

File No. 150494

Committee Item No. 2

Board Item No. 3

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation

Date February 1, 2016

Board of Supervisors Meeting

Date February 23, 2016

Cmte Board

- | | | |
|-------------------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Memorandum of Understanding (MOU) |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 - Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 700 |
| <input type="checkbox"/> | <input type="checkbox"/> | Vacancy Notice |
| <input type="checkbox"/> | <input type="checkbox"/> | Information Sheet |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Public Correspondence |

OTHER (Use back side if additional space is needed)

- | | | |
|-------------------------------------|-------------------------------------|---|
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Building Inspection Commission Memo, dtd 1/28/16</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>CEQA Determinations, dtd 1/28/16 & 4/14/15</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Planning Commission Resolution No. 19532</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |

Completed by: Alisa Somera Date January 28, 2016

Completed by: Alisa Somera Date February 9, 2016

1 [Planning, Building Codes - Conditional Use Required to Remove Any Residential Unit and
2 Mandatory Legalization of Illegal Units in C-3 Districts; Permeable Surfaces and Landscaping
3 Requirements Citywide for Building Additions and Residential Mergers]

4 Ordinance amending the Planning Code to require Conditional Use authorization for
5 the removal of any residential unit in a C-3 (Downtown Commercial) District (whether
6 legal or illegal) and to require compliance Citywide with landscaping and permeable
7 surfaces requirements for building additions and residential mergers, and to exempt
8 from the Conditional Use application requirement illegal units in C-3 Districts where
9 there is no legal path for legalization and residential units that have received prior
10 Planning approval; amending the Building Code to require that notices of violation in a
11 C-3 District mandate legalization of an illegal unit unless infeasible under the Building
12 Code or the Planning Commission approves its removal, and to require requiring re-
13 issuance of unabated notices of violation in a C-3 District to include the new
14 requirement; affirming the Planning Department's determination under the California
15 Environmental Quality Act; and making findings of consistency with the General Plan,
16 Planning Code, Section 302, and the eight priority policies of Planning Code, Section
17 101.1.

18 NOTE: Unchanged Code text and uncodified text are in plain Arial font.
19 Additions to Codes are in *single-underline italics Times New Roman font*.
20 Deletions to Codes are in *strikethrough italics Times New Roman font*.
21 Board amendment additions are in double-underlined Arial font.
22 Board amendment deletions are in ~~Arial font~~.
23 Asterisks (* * * *) indicate the omission of unchanged Code
24 subsections or parts of tables.

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

25 Section 1. Findings.

1 (a) The Planning Department has determined that the actions contemplated in this
2 ordinance comply with the California Environmental Quality Act (California Public Resources
3 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
4 Supervisors in File No. 150494 and is incorporated herein by reference. The Board affirms
5 this determination.

6 (b) On December 10, 2015, the Planning Commission, in Resolution No. 19532,
7 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
8 with the City's General Plan and the eight priority policies of Planning Code Section 101.1.
9 The Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk
10 of the Board of Supervisors in File No. 150494, and is incorporated herein by reference.

11 (c) Pursuant to Planning Code Section 302, this Board finds that these Planning
12 Code amendments will serve the public necessity, convenience, and welfare for the reasons
13 set forth in Planning Commission Resolution No. 19532 and the Board incorporates such
14 reasons herein by reference.

15
16 Section 2. The Planning Code is hereby amended by revising Sections 132 and 347
17 adding Section 317.1, to read as follows:

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

20 The following requirements for minimum front setback areas shall apply to every
21 building in all RH, RTO, and RM Districts, in order to relate the setbacks provided to the
22 existing front setbacks of adjacent buildings. Buildings in RTO Districts which have more than
23 75 feet of street frontage are additionally subject to the Ground Floor Residential Design
24 Guidelines, as adopted and periodically amended by the Planning Commission. Planned Unit
25

1 Developments or PUDs, as defined in Section 304, shall also provide landscaping in required
2 setbacks in accord with Section 132(g).

3 * * * *

4 (g) **Landscaping and Permeable Surfaces.** The landscaping and permeable
5 surface requirements of this Section Subsection (g) and Section Subsection (h) below shall be
6 met by the permittee in the case of construction of a new building; the addition of a new
7 Dwelling Unit, a garage, or additional parking; any addition to a structure that would result in an
8 increase of 20% or more of the existing Gross Floor Area, as defined in Section 102; a Residential
9 Merger, as defined in Section 317; or paving or repaving more than 200 square feet of the front
10 setback. All front setback areas required by this Section 132 shall be appropriately
11 landscaped, meet any applicable water use requirements of Administrative Code Chapter 63,
12 and in every case not less than 20% percent of the required setback area shall be and remain
13 unpaved and devoted to plant material, including the use of climate appropriate plant material
14 as defined in Public Works Code Section 802.1. For the purposes of this Section 132,
15 permitted obstructions as defined by Section 136(c)(6) chimneys, Section 136(c)(14) steps
16 stairs, and Section 136(c)(26) (27) underground garages, shall be excluded from the front
17 setback area used to calculate the required landscape and permeable surface area. If the
18 required setback area is entirely taken up by one or more permitted obstructions, the Zoning
19 Administrator may allow the installation of sidewalk landscaping that is compliant with
20 applicable water use requirements of Chapter 63 of the Administrative Code to satisfy the
21 requirements of this Section 132, subject to permit approval from the Department of Public
22 Works in accordance with Public Works Code Section 810B.

23 * * * *

1 **SEC. 317.1. LOSS OF RESIDENTIAL AND UNAUTHORIZED UNITS IN C-3 DISTRICTS**
2 **THROUGH DEMOLITION, MERGER, AND CONVERSION.**

3 (a) **Definitions.** For the purposes of this Section 317.1, the terms below shall be as
4 **defined below. Capitalized terms not defined below are defined in Section 102 of this Code.**

5 **"Removal" shall mean, with reference to a Residential or Unauthorized Unit, its**
6 **Conversion, Demolition, or Merger.**

7 **"Residential Conversion" shall mean the removal of cooking facilities, change of**
8 **occupancy (as defined and regulated by the Building Code), or change of use (as defined and**
9 **regulated by the Planning Code), of any Residential Unit or Unauthorized Unit to a Non-**
10 **Residential or Student Housing use.**

11 **"Residential Demolition" shall have the meaning set forth in Section 317(b)(2) of this**
12 **Code.**

13 **"Residential Merger" shall mean the combining of two or more Residential or**
14 **Unauthorized Units, resulting in a decrease in the number of Residential Units and**
15 **Unauthorized Units within a building, or the enlargement of one or more existing units while**
16 **reducing the size of other units by more than 25% of their original floor area, even if the**
17 **number of units is not reduced. The Planning Commission may reduce the numerical element**
18 **of this criterion by up to 20% of its value should it deem that adjustment necessary to**
19 **implement the intent of this Section 317.1, to conserve existing housing and preserve**
20 **affordable housing.**

21 **"Residential Unit" shall mean a legal conforming or legal nonconforming Dwelling Unit,**
22 **or a legal nonconforming Live/Work Unit or Group Housing.**

23 **"Unauthorized Unit" shall mean one or more rooms within a building that have been**
24 **used, without the benefit of a building permit, as a separate and distinct living or sleeping**
25 **space independent from Residential Units on the same property. In this context,**

1 "independent" shall mean that (A) the space has separate access that does not require
2 entering a Residential Unit on the property and (B) there is no open, visual connection to a
3 Residential Unit on the property.

4 (b) **Applicability; Exemption for Unauthorized Unit.**

5 (1) Any application for a permit that would result in the Removal of one or
6 more Residential Units or Unauthorized Units in a C-3 (Downtown Commercial) District is
7 required to obtain Conditional Use authorization. The application for a replacement building or
8 alteration permit shall also be subject to Conditional Use requirements.

9 (2) The Conditional Use requirement of Subsection (b)(1) shall apply to (A)
10 any building or site permit for Removal of an Unauthorized Unit issued on or after March 1,
11 2016, and (B) any permit for Removal of an Unauthorized Unit issued prior to March 1, 2016,
12 that has been suspended by the City or in which the applicant's rights have not vested.

13 (3) The Removal of a Residential Unit that has received approval from the
14 Planning Department through administrative approval or the Planning Commission through
15 Discretionary Review or Conditional Use authorization prior to the effective date of this
16 Section 317.1 is not required to apply for an additional approval under Subsection (b)(1).

17 (4) The Removal of an Unauthorized Unit does not require a Conditional Use
18 authorization pursuant to Subsection (b)(1) if the Department has determined that there is no
19 legal path for legalization.

20 (c) **Demolition.**

21 (1) No permit to Demolish a Residential Building in a C-3 District shall be
22 issued until a building permit for the replacement structure is finally approved, unless the
23 building is determined to pose a serious and imminent hazard as defined in the Building Code.
24 A building permit is finally approved if the Board of Appeals has taken final action for approval
25

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

3 (2) Conditional Use authorization is required for approval of the permit for
4 Residential Demolition in a C-3 District, and the Commission shall consider the replacement
5 structure as part of its decision on the Conditional Use application. If Conditional Use
6 authorization is required for the replacement structure by other sections of this Code, the
7 Commission shall consider the demolition as part of its decision on the Conditional Use
8 application.

9 (3) Nothing in this Section 317.1 is intended to exempt buildings or sites
10 where demolition is proposed from undergoing review with respect to Articles 10 and 11 of the
11 Planning Code, where the requirements of those Articles apply. Notwithstanding the definition
12 of "Residential Demolition" in this Section 317.1 and as further described in the Code
13 Implementation Document with regard to Residential Demolition, the criteria of Section 1005
14 shall apply to projects subject to review under the requirements of Article 10 with regard to the
15 structure itself.

16 (d) **Conversion to Student Housing.** The conversion of Residential Units to
17 Student Housing is prohibited in C-3 Districts. For the purposes of this subsection (d),
18 Residential Units that have been defined as such by the time a First Certificate of Occupancy
19 has been issued by the Department of Building Inspection for new construction shall not be
20 converted to Student Housing.

21 (e) **Conditional Use Criteria.** When considering whether to grant Conditional Use
22 authorization for the loss or Removal of Residential or Unauthorized Unit(s) in C-3 Districts, in
23 lieu of the criteria set forth in Planning Code Section 303, consideration shall be given to the
24 adverse impact on the public health, safety, and general welfare of the loss of housing stock
25 in the zoning district and to any unreasonable hardship to the applicant if the permit is denied.

1 (1) Residential Merger. In addition to the criteria set forth in Section 317(e)
2 of this Code, the Planning Commission shall consider the following criteria in the review of
3 applications to merge Residential Units or Unauthorized Units in C-3 Districts:

4 (A) how recently the unit being removed was occupied by a tenant or
5 tenants; and

6 (B) the appraised value of the least expensive Residential Unit
7 proposed for merger, when the merger does not involve an Unauthorized Unit.

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

22 (2) Residential Conversion. The Planning Commission shall consider the
23 criteria set forth in Section 317(f)(1) through (4) of this Code in the review of applications for
24 Residential Conversion in C-3 Districts.

1 (3) Residential Demolition. In addition to the criteria set forth in Section
2 317(d) of this Code, the Planning Commission shall also consider the following criteria in the
3 review of applications for Residential Demolition in C-3 Districts:

4 (A) whether the replacement project would maximize density on the
5 subject lot; and

6 (B) if replacing a building not subject to the Residential Rent
7 Stabilization and Arbitration Ordinance, whether the new project replaces all of the existing
8 units with new Dwelling Units of a similar size and with the same number of bedrooms or
9 more.

10 (4) Removal of Unauthorized Units. In addition to the criteria set forth in
11 Subsections (e)(1) through (e)(3) above, the Planning Commission shall also consider the
12 criteria below in the review of applications for removal of Unauthorized Units:

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

15 (B) whether the costs to legalize the Unauthorized Unit or Units under
16 the Planning, Building, and other applicable Codes is reasonable based on how such cost
17 compares to the average cost of legalization per unit derived from the cost of projects on the
18 Planning Department's Master List of Additional Dwelling Units Approved required by Section
19 207.3(k) of this Code;

20 (C) whether it is financially feasible to legalize the Unauthorized Unit or
21 Units, based on the costs to legalize the Unauthorized Unit(s) under the Planning, Building,
22 and other applicable Codes in comparison to the added value that legalizing said Units would
23 provide to the subject property. The gain in the value of the subject property shall be based on
24 the current value of the property with the Unauthorized Unit(s) compared to the value of the
25 property if the Unauthorized Unit(s) is/are legalized. The calculation of the gain in value shall

1 be conducted and approved by a California licensed property appraiser. Legalization shall be
2 deemed financially feasible if the gain in the value of the subject property is equal to or greater
3 than the cost to legalize the Unauthorized Unit.

