



SAN FRANCISCO PLANNING DEPARTMENT

July 26, 2013

Ms. Angela Calvillo, Clerk
Honorable Supervisor Avalos
Board of Supervisors
City and County of San Francisco
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**Re: Transmittal of Planning Department Case Number 2013.0134T:
Planning Code Amendment: Conversion, Demolition, and Mergers and
Conformity of Residential Uses
Board File No. 13-0041
Planning Commission Recommendation: Approval with Modifications**

Dear Ms. Calvillo and Supervisor Avalos:

On July 18, 2013, the San Francisco Planning Commission conducted a duly noticed public hearing at the regularly scheduled meeting to consider the proposed amendments to the Planning Code introduced by Supervisor John Avalos as described in the draft Ordinance referenced above. At the hearing, the Planning Commission recommended approval with modifications. The modifications note, among other changes, that the Supervisor split the file so that the Commission can consider the proposed amendments to Planning Code Section 181 at a later date.

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "AM - Rodgers", with a long horizontal stroke extending to the right.

AnMarie Rodgers
Manager of Legislative Affairs

cc:

Supervisor John Avalos

Jon Givner, Deputy City Attorney

Judy Boyajian, Deputy City Attorney

Jason Elliot, Mayor's Director of Legislative & Government Affairs

Attachments (two hard copies of the following):

Planning Commission Resolution 18927

Draft Ordinance

Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 18927 Planning Code Text Change

HEARING DATE: JULY 18, 2013

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CA 94103-2479

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

RECOMMENDING THAT THE BOARD OF SUPERVISORS APPROVE WITH MODIFICATIONS A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO: 1) REVISE THE CRITERIA FOR REVIEWING AND THE DEFINITIONS OF RESIDENTIAL DEMOLITION, CONVERSION, AND MERGER OF UNITS; 2) PERMIT THE ALTERATION OF NON-CONFORMING UNITS IN REGARD TO DENSITY WITHOUT INCREASING THE NON-CONFORMITY IN OTHER ASPECTS; 3) ESTABLISH A PRESUMPTION IN FAVOR OF PRESERVING DWELLING UNITS IN ENFORCEMENT OF REQUIREMENTS FOR NON-CONFORMING USES AND STRUCTURES; AND TO 4) TO PERMIT ALTERATIONS TO NON-CONFORMING USES AND NON-COMPLYING STRUCTURES IN ORDER TO COMPLY WITH DISABLED ACCESS REQUIREMENTS OR TO PROVIDE SECURE BICYCLE PARKING; AND ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE PRIORITY POLICIES OF PLANNING CODE SECTION 101.

WHEREAS, on January 22, 2103, Supervisors Avalos introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 13-0041, which would amend Sections 207.7, 212(e), and 317 of the Planning Code regarding the loss of dwelling units, would amend Sections 180 and 181 regarding nonconforming units, and would make various amendments to consolidate criteria and references in the Planning Code;

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

WHEREAS, the proposed Ordinance has been determined to be exempt from environmental review under the General Rule Exclusion, California Environmental Quality Act Section 15060(c)(2); and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of

Department staff and other interested parties; and

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

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

MOVED, that the Commission hereby recommends that the Board of Supervisors *approve with modifications* the draft Ordinance and adopts the attached Resolution to that effect. The Planning Commission recommends the following modifications, described in detail in the attached Executive Summary:

1. **Split the draft Ordinance into two separate Ordinances:** one file that addresses the loss of dwelling units through demolition, merger, and conversion, as well as proposed amendments Section 180, and a second file that amends Planning Code Section 181 regarding enlargements and alterations of non-conforming uses. The modifications recommended in this Resolution reflect the Planning Commission's recommendations regarding the loss of dwelling units. The Commission will consider the proposed amendments to Planning Code Section 181 separately.
2. **Repeal Section 207.7 in its entirety.**
3. **Delete Section 212(e) in its entirety.**
4. **Add Requirements to and Amend Criteria in Section 317(c) and (d):**
 - a. Amend Section 317(c) Applicability in two ways: 1) Add language that requires Conditional Use authorization for the demolition of any units, the merger of two or more units, or the conversion of any unit within the RTO, RTO-M, NCT, and Upper Market NCD Zoning Districts; 2) Add language to Section 317 that addresses the loss of units by demolition, merger, or conversion in the C-3 Zoning Districts, and note that the criteria for review of the required Conditional Use authorization are different than those outlined in Section 303, and are applicable only to the C-3 Zoning District. The Commission recommends the following language:

317(c) **Applicability.** ~~Where~~ An application for a permit that would result in the loss of one or more Residential Units is required to obtain Conditional Use authorization ~~by other sections of this Code~~ **in the RTO, RTO-M, NCT, and Upper Market NCD Zoning Districts, as well as the loss of any residential unit above the ground floor in the C-3 Zoning District.** The application for a replacement building or alteration permit shall also be subject to Conditional Use requirements. **When considering whether to grant Conditional Use authorization for the loss of dwelling unit(s) in the C-3 districts, in lieu of the criteria set forth in Planning Code Section 303, consideration shall be given to the adverse impact on the public health, safety, and general welfare of the loss of housing stock in the district and to any unreasonable hardship to the applicant if the permit is denied.**
 - b. Amend the language of 317(d)(3)(A) to clarify that buildings proposed for demolition in RH-1 **and RH-1(d)** districts are not subject to a Mandatory Discretionary Review if they meet the levels that define "demonstrably not affordable."
 - c. Amend Section 317(d) by adding the specific criteria for evaluating the loss of dwelling units currently listed in Section 207.7 that are not listed in Section 317(d) to maintain the

review and evaluation policies for the loss of units outlined currently in Section 207.7, developed through the Market-Octavia Plan. The Commission’s recommendations are summarized in the Table 1 below:

Table 1: Comparing the Criteria for Demolition in the Draft Ordinance to the Department’s Proposed Modifications

