, beginning in 2004 the Building and Planning departments decided that I (the new owner and not the original builder, who purchased a 4 unit building) had according to them installed a new kitchen.

They filed an abatement against the building, billed me for a fine, which I paid, and then have continued to harass me telling me **I must remove the two affordable, rent controlled units. I have repeatedly pointed out that this is in violation of their own stated principles of not removing affordable housing installed on approved permits.**

They have posted a lean against my property.

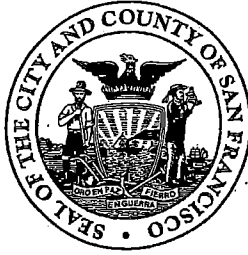
- I cannot sell it or refinance it (since I could not refinance when the loans were 1 and 2% during the down turn, their harassment has cost me about \$24,000 a year in additional interest).
- The city inspectors said that I had to replace the decks which were rotten and deteriorating after 34 years, but when I went to get permits to do so they refused to issue the permits because I had not removed the two affordable units.
- When I went to replace the deteriorated siding on the South side of the building the same thing.

Finally after threatening lawsuits they allowed the two permits but this had held up construction for over a year. Luckily the decks did not collapse.

Passage of this ordinance will stop this insanity.

Gale Bradley 415 824 3330

BOARD of SUPERVISORS



City Hall
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San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Tom Hui, Director, Department of Building Inspection
Mohammed Nuru, Director, Department of Public Works

FROM: Alisa Miller, Clerk, Land Use and Economic Development Committee
Board of Supervisors

DATE: August 7, 2013

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Economic Development Committee has received the following proposed legislation, introduced by Supervisor Avalos on July 30, 2013:

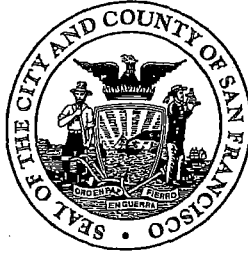
File No. 130783

Ordinance amending the Planning Code to permit the enlargement, alteration or reconstruction of a dwelling or other housing structure that exceeds the permitted density of the district if dwelling units are principally permitted in the district and the enlargement, alteration or reconstruction does not extend beyond the building envelope as it existed on January 1, 2013; and making environmental findings and findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1.

This matter is being forwarded to your department for informational purposes. If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: William Strawn, Department of Building Inspection
Carolyn Jayin, Department of Building Inspection
Frank Lee, Department of Public Works

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TDD/TTY No. 554-5227

August 7, 2013

File No. 130783

Sarah Jones
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Ms. Jones:

On July 30, 2013, Supervisor Avalos introduced the following proposed legislation:

File No. 130783

Ordinance amending the Planning Code to permit the enlargement, alteration or reconstruction of a dwelling or other housing structure that exceeds the permitted density of the district if dwelling units are principally permitted in the district and the enlargement, alteration or reconstruction does not extend beyond the building envelope as it existed on January 1, 2013; and making environmental findings and findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

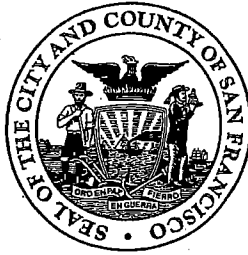
A handwritten signature in cursive script that reads "Alisa Miller".

By: Alisa Miller, Committee Clerk
Land Use & Economic Development Committee

Attachment

c: Monica Pereira, Environmental Planning
Joy Navarrete, Environmental Planning

BOARD of SUPERVISORS



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San Francisco 94102-4689
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TDD/TTY No. 554-5227

August 7, 2013

Planning Commission and
Attn: Jonas Ionin
1660 Mission Street, 5th Floor
San Francisco, CA 94103

Dear Commissioners:

On July 30, 2013, Supervisor Avalos introduced the following proposed legislation:

File No. 130783

Ordinance amending the Planning Code to permit the enlargement, alteration or reconstruction of a dwelling or other housing structure that exceeds the permitted density of the district if dwelling units are principally permitted in the district and the enlargement, alteration or reconstruction does not extend beyond the building envelope as it existed on January 1, 2013; and making environmental findings and findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1.

The proposed ordinance is being transmitted pursuant to Planning Code Section 302(b) for public hearing and recommendation. The ordinance is pending before the Land Use & Economic Development Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script that reads "Alisa Miller".

By: Alisa Miller, Committee Clerk
Land Use & Economic Development Committee

c: John Rahaim, Director of Planning
Scott Sanchez, Zoning Administrator
Sarah Jones, Chief, Major Environmental Analysis
AnMarie Rodgers, Legislative Affairs
Monica Pereira, Environmental Planning
Joy Navarrete, Environmental Planning

Dr. LU clerk
COB, cpage

Member, Board of Supervisors
District 8



City and County of San Francisco

SCOTT WIENER

威善高

DATE: December 3, 2013

TO: Angela Calvillo
Clerk of the Board of Supervisors

FROM: Supervisor Scott Wiener
Chairperson

RE: Land Use and Economic Development Committee
COMMITTEE REPORT

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2013 DEC -5 AM 9:47

Pursuant to Board Rule 4.20, as Chair of the Land Use and Economic Development Committee, I have deemed the following matter is of an urgent nature and request it be considered by the full Board on December 10, 2013, as a Committee Report:

130783 Planning Code - Nonconforming Uses: Enlargement, Alteration or Reconstruction

Ordinance amending the Planning Code to permit the enlargement, alteration or reconstruction of a dwelling or other housing structure that exceeds the permitted density of the district if dwelling units are principally permitted in the district and the enlargement, alteration or reconstruction does not extend beyond the building envelope as it existed on January 1, 2013; and making environmental findings and findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1.

This matter will be heard in the Land Use and Economic Development Committee on December 9, 2013, at 1:30 p.m.

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee.
An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. []
- 9. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative

Sponsor(s):

Supervisor John Avalos

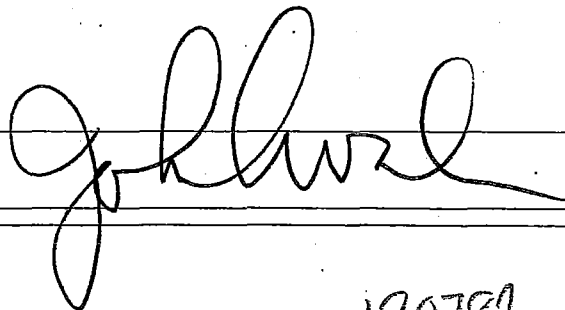
Subject:

Ordinance - Planning Code - Nonconforming Uses; Enlargements and Alterations

The text is listed below or attached:

[Empty box for text listing]

Signature of Sponsoring Supervisor:



or Clerk's Use Only:

130783