4 (5) Denial of Application to Remove an Unauthorized Unit: Requirement
5 to Legalize the Unit. If the Planning Commission denies an application to Remove an
6 Unauthorized Unit, the property owner shall file an application for a building permit to legalize
7 the Unit. Failure to do so within a reasonable period of time, as determined by the Zoning
8 Administrator, shall be deemed a violation of the Planning Code.

9 (f) Notice of Conditional Use Hearing. At least 20 days prior to any hearing to
10 consider a Conditional Use authorization under Subsection (b) of this Section 317.1, the
11 Zoning Administrator shall cause a written notice containing the following information to be
12 mailed to all Residential Units and if known any Unauthorized Units in the building, in addition
13 to any other notice required under this Code:

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

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

19 (g) Exemptions. This Section 317.1 shall not apply to property:

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

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

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

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

Section 3. The Planning Code is hereby amended by revising Zoning Control Table 210.2, to read as follows:

**Table 210.2
ZONING CONTROL TABLE FOR C-3 DISTRICTS**

Zoning Category	§ References	C-3-O	C-3-O(SD)	C-3-R	C-3-G	C-3-S
* * * *						
RESIDENTIAL STANDARDS AND USES						
Development Standards						
Usable Open Space [Per Dwelling Unit]	§§ 135, 136	At least 36 square feet if private, and 48 square feet per dwelling unit if common.				
Residential Parking Requirements	§§ 150, 151.1, 161	None required. P up to one car for each two Dwelling Units; C up to three cars for each four Dwelling Units. NP above.				
Rear Yard Setback	§§ 130, 134	25% of the total depth lot depth, but in no case less than 15 feet for lowest story containing a dwelling unit and each succeeding story. Exceptions are permitted by § 309.				
Residential Conversion, Demolition, or Merger	§ 317 317.1	<u>C for Removal of one or more Residential Units or Unauthorized Units in C-3, C only for Removal above the ground floor</u> <u>Loss of 1-2 units mandatory DR/Loss of 3 or more units C.</u>				

1 * * * *

2 Section 4. The Building Code is hereby amended by revising Section 102A, to read as
3 follows:

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

5 All buildings, structures, property, or parts thereof, regulated by this code that are
6 structurally unsafe or not provided with adequate egress, or that constitute a fire hazard, or
7 are otherwise dangerous to human life, safety, or health of the occupants or the occupants of
8 adjacent properties or the public by reason of inadequate maintenance, dilapidation,
9 obsolescence, or abandonment, or by reason of occupancy or use in violation of law or
10 ordinance, or were erected, moved, altered, constructed, or maintained in violation of law or
11 ordinance are, for the purpose of this chapter, unsafe.

12 * * * *

13 **102A.3 Inspections and Complaints.** The Building Official is hereby authorized to
14 inspect or cause the inspection of any building, structure or property for the purpose of
15 determining whether or not it is unsafe in any of the following circumstances:

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

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

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

1 Upon the completion of any such inspection and the finding by the Building Official of
2 any condition which renders the building, structure, or property unsafe, the Building Official
3 shall, within 15 days thereafter, serve a written notice of violation upon the building owner
4 which shall contain specific allegations, setting forth each condition the Building Official has
5 found which renders the building, structure, or property unsafe. The Building Official shall,
6 within three days of mailing of such notice of violation, post a copy thereof in a conspicuous
7 place in or upon such building, structure, or property and make available a copy of the notice
8 of violation to each tenant thereof. Such notice shall also set forth the penalties for violation
9 prescribed in Section 103A of this code. In addition to the civil penalties prescribed in Section
10 103A, the Department's cost of preparation for and appearance at the hearing required by
11 Section 102A.4, and all prior and subsequent attendant and administrative costs, shall be
12 assessed upon the property owner monthly, after failure to comply with a written notice of
13 violation that has been served upon the property owner. Said violations will not be deemed
14 legally abated until the property owner makes full payment of the assessment of costs to the
15 Department of Building Inspection. See Section 110A, Table 1A-D – Standard Hourly Rates
16 and Table 1A-K – Penalties, Hearings, Code Enforcement Assessments – for the applicable
17 rate. Failure to pay the assessment of costs shall result in tax lien proceedings against the
18 property per Section 102A.18.

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

23 102A.3.1. Dwelling Units constructed or installed without required permit(s). In the case of an
24 unauthorized Dwelling Unit constructed or installed in an existing building in a C-3 Zoning District
25 without the required permit or permits, in addition to the above requirements the written notice of

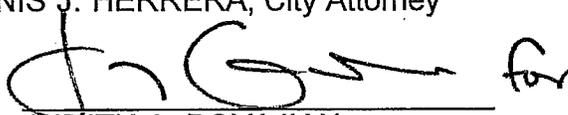
1 violation shall order the property owner to file an application for a building and other permits required
2 to legalize the unit pursuant to Building Code Section 106A.3.1.3 and Planning Code Section 207.3
3 unless removal of the unit is approved by the Planning Commission pursuant to Planning Code Section
4 317.1

5 102A.3.1.1. Re-issuance of an unabated notice of violation. Any notice of violation in a C-3
6 Zoning District issued prior to the effective date of Section 102A.3.1 and that remains unabated shall
7 be re-issued in compliance with the requirements of Section 102A.3.1.

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

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

22 By:  for

23 JUDITH A. BOYAJIAN
24 Deputy City Attorney

25 n:\legana\as2016\1500751\01079640.docx

REVISED LEGISLATIVE DIGEST

(2/8/2016, Amended in Committee)

[Planning, Building Codes - Conditional Use Required to Remove Any Residential Unit in a C-3 District, including Illegal Units; Permeable Surfaces and Landscaping Requirements Citywide for Building Additions and Residential Mergers]

Ordinance amending the Planning Code to require Conditional Use authorization for the removal of any residential unit in a C-3 (Downtown Commercial) District (whether legal or illegal) and to require compliance Citywide with landscaping and permeable surfaces requirements for building additions and residential mergers, and to exempt from the Conditional Use application requirement illegal units in C-3 Districts where there is no legal path for legalization and residential units that have received prior Planning approval; amending the Building Code to require that notices of violation in a C-3 District order the filing of an application to legalize an illegal unit unless infeasible under the Building Code or the Planning Commission approves its removal, and to require re-issuance of unabated notices of violation in a C-3 District to include the new requirement; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, Planning Code

Existing Law

Planning Code Section 132 imposes requirements for landscaping and permeable surfaces in all RH, RTO, and RM Districts when (1) constructing a new building, (2) adding a new dwelling unit, a garage, or additional parking or (3) paving or repaving more than 200 square feet of the front setback.

Planning Code Section 317 regulates the removal of "Residential Units," as defined, through demolition, merger, or conversion. A Conditional Use authorization is required for the removal of any Residential Unit in RTO, RTO-M, NCT, and Upper Market NCD zoning districts, for the loss of any Residential Unit above the ground floor in C-3 districts, and for the loss or removal of three or more Residential Units in other zoning districts. A Conditional Use authorization is also required for a replacement building.

Building Code Section 102A.3 establishes the process for the Department of Building Inspection's investigation and citation of code violations.

Amendments to Current Law

Planning Code Section 132 is amended to impose the requirements for landscaping and permeable surfaces on a "Residential Merger" as defined in Section 317 and where any addition to a structure would result in an increase of 20% or more of the existing Gross Floor Area.

Planning Code Section 317.1 is added to require a Conditional Use authorization for the loss or removal of any Residential Unit in a C-3 District, whether or not the unit is authorized and legal or is unauthorized and illegal. The Conditional Use requirement applies to (1) any building or site permit issued for removal of an Unauthorized Unit on or after March 1, 2016 and (2) any permit issued for removal of an Unauthorized Unit prior to March 1, 2016 that has been suspended ;by the City or in which the applicant's rights have not vested. If the Planning Commission denies an application to remove an Unauthorized Unit, the property owner is required to apply for a building permit to legalize the unit. The removal of a legal Residential Unit that has received approval from the Planning Department through administrative approval or the Planning Commission through a Discretionary Review or Conditional Use authorization prior to the effective date of the Conditional Use requirement of this Ordinance is not required to apply for an additional approval.

The Building Code is also amended to require a Notice of Violation for an Unauthorized Unit in a C-3 Zoning District to order the property owner to apply for a building permit to legalize the unit unless legalization of the unit is not permitted under the Building Code or removal of the unit is approved by the Planning Commission. Any Notice of Violation in a C-3 Zoning District that was issued prior to the effective date of this Ordinance and remains unabated shall be re-issued in compliance with the requirements of this Ordinance.

An "Unauthorized Unit" is defined as "one or more rooms within a building that have been used, without the benefit of a building permit, as a separate and distinct living or sleeping space independent from Residential Units on the same property." "Independent" means that (1) the space has independent access that does not require entering a Residential Unit on the property and (2) there is no open, visual connection to a Residential Unit on the property. Twenty days before the Conditional Use hearing, notice of the hearing must be mailed to all Residential Units and, if known, to any Unauthorized Units in the building. The prohibitions against conversion to Student Housing and the merger of Residential Units not subject to a Conditional Use requirement have been retained and relocated. Conditional Use criteria are all in one subsection; the existing criteria have been retained and new criteria added for the removal of Unauthorized Units.

Background Section

This Ordinance initially proposed amendments to Planning Code Section 317 that would apply Citywide. Following amendments adopted by the Land Use and Transportation Committee on February 8, 2016, the Ordinance adds Section 317.1, applicable only to the C-3 District, but makes no change in Section 317. Since this Ordinance does not amend Section 317, the proposed amendments to that Section that appeared in the initial version of this Ordinance have been removed from this Ordinance.

Somera, Alisa (BOS)

From: Wong, Linda (BOS)
nt: Monday, February 01, 2016 2:00 PM
Subject: FW: File 150494 FW: Conditional Use Requirement for Removal of an Illegal Housing Unit: Economic Impact Report

From: Khan, Asim (CON)
Sent: Monday, February 01, 2016 1:12 PM
To: Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>; BOS-Supervisors <bos-supervisors@sfgov.org>; BOS-Legislative Aides <bos-legislative_aides@sfgov.org>; Kawa, Steve (MYR) <steve.kawa@sfgov.org>; Elliott, Jason (MYR) <jason.elliott@sfgov.org>; Steeves, Asja (CON) <asja.steeves@sfgov.org>; Campbell, Severin (BUD) <severin.campbell@sfgov.org>; Newman, Debra (BUD) <debra.newman@sfgov.org>; Rose, Harvey (BUD) <harvey.rose@sfgov.org>; Rosenfield, Ben (CON) <ben.rosenfield@sfgov.org>; Rydstrom, Todd (CON) <Todd.Rydstrom@sfgov.org>; Lane, Maura (CON) <maura.lane@sfgov.org>; gmetcalf@spur.org; bob@sfchamber.com; jballesteros@sanfancisco.travel; SF Docs (LIB) <sfdocs@sfpl.org>; Howard, Kate (MYR) <kate.howard@sfgov.org>; Falvey, Christine (MYR) <christine.falvey@sfgov.org>; Tsang, Francis <francis.tsang@sfgov.org>; CON-Finance Officers <CON-Finance_Officers@SFGOV.org>; Elliott, Nicole (MYR) <nicole.elliott@sfgov.org>
Subject: Conditional Use Requirement for Removal of an Illegal Housing Unit: Economic Impact Report

This report from the Office of Economic Analysis assesses the impact of requiring a Conditional Use authorization to remove an illegal housing unit. Currently, no such permit is required.

The report finds that if the legislation results in the preservation of more illegal units, it would likely put downward pressure on housing prices at the low end of the private housing market, where most low-income households obtain housing. Prices in that sub-market could be up to 1% lower as a result of the legislation. While prices in the upper-end of the market could rise, the price inflation would likely be significantly smaller.