Draft Ordinance: Amended 317(d)(3)(C)(i-xvi) -- Criteria For Review of Demolition	Department's Proposed Modifications to Section 317(d)(3)(A)(i-xvi) of the Draft Ordinance
Whether the property is free of a history of serious, continuing Code violations;	(i) Whether the property is free of a history of serious, continuing Code violations;
Whether the housing has been maintained in a decent, safe, and sanitary condition;	(ii) Whether the housing has been maintained in a decent, safe, and sanitary condition;
Whether the property is an "historical resource" under CEQA;	(iii) Whether the property is an "historical resource" under CEQA;
Whether the removal of the resource will have a substantial adverse impact under CEQA;	(iv) Whether the removal of the resource will have a substantial adverse impact under CEQA;
Whether the project converts rental housing to other forms of tenure or occupancy;	(v) Whether the project converts rental housing to other forms of tenure or occupancy;
Whether the project removes rental units subject to the Rent Stabilization and Arbitration Ordinance;	(vi) Whether the project removes rental units subject to the Rent Stabilization and Arbitration Ordinance <u>or Affordable Housing</u> ;
Whether the project conserves existing housing to preserve cultural and economic neighborhood diversity;	(vii) Whether the project conserves existing housing to preserve cultural and economic neighborhood diversity;
Whether the project conserves neighborhood character to preserve neighborhood cultural and economic diversity;	(viii) Whether the project conserves neighborhood character to preserve neighborhood cultural and economic diversity;
Whether the project protects the relative affordability of existing housing;	(ix) Whether the project protects the relative affordability of existing housing;
Whether the project increases the number of permanently affordable units as governed by <u>Article 4</u> ;	(x) Whether the project increases the number of permanently affordable units as governed by <u>Article 4 Section 415</u> ;
Whether the project locates in-fill housing on appropriate sites in established neighborhoods;	(xi) Whether the project locates in-fill housing on appropriate sites in established neighborhoods;
Whether the project creates quality, new family housing;	(xii) Whether the project creates quality new family housing, <u>increases the number of family-sized units on-site</u> ;
Whether the project creates new supportive housing;	(xiii) Whether the project creates new supportive housing;
Whether the project <u>project</u> promotes construction of well-designed housing to enhance existing neighborhood character;	(xiv) Whether the project <u>project</u> promotes construction of well designed housing <u>to is of superb architectural and urban design, meeting all relevant design guidelines</u> , to enhance existing neighborhood character;
Whether the project increases the number of on-site dwelling units;	(xv) Whether the project increases the number of on-site dwelling units;
Whether the project increases the number of on-site bedrooms.	(xvi) Whether the project increases the number of on-site bedrooms.
<u>If the Residential Demolition removes Affordable Housing or housing subject to the Rent Stabilization and Arbitration Ordinance, whether replacement housing will be provided which is equal or greater in size, number of bedrooms, affordability, and suitability to households with children to the housing to be demolished.</u>	<u>(xvii) If the Residential Demolition removes Affordable Housing or housing subject to the Rent Stabilization and Arbitration Ordinance, whether replacement housing will be provided which is equal or greater in size, number of bedrooms, affordability, and suitability to households with children to the housing to be demolished.</u>

5. **Remove the new definition for “Residential Use” proposed in the draft Ordinance for Section 317(b)(13).** Instead, amend the existing definition of “Residential Unit” in Section 317(b)(12) to include Group Housing, along with Dwelling Units and Live/Work units. The Commission recommends the following language for Section 317(b)(12):

"Residential Unit" shall mean a legal conforming or non-conforming dwelling unit as defined in Planning Code Section [102.7](#), or a legal non-conforming Live/Work Unit as defined in Planning Code Section [102.13](#), **or Group Housing as defined in Planning Code Section 209.2(a)(b) and (c).**
6. **Add Requirements to and Amend Criteria in Section 317(e).**
 - d. Do not amend the criterion in Section 317(e)(2)(iv) that reads, “whether the removal of the unit will bring the building closer into conformance with the prescribed zoning.”
 - e. Amend the proposed new criterion in Section 317(e)(2)(D), and replace it with a new criterion that considers whether the merged unit will provide family-sized housing, by including the following language, **“whether the number of bedrooms provided in the merged unit will be equal to or greater than the number of bedrooms in the separate units.”**
 - f. Clarify the term “owner-occupied” as used in Section 317(e)(2)(i) and (ii).
7. **Delete Inapplicable Language in Section 317(f).**
 - g. Delete Section 317(f)(2)(C), which, as amended would require that the Commission consider whether, in districts in which residential uses are not permitted (such as industrial districts), the residential conversion will bring the building in closer conformity with uses permitted in the district.
 - h. Delete the proposed new Section 317(f)(2)(G), which evaluates the replacement housing as it compares to the existing housing.
8. **Amend Section 180(h).** In the proposed new Section 180(h), clarify the term “strong presumption in favor of preserving Dwelling Units” revising the section to read, **“Preserving Dwelling Units. If the administrative record regarding a nonconforming unit does not provide conclusive evidence that the unit is illegal, it shall be presumed to be a legal nonconforming unit.”**

FINDINGS

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

1. The proposed Ordinance would amend the Planning Code in three ways: 1) consolidate and amend controls for the loss of dwelling units in Section 317 of the Planning Code; 2) add protection and flexibility for existing nonconforming units; and 3) simplify the Planning Code.
2. While the Commission is generally supportive of the amendments, careful consideration should be given to the potential for unintended implications to the affordability of existing nonconforming residential units.

3. Based on information from the Department's Information and Analysis group, of the approximately 360,000 dwelling units in the City, nearly 52,000 units exceed the permitted zoning of the parcel on which they are located, representing close to 14% of existing units in the City.
4. Generally speaking, these legal nonconforming units are in older buildings constructed prior to the establishment of current zoning districts.
5. The age of the structures, together with the existing prohibition to expand, means that very often nonconforming units are among the city's most affordable housing stock, and are often subject to rent control.
6. The Commission's recommendation, detailed above, is intended to provide oversight in cases that would expand nonconforming units in a manner that includes adding bedrooms, by requiring Conditional Use authorization. This recommendation is intended to provide increased flexibility while allowing the Commission to consider the impacts to affordability that a proposed expansion or alteration may have.
7. The draft Ordinance consolidates the controls and criteria for review for the loss of dwelling units in a single location in the Planning Code. The Commission is supportive of this amendment and is hopeful that this will help to improve consistency of review and public understanding of the controls.
8. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

I. HOUSING ELEMENT

OBJECTIVE 2

RETAIN EXISTING HOUSING UNITS, AND PROMOTE SAFETY AND MAINTENANCE STANDARDS, WITHOUT JEOPARDIZING AFFORDABILITY.

POLICY 2.1

Discourage the demolition of sound existing housing, unless the demolition results in a net increase in affordable housing.

POLICY 2.2

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

POLICY 2.4

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

The draft Ordinance will consolidate and clarify controls for the loss of dwelling units through demolition, merger, or conversion. In addition, the draft Ordinance will allow increased flexibility to expand nonconforming units, which may encourage maintenance of existing housing stock.