The full report may be viewed here: <http://openbook.sfgov.org/webreports/details3.aspx?id=2269>

For questions about the report, please contact Ted Egan at ted.egan@sfgov.org or Asim Khan at asim.khan@sfgov.org

Follow us on Twitter [@SFController](https://twitter.com/SFController)



Conditional Use Requirement for Removal of an Illegal Housing Unit: Economic Impact Report

Office of Economic Analysis
Item # 150494
February 1st, 2016

Introduction

- The proposed legislation would amend the Section 317 of the Planning Code to require a conditional use (CU) authorization for the removal of an illegal housing unit. Currently, only the removal of a legal housing unit requires a conditional use.
- A Notice of Violation for an illegal unit, from the Department of Building Inspection, would require a property owner to file a permit to legalize the unit, unless it is infeasible under the building code, or the Planning Commission approves removal of the unit under CU authorization.
- The legislation would also require compliance with landscaping and permeable surface requirements for residential merger and where addition to a building structure increases the existing gross floor areas by 20%.
- The office of Economic Analysis has prepared this report because the proposal could have material economic impact on the city's economy.
- In particular, limitation on demolition of illegal units could reduce the housing burden of low-income households, by maintaining a greater supply of housing at the low end of the private market.

Economic Impact Factors

- Building permit data suggests that illegal units are most often removed to expand an existing, larger, housing unit on the same parcel.
- By placing new restrictions on the removal of illegal units, the legislation would effectively expand the housing supply at the low end of the private housing market. This conclusion is based on the assumption that a CU authorization to remove an illegal unit would be no more likely to be granted than a CU authorization to remove an authorized unit.
- The result of that would be to put downward pressure on housing prices facing low-income households seeking housing in the city.
- On the other hand, limiting the removal of unauthorized units would inhibit the expansion of large units which are in demand at the upper end of the market. The resulting supply constraint at the upper end would tend to inflate prices at the upper end of the market. To the extent that supply is not expanded elsewhere (by increasing the attractiveness of upper-end properties in other ways, for example), then the price increase will be felt throughout the market.

Impact on Housing Prices

- The impact on citywide housing prices will depend on the number of illegal units removed each year. Unfortunately, since illegal units are unpermitted, data on the removal (and creation) of illegal units is indirect, and likely understates the extent of the activities.
- By analyzing building permit applications, the Planning Department has estimated that an average of 23 illegal units have been removed annually, over the 2004-14 period (see next page).
- If this trend is accurate and continues, the proposed legislation would lead to a decline in housing prices of 1% per year for 1-room housing units, on average over the next 20 years. This estimate is based on the total number of 1 room housing units currently in the city, as reported by the Census.
- On the other hand, the price increase at the upper end of the market is highly uncertain, because we lack data on the size of units that have been merged with an illegal unit, and how the supply constraint would ripple through the housing market. If these units would generally have 6 rooms or above after merger, then prices for those largest housing units in the city could increase by 0.02 to 0.04%, on average over the next 20 years.
- The net impact on citywide housing prices depends on how property owners react to the legislation and whether they make alternative actions to improve the value of their property. We are unable to estimate that impact with the available data.

Trends in the Demolition of Illegal Housing Units in San Francisco, 2004-14

Year	Illegal Units Removed
2004	22
2005	38
2006	12
2007	10
2008	19
2009	8
2010	6
2011	39
2012	2
2013	70
2014	24
Average	23

Source: Housing Element 2014, Planning Department

Staff Contacts

Ted Egan, Ph.D., Chief Economist

ted.egan@sfgov.org

(415) 554-5268

Asim Khan, Ph.D., Principal Economist

asim.khan@sfgov.org

(415) 554-5369



BUILDING INSPECTION COMMISSION (BIC)

Department of Building Inspection
1660 Mission Street, San Francisco, California 94103-2414

Voice (415) 558-6164 - Fax (415) 558-6509

February 18, 2016

Edwin M. Lee
Mayor

MEMO

COMMISSION

Angus McCarthy
President

Myrna Melgar
Vice-President

Kevin Clinch
Gail Gilman
John Konstin
Frank Lee
Debra Walker

Sonya Harris
Secretary

Tom C. Hui
Director

Ms. Angela Calvillo
Clerk of the Board
Board of Supervisors, City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4694

RE: File No. 150494-3 – Ordinance amending the Planning Code to require Conditional use authorization for the removal of any residential unit (whether legal or illegal) and compliance with landscaping and permeable surfaces requirements for building additions and residential mergers, and to exempt from the Conditional Use application requirement illegal units where there is no legal path for legalization and residential units that have received prior Planning approval; amending the Building Code to require that notices of violation mandate legalization of an illegal unit unless infeasible under the Building Code or the Planning Commission approves its removal, and requiring re-issuance of unabated notices of violation to include the new requirement.

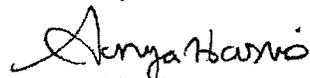
Dear Ms. Calvillo:

On February 17, 2016 the Building Inspection Commission held a public hearing on the proposed amendment to the San Francisco Building Code referenced above. The Commissioners had some additional concerns regarding the legislation, so they unanimously voted to continue the item to the next Regular Building Inspection Commission meeting on March 16, 2016.

Commissioners McCarthy, Melgar, Clinch, Gilman, Konstin, Lee, and Walker voted unanimously to continue the item to March 16, 2016.

Should you have any questions, please do not hesitate to call me at 558-6164.

Sincerely,


Sonya Harris
Commission Secretary

cc: Tom C. Hui, S.E., C.B.O., Director

BOARD of SUPERVISORS



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

January 28, 2016

File No. 150494-3

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

Dear Ms. Jones:

On January 26, 2016, Supervisor Avalos introduced the following **substitute** legislation:

File No. 150494-3

Ordinance amending the Planning Code to require Conditional Use authorization for the removal of any residential unit (whether legal or illegal) and compliance with landscaping and permeable surfaces requirements for building additions and residential mergers, and to exempt from the Conditional Use application requirement illegal units where there is no legal path for legalization and residential units that have received prior Planning approval; amending the Building Code to require that notices of violation mandate legalization of an illegal unit unless infeasible under the Building Code or the Planning Commission approves its removal, and requiring re-issuance of unabated notices of violation to include the new requirement; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, Planning Code, Section 302, and the eight priority policies of Planning Code, Section 101.1.

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 Somera".

By: Alisa Somera, Assistant Clerk

Attachment

cc: Joy Navarrete, Environmental Planning
Jeanie Poling, Environmental Planning

Not defined a project under CEQA Section 15378 and 15060(c)(2) because it does not result in a physical change in the environment.

Joy
Navarrete

Digitally signed by Joy Navarrete
DN: cn=Joy Navarrete, o=Planning,
ou=Environmental Planning,
email=joy.navarrete@sfgov.org, c=US
Date: 2016.02.11 16:32:01 -08'00'

BOARD of SUPERVISORS



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

December 9, 2015

File No. 150494

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

Dear Ms. Jones:

On December 1, 2015, Supervisor Avalos introduced the following substitute legislation:

File No. 150494.

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

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 Somera".

By: Alisa Somera, Assistant Clerk

Attachment

cc: Joy Navarrete, Environmental Planning
Jeanie Poling, Environmental Planning

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it does not result in a physical change in the environment.

Joy
Navarrete

Digitally signed by Joy Navarrete
DN: cn=Joy Navarrete, o=Planning,
ou=Environmental Planning,
email=joy.navarrete@sfgov.org, c=US
Date: 2016.01.25 12:13:43 -08'00'

BOARD of SUPERVISORS



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

May 22, 2015

File No. 150494

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

Dear Ms. Jones:

On May 12, 2015, Supervisor Avalos introduced the following legislation:

File No. 150494

Ordinance amending the Planning Code to require conditional use authorization for all residential mergers and to require compliance with landscaping and permeable surfaces requirements for building additions and residential mergers, and affirming the Planning Department's California Environmental Quality Act determination; and making Planning Code, Section 302, findings, and making 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, appearing to read "A. Ausberry".

By: Andrea Ausberry, Assistant Clerk

Attachment

cc: Joy Navarrete, Environmental Planning
Jeanie Poling, Environmental Planning

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it does not result in a physical change in the environment.

Joy
Navarrete

Digitally signed by Joy Navarrete
DN: cn=Joy Navarrete, o=Planning,
ou=Environmental Planning,
email=joy.navarrete@sfgov.org,
c=US
Date: 2015.06.04 15:53:33 -07'00'



SAN FRANCISCO PLANNING DEPARTMENT

December 15, 2015

Ms. Angela Calvillo, Clerk
Honorable Supervisor John 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 2015.006712PCA:
Requiring Conditional Use Authorization for Residential Unit Removals
Including Unauthorized Units
Board File No. 150494
Planning Commission Recommendation: Approval with Modification**

Dear Ms. Calvillo and Supervisor Avalos,

On December 10, 2015, the San Francisco Planning Commission conducted duly noticed public hearing at a regularly scheduled meeting to consider the proposed amendments to the Planning Code introduced by Supervisors Avalos. At the hearing, the Planning Commission recommended approval with modification of this Ordinance.

The Commission's proposed modifications were as follows:

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

The proposed amendments are exempt from environmental review under Section 15060(c)(2) and 15378 of the CEQA Guidelines.

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission.

Transmittal Materials

CASE NO. 2015.006712PCA
Requiring Conditional Use Authorization for
Residential Unit Removals Including Unauthorized Units

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

Sincerely,



Aaron D. Starr
Manager of Legislative Affairs

cc:

Supervisor Jane Kim
Judy Boyajian, City Attorney
Jeremy Pollock, Legislative aid to Supervisor John Avalos
April Veneracion, Legislative aid to Supervisor Jane Kim
Andrea Ausberry, Office of the Clerk of the Board

Attachments

Planning Commission Resolution
Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 19532 Planning, and Building Code Text Change HEARING DATE: DECEMBER 10TH, 2015

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Project Name: Requiring Conditional Use Authorization to Remove Residential Units Including Unauthorized Units
Case Number: 2015-006712PCA [Board File No. 150494]
Initiated by: Supervisor Avalos / Introduced May 12, 2015
Staff Contact: Kimia Haddadan, Legislative Affairs
Kimia.haddadan@sfgov.org, 415-575-9068
Reviewed by: Aaron Starr, Manager Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Recommendation: Recommend Approval with Modification

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO REQUIRE CONDITIONAL USE AUTHORIZATION FOR THE REMOVAL OF ANY RESIDENTIAL UNIT, WHETHER LEGAL OR ILLEGAL, AND COMPLIANCE WITH LANDSCAPING AND PERMEABLE SURFACES REQUIREMENTS FOR BUILDING ADDITIONS AND RESIDENTIAL MERGERS; AMENDING THE BUILDING CODE TO REQUIRE THAT NOTICES OF VIOLATION MANDATE LEGALIZATION OF AN ILLEGAL UNIT UNLESS INFEASIBLE UNDER THE BUILDING CODE OR THE PLANNING COMMISSION APPROVES ITS REMOVAL; AFFIRMING THE PLANNING DEPARTMENT'S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; AND MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, PLANNING CODE SECTION 302, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE SECTION 101.1.

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

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on December 10, 2015; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c); and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors approve/approve with modifications the proposed ordinance. The proposed modifications include:

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

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

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

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

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.

The proposed Ordinance would provide the highest scrutiny for removal of residential units through demolition-whether legal or unauthorized. This would help discourage demolition of existing housing unless necessary findings warrant the demolition.

POLICY 2.2

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

The proposed Ordinance would provide the highest scrutiny for removal of residential units through merger-whether legal or unauthorized. This would help discourage merger of two residential units or merging an unauthorized units unless necessary findings warrant the merger.

6. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would encourage retaining the existing housing stock and would help preserve the neighborhood character.

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

The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing and would help retain existing housing stock.

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

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

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

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

8. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance with modifications as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on December 10, 2015.

Jonas P. Ionin
Commission Secretary

AYES: Johnston, Fong, Hillis, Moore, Richards,

NOES: Antonini

ABSENT: Wu

ADOPTED: December 10, 2015



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning, and Building Code Text Change HEARING DATE: DECEMBER 10TH, 2015

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Project Name: Requiring Conditional Use Authorization to Remove Residential Units Including Unauthorized Units
Case Number: 2015-006712PCA [Board File No. 150494]
Initiated by: Supervisor Avalos / Introduced May 12, 2015
Staff Contact: Kimia Haddadan, Legislative Affairs
Kimia.haddadan@sfgov.org, 415-575-9068
Reviewed by: Aaron Starr, Manager Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Recommendation: Recommend Approval with Modification

PLANNING & BUILDING CODE AMENDMENTS

The Proposed Ordinance would amend the Planning Code to require Conditional Use authorization for the removal of any residential unit, whether legal or illegal, and compliance with landscaping and permeable surfaces requirements for building additions and residential mergers; amending the Building Code to require that notices of violation mandate legalization of an illegal unit unless infeasible under the Building Code or the Planning Commission approves its removal.