OBJECTIVE 3

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

POLICY 3.1

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

POLICY 3.4

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

The Commission's recommended modifications would provide oversight in cases that would expand nonconforming units in a manner that includes adding bedrooms, by requiring Conditional Use authorization. This recommendation is intended to provide increased flexibility while allowing the Commission to consider the impacts to affordability that a proposed expansion or alteration may have.

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

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

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

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

The proposed Ordinance is intended to protect existing housing and neighborhood character through careful review of the loss of dwellings and expansion of nonconforming units.

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

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

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

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

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

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

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

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

7. That the landmarks and historic buildings be preserved;

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

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

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

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

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on July 18, 2013.

Jonas P. Ionin
Acting Commission Secretary

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

NOES: Commissioner Antonini

ABSENT: Commissioner Hillis

ADOPTED: July 18, 2013



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change

HEARING DATE: JULY 18, 2013

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

PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code by repealing Sections 790.84, 790.86, 890.84, and 890.86, and amending Section 317 to: 1) revise the criteria used for evaluating residential demolitions, conversions, and mergers, 2) standardize definitions of residential demolition, conversion, and merger across various use districts, 3) permit the enlargement or alteration of dwelling units which are nonconforming as to density in districts where dwelling units are principally permitted if there is no increase in nonconformity of height, bulk, or required rear yards or setbacks; 4) permit alterations to nonconforming uses or noncomplying structures to comply with disabled access requirements or to provide secure bicycle parking; 5) establish a strong presumption in favor of preserving dwelling units in enforcement of requirements for nonconforming uses, structures, and lots; and 6) various technical amendments.

The Way It Is Now:

Planning Code Section 181 describes the provisions for enlarging, altering, and reconstructing a nonconforming structure¹. Section 181(c) notes that in a building that has a total number of dwelling units that exceeds the permitted density in a given zoning district, only those units that exceed the permitted density are considered nonconforming. Those units that are the nonconforming units in the building may not be enlarged, altered, or reconstructed in a manner that increases their nonconformity.

Planning Code Section 207.7 addresses specific requirements associated with the loss of dwelling units in the RTO (Residential, Transit-Oriented), NCT (Neighborhood Commercial, Transit-Oriented), and the Upper Market Neighborhood Commercial Districts. Section 207.7 outlines a single set of criteria to be used to evaluate the loss of a dwelling unit through demolition, merger, or conversion – this is distinct from Planning Code Section 317 (described below), which sets forth specific criteria for demolition that differ from those used to evaluate mergers and conversions. In districts for which this section is

¹ Planning Code Section 180(a)(2) defines a nonconforming structure as “a structure which existed lawfully at the effective date of this Code, or of amendments thereto, and which fails to comply with one or more of the regulations for structures, including requirements for off-street parking and loading, under Articles 1.2, 1.5, 2.5, 6, 7 and 8 of this Code, that then became applicable to the property on which the structure is located.”

applicable, the loss of any dwelling unit requires Conditional Use authorization by the Planning Commission, and the Commission must consider thirteen criteria for projects associated with the loss of a unit. The criteria for the review of the loss of dwelling units in the RTO, NCT, and Upper Market NCD districts are not identical to the criteria outlined in Section 317, as illustrated below in Table 1.

Planning Code Section 212 defines additional requirements for uses in specific C (Commercial) and M (Industrial) districts. Section 212(b) prohibits any permitted use in the C-3 zoning district from including a “drive-in” component that would serve customers in parked cars, except for gas stations and car washes, where they are permitted. Section 212(e) requires that the loss of any dwelling unit above the ground floor require Conditional Use authorization, unless a building is deemed unsafe or dangerous. The criteria for review of the loss of dwelling units are specific: in lieu of the criteria outlined in Section 303, Section 212(e) states that the Commission shall consider the adverse impact on the public health, safety and general welfare of the loss of housing stock in the district and to any unreasonable hardship to the applicant if the permit is denied. As with Section 207.7, the criteria for evaluation of the loss of units included in Section 212 are not the same as those listed in Section 317.

Planning Code Section 317 defines the terms and the controls associated with the loss of dwelling units through *demolition, merger, and conversion*. Project proposals that would result in the loss or removal of three or more dwelling units require Conditional Use authorization by the Planning Commission. Projects that would result in the loss of up to two dwelling units require a Mandatory Discretionary Review hearing before the Planning Commission. Section 317 identifies certain exceptions from the requirement for public hearings:

Section 317 provides the following exceptions for demolition proposals:

- Single-Family homes in RH-1 Zoning Districts that are demonstrably not affordable or financially accessible do not require a Mandatory Discretionary Review hearing²; and,
- Residential buildings with two units or fewer that are found to be unsound do not require a Mandatory Discretionary Review hearing.³

Section 317 provides the following exceptions for the loss of units through mergers:

- Applications in which the least expensive of the units proposed for a merger is demonstrably not affordable or financially accessible; and,
- Projects that meet four out of the five specific criteria used to evaluate the loss of residential units through mergers.

As noted above, Section 317 also defines the criteria that the Planning Commission and the Department must consider in reviewing applications for the loss of units through demolition, merger, and conversion. These criteria are not identical to those outlined in Section 207.7 and in Section 212(e).

There are 16 criteria for the evaluation of applications for *demolition*.

² The specific language, including affordability thresholds are detailed in Planning Code Section 317(d)(3) and 317(d)(3)(A).

³ The specific language for the exception and the procedure for determining a structure’s soundness are detailed in Planning Code Section 317(d)(3)(B).

There are five criteria for the evaluation of applications for residential *mergers*, including whether the removal of the unit will bring the building closer into conformance with the prevailing density and the prescribed zoning in its immediate area and within the zoning district.

There are also five criteria for the evaluation of applications for residential *conversion*, including whether the conversion of the unit would bring the building closer into conformance with the prevailing character of the immediate area and the zoning district.

The following two tables compare the differences between the criteria for evaluating the loss of dwelling units in Section 207.7 and Section 317; please note that the criteria are not numbered and have been rearranged in order to clearly show where the existing criteria are the same or similar between the two Planning Code Sections.