The Way It Is Now:

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

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

Building Code

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

The Way It Would Be:

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

Building Code Modifications:

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

BACKGROUND

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

Bay Area as a region. Rental prices in San Francisco remained the most expensive market in the country with median 1-bedroom rents rising to \$3,670 according to Zumper¹.

In the midst of such housing shortage, since 2010, the City has lost an average of about 240² units a year due to demolition, conversion, or merger of legal units or removal of Unauthorized Units.

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

Interim Controls for Restricting Unit Loss

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

Legalizing Unauthorized Units

Anecdotally, Unauthorized Units constitute a large portion of San Francisco's housing stock. While the City does not maintain any database on these units, estimates range between 30,000 to 50,000 of such units in San Francisco. These units are generally affordable to lower income households as they offer lower rates of rent.³ In May 2014, the City established a new program that created a path to legalize Unauthorized Units. This voluntary program provides waivers from many of the Planning Code requirements, including exceeding density limits to legalize one Unauthorized Unit per lot. Since then the City has received 238 applications of which about 130 permits are issued and the rest are under review.

This program was a turning point in the City's approach towards Unauthorized Units. Previously, if the City was made aware of such unit, DBI would issue a NOV requiring removal of the unit. In the past ten years (2004-2014), over 225 of such units were removed⁴. Given the housing crisis in San Francisco the City is shifting its approach to instead encourage the retention of Unauthorized Units.

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

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

³ Karen Chapple, Jake Wegmann, Alison Nemirow, Colin Dentel-Post; *Yes to My Back Yard, Mobilizing the Market for Secondary Units*; Center for Community Innovation at the Institute of Urban and Regional Development, June 2012.

⁴ San Francisco Housing Element 2014 Part I (Table I-54) and Housing Inventory 2014 (Table 8)

The Mayor's Executive Directive

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

ISSUES AND CONSIDERATIONS

Loss of residential units: Implications

San Francisco has about 379,600 residential units, representing a valuable resource in addressing housing demand in the city and region. Analysis of a one year data indicates a 3.5% turnover for sales and over 10% turnover for rental⁵, both of which are higher than the net increase in number of housing units over the last year⁶ (1%). This indicates a stronger role for the existing housing stock to address the housing demand compared to the new housing developed.

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

Removal of residential units is also a major cause of tenant eviction in those units. Eviction rates have increased by 45% Citywide from 2010-2014. Of approximately 4,500 no-fault evictions from 2005-2015, about 500 (11%) were due to demolition⁷.

Preserving the housing stock is also an effective tool for neighborhood stabilization. The tenants in the existing rental housing stock- especially in rent controlled units- pay much lower rents compared to current asking rent on the market. If these tenants were to be evicted due to removal of the unit, finding replacement housing at the same affordability rate in the same neighborhood could prove infeasible. The displacement of tenants would transform the neighborhoods and weaken the social ties and resources that people shape during the years of living in one place.

Types of Approval for Unit Loss

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

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

⁶ From 2013 to 2014, Housing Inventory 2014, SF Planning

⁷ Housing Balance Report, September 2015, SF Planning

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

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

Loss of Residential Units: Administrative Approval

As listed in the table above, the Planning Code currently allows administrative approval for removal of a single family building that is demonstrably unaffordable or financially inaccessible, and also for buildings of two or less units that are unsound. The Planning Code further defines demonstrably unaffordable as "housing that has a value greater than at least 80% of the combined land and structure values of single-family homes in San Francisco as determined by a credible appraisal" The Department defines a numerical value for this threshold through an appraisal process every year.

The interim controls removed the administrative approval process in cases of a unit merger, subjecting all unit merger application to a CU authorization. The Planning Code still allows administrative approval for removal applications through demolition. The proposed legislation would expand the stricter review process to demolition applications even for buildings that may be demonstrably unaffordable. The goal for this proposal is to ensure retaining the existing housing stock for two main reasons: 1) the existing residential units are generally larger in size compared to the newly constructed residential units. Of the rental units built since 2010, only about 10% are 3 or more bedrooms, while about 33% of rental units built before 2010 are 3 or more bedrooms⁸; 2) the existing housing stock is generally more affordable than the new residential units being built. Newly constructed rental units on the market (since 2005) ask for higher rent premium of about \$300 to \$600 compared to the rental units built before 2005⁹.

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

Loss of Unauthorized Units: Challenges of Existing Controls

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

This challenge is due to the narrow scope of this policy. A snapshot of the Department's alteration permits filed since May 2014¹⁰ includes over 180 permits filed for removal of illegal units of which at least 120 are located in single family or two unit buildings. Similar pattern is also present in permits to legalize Unauthorized Units: approximately 75% of the applications received are one or two unit buildings. Based on this data, it is safe to assume that Unauthorized Units in the City are mostly in one or two unit buildings not in building with three or more, which are the buildings covered under the Mayor's Executive Order.

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

⁸ San Francisco Planning Housing Database, made summer 2015

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

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

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

Another challenge with the exiting controls is related to notification of tenants residing in the Unauthorized Units slated for removal. Removing an unwarranted unit often results in eviction of the tenant. Currently there is no requirement to notify the tenant that their home is slated for removal. Therefore, often the tenant is not aware of such permit and only finds out when the eviction notice is served after the permit is approved and the appeal period for the permit (15 days) has ended. Staff is aware of at least eight cases, dating back only to May of this year, filed with the Board of Appeals for a Jurisdiction Request¹¹ by tenants that were evicted because of the removal of an Unauthorized Unit. Most of these cases were denied by the Board of Appeals. Currently there is a pending ordinance¹², sponsored by Supervisor Weiner, that would require mailed notification as well as on site notice when removing an Unauthorized Unit in order to allow adequate time for the tenant to appeal or secure an alternative housing option. The proposed legislation would also require notification for at least 20 days before the CU authorization is heard at the Planning Commission. This legislation will become effective by the end of the year.

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

Loss of Unauthorized Units: Section 317 Findings

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

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

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

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

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

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

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

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATIONS

The Department recommends that the Commission recommend approval with modifications of the proposed Ordinance and adopt the attached Draft Resolution to that effect. The proposed modifications include:

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

Basis for Recommendations:

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

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

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

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

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

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

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

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

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

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

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

Environmental Review

The proposed Ordinance is identified not a project under CEQA guidelines Sections 15060(c) and 15378.

PUBLIC COMMENT

As of the date of this report, the Planning Department has received no public comment about this Ordinance.

Attachments:

Exhibit A: Draft Resolution

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

ZACKS & FREEDMAN

A PROFESSIONAL CORPORATION

235 Montgomery Street, Suite 400
San Francisco, California 94104
Telephone (415) 956-8100
Facsimile (415) 288-9755
www.zulpc.com

February 8, 2016

File No. 150494

Land Use and Transportation Committee
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102

Re: File No. 150494 – Removal of Residential Units

Dear Members of the Land Use and Transportation Committee:

This office represents 1049 Market Street, LLC and 1067 Market Street, LLC (collectively “Owners”) and the Small Property Owners of San Francisco and Small Property Owners of San Francisco Institute. File No. 150494 (the “Ordinance”) targets the property owners and their properties, 1049 Market Street and 1067 Market Street, San Francisco, CA, as well as other owners and their properties across the City.

SPOSF and the Owners oppose the Ordinance and submit these comments in advance of the Committee hearing thereon.

1. The Committee’s hearing on the Ordinance is premature.
 - a. The City re-referred the Ordinance to the Planning Commission for consideration following the substantial amendment of the Ordinance and substitution of a new version thereof (Version 3). However, the Planning Commission has not yet reviewed Version 3—let alone Version 4, with new and substantial modifications dated February 1. Any action on the Ordinance at this time by the Committee will therefore be in violation of City and County of San Francisco Charter Article IV, § 4.105 and San Francisco Planning Code § 302. The Planning Commission has not had an opportunity to consider Version 4 and make recommendations, and it will not have such an opportunity prior to the Committee’s hearing.
 - b. Likewise, Version 3 of the Ordinance was re-referred to the Planning Department for environmental review on January 28, 2016, but a response has not yet been received, in violation of San Francisco Administrative Code § 31.08. Version 4 must also be re-referred for environmental review, and a response must be received prior to Committee action.

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2016 FEB - 8 PM 1:25

- c. Lastly, the Ordinance was referred to the Building Inspection Commission pursuant to Charter Section D3.750-5 on January 28. Per the Building Inspection Commission's January 28 memorandum, the Building Inspection Commission "has additional concerns regarding the legislation" and has continued its hearing on the Ordinance to February 10 or 17, at the earliest. Any prior action by this Committee would be premature.
2. The Ordinance was misclassified as "not a project" for CEQA purposes. This is erroneous.
 - a. The Ordinance constitutes a citywide rezoning via amendment of the Planning Code. Unit removal would no longer be permitted; it would now be merely *conditionally* permitted. By the same token, non-residential uses would no longer be permitted; they would now be merely *conditionally* permitted. This is a major change of unprecedented scale in San Francisco. On one hand, owners would be deprived of substantial property rights – to use their properties for non-residential purposes. On the other hand, properties across the City would now be required to have more dwelling units than under existing law. This rezoning conflicts with the General Plan, which respects and directs principally permitted uses other than residential use in areas of the City that are covered by the Ordinance.
 - b. The Ordinance will cause long-term vacancy, property deterioration and degradation, blight, and urban decay. After an eviction, owners will likely be unable to obtain conditional use authorization to remove the subject unit and use it for nonresidential purposes; the required Conditional Use findings are clearly designed to result in denial. As a result, properties across the City will sit empty. Owners of single-family homes, in particular, do not want second units because of the risk of those second units subjecting the entire building to Rent Control. Such owners would instead leave unlawful units vacant to avoid Notices of Violation that can only be cured by subjecting the entire building to Rent Control. This is most clearly true of unlawful units that have been the subject of no-fault evictions, in which case residential merger is prohibited.
 - c. Lastly, the compulsory residential use of nonresidential structures is unsafe. Forcing owners to continue the residential rental of garages, offices, warehouses, and other spaces that were not designed for residential uses poses a significant risk to the public and occupants of those and neighboring structures. This places an additional burden on public safety resources and infrastructure. Perversely, the Ordinance would force the maintenance of unlawful uses that did not receive proper CEQA review in the first place.

3. The Ordinance is preempted by state law.
 - a. The Ordinance changes the San Francisco Building Code, in conflict with the California Building Code. Specific requirements must be met in order to deviate from the state code, and those requirements are unmet in this case. The Ordinance attempts to change state requirements for unwarranted units in a way that loosens the law (all unwarranted units will be kept where possible, rather than leaving this decision up to the owner or removed due to illegality). Such changes are wholly unrelated to the unique climate, geography, or topography of San Francisco. San Francisco Building Code § 109A requires the issuance of a Certificate of Final Completion and Occupancy (“CFCO”) prior to any residential use, but the Controls (under the auspices of the Planning Code) seek to compel residential use without the prior issuance of a CFCO. California Building Code § 3408 explicitly authorizes the change of use from a more hazardous classification (e.g., residential) to a less hazardous classification (e.g., commercial). California Historical Building Code § 8-302 explicitly authorizes the return of a historical building to its historical use – in this case, office use. The City has not followed the substantive or procedural requirements for deviation from the California Building Code.
 - b. After exercising their rights under the state’s Ellis Act, property owners will be unable to obtain authorization to remove an unwarranted unit; nor will they be able to rent such units given their unwarranted status. This means that use of any kind will be prohibited. This constitutes an impermissible burden on the state-law right to go out of the residential rental business, in direct contravention of the Ellis Act. This Ordinance is not a valid exercise of local-government authority over land use; rather, it is a deliberate attempt to interfere with rights guaranteed by the Ellis Act.
 - c. This Ordinance is apparently being proposed pursuant to the state Granny Flat law, Government Code Section 65852.2. However, that law applies to single family homes. The Ordinance exceeds San Francisco’s authority to enact such legislation.
4. The Ordinance’s requirement that Notices of Violation be retroactively re-issued with instructions to legalize unlawful units rather than remove them would violate the vested rights of property owners who have already taken substantial steps to remove unlawful units in accordance with existing Notices of Violation. Furthermore, the Ordinance’s newly amended requirement that the “Conditional Use requirement of Subsection (c)(1) shall apply to (A) any building or site permit issued for Removal of an Unauthorized Unit on or after March 1, 2016, and (B) any permit issued for Removal of an Unauthorized Unit prior to March 1, 2016 that has been suspended by the City or in which the applicant’s rights have not vested” clearly targets the Owners and their wrongfully suspended Building Permit Application No. 201307262890 for 1049 Market Street, in which their rights have vested. It also changes the rules for property owners across the City who already have permits to remove residential units, disintitling their projects with no CEQA review of the environmental consequences.