Table 1: Comparing the Criteria of 207.7(b) to the Criteria for Demolition in Section 317 (*emphasis added*)

Existing 207.7(b)(1-13): Applies to Demolition, Merger, and Conversion in the RTO, NCT, and Upper Market NCD	Existing 317(d)(3)(C)(i-xvi) -- Criteria For Review of Demolition
There is no history of poor maintenance or Code <i>violations</i> ;	Whether the property is free of a history of serious, continuing Code <i>violations</i> ;
The units proposed for demolition are unsound, in accord with the Planning Commission's adopted definition of " <i>unsound</i> ";	Whether the housing has been maintained in a decent, <i>safe</i> , and sanitary condition;
The property is not a <i>historic resource</i> under CEQA;	Whether the property is an " <i>historic resource</i> " under CEQA;
	Whether the removal of the resource will have a substantial adverse impact under CEQA;
The proposed replacement project <i>preserves rental housing</i> on site from conversion to other forms of occupancy or tenure;	Whether the project <i>converts rental housing</i> to other forms of tenure or occupancy;
The proposed replacement project <i>restores rent control</i> to equivalent number of units on the site;	Whether the project <i>removes rental units</i> subject to the <i>Rent Stabilization and Arbitration Ordinance</i> ;
	Whether the project conserves existing housing to preserve cultural and economic neighborhood diversity;
	Whether the project conserves neighborhood character to preserve neighborhood cultural and economic diversity;
The proposed <i>replacement project features affordability</i> at least equivalent to the existing units;	Whether the project <i>protects the relative affordability of existing</i> housing;
The proposed replacement project serves as <i>supportive housing</i> or serves a special or underserved population;	Whether the project creates new <i>supportive housing</i> ;
The proposed replacement project represents <i>no net loss in the number of family-sized units</i> ;	Whether the project <i>creates quality, new family housing</i> ;
The proposed replacement project is of <i>superb architectural and urban design</i> , meets or exceeds all relevant design guidelines and Area Plan policies;	Whether the project promotes construction of <i>well-designed housing</i> to enhance existing neighborhood character;
The proposed replacement project results in a <i>net increase in the number of units</i> on-site;	Whether the project <i>increases the number of on-site dwelling units</i> ;
	Whether the project increases the number of on-site bedrooms.
	Whether the project locates in-fill housing on appropriate sites in established neighborhoods;
	Whether the project increases the number of permanently affordable units as governed by Section 415;
The proposed project seeks to convert a ground-floor, street-facing residential use to a commercial use in a neighborhood commercial district where such commercial uses are desirable; and	
The proposed replacement project serves a public interest or public use that cannot be met without the proposed demolition.	
The assessed value of the units proposed for demolition exceed that which is affordable to households earning 100% of median income;	

Table 2: Comparing the Criteria of Section 207.7(b) to the Criteria for Mergers and Conversions in Section 317 (*emphasis added*)

Existing 207.7(b)(1-13): Applies to <u>Demolition, Merger, and Conversion</u> in the RTO, NCT, and Upper Market NCD	Existing 317e(2)(A-E) -- Criteria for Review of <u>Mergers</u>	Existing 317(f)(2)(A-E) -- Criteria for Review of <u>Conversions</u>
	Whether removal of the unit(s) would <u>eliminate only owner occupied housing</u> , and if so, for how long the unit(s) proposed to be removed have been owner occupied;	Whether conversion of the unit(s) would <u>eliminate only owner occupied housing</u> , and if so, for how long the unit(s) proposed to be removed were owner occupied;
	Whether removal of the unit(s) and the merger with another is intended for owner occupancy;	
	Whether removal of the unit(s) will bring the building <u>closer into conformance</u> with the prevailing <u>density</u> in its immediate area and in the same zoning district;	Whether conversion of the unit(s) will bring the building <u>closer into conformance</u> with the prevailing <u>character</u> of its immediate area and in the same zoning district;
	Whether removal of the unit(s) will bring the building <u>closer into conformance</u> with prescribed <u>zoning</u> ;	
		Whether conversion of the unit(s) will be detrimental to the City's housing stock;
	Whether removal of the unit(s) is necessary to <u>correct design or functional deficiencies</u> that cannot be corrected through interior alterations.	Whether conversion of the unit(s) is necessary to <u>eliminate design, functional, or habitability deficiencies</u> that cannot otherwise be corrected.
The assessed value of the units proposed for demolition exceed that which is affordable to households earning 100% of median income;		
The units proposed for demolition are unsound, in accord with the Planning Commission's adopted definition of "unsound";		
There is no history of poor maintenance or Code violations;		
The property is not a historic resource under CEQA;		
The proposed replacement project results in a net increase in the number of units on-site;		
The proposed replacement project is of superb architectural and urban design, meets or exceeds all relevant design guidelines and Area Plan policies;		
The proposed replacement project preserves rental housing on site from conversion to other forms of occupancy or tenure;		
The proposed replacement project restores rent control to equivalent number of units on the site;		
The proposed replacement project features affordability at least equivalent to the existing units;		
The proposed replacement project represents no net loss in the number of family-sized units;		

Table 2: Comparing the Criteria of Section 207.7(b) to the Criteria for Mergers and Conversions in Section 317 (*emphasis added*)

Existing 207.7(b)(1-13): Applies to <u>Demolition, Merger, and Conversion</u> in the RTO, NCT, and Upper Market NCD	Existing 317e(2)(A-E) -- Criteria for Review of <u>Mergers</u>	Existing 317(f)(2)(A-E) -- Criteria for Review of <u>Conversions</u>
The proposed replacement project serves as supportive housing or serves a special or underserved population;		
The proposed project seeks to <u>convert a ground-floor, street-facing residential use to a commercial use in a neighborhood commercial district</u> where such commercial uses are desirable; and		Whether conversion of the unit(s) would <u>provide desirable new non-residential use(s)</u> appropriate for the neighborhood and adjoining district(s);
The proposed replacement project serves a public interest or public use that cannot be met without the proposed demolition.		

The Way It Would Be:

The draft Ordinance proposes amendments that may be divided into three topics: 1) consolidation and amendment of controls for the loss of dwelling units in Section 317 of the Planning Code; 2) added protection and flexibility for existing nonconforming units; and 3) simplification of the Planning Code.

1. Consolidation and Amendment of Controls for Loss of Dwelling Units

Much of Section 207.7 and Section 212(e) would be deleted and replaced with a reference to Section 317. This would simplify the Planning Code by consolidating the location of controls for the loss of dwelling units. Section 317 would be amended to change the evaluation criteria for the loss of units, as well as to remove the provision that allows for the administrative review of dwelling unit mergers.