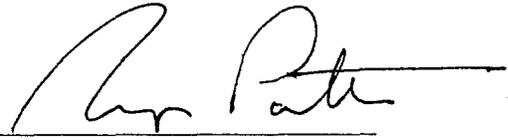
5. Enactment of the Ordinance violates Due Process rights. This may constitute an adjudicatory action as it regards actual owners subject to Notices of Violation for unlawful units. Such property owners are uniquely affected by this Ordinance and stand to be deprived of significant property rights, as they will now be unable to remove those units without difficult (or impossible) procedural hurdles designed to result in denial of Conditional Use authorization, if such permission is available at all. Those owners are entitled to notice of the consideration of this Ordinance and an opportunity to object, including pursuant to *Horn v. Cty. of Ventura*, 24 Cal. 3d 605 (1979). Additionally, the requirement that Notices of Violation require legalization conflicts with the requirement (and purported option) to obtain Conditional Use authorization to remove an unlawful unit. Lastly, the Ordinance radically departs from fundamental principles of zoning law, which protect lawful and principally permitted uses and do not protect unlawful or unpermitted uses. At a minimum, the legislative changes in the Ordinance are landlord-tenant measures, inappropriate for the Planning and Building Codes, and they should be proposed as an amendment to the Rent Ordinance.
6. The Ordinance does not advance a legitimate state interest. The purpose of the Ordinance is to target and punish the Owners for their unpopular but lawful attempt to evict tenants for illegal and unsafe residential use. The Ordinance attempts to force the Owners to maintain a life-safety hazard despite the Department of Building Inspection's issuance of Notices of Violation to cure that unlawful and hazardous condition.
7. The Ordinance applies landscaping and permeable surface requirements for new buildings and building additions to unit mergers which do not change the square footage or building footprint in any way. There is no nexus for this requirement and it will make even desirable unit mergers virtually impossible.
8. The Ordinance makes merging units extremely costly and time-consuming, discouraging family-friendly housing by making it even more expensive and less attainable, as shown in the February 1 Economic Impact Report.
9. The Ordinance's financial feasibility test is unworkable. Legalization is deemed financially feasible if the increase in value is equal to the cost of legalization. However, an owner will have to pay the legalization costs up front but can only realize a gain in value upon sale. Many, if not most, owners will not be able to afford to pay those costs up front; and even if they could, Ordinance No. 131148 prohibits "passing through" these capital improvement costs to tenants to reimburse an owner. Individual owners—rather than the City as a whole—will be forced to bear the burden of the City's "housing crisis"; this is a crisis for which the individual owners are not responsible. Under the Ordinance, they will be forced to spend considerable funds with no financial upside, effectively subsidizing existing tenants. Moreover, the Ordinance's financial feasibility test is also unworkable for another reason: the value of a property containing an illegal unit will generally be *reduced* by legalization, not increased, especially in the case of single-family homes which would not otherwise be subject to Rent Control.

10. The controls constitute unjust interference with the Department of Building Inspection's and Planning Department's Charter obligations to enforce the City Codes.
11. The Ordinance would effect a regulatory taking of private property without compensation. Property owners cannot charge rent for illegal residential use, and the Controls seek to prevent any other use.

We respectfully request that this Committee reject the proposed Ordinance. If the Ordinance is enacted, we are prepared to file suit.

Very truly yours,

ZACKS & FREEDMAN, P.C.

A handwritten signature in black ink, appearing to read "Ryan Patterson", written over a horizontal line.

Ryan J. Patterson

Encl.



NOTICE OF MEETING

Regular Meeting of the CODE ADVISORY COMMITTEE

DATE: February 10, 2016

TIME: 9:30 a.m. to 11:00 a.m.

LOCATION: 1650 Mission Street, Room 431
(Thru Room 400, Planning Dept. Forth floor)

This Committee meets regularly every second Wednesday of the month at 1650 Mission Street, Room 431, 4th Floor (City Planning Department). If you wish to be placed on a mailing list for agendas, please call (415) 575-6832.

Note: Public comment is welcome and will be heard during each item. Reference documents relating to agenda are available for review at the 1660 Mission Street, 1st floor. For information, please call Kirk Means at (415) 575-6832.

AGENDA

- 1.0 Call to Order, Roll Call and confirmation of quorum.
- 2.0 Discussion and possible action regarding a proposed ordinance (file #150732) amending the Building Code to require any existing building with a place of public accommodation either to have all primary entries and path of travel into the building accessible by persons with disabilities or to receive from the City a determination of equivalent facilitation, technical infeasibility, or unreasonable hardship; establishing a Disability Access Compliance Unit within the Department of Building Inspection; establishing a fee to offset the costs of the disability access improvement program; affirming the Planning Department's California Environmental Quality Act determination; making findings of local conditions under the California Health and Safety Code; and directing the Clerk of the Board of Supervisors to forward the legislation to the California Building Standards Commission upon final passage. The possible action would be to make a recommendation to the full Code Advisory Committee for their further action. (20 minutes)
- 3.0 Discussion and possible action regarding a proposed ordinance (file# 160024) amending the Police Code to mandate that businesses and places of public accommodation designate single-user toilet facilities that are available to the public or employees as all-gender and accessible to persons of any gender identity, and require enforcement of the signage requirements by the Department of Building Inspection; amending the Administrative Code to require buildings on land that the City owns or leases to provide all-gender toilet facilities; and affirming the Planning Department's determination under the California Environmental Quality Act. The possible action would be to make a recommendation to the full Code Advisory Committee for their further action. (10 minutes)

- 4.0 Discussion and possible action regarding a proposed ordinance (file# 150494-2) amending the Planning Code to require Conditional Use authorization for the removal of any residential unit, whether legal or illegal, and compliance with landscaping and permeable surfaces requirements for building additions and residential mergers; amending the Building Code to require that notices of violation mandate legalization of an illegal unit unless infeasible under the Building Code or the Planning Commission approves its removal; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, Planning Code Section 302, and the eight priority policies of Planning Code, Section 101.1. The possible action is to make a recommendation to the Building Inspection Commission for their further action. (20 minutes)

- 5.0 Discussion and possible action regarding a proposed ordinance (file141118) amending the Building Code to require that 1) the facades of certain buildings having five or more stories be inspected periodically by a licensed architect or engineer; 2) inspection reports be submitted to the owner and the Department of Building Inspection according to an inspection and reporting schedule; 3) maintenance of the facades be conducted in accordance with an Administrative Bulletin that is based on a notional standard; 4) establishing a fee to compensate the Department for review and related evaluation processing; 5) making findings, including environmental findings, and findings under the California Health and Safety Code; and 6) directing the Clerk of the Board of Supervisors to forward this Ordinance to the California Building Standards Commission upon final passage (20 minutes).

- 6.0 Discussion and possible action regarding a proposed change to Section 4 (g) (2) (i) and update of other sections of existing Administrative Bulletin AB-047, Specific Submittal Criteria for Reports, Special Inspections and Final Acceptance Testing of Smoke Control Systems. The possible action would be to make a recommendation to the Building Inspection Commission for their further action. (10 minutes)

- 7.0 Discussion and possible action regarding propose code changes to California Plumbing Code Sections 606.3 Multi-dwelling Units, 606.5 Control Valves, and 606.2 Fullway valve. The possible action is to make a recommendation to the Building Inspection Commission for their further action. (10 minutes)

- 8.0 Public Comments on items not on this agenda but within the jurisdiction of the Code Advisory Committee. Comment time is limited to 3 minutes or as determined by of the Chairperson

- 9.0 Committee comments on items not on this agenda

- 10.0 Subcommittee Reports: (Discussion & possible action) (5 minutes)
 - a. Housing Code Subcommittee:
Subcommittee Chair: Jim Reed
Subcommittee Members: Ira Dorter; Henry Karnilowicz

 - b. Mechanical Electrical Plumbing & Fire Subcommittee:
Subcommittee Chair: Jim Reed
Subcommittee Members: Robert Wong, M.E., Henry Karnilowicz, Brian Salyers, F.P.E.

 - c. Administrative & General Design and Disability Access Subcommittee
Subcommittee Chair: Tony Sanchez-Corea

Subcommittee Members: Arnie Lerner, FAIA, CASp, Zachary Nathan, AIA, CASp, Henry Karnilowicz, Jonathan Rodriguez

d. Structural Subcommittee:

Subcommittee Chair: Stephen Harris, S.E.

Subcommittee Members: Rene' Vignos, S.E., LEED A.P., Marc Cunningham, Ned Fennie, AIA

e. Green Building Subcommittee:

Subcommittee Chair: Zachary Nathan, AIA, CASp

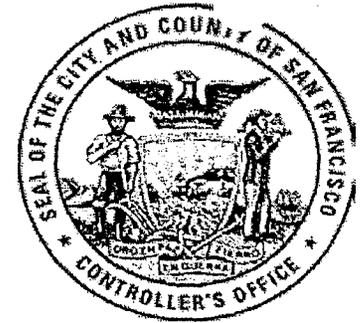
Subcommittee Members: Arnie Lerner, FAIA, CASp, Ilene Dick; Kevin Wallace, Henry Karnilowicz, Robert Wong, M.E., Michael Chavez

11.0 Review of communication items. The Committee may discuss or acknowledge communication items received for discussion.

12.0 Committee Member's and Staff's identification agenda items for the next meeting, as well as current agenda items to be continued to another CAC regular meeting or special meeting, or a subcommittee meeting. CAC discussion and possible action regarding administrative issues related to building codes.

13.0 Adjournment.

Note to Committee Members: Please review the appropriate material and be prepared to discuss at the meeting. If you are unable to attend, please call Chairperson Ned Fennie at (415) 278-9596 or Building Inspector Kirk Means at (415) 575-6832. The meeting will begin promptly.



Conditional Use Requirement for Removal of an Illegal Housing Unit: Economic Impact Report

Office of Economic Analysis
Item # 150494
February 1st, 2016

Introduction

- The proposed legislation would amend the Section 317 of the Planning Code to require a conditional use (CU) authorization for the removal of an illegal housing unit. Currently, only the removal of a legal housing unit requires a conditional use.
- A Notice of Violation for an illegal unit, from the Department of Building Inspection, would require a property owner to file a permit to legalize the unit, unless it is infeasible under the building code, or the Planning Commission approves removal of the unit under CU authorization.
- The legislation would also require compliance with landscaping and permeable surface requirements for residential merger and where addition to a building structure increases the existing gross floor areas by 20%.
- The office of Economic Analysis has prepared this report because the proposal could have material economic impact on the city's economy.
- In particular, limitation on demolition of illegal units could reduce the housing burden of low-income households, by maintaining a greater supply of housing at the low end of the private market.

Economic Impact Factors

- Building permit data suggests that illegal units are most often removed to expand an existing, larger, housing unit on the same parcel.
- By placing new restrictions on the removal of illegal units, the legislation would effectively expand the housing supply at the low end of the private housing market. This conclusion is based on the assumption that a CU authorization to remove an illegal unit would be no more likely to be granted than a CU authorization to remove an authorized unit.
- The result of that would be to put downward pressure on housing prices facing low-income households seeking housing in the city.
- On the other hand, limiting the removal of unauthorized units would inhibit the expansion of large units which are in demand at the upper end of the market. The resulting supply constraint at the upper end would tend to inflate prices at the upper end of the market. To the extent that supply is not expanded elsewhere (by increasing the attractiveness of upper-end properties in other ways, for example), then the price increase will be felt throughout the market.

Impact on Housing Prices

- The impact on citywide housing prices will depend on the number of illegal units removed each year. Unfortunately, since illegal units are unpermitted, data on the removal (and creation) of illegal units is indirect, and likely understates the extent of the activities.
- By analyzing building permit applications, the Planning Department has estimated that an average of 23 illegal units have been removed annually, over the 2004-14 period (see next page).
- If this trend is accurate and continues, the proposed legislation would lead to a decline in housing prices of 1% per year for 1-room housing units, on average over the next 20 years. This estimate is based on the total number of 1 room housing units currently in the city, as reported by the Census.
- On the other hand, the price increase at the upper end of the market is highly uncertain, because we lack data on the size of units that have been merged with an illegal unit, and how the supply constraint would ripple through the housing market. If these units would generally have 6 rooms or above after merger, then prices for those largest housing units in the city could increase by 0.02 to 0.04%, on average over the next 20 years.
- The net impact on citywide housing prices depends on how property owners react to the legislation and whether they make alternative actions to improve the value of their property. We are unable to estimate that impact with the available data.

Trends in the Demolition of Illegal Housing Units in San Francisco, 2004-14

Year	Illegal Units Removed
2004	22
2005	38
2006	12
2007	10
2008	19
2009	8
2010	6
2011	39
2012	2
2013	70
2014	24
Average	23

Source: Housing Element 2014, Planning Department

Staff Contacts

Ted Egan, Ph.D., Chief Economist
ted.egan@sfgov.org
(415) 554-5268

Asim Khan, Ph.D., Principal Economist
asim.khan@sfgov.org
(415) 554-5369

1 RYAN J. PATTERSON (SBN 277971)
2 ZACKS & FREEDMAN, P.C.
3 235 Montgomery Street, Suite 400
4 San Francisco, CA 94104
5 Tel: (415) 956-8100
6 Fax: (415) 288-9755

7 Attorneys for 1049 Market Street, LLC
8 and 1067 Market Street, LLC

9 SAN FRANCISCO BOARD OF SUPERVISORS

10 DECLARATION OF MARIO BALLARD

11 File No.: 150087
12 Re: Interim Zoning Controls

13 I, Mario Ballard, declare as follows:

14 1. I make this declaration based on facts personally known to me, except as to
15 those facts stated on information and belief, which facts I believe to be true.

16 2. I am a retired San Francisco Fire Captain, former Chief of the San Francisco
17 Fire Department's Plan Check operations, and former Captain, Bureau of Fire Prevention &
18 Public Safety. I currently consult on fire-related issues.

19 3. Buildings designed for commercial occupancy often lack life-safety features that
20 are required for residential occupancy. This mismatch creates a substantial risk of harm to
21 residential occupants of commercial buildings that do not meet Building Code or Fire Code
22 requirements for residential occupancy.

23 4. I am familiar with the building located at 1049 Market Street and 1067 Market
24 Street, San Francisco, CA (the "Buildings"), which were constructed and permitted for
25 commercial occupancy. I am informed and believe that the Buildings do not meet code
26
27
28

-1-
DECLARATION OF MARIO BALLARD

ZACKS & FREEDMAN, P.C.
235 MONTGOMERY STREET, SUITE 400
SAN FRANCISCO, CALIFORNIA 94104

ZACKS & FREEDMAN, P.C.
235 MONTGOMERY STREET, SUITE 400
SAN FRANCISCO, CALIFORNIA 94104

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

requirements for residential occupancy because they lack required glazing in sleeping areas required for rescue windows up to and including the third floors.

5. I am informed and believe that Board of Supervisors File No. 150087 (the "Resolution") seeks to delay or prevent the abatement of extant unpermitted residential use of the Buildings, which would perpetuate a serious life-safety risk, not only to those occupying the building but also to fire personnel responding to an incident expecting certain life-safety features to be in place.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this was executed on March 3, 2015.

Designated by:
Mario Ballard
283BD3AF4471ARD...
Mario Ballard

MARIO BALLARD & Associates
1335 Sixth Avenue, San Francisco, California 94122
(415) 640-4283
marioballardsf@aol.com

Mario Ballard, Principal

CAREER SUMMARY

Principal, Mario Ballard and Associates	5/1/2007-Present
Principal, Zari Consulting Group	1/1/2013-Present
Captain, Bureau of Fire Prevention, Plan Review Division	2001- 4/21/2007
Lieutenant, Bureau of Fire Prevention, Plan Check Division	1994 - 2001
Inspector, San Francisco Fire Department	1991 - 1994
Firefighter, San Francisco Fire Department	1974 - 1991
Linebarger Plumbing and Construction, SF CA	1974 - 1980
Servadei Plumbing Company, SF CA	1974
United States Army, Army Security Agency	1972 - 1974

LICENSES

ICC, International Code Conference Certified Building Plans Examiner

CERTIFICATIONS

ICC Advanced Occupancy
ICC Advanced Schematic Design
ICC Building Areas and Fire Design
ICC Advanced Types of Construction
ICC Advanced Means of Egress
CFCA Certificate of Training of Locally Adopted Ordinances and Resolutions
IFC Institute Certificate Application of the UBC for Fire Code Enforcement
ICBO Certificate on Course Completion on Fundamentals of Exiting
ICBO Certificate on Course Completion Complex Exiting
ICBO Certificate on Course Completion Building Use and Construction Type
ICBO Certificate on Course Completion Fire Protection, Building Size and Location
ICBO Course Overview of the Uniform Building Code
California Fire Chief's Association Fire Prevention Officers' Section Fire Alarm Levels I & II
Fire Sprinkler Advisory Board of Northern California & Sprinkler Fitter Local 483 Fire Sprinkler Seminar
National Fire Sprinkler Association, Inc., Hydraulics for Sprinklers
EDI Code International, Innovative Code Enforcement Techniques
Certification State of California Title 19/Title 24

EDUCATION

Fire Strategy & Tactics	1981-1993
Fire Service Supervision	
Fire Prevention 1A, 1B, 1C	
Fire Prevention 2A, 2B	
Fire Prevention Officer Level One	
Firefighter Level One and Two	
Arson 1A, 1B	
Hazardous Materials 1A, 1B	
Instructor 1A	
Fire Management 1A	
City College of San Francisco	1970-1972

COMMITTEE INVOLVEMENT

Building Code Advisory Committee
Hunters Point Development Team
Mission Bay Task Force
Treasure Island Development Team
Trans-Bay Transit Center
Muni Metro, Light Rail Third Street Corridor
Department of Building Inspection MIS Case Development
San Francisco Board of Examiners Fire Department Representative
Member California Fire Chief's Association Fire Prevention Officers
BOMA Code Advisory Committee
Mayor's Office of Economic Development Bio-Teck Task Force
Hunters Point Redevelopment Task Force
Building Code Standards Committee 1996-1999
Participant in the Eighth Annual California Fire Prevention-Institute Workshop,
"Providing the Optimum in Fire and Life Safety Training"
Participant North/South California Fire Prevention Officers Workshops 1996 - 1998
Guest Speaker at SMACNA (Sheet Metal and Air Conditioning Contractors National Association)

PUBLIC SERVICE

Rooms That Rock For Chemo (RTR4C), Director Secretary	2011-Present
San Francisco Spina Bifida Association, (Past) Vice President	

File No. 150494
2/0/2016 @ 11:29 am
Received via email
dh

February 1, 2016

To: Land Use and Transportation Committee - BOARD OF SUPERVISORS
RE: FILE 150494

Dear Supervisors, Wiener, Cohen and Peskin:

In this proposed ordinance there is a loophole that allows for large sized units to be reduced in size whether the unit is legal or illegal when a developer takes a 2 unit building and creates one large, luxury unit and downsizes the second unit but avoids the issue of unit merger or loss of housing.

It is Section 317 (b) (7) the fact of the decrease of no more than 25% is a loophole that allows units to be decreased by just under that percentage. Additionally, the phrase, "*The Planning Commission may reduce the numerical element of this criterion by up to 20% of its value should it deem that adjustment is necessary to implement the intent of the Section 317 to conserve existing housing and preserve affordable housing.*" is not enough to deal with this loophole, because these units are often approved by staff. They do not get a DR currently and even under this legislation they would not have a CU as long as they do not reach the 25% number...at least that is how the legislation appears to me.

This issue of a change in one unit to increase another often results in an unbalanced housing stock where the decreased unit becomes somewhat marginal while in the increased unit becomes very grand...and expensive. Additionally the decreased unit can easily be absorbed into the large second unit and is marketed in that manner. And there is nothing that compels the property owner/developer to either rent or sell this second unit on the open market. Here are some examples of what has happened in Noe Valley and it is probably happening throughout the City.

1. Smaller unit put behind the garage, moved "downstairs";
2. Two bedroom becomes one bedroom;
3. Living Rooms become "media rooms" with full kitchen becoming efficiency kitchen (there is no requirement that rooms "translate" as the units change;
4. Family sized units become more suitable as guest quarters or au pair type units.

Thank you.

Georgia Schuttish (schuttishtr@sbcglobal.net) resident of Noe Valley

ZACKS & FREEDMAN

A PROFESSIONAL CORPORATION

235 Montgomery Street, Suite 400
San Francisco, California 94104
Telephone (415) 956-8100
Facsimile (415) 288-9755
www.zulpc.com

February 1, 2016

File No. 150494

2/1/2016 Received
in Committee

DN

Land Use and Transportation Committee
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102

Re: File No. 150494 – Removal of Residential Units

Dear Members of the Land Use and Transportation Committee:

This office represents 1049 Market Street, LLC and 1067 Market Street, LLC (collectively “Owners”) and the Small Property Owners of San Francisco and Small Property Owners of San Francisco Institute. File No. 150949 (the “Ordinance”) targets the property owners and their properties, 1049 Market Street and 1067 Market Street, San Francisco, CA, as well as other owners and their properties across the City.

SPOSF and the Owners oppose the Ordinance and submit these comments in advance of the Committee hearing thereon.

1. The Committee’s hearing on the Ordinance is premature. The City has failed to re-refer the Ordinance to the Planning Commission for consideration following the substantial amendment of the Ordinance and substitution of a new version thereof (Version 3), in violation of City and County of San Francisco Charter Article IV, § 4.105 and San Francisco Planning Code § 302. The Planning Commission has not had an opportunity to consider Version 3 and make recommendations, and it will not have such an opportunity prior to the Committee’s hearing. Likewise, the Ordinance was re-referred to the Planning Department for environmental review on January 28, 2016, but a response has not yet been received, in violation of San Francisco Administrative Code § 31.08.
2. The Ordinance was misclassified as “not a project” for CEQA purposes. This is erroneous.
 - a. The Ordinance constitutes a citywide rezoning via amendment of the Planning Code. Unit removal would no longer be permitted; it would now be merely *conditionally* permitted. By the same token, non-residential uses would no longer be permitted; they would now be merely *conditionally* permitted. This is a major change of unprecedented scale in San Francisco. On one hand, owners would be deprived of substantial property rights – to use their properties for non-residential purposes. On

the other hand, properties across the City would now be required to have more dwelling units than under existing law. This rezoning conflicts with the General Plan, which respects and directs principally permitted uses other than residential use in areas of the City that are covered by the Ordinance.

- b. The Ordinance will cause blight and urban decay. After an eviction, owners will likely be unable to obtain conditional use authorization to remove the subject unit and use it for nonresidential purposes; the required Conditional Use findings are clearly designed to result in denial. As a result, properties across the City will sit empty. Owners of single-family homes, in particular, do not want second units because of the risk of those second units subjecting the entire building to Rent Control. Such owners would instead leave unlawful units vacant to avoid Notices of Violation that can only be cured by subjecting the entire building to Rent Control. This is most clearly true of unlawful units that have been the subject of no-fault evictions, in which case residential merger is prohibited.
- c. Lastly, the compulsory residential use of nonresidential structures is unsafe. Forcing owners to continue the residential rental of garages, offices, warehouses, and other spaces that were not designed for residential uses poses a significant risk to the public and occupants of those and neighboring structures. This places an additional burden on public safety resources and infrastructure. Perversely, the Ordinance would force the maintenance of unlawful uses that did not receive proper CEQA review in the first place.