Planning Code Section 207.7 would be amended to apply only to RTO and RTO-M zoning districts. In these two zoning districts, all demolitions, mergers, or conversions would require Conditional Use authorization. The thirteen criteria for review of loss of units would be deleted, and replaced with a reference to the amended criteria for evaluating demolition applications listed in Section 317(d)(3)(C). The draft Ordinance does not completely repeal Section 207.7 in order to maintain the requirement that the loss of two or fewer units in the RTO zoning districts obtain Conditional Use authorization.⁴

Planning Code Section 212 would be amended to explicitly state that no Drive-Up facility, as defined in Planning Code Section 790.30, is permitted in the C-3 district. Section 212(e) would be amended by removing the specific criteria for consideration of loss of dwelling units, and replacing the existing criteria with a reference to Section 317, as well as the general criteria for review for applications for Conditional Use authorizations listed in Section 303. This change would result in stricter criteria for the evaluation of the loss of residential units above the ground floor in the C-3 districts.

Planning Code Section 317 would be amended to:

- Change the definitions related to the loss of dwelling units, in the following manner:
 1. Clarify that Section 317(b)(1), which defines “Residential Conversions,” would not apply to the conversion of residential hotels, which are governed by the Administrative Code.

⁴ Planning Code Section 207.7 requires that the loss of any dwelling units requires Conditional Use authorization; in most other zoning districts, the loss of up to two dwelling units requires a Mandatory Discretionary Review by the Planning Commission.

2. Highlight in Section 317(b)(11) that the presence of one “live-work” unit as a principal use in a structure would make the building a “Residential Building” for the purposes of the review of loss of units;
 3. Add Section 317(b)(13) to define “Residential Use” as a Dwelling Unit or Group Housing as a principal use.
- Remove Section 317(e)(4), which allows for administrative review of proposed residential mergers that meet a super majority of the criteria for demolition. All proposals for residential mergers would be subject to a Mandatory Discretionary Review hearing unless the least expensive unit proposed for the merger is demonstrably not affordable or financially accessible.
 - Add a new, 17th criterion for review of residential *demolitions*. The new criterion would require the Commission to consider whether the demolition would remove Affordable Housing or housing subject to the Rent Stabilization Ordinance, and if so, whether the replacement housing would be equal or greater in size, number of bedrooms, affordability, and suitability to households with children to the housing that is proposed for demolition (Section 317(d)(3)(C)(xvii)).
 - For the evaluation of residential *mergers*, two criteria would be removed, and two criteria would be added. The effect of this change would be to move emphasis for consideration away from existing zoning and prevailing density and toward consideration of the loss of affordable housing. Specifically, the changes would be:
 1. The criterion that requires the Commission to consider whether the removal of the unit will bring the building closer into conformity with the prevailing density of the immediate area would be removed. This existing criterion would be replaced with a criterion that would require the Commission to consider whether the removal of the unit would remove Affordable Housing or housing subject to rent control (Section 317(e)(2)(C)).
 2. The existing criterion that requires the Commission to consider whether the removal of the unit will be bring the building closer into conformity with the prescribed zoning of the district would be removed, and replaced with a criterion that would require that the Commission, in cases in which Affordable or rent controlled units are lost, whether the replacement housing is equal or greater in size, number of bedrooms, affordability, and suitability to households with children to the units that may be removed (Section 317(e)(2)(D)).
 - For the evaluation of residential *conversions*, one existing criterion would be removed and replaced, and two additional criteria would be added. Similar to the amendments related to residential mergers, the effect of this change would be to shift emphasis in consideration away from the existing zoning and prevailing density and toward loss of affordable housing. Specifically, the changes would be:
 1. The criterion that requires that the Commission consider the prevailing character of the immediate area and its zoning district would be replaced with a criterion that would specifically address conversions in zoning districts that do not permit residential uses, and would require that the Commission considers whether the residential conversion

brings the building closer into conformity with uses permitted in the zoning district (Section 317(f)(2)(C)).⁵

2. Criteria would be added that would require the Commission to consider: (1) whether the conversion will remove Affordable Housing or rent controlled units, and (2) if so, whether replacement housing will be provided that is equal or greater in size, number of bedrooms, affordability, and suitability to families with children to the units being converted (Section 317(f)(2)(F) and (G)).

2. Added Protections and Flexibility for Nonconforming Units

Legal, nonconforming units would be allowed to be enlarged, and when the permit history of an existing nonconforming unit is unclear, the presumption would be that the unit was legally constructed.

Planning Code Section 180, which describes and defines nonconforming uses, would be amended to add subsection 180(h), to assert that in enforcing nonconforming uses, there would be a strong presumption in favor of preserving dwelling units.

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

- Add a new Section 181(b)(5) that would allow alterations necessary in order to bring the building into conformity with disabled access or to provide secure bike parking;
- Amend Section 181(c) would be amended to allow, in zoning districts in which dwelling units are principally permitted, even the nonconforming units that exceed the zoning district's permitted density to be enlarged, altered, or reconstructed, provided that the alterations would not increase the nonconformity in permitted height, bulk, or required rear yards or setbacks.
- Amend Section 181(h) to include buildings with residential uses in the M-2 zoning district.

3. Simplification of the Planning Code

The proposed Ordinance would repeal, in their entirety, the following Planning Code Sections and subsections, and would instead provide consistent references in Articles 7 and 8 to the controls for loss of dwelling units consolidated into Section 317:

- 790.84 (Residential Demolition, defined for Neighborhood Commercial districts);
- 790.86 (Residential Merger, defined for Neighborhood Commercial districts);
- 803.8(a) (Housing in Mixed Use Districts – Demolition or Conversion of Group Housing or Dwelling Units in South of Market Mixed Use Districts);
- 890.84 (Residential Conversion, defined for Mixed-Use districts); and
- 890.86 (Residential Demolition, defined for Mixed-Use districts).

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.

⁵ List districts in which residential uses are not permitted.

RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance and adopt the attached Draft Resolution to that effect. The specific modifications recommended by the Department are detailed below.

BASIS FOR RECOMMENDATION

As noted above, the draft Ordinance proposes a series of amendments that may be divided into three broad categories: 1) consolidation of and amendments to the controls for loss of residential units; 2) additional protections and flexibility for nonconforming units; and 3) general Planning Code “clean up” amendments to condense the controls for loss of dwelling units to Article 3. Many of the proposed amendments reduce duplicative references and serve to update the Code in a manner consistent with planning efforts in recent years, including the focus on increasing density near transit in a manner that is sensitive to existing neighborhood character.