3. The Ordinance is preempted by state law.

- a. The Ordinance changes the San Francisco Building Code, in conflict with the California Building Code. Specific requirements must be met in order to deviate from the state code, and those requirements are unmet in this case. The Ordinance attempts to change state requirements for unwarranted units in a way that loosens the law (all unwarranted units will be kept where possible, rather than leaving this decision up to the owner). Such changes are wholly unrelated to the unique climate, geography, or topography of San Francisco. SFBC Section 109A requires the issuance of a Certificate of Final Completion and Occupancy (“CFCO”) prior to any residential use, but the Controls (under the auspices of the Planning Code) seek to compel residential use without the prior issuance of a CFCO. California Building Code Section 3408 explicitly authorizes the change of use from a more hazardous classification (e.g., residential) to a less hazardous classification (e.g., commercial). California Historical Building Code Section 8-302 explicitly authorizes the return of a historical building to its historical use – in this case, office use. The City has not followed the substantive or procedural requirements for deviation from the California Building Code.

- b. After exercising their rights under the state's Ellis Act, property owners will be unable to obtain authorization to remove an unwarranted unit; nor will they be able to rent such units given their unwarranted status. This means that use of any kind will be prohibited. This constitutes an unconstitutional taking of private property and an unlawful burden on the exercise of the right to go out of the residential rental business.
 - c. This Ordinance is apparently being proposed pursuant to the state Granny Flat law, Government Code Section 65852.2. However, that law applies to single family homes. The Ordinance exceeds San Francisco's authority to enact such legislation.
4. The Ordinance's requirement that Notices of Violation be retroactively re-issued with instructions to legalize unlawful units rather than remove them would violate the vested rights of property owners who have already taken substantial steps to remove unlawful units in accordance with existing Notices of Violation.
5. Enactment of the Ordinance violates Due Process rights. This may constitute an adjudicatory action as it regards actual owners subject to Notices of Violation for unlawful units. Such property owners are uniquely affected by this Ordinance and stand to be deprived of significant property rights, as they will now be unable to remove those units without difficult procedural hurdles designed to result in denial of Conditional Use authorization, if such permission is available at all. Those owners are entitled to notice of the consideration of this Ordinance and an opportunity to object, including pursuant to *Horn v. Cty. of Ventura*, 24 Cal. 3d 605 (1979). Additionally, the requirement that Notices of Violation require legalization conflicts with the requirement (and purported option) to obtain Conditional Use authorization to remove an unlawful unit. Lastly, the Ordinance radically departs from fundamental principles of zoning law, which protect lawful and principally permitted uses and do not protect unlawful or unpermitted uses. At a minimum, the legislative changes in the Ordinance are landlord-tenant measures, inappropriate for the Planning and Building Codes, and they should be proposed as an amendment to the Rent Ordinance.
6. The Ordinance does not advance a legitimate state interest. The purpose of the Ordinance is to target and punish the Owners for their unpopular but lawful attempt to evict tenants for illegal and unsafe residential use. The Ordinance attempts to force the Owners to maintain a life-safety hazard despite the Department of Building Inspection's issuance of Notices of Violation to cure that unlawful and hazardous condition.
7. The controls constitute unjust interference with the Department of Building Inspection's and Planning Department's Charter obligations to enforce the City Codes.

8. The Ordinance would effect a regulatory taking of private property without compensation. Property owners cannot charge rent for illegal residential use, and the Controls seek to prevent any other use.

We respectfully request that this Committee reject the proposed Ordinance. If the Ordinance is enacted, we are prepared to file suit.

Very truly yours,

ZACKS & FREEDMAN, P.C.



Ryan J. Patterson

Encl.

ZACKS & FREEDMAN, P.C.
235 MONTGOMERY STREET, SUITE 400
SAN FRANCISCO, CALIFORNIA 94104

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RYAN J. PATTERSON (SBN 277971)
ZACKS & FREEDMAN, P.C.
235 Montgomery Street, Suite 400
San Francisco, CA 94104
Tel: (415) 956-8100
Fax: (415) 288-9755

Attorneys for 1049 Market Street, LLC
and 1067 Market Street, LLC

SAN FRANCISCO BOARD OF SUPERVISORS

DECLARATION OF MARIO BALLARD

File No.: 150087
Re: Interim Zoning Controls

I, Mario Ballard, declare as follows:

1. I make this declaration based on facts personally known to me, except as to those facts stated on information and belief, which facts I believe to be true.

2. I am a retired San Francisco Fire Captain, former Chief of the San Francisco Fire Department's Plan Check operations, and former Captain, Bureau of Fire Prevention & Public Safety. I currently consult on fire-related issues.

3. Buildings designed for commercial occupancy often lack life-safety features that are required for residential occupancy. This mismatch creates a substantial risk of harm to residential occupants of commercial buildings that do not meet Building Code or Fire Code requirements for residential occupancy.

4. I am familiar with the building located at 1049 Market Street and 1067 Market Street, San Francisco, CA (the "Buildings"), which were constructed and permitted for commercial occupancy. I am informed and believe that the Buildings do not meet code

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

requirements for residential occupancy because they lack required glazing in sleeping areas required for rescue windows up to and including the third floors.

5. I am informed and believe that Board of Supervisors File No. 150087 (the "Resolution") seeks to delay or prevent the abatement of extant unpermitted residential use of the Buildings, which would perpetuate a serious life-safety risk, not only to those occupying the building but also to fire personnel responding to an incident expecting certain life-safety features to be in place.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this was executed on March 3, 2015.

ZACKS & FREEDMAN, P.C.
235 MONTGOMERY STREET, SUITE 400
SAN FRANCISCO, CALIFORNIA 94104

DocuSigned by:
Mario Ballard
-263BD3AF44714B0...
Mario Ballard.

MARIO BALLARD & Associates
1335 Sixth Avenue, San Francisco, California 94122
(415) 640-4283
marioballardsf@aol.com

Mario Ballard, Principal

CAREER SUMMARY

Principal, Mario Ballard and Associates	5/1/2007-Present
Principal, Zari Consulting Group	1/1/2013-Present
Captain, Bureau of Fire Prevention, Plan Review Division	2001- 4/21/2007
Lieutenant, Bureau of Fire Prevention, Plan Check Division	1994 - 2001
Inspector, San Francisco Fire Department	1991 - 1994
Firefighter, San Francisco Fire Department	1974 - 1991
Linebarger Plumbing and Construction, SF CA	1974 - 1980
Servadei Plumbing Company, SF CA	1974
United States Army, Army Security Agency	1972 - 1974

LICENSES

ICC, International Code Conference Certified Building Plans Examiner

CERTIFICATIONS

ICC Advanced Occupancy
ICC Advanced Schematic Design
ICC Building Areas and Fire Design
ICC Advanced Types of Construction
ICC Advanced Means of Egress
CFCA Certificate of Training of Locally Adopted Ordinances and Resolutions
IFC Institute Certificate Application of the UBC for Fire Code Enforcement
ICBO Certificate on Course Completion on Fundamentals of Exiting
ICBO Certificate on Course Completion Complex Exiting
ICBO Certificate on Course Completion Building Use and Construction Type
ICBO Certificate on Course Completion Fire Protection, Building Size and Location
ICBO Course Overview of the Uniform Building Code
California Fire Chief's Association Fire Prevention Officers' Section Fire Alarm Levels I & II
Fire Sprinkler Advisory Board of Northern California & Sprinkler Fitter Local 483 Fire Sprinkler Seminar
National Fire Sprinkler Association, Inc., Hydraulics for Sprinklers
EDI Code International, Innovative Code Enforcement Techniques
Certification State of California Title 19/Title 24

EDUCATION

Fire Strategy & Tactics 1981-1993
Fire Service Supervision
Fire Prevention 1A, 1B, 1C
Fire Prevention 2A, 2B
Fire Prevention Officer Level One
Firefighter Level One and Two
Arson 1A, 1B
Hazardous Materials 1A, 1B
Instructor 1A
Fire Management 1A

City College of San Francisco 1970-1972

COMMITTEE INVOLVEMENT

Building Code Advisory Committee
Hunters Point Development Team
Mission Bay Task Force
Treasure Island Development Team
Trans-Bay Transit Center
Muni Metro, Light Rail Third Street Corridor
Department of Building Inspection MIS Case Development
San Francisco Board of Examiners Fire Department Representative
Member California Fire Chief's Association Fire Prevention Officers
BOMA Code Advisory Committee
Mayor's Office of Economic Development Bio-Teck Task Force
Hunters Point Redevelopment Task Force
Building Code Standards Committee 1996-1999
Participant in the Eighth Annual California Fire Prevention-Institute Workshop,
"Providing the Optimum in Fire and Life Safety Training"
Participant North/South California Fire Prevention Officers Workshops 1996 - 1998
Guest Speaker at SMACNA (Sheet Metal and Air Conditioning Contractors National Association)

PUBLIC SERVICE

Rooms That Rock For Chemo (RTR4C), Director Secretary 2011-Present
San Francisco Spina Bifida Association, (Past) Vice President

File No. 150494
2/1/2016 Received
in Committee

February 1, 2016

To: Land Use and Transportation Committee – BOARD OF SUPERVISORS
RE: FILE 150494

Dear Supervisors, Wiener, Cohen and Peskin:

In this proposed ordinance there is a loophole that allows for large sized units to be reduced in size whether the unit is legal or illegal when a developer takes a 2 unit building and creates one large, luxury unit and downsizes the second unit but avoids the issue of unit merger or loss of housing.

It is Section 317 (b) (7) the fact of the decrease of no more than 25% is a loophole that allows units to be decreased by just under that percentage. Additionally, the phrase, "*The Planning Commission may reduce the numerical element of this criterion by up to 20% of its value should it deem that adjustment is necessary to implement the intent of the Section 317 to conserve existing housing and preserve affordable housing.*" is not enough to deal with this loophole, because these units are often approved by staff. They do not get a DR currently and even under this legislation they would not have a CU as long as they do not reach the 25% number...at least that is how the legislation appears to me.

This issue of a change in one unit to increase another often results in an unbalanced housing stock where the decreased unit becomes somewhat marginal while in the increased unit becomes very grand...and expensive. Additionally the decreased unit can easily be absorbed into the large second unit and is marketed in that manner. And there is nothing that compels the property owner/developer to either rent or sell this second unit on the open market. Here are some examples of what has happened in Noe Valley and it is probably happening throughout the City.

1. Smaller unit put behind the garage, moved "downstairs";
2. Two bedroom becomes one bedroom;
3. Living Rooms become "media rooms" with full kitchen becoming efficiency kitchen (there is no requirement that rooms "translate" as the units change);
4. Family sized units become more suitable as guest quarters or au pair type units.

Thank you.

Georgia Schuttish (schuttishtr@sbcglobal.net) resident of Noe Valley

BOARD of SUPERVISORS



City Hall
1 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

TO: Olson Lee, Director, Mayor's Office of Housing & Community Development
Mohammed Nuru, Director, Public Works
Delene Wolf, Executive Director, Rent Board

FROM:  Alisa Somera, Assistant Clerk, Land Use and Transportation Committee, Board of Supervisors

DATE: January 28, 2016

SUBJECT: SUBSTITUTE LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following **substitute** legislation, introduced by Supervisor Avalos on January 26, 2016:

File No. 150494-3

Ordinance amending the Planning Code to require Conditional Use authorization for the removal of any residential unit (whether legal or illegal) and compliance with landscaping and permeable surfaces requirements for building additions and residential mergers, and to exempt from the Conditional Use application requirement illegal units where there is no legal path for legalization and residential units that have received prior Planning approval; amending the Building Code to require that notices of violation mandate legalization of an illegal unit unless infeasible under the Building Code or the Planning Commission approves its removal, and requiring re-issuance of unabated notices of violation to include the new requirement; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, Planning Code, Section 302, and the eight priority policies of Planning Code, Section 101.1.

If you have any additional 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: Eugene Flannery, Secretary
Frank Lee, Secretary to the Director
Sophie Hayward, Policy Legislative Affairs

BOARD of SUPERVISORS



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

January 28, 2016

Planning Commission
Attn: Jonas Ionin
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Commissioners:

On January 26, 2016, Supervisor Avalos introduced the following **substitute** legislation:

File No. 150494-3

Ordinance amending the Planning Code to require Conditional Use authorization for the removal of any residential unit (whether legal or illegal) and compliance with landscaping and permeable surfaces requirements for building additions and residential mergers, and to exempt from the Conditional Use application requirement illegal units where there is no legal path for legalization and residential units that have received prior Planning approval; amending the Building Code to require that notices of violation mandate legalization of an illegal unit unless infeasible under the Building Code or the Planning Commission approves its removal, and requiring re-issuance of unabated notices of violation to include the new requirement; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, Planning Code, Section 302, and the eight priority policies of Planning Code, Section 101.1.

The proposed ordinance is being transmitted pursuant to Planning Code Section 302(b) for public hearing and recommendation. On December 10, 2015, the Planning Commission held a public hearing on this matter and recommendation "approval with modifications."

Angela Calvillo, Clerk of the Board

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

By: Alisa Somera, Assistant Clerk

- c: John Rahaim, Director of Planning
- Aaron Starr, Acting Manager of Legislative Affairs
- AnMarie Rodgers, Senior Policy Manager
- Scott Sanchez, Zoning Administrator
- Sarah Jones, Chief, Major Environmental Analysis
- Jeanie Poling, Environmental Planning
- Joy Navarrete, Environmental Planning

BOARD of SUPERVISORS



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

January 28, 2016

File No. 150494-3

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

Dear Ms. Jones:

On January 26, 2016, Supervisor Avalos introduced the following **substitute** legislation:

File No. 150494-3

Ordinance amending the Planning Code to require Conditional Use authorization for the removal of any residential unit (whether legal or illegal) and compliance with landscaping and permeable surfaces requirements for building additions and residential mergers, and to exempt from the Conditional Use application requirement illegal units where there is no legal path for legalization and residential units that have received prior Planning approval; amending the Building Code to require that notices of violation mandate legalization of an illegal unit unless infeasible under the Building Code or the Planning Commission approves its removal, and requiring re-issuance of unabated notices of violation to include the new requirement; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, Planning Code, Section 302, and the eight priority policies of Planning Code, Section 101.1.

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 Somera".

By: Alisa Somera, Assistant Clerk

Attachment

cc: Joy Navarrete, Environmental Planning
Jeanie Poling, Environmental Planning

BOARD of SUPERVISORS



City Hall
1 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

TO: Tom Hui, Director, Department of Building Inspection
Sonya Harris, Secretary, Building Inspection Commission

FROM:  Alisa Somera, Assistant Clerk
Land Use and Transportation Committee

DATE: January 28, 2016

SUBJECT: SUBSTITUTE LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following substitute legislation, introduced by Supervisor Avalos on January 26, 2016:

File No. 150494-3

Ordinance amending the Planning Code to require Conditional Use authorization for the removal of any residential unit (whether legal or illegal) and compliance with landscaping and permeable surfaces requirements for building additions and residential mergers, and to exempt from the Conditional Use application requirement illegal units where there is no legal path for legalization and residential units that have received prior Planning approval; amending the Building Code to require that notices of violation mandate legalization of an illegal unit unless infeasible under the Building Code or the Planning Commission approves its removal, and requiring re-issuance of unabated notices of violation to include the new requirement; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, Planning Code, Section 302, and the eight priority policies of Planning Code, Section 101.1.

The proposed ordinance is being transmitted pursuant to Charter, Section D3.750-5, for public hearing and recommendation. The Commission Secretary has sent confirmation that the Commission held a public hearing on January 20, 2016, and continued the matter to February 17, 2016.

Please forward me the Commission's recommendation and reports at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: alisa.somera@sfgov.org.

c: William Strawn, Department of Building Inspection
Carolyn Jayin, Department of Building Inspection

BOARD of SUPERVISORS



City Hall
1 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

TO: Tom Hui, Director, Department of Building Inspection
Sonya Harris, Secretary, Building Inspection Commission

FROM:  Alisa Somera, Assistant Clerk
Land Use and Transportation Committee

DATE: December 9, 2015

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following substitute legislation, introduced by Supervisor Avalos on December 1, 2015:

File No. 150494

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

The proposed ordinance is being transmitted pursuant to Charter, Section D3.750-5, for public hearing and recommendation. It is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Please forward me the Commission's recommendation and reports at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: alisa.somera@sfgov.org.

c: William Strawn, Department of Building Inspection
Carolyn Jayin, Department of Building Inspection

BOARD of SUPERVISORS



City Hall
1 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

TO: Olson Lee, Director, Mayor's Office of Housing & Community Development
Mohammed Nuru, Director, Public Works
Delene Wolf, Executive Director, Rent Board

FROM:  Alisa Somera, Assistant Clerk, Land Use and Transportation Committee, Board of Supervisors

DATE: December 1, 2015

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following substitute legislation, introduced by Supervisor Avalos on December 1, 2015:

File No. 150494

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

If you have any additional 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: Eugene Flannery, Secretary
Frank Lee, Secretary to the Director
Sophie Hayward, Policy Legislative Affairs

BOARD of SUPERVISORS



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

December 9, 2015

Planning Commission
Attn: Jonas Ionin
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Commissioners:

On December 1, 2015, Supervisor Avalos introduced the following substitute legislation:

File No. 150494

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

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 and 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 Somera".

By: Alisa Somera, Assistant Clerk

c: John Rahaim, Director of Planning
Aaron Starr, Acting Manager of Legislative Affairs
AnMarie Rodgers, Senior Policy Manager
Scott Sanchez, Zoning Administrator
Sarah Jones, Chief, Major Environmental Analysis
Jeanie Poling, Environmental Planning
Joy Navarrete, Environmental Planning

BOARD of SUPERVISORS



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

December 9, 2015

File No. 150494

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

Dear Ms. Jones:

On December 1, 2015, Supervisor Avalos introduced the following substitute legislation:

File No. 150494

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

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 Somera".

By: Alisa Somera, Assistant Clerk

Attachment

cc: Joy Navarrete, Environmental Planning
Jeanie Poling, Environmental Planning

BOARD of SUPERVISORS



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

May 22, 2015

File No. 150494

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

Dear Ms. Jones:

On May 12, 2015, Supervisor Avalos introduced the following legislation:

File No. 150494

Ordinance amending the Planning Code to require conditional use authorization for all residential mergers and to require compliance with landscaping and permeable surfaces requirements for building additions and residential mergers, and affirming the Planning Department's California Environmental Quality Act determination; and making Planning Code, Section 302, findings, and making 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, appearing to read "A. Ausberry".

By: Andrea Ausberry, Assistant Clerk

Attachment

cc: Joy Navarrete, Environmental Planning
Jeanie Poling, Environmental Planning

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

May 22, 2015

Planning Commission
Attn: Jonas Ionin
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Commissioners:

On May 12, 2015, Supervisor Avalos introduced the following legislation:

File No. 150494

Ordinance amending the Planning Code to require conditional use authorization for all residential mergers and to require compliance with landscaping and permeable surfaces requirements for building additions and residential mergers, and affirming the Planning Department's California Environmental Quality Act determination; and making Planning Code, Section 302, findings, and making 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 and 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, appearing to read "A. Ausberry".

By: Andrea Ausberry, Assistant Clerk
Land Use and Transportation Committee

c: John Rahaim, Director of Planning
Aaron Starr, Acting Manager of Legislative Affairs
AnMarie Rodgers, Senior Policy Manager
Scott Sanchez, Zoning Administrator
Sarah Jones, Chief, Major Environmental Analysis
Jeanie Poling, Environmental Planning
Joy Navarrete, Environmental Planning

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

TO: Olson Lee, Director, Mayor's Office of Housing & Community Development
Mohammed Nuru, Director, Public Works
Delene Wolf, Executive Director, Rent Board

FROM: Andrea Ausberry, Assistant Clerk, Land Use and Transportation Committee,
Board of Supervisors

DATE: May 22, 2015

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, introduced by Supervisor Avalos on May 12, 2015:

File No. 150494

Ordinance amending the Planning Code to require conditional use authorization for all residential mergers and to require compliance with landscaping and permeable surfaces requirements for building additions and residential mergers, and affirming the Planning Department's California Environmental Quality Act determination; and making Planning Code, Section 302, findings, and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

If you have any additional 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:
Eugene Flannery, Secretary
Frank Lee, Secretary to the Director
Sophie Hayward, Policy Legislative Affairs

Print Form

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. [150494]
- 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

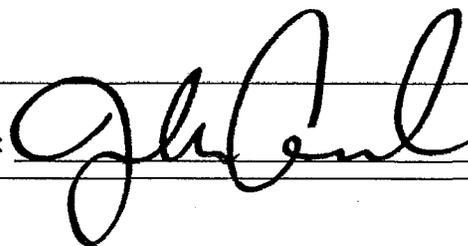
Subject:

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

The text is listed below or attached:

[Empty box for text listing]

Signature of Sponsoring Supervisor:



For Clerk's Use Only:

Print Form

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. 1500751
- 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):

Supervisors Avalos, Kim

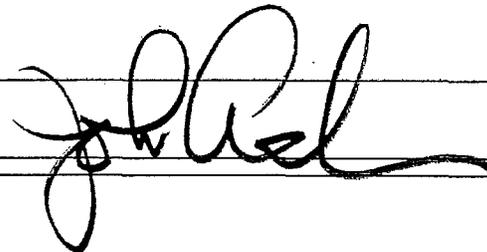
Subject:

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

The text is listed below or attached:

[Empty box for text listing]

Signature of Sponsoring Supervisor:



For Clerk's Use Only:

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 Avalos

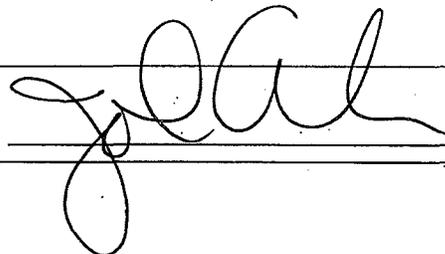
Subject:

Ordinance - Planning Code - Residential Mergers; Permeable Surfaces and Landscaping Requirements

The text is listed below or attached:

[Empty box for text listing]

Signature of Sponsoring Supervisor:



For Clerk's Use Only:

Print Form

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. [150494]
- 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):

Supervisors Avalos, Kim

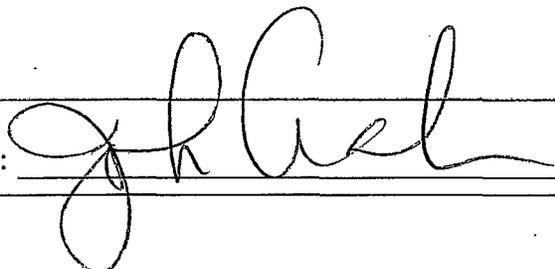
Subject:

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

The text is listed below or attached:

[]

Signature of Sponsoring Supervisor:



For Clerk's Use Only:

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 TRANSPORTATION COMMITTEE SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Malia Cohen, Chair
Land Use and Transportation Committee

FROM:  Alisa Somera, Assistant Clerk

DATE: February 9, 2016

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**
Tuesday, February 9, 2016

The following file should be presented as a **COMMITTEE REPORT** at the Board meeting, Tuesday, February 9, 2016. This item was acted upon at the Committee Meeting on Monday, February 8, 2016, at 1:30 p.m., by the votes indicated.

Item No. 33 **File No. 150494**

Ordinance amending the Planning Code to require Conditional Use authorization for the removal of any residential unit in a C-3 (Downtown Commercial) District (whether legal or illegal) and to require compliance Citywide with landscaping and permeable surfaces requirements for building additions and residential mergers, and to exempt from the Conditional Use application requirement illegal units in C-3 Districts where there is no legal path for legalization and residential units that have received prior Planning approval; amending the Building Code to require that notices of violation in a C-3 District order the filing of an application to legalize an illegal unit unless infeasible under the Building Code or the Planning Commission approves its removal, and to require re-issuance of unabated notices of violation in a C-3 District to include the new requirement; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, Planning Code, Section 302, and the eight priority policies of Planning Code, Section 101.1.

DUPLICATED (Duplicated File No. 160115)

AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE, by removing all proposed changes, except for those requiring Conditional Use authorization for the removal of any residential unit in a C-3 (Downtown Commercial) District, and requiring citywide compliance with landscaping and permeable surfaces requirements for building additions and residential mergers.

RECOMMENDED AS AMENDED AS A COMMITTEE REPORT

Vote: Supervisor Malia Cohen - Aye
Supervisor Scott Wiener - Aye
Supervisor Aaron Peskin - Aye

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