The Department recommends the following modifications to the draft Ordinance:

Consolidation and Amendment of Controls for Loss of Dwelling Units

Planning Code Section 207.7 was created as part of the Market and Octavia planning effort, and was added to the Planning Code in 2008.⁶ It details restrictions on the loss of residential units that are specific to the RTO, NCT, and the Upper Market Neighborhood Commercial Districts.⁷ The procedure outlined for the review of the loss of dwelling units is slightly different in Section 207.7 than in Section 317, as are the criteria for review. As proposed, the draft Ordinance would eliminate much of Section 207.7 and replace it with a reference to the controls and criteria of Section 317. It is important to note that as proposed, the draft Ordinance replaces the single set of criteria set forth in 207.7 (which applies to the loss of a dwelling unit through demolition, merger or conversion), with the contrasting approach outlined in Section 317, which uses separate criteria to evaluate demolitions, mergers, and conversions. The differences between the criteria for evaluation are summarized above in Table 1, which illustrates that while many of the criteria are similar, they are not exactly the same. Similarly, the draft Ordinance proposes deleting much of Section 212(e), which addresses the loss of residential units above the ground floor in the C-3 Districts, and adding a reference to Sections 303 and 317. Section 212(e) outlines a specific process as well as specific criteria for review, which are not the same as those outlined in Section 317.

The Department recommends the following modifications to the draft Ordinance related to the loss of dwelling units:

1. **Repeal Section 207.7 in its entirety.** The draft Ordinance maintains 207.7(a) and a portion of 207.7(b) in order to preserve the requirement that the loss of any number of units in the RTO zoning district obtain Conditional Use authorization, rather than the more typical requirement that a Mandatory Discretionary Review is required for the loss of up to two units and Conditional Use authorization for three or more units. In addition, the amendment would apply

⁶ Section 207.7 was added by Ordinance 72-08, Board File 071157.

⁷ Section 207.7(a) includes the following explicit policy statement: that addresses the potential for the flexible density and parking controls in the Market-Octavia to encourage demolition: the controls are “intended to foster creative infill housing of moderate to high density while maintaining the character of the district. The intent of this flexibility, however, is not to encourage the demolition or removal of existing housing stock, particularly units in older buildings.”

requirements in 207.7 to RTO-M zoning districts in the Mission District. The Department recommends that Section 207.7 be repealed in its entirety, and that the specific requirement for Conditional Use authorization for the loss of one and two units in the RTO and RTO-M districts be added to Section 317. As detailed below, the Department further recommends that the criteria for review of loss of dwelling units in Section 317 be amended to include the criteria developed through the Market-Octavia Plan currently listed in Section 207.7. These changes are proposed in the spirit of Code consolidation and clarity.

2. **Delete Section 212(e) in its entirety.** The draft Ordinance deletes most of Section 212(e), which includes controls and criteria for the review of the loss of dwelling units in the C-3 Zoning District, and replaces them with a reference to Sections 303 and 317. The criteria for review of the loss of dwelling units in the C-3 are less stringent than those used in residential and neighborhood commercial districts. The Department's proposed modification would delete the entire subsection, but would add new language to Section 317 to include the specific controls and criteria listed in Section 212(e). These changes are proposed in the spirit of Code consolidation and clarity, and maintain the current standards for review of the loss of dwelling units in the C-3 Zoning District.
3. **Add Requirements to and Amend Criteria in Section 317(c) and (d).** While the Department recommends repealing Section 207.7, it also recommends adding language to Section 317 to maintain the review and evaluation policies for the loss of units outlined currently in Section 207.7, developed through the Market and Octavia Plan, as well as the policies currently located in Section 212(e), applicable to the loss of dwelling units in the C-3 districts. These modifications would eliminate the need for Section 207.7 as well as Section 212(e). To this end, the Department recommends the following:
 - a. Amend Section 317(c) Applicability in two ways: 1) Add language that requires Conditional Use authorization for the demolition of any units, the merger of two or more units, or the conversion of any unit within the RTO, RTO-M, NCT, and Upper Market NCD Zoning Districts; 2) Add language to Section 317 that addresses the loss of units by demolition, merger, or conversion in the C-3 Zoning Districts, and note that the criteria for review of the required Conditional Use authorization are different than those outlined in Section 303, and are applicable only to the C-3 Zoning District. The Department recommends the following language:

317(c) **Applicability.** ~~Where~~ **An** application for a permit that would result in the loss of one or more Residential Units is required to obtain Conditional Use authorization ~~by other sections of this Code~~ **in the RTO, RTO-M, NCT, and Upper Market NCD Zoning Districts, as well as the loss of any residential unit above the ground floor in the C-3 Zoning District.** The application for a replacement building or alteration permit shall also be subject to Conditional Use requirements. **When considering whether to grant Conditional Use authorization for the loss of dwelling unit(s) in the C-3 districts, in lieu of the criteria set forth in Planning Code Section 303, consideration shall be given to the adverse impact on the public health, safety, and general welfare of the loss of housing stock in the district and to any unreasonable hardship to the applicant if the permit is denied.**
 - b. Amend the language of 317(d)(3)(A) to clarify that buildings proposed for demolition in RH-1 **and RH-1(d)** districts are not subject to a Mandatory Discretionary Review if they meet the levels that define "demonstrably not affordable."

- c. Amend Section 317(d) by adding the specific criteria for evaluating the loss of dwelling units currently listed in Section 207.7 that are not listed in Section 317(d) to maintain the review and evaluation policies for the loss of units outlined currently in Section 207.7, developed through the Market-Octavia Plan. The Department’s recommendation are summarized in the table below; please note that the Section 317(d)(3)(C) subsection numbers have been added to the proposed modifications for clarity:

Table 3: Comparing the Criteria for Demolition in the Draft Ordinance to the Department’s Proposed Modifications

Draft Ordinance: Amended 317(d)(3)(C)(i-xvi) -- Criteria For Review of Demolition	Department’s Proposed Modifications to Section 317(d)(3)(A)(i-xvi) of the Draft Ordinance
Whether the property is free of a history of serious, continuing Code violations;	(i) Whether the property is free of a history of serious, continuing Code violations;
Whether the housing has been maintained in a decent, safe, and sanitary condition;	(ii) Whether the housing has been maintained in a decent, safe, and sanitary condition;
Whether the property is an "historical resource" under CEQA;	(iii) Whether the property is an "historical resource" under CEQA;
Whether the removal of the resource will have a substantial adverse impact under CEQA;	(iv) Whether the removal of the resource will have a substantial adverse impact under CEQA;
Whether the project converts rental housing to other forms of tenure or occupancy;	(v) Whether the project converts rental housing to other forms of tenure or occupancy;
Whether the project removes rental units subject to the Rent Stabilization and Arbitration Ordinance;	(vi) Whether the project removes rental units subject to the Rent Stabilization and Arbitration Ordinance <u>or Affordable Housing</u> ;
Whether the project conserves existing housing to preserve cultural and economic neighborhood diversity;	(vii) Whether the project conserves existing housing to preserve cultural and economic neighborhood diversity;
Whether the project conserves neighborhood character to preserve neighborhood cultural and economic diversity;	(viii) Whether the project conserves neighborhood character to preserve neighborhood cultural and economic diversity;
Whether the project protects the relative affordability of existing housing;	(ix) Whether the project protects the relative affordability of existing housing;
Whether the project increases the number of permanently affordable units as governed by <u>Article 4</u> ;	(x) Whether the project increases the number of permanently affordable units as governed by <u>Article 4 Section 415</u> ;
Whether the project locates in-fill housing on appropriate sites in established neighborhoods;	(xi) Whether the project locates in-fill housing on appropriate sites in established neighborhoods;
Whether the project creates quality, new family housing;	(xii) Whether the project creates quality new family housing, <u>increases the number of family-sized units on-site</u> ;
Whether the project creates new supportive housing;	(xiii) Whether the project creates new supportive housing;

Table 3: Comparing the Criteria for Demolition in the Draft Ordinance to the Department’s Proposed Modifications

Draft Ordinance: Amended 317(d)(3)(C)(i-xvi) -- Criteria For Review of Demolition	Department's Proposed Modifications to Section 317(d)(3)(A)(i-xvi) of the Draft Ordinance
Whether the protect <i>project</i> promotes construction of well-designed housing to enhance existing neighborhood character;	(xiv) Whether the <i>project</i> promotes construction of well-designed housing to <i>is of superb architectural and urban design, meeting all relevant design guidelines</i> , to enhance existing neighborhood character;
Whether the project increases the number of on-site dwelling units;	(xv) Whether the project increases the number of on-site dwelling units;
Whether the project increases the number of on-site bedrooms.	(xvi) Whether the project increases the number of on-site bedrooms.
<i><u>If the Residential Demolition removes Affordable Housing or housing subject to the Rent Stabilization and Arbitration Ordinance, whether replacement housing will be provided which is equal or greater in size, number of bedrooms, affordability, and suitability to households with children to the housing to be demolished.</u></i>	<i><u>(xvii) If the Residential Demolition removes Affordable Housing or housing subject to the Rent Stabilization and Arbitration Ordinance, whether replacement housing will be provided which is equal or greater in size, number of bedrooms, affordability, and suitability to households with children to the housing to be demolished.</u></i>

4. **Remove the new definition for “Residential Use” proposed in the draft Ordinance for Section 317(b)(13).** Instead, amend the existing definition of “Residential Unit” in Section 317(b)(12) to include Group Housing, along with Dwelling Units and Live/Work units. This would require that the loss of housing in the form of Group Housing, as defined in Section 209.2(a-c), be considered in the same manner (and subject to the same fees and process) as the loss of dwelling units and live/work units – without the need for a new definition in Section 317(b). The Department recommends the following language for Section 317(b)(12):

"Residential Unit" shall mean a legal conforming or non-conforming dwelling unit as defined in Planning Code Section [102.7](#), or a legal non-conforming Live/Work Unit as defined in Planning Code Section [102.13](#), **or Group Housing as defined in Planning Code Section 209.2(a)(b) and (c).**

5. **Add Requirements to and Amend Criteria in Section 317(e).** In Section 317(e), which addresses **Mergers**, the effect of the changes proposed in the draft Ordinance would be to move emphasis for consideration away from existing zoning and prevailing density and toward consideration of the loss of affordable housing. While the Department agrees that more consideration should be given to the loss of affordable housing given the housing crisis in San Francisco, it seems this should be balanced with consideration of existing law. If the density controls in the existing Planning Code are believed to be too restrictive, then density limits should be explicitly amended. Therefore, the Department recommends the following modifications to the draft Ordinance, which would both preserve consideration of existing zoning laws and add consideration of the loss of affordable housing:
 - a. Do not amend the criterion in Section 317(e)(2)(iv) that reads, “whether the removal of the unit will bring the building closer into conformance with the prescribed zoning.”
 - b. Amend the proposed new criterion in Section 317(e)(2)(D), and replace it with a new criterion that considers whether the merged unit will provide family-sized housing, by including the following language, “**whether the number of bedrooms provided in the**

merged unit will be equal to or greater than the number of bedrooms in the separate units.

- c. Clarify the term “owner-occupied” as used in Section 317(e)(2)(i) and (ii).
6. **Delete Inapplicable Language in Section 317(f).** In Section 317(f), which addresses Conversion of existing units from residential uses to non-residential uses, the Department recommends removing two new criteria proposed in the draft Ordinance, as they do not appear to be applicable or necessary. The Department recommends deleting the following criteria, in the spirit of Code consolidation and clarity:
- a. Delete Section 317(f)(2)(C), which, as amended would require that the Commission consider whether, in districts in which residential uses are not permitted (such as industrial districts), the residential conversion will bring the building in closer conformity with uses permitted in the district. This is not necessary, as any new use proposed through a conversion would need to be consistent with the existing zoning, and would be subject to all Planning Code requirements.
 - b. Delete the proposed new Section 317(f)(2)(G), which evaluates the replacement housing as it compares to the existing housing. This criterion does not appear to be applicable to the conversion of a residential use to a non-residential use.

Added Protections and Flexibility for Nonconforming Units

Planning Code Sections 180 and 181, as noted above, define and outline controls for nonconforming uses, including dwelling units that lawfully exist, but that are in excess of the permitted density of the zoning district in which they are located. The draft Ordinance would amend Planning Code 181(c) to allow nonconforming units that exceed the permitted density to expand. The Department’s proposed modifications would allow nonconforming units to expand, but would add an additional layer of oversight when the expansion may result in decreased affordability of expanded nonconforming units.

The following three modifications are suggested to both clarify the Code, as well as to protect affordability of existing housing:

1. **Amend Section 180(h).** In the proposed new Section 180(h), clarify the term “strong presumption in favor of preserving Dwelling Units” revising the section to read, “**Preserving Dwelling Units. If the administrative record regarding a nonconforming unit does not provide conclusive evidence that the unit is illegal, it shall be presumed to be a legal nonconforming unit.**”
2. **Delete Section 181(b)(5).** In the proposed new Section 181(b)(5), alterations to bring nonconforming uses into conformity with disabled access requirements and to provide secure bike parking are permitted. The Department recommends deleting this section, as any proposed alteration of a nonconforming unit may be altered to conform to such requirements through the existing Variance process.
3. **Amend Section 181(c).** In section 181(c), remove the proposed new language that would specify that nonconforming units that exceed the permitted density would only be allowed to expand “so long as such enlargements, alterations, or reconstruction do not otherwise increase nonconformity in permitted height, bulk, or required rear yards or setbacks.” The Department recommends that the draft Ordinance be amended to explicitly state that dwellings that are

nonconforming as to density, in districts where a Dwelling Unit is a principally permitted use, may be expanded, altered, or enlarged. However, the Department also recommends that when a nonconforming unit is expanded or altered, Conditional Use authorization is required if the number of on-site bedrooms is increased. To that end, the Department recommends the following language:

181(c) A dwelling or other housing structure exceeding the permitted density of dwelling units or other housing units set forth in Sections [207.5](#), [208](#), [209.1](#), [209.2](#), or [215](#) of this Code for the district in which it is located shall be classified as a nonconforming use under Section [180](#) of this Code, but only to the extent that such dwelling or other housing structure exceeds the permitted density. This Section 181 shall *not* apply with respect to enlargements, alterations and reconstruction of the nonconforming portion of such dwelling or other housing structure, consisting of those dwelling units or other housing units which exceed the permitted density **in districts in which a Dwelling Unit is a principally permitted use. Dwelling Units that are nonconforming as to density in such districts may be altered, enlarged, or expanded. When the alteration would result in the addition of one or more bedroom(s) to the nonconforming unit, Conditional Use authorization shall be required.** Any dwelling unit or other housing unit coming within the density limit shall not be affected by this Section [181](#). Except as provided in Sections [181](#)(h) and [182](#)(e), no dwelling or other housing structure exceeding the permitted density of dwelling units or other housing units shall be altered to increase the number of dwelling units or other housing units therein, or to increase or create any other nonconformity with respect to the dwelling unit or other housing unit density limitations of Section [209.1](#) or Section [209.2](#).

ISSUES AND CONSIDERATIONS

Nonconforming Units and Affordability

The draft Ordinance proposes a series of amendments to the Planning Code, which, if adopted, would result in changes to the way that the loss of residential housing and alterations to nonconforming units are controlled and considered. While the Department is generally supportive of the amendments, careful consideration should be given to the potential for unintended implications to the affordability of existing nonconforming residential units.

For the purposes of this report, nonconforming units are legal units that do not conform to current existing density controls. Generally speaking, these units are in older buildings constructed prior to the establishment of current zoning districts; a typical example is a three-unit building located in an RH-2 zoning district, or a larger apartment building located on a corner parcel within an RH-2 zoning district. Currently, buildings that contain a greater number of units than is permitted by the zoning district in which they are located must designate units as either “conforming,” or “nonconforming.” Only those units that are conforming may be expanded or otherwise altered. Building owners may choose which units to designate as conforming or nonconforming, which means that most often the smallest or least desirable units are made the nonconforming units. The age of the structure, together with the prohibition to expand, means that very often nonconforming units are among the city’s most affordable housing stock, and are often subject to rent control. While these units are affordable, they are not, by definition, so-called “secondary units,” or “illegal in-law” units, as they were legally constructed with permits.⁸

⁸ Secondary units, distinct from nonconforming units, also provide an important source of affordable housing in San Francisco. The March, 2013 report “Our Hidden Communities: Secondary Unit Households in the Excelsior Neighborhood of San Francisco,”

Based on information from the Department's Information and Analysis group, of the approximately 360,000 dwelling units in the City, nearly 52,000 units exceed the permitted zoning of the parcel on which they are located, representing close to 14% of existing units in the City – and, as noted above, many of these units provide affordable housing. The amendments to controls for nonconforming units included in the draft Ordinance would provide increased flexibility, which could encourage the improvement, expansion, or production of family-sized housing. Alternatively, the amendments could result in expansions that would increase the cost of the units, including rental units, such that they are no longer affordable.⁹ **At this point, the Department cannot fully predict the implications of such a change but encourages decision-makers to carefully consider these potential impacts to the city's most affordable, yet unsubsidized, form of housing.**

The Department's recommendation, detailed above, is intended to provide oversight in cases that would expand nonconforming units in a manner that includes adding bedrooms, by requiring Conditional Use authorization. This recommendation is intended to provide increased flexibility while allowing the Commission to consider the impacts to affordability that a proposed expansion or alteration may have. The proposed modification is consistent with the Department's support for the amendment to Section 317(e) in the draft Ordinance, which removes the administrative review criteria for residential mergers: such mergers may impact the city's naturally affordable units, and should also require careful review by the Commission.

In addition to concerns regarding impact to affordability of nonconforming units, the Department would like to make explicit the review process for enlarging or altering nonconforming units. As drafted, the proposed Ordinance would amend Section 181(c) allow nonconforming units to expand "so long as such enlargements, alterations, or reconstruction do not otherwise increase nonconformity in permitted height, bulk, or required rear yards or setbacks."¹⁰ This may create a scenario by which, through serial permits, a nonconforming use could be expanded, provided that the conforming units are first enlarged, and then in a subsequent stage the nonconforming units are expanded into the new "buildable envelope."

Consolidation and Amendment of Controls for Loss of Dwelling Units

The draft Ordinance consolidates the controls and criteria for review for the loss of dwelling units in a single location in the Planning Code. The Department is supportive of this amendment and is hopeful that this will help to improve consistency of review and public understanding of the controls.

by the Asian Law Caucus (available online at: <http://www.advancingjustice-alc.org/news-media/publications/our-hidden-communities-secondary-unit-households-excelsior-neighborhood-san> (July 10, 2013)) outlines the role of in-law units, the problems associated with their lack of legal standing, and provides policy recommendations to ensure health and safety as well as to preserve existing housing stock.

⁹ The costs associated with alterations, expansions, and improvements to rental units may be passed through to existing tenants by petitioning the Rent Board for a Capital Improvement Passthrough. In buildings with five or fewer residential units, 100% of the improvement cost may be passed through to the tenant. In buildings with six or more units, in most cases 50% of the improvement cost may be passed through. (Information provided by the San Francisco Rent Board: <http://www.sfrb.org/index.aspx?page=947>).

¹⁰ Language included in Section 181(c), lines 9-10 of the Draft Ordinance.

ENVIRONMENTAL REVIEW

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

PUBLIC COMMENT

Staff has received no public comment at the time of the publication of this report, although we continue to conduct outreach, in coordination with Supervisor Avalos and his staff, in order to further explore impacts to affordability of housing discussed above.

RECOMMENDATION: Recommendation of Approval with Modifications
