

File No. 150798

Committee Item No. \_\_\_\_\_

Board Item No. 79

### COMMITTEE/BOARD OF SUPERVISORS

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Committee: \_\_\_\_\_

Date: \_\_\_\_\_

Board of Supervisors Meeting

Date: July 28, 2015

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- Copy of BOS File No. 150494 and Legislation Digest
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Completed by: John Carroll

Date: July 24, 2015

Completed by: \_\_\_\_\_

Date: \_\_\_\_\_

1 [Approval of a 60-Day Extension for Planning Commission Review of an Ordinance Amending  
2 the Planning Code to Require Conditional Use Authorization for All Residential Mergers (File  
3 No. 150494)]

4 **Resolution extending by 60 days the prescribed time within which the Planning**  
5 **Commission may render its decision on an Ordinance (File No. 150494) amending the**  
6 **Planning Code to require conditional use authorization for all residential mergers and**  
7 **to require compliance with landscaping and permeable surfaces requirements for**  
8 **building additions and residential mergers; affirming the Planning Department's**  
9 **California Environmental Quality Act determination; and making Planning Code,**  
10 **Section 302, findings, and findings of consistency with the General Plan, and the eight**  
11 **priority policies of Planning Code, Section 101.1.**

12  
13 WHEREAS, On May 12, 2015, Supervisor Avalos introduced legislation amending the  
14 Planning Code to require conditional use authorization for all residential mergers and to  
15 require compliance with landscaping and permeable surfaces requirements for building  
16 additions and residential mergers, and affirming the Planning Department's California  
17 Environmental Quality Act determination; and making Planning Code, Section 302, findings,  
18 and making findings of consistency with the General Plan, and the eight priority policies of  
19 Planning Code, Section 101.1; and

20 WHEREAS, On or about May 22, 2015, the Clerk of the Board of Supervisors referred  
21 the proposed ordinance to the Planning Commission, which currently is reviewing the  
22 proposed ordinance; and

23 WHEREAS, On or about July 21, 2015, the Board of Supervisors granted a 90-day  
24 extension that extended the time in which the Planning Commission could review the  
25 proposed for an additional 60-days to October 22, 2015; and

1           WHEREAS, The Board, in accordance with Planning Code Section 306.4(d) may, by  
2 Resolution, extend the prescribed time within which the Planning Commission is to render its  
3 decision on proposed amendments to the Planning Code that the Board of Supervisors  
4 initiates; and

5           WHEREAS, Supervisor Avalos has requested additional time for the Planning  
6 Commission to review the proposed Ordinance; and

7           WHEREAS, The Board deems it appropriate in this instance to grant to the Planning  
8 Commission additional time to review the proposed Ordinance and render its decision; now,  
9 therefore, be it

10          RESOLVED, That by this Resolution, the Board hereby extends the prescribed time  
11 within which the Planning Commission may render its decision on the proposed Ordinance for  
12 approximately 60 additional days, until October 22, 2015.

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1 [Planning Code - Residential Mergers; Permeable Surfaces and Landscaping Requirements]

2

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

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

13

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

15

16 Section 1. Findings.

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

22 (b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_,  
23 adopted findings that the actions contemplated in this ordinance are consistent, on balance,  
24 with the City’s General Plan and eight priority policies of Planning Code Section 101.1. The  
25

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

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

7  
8 Section 2. The Planning Code is hereby amended by revising Sections 132 and 317, to  
9 read as follows:

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

12 The following requirements for minimum front setback areas shall apply to every  
13 building in all RH, RTO, and RM Districts, in order to relate the setbacks provided to the  
14 existing front setbacks of adjacent buildings. Buildings in RTO Districts which have more than  
15 75 feet of street frontage are additionally subject to the Ground Floor Residential Design  
16 Guidelines, as adopted and periodically amended by the Planning Commission. Planned Unit  
17 Developments or PUDs, as defined in Section 304, shall also provide landscaping in required  
18 setbacks in accord with Section 132(g).

19 \* \* \* \*

20 (g) **Landscaping and Permeable Surfaces.** The landscaping and permeable surface  
21 requirements of this Section and Section (h) below shall be met by the permittee in the case  
22 of construction of a new building; the addition of a new dwelling unit, a garage, or additional  
23 parking; any addition to a structure that would result in an increase of 20% or more of the existing  
24 Gross Floor Area, as defined in Section 102; a Residential Merger, as defined in Section 317; or  
25 paving or repaving more than 200 square feet of the front setback. All front setback areas

1 required by this Section 132 shall be appropriately landscaped, meet any applicable water use  
2 requirements of Administrative Code Chapter 63, and in every case not less than 20 percent  
3 of the required setback area shall be and remain unpaved and devoted to plant material,  
4 including the use of climate appropriate plant material as defined in Public Works Code  
5 Section 802.1. For the purposes of this Section, permitted obstructions as defined by Section  
6 136(c)(6) chimneys, Section 136(c)(14) steps stairs, and Section 136(c)(26) underground  
7 garages, shall be excluded from the front setback area used to calculate the required  
8 landscape and permeable surface area. If the required setback area is entirely taken up by  
9 one or more permitted obstructions, the Zoning Administrator may allow the installation of  
10 sidewalk landscaping that is compliant with applicable water use requirements of Chapter 63  
11 of the Administrative Code to satisfy the requirements of this sSection, subject to permit  
12 approval from the Department of Public Works in accordance with Public Works Code Section  
13 810B.

14 \* \* \* \*

15 **SEC. 317. LOSS OF DWELLING UNITS THROUGH DEMOLITION, MERGER AND**  
16 **CONVERSION.**

17 \* \* \* \*

18 **(e) Residential Merger.**

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

1 (2) The Planning Commission shall consider the following criteria in the review  
2 of applications to merge Residential Units:

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

6 (B) whether removal of the unit(s) and the merger with another is  
7 intended for owner occupancy;

8 (C) whether the removal of the unit(s) will remove an affordable housing  
9 unit as defined in Section 415 of this Code or housing subject to the Rent Stabilization and  
10 Arbitration Ordinance;

11 ~~(D) whether removal of the unit(s) will bring the building closer into~~  
12 ~~conformance with prescribed zoning;~~

13 ~~(E)~~ if removal of the unit(s) removes an affordable housing unit as defined  
14 in Section 401 of this Code or units subject to the Rent Stabilization and Arbitration  
15 Ordinance, whether replacement housing will be provided which is equal or greater in size,  
16 number of bedrooms, affordability, and suitability to households with children to the units  
17 being removed;

18 ~~(E)(F)~~ whether the number of bedrooms provided in the merged unit will  
19 be equal to or greater than the number of bedrooms in the separate units;

20 ~~(F)(G)~~ whether removal of the unit(s) is necessary to correct design or  
21 functional deficiencies that cannot be corrected through interior alterations.

22 (3) At least ten days prior to any hearing to consider a Conditional Use authorization  
23 under subsection (e)(1), the Zoning Administrator shall mail a notice containing the following  
24 information to all residential units in the building, in addition to any other notice required under this  
25 Code:

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

2 (B) An explanation of the process for merging residential units, including a  
3 description of subsequent permits that would be required from the Planning Department and Building  
4 Inspection Department and how they could be appealed; and

5 (C) A list of tenant counseling services that can provide assistance to tenants  
6 with understanding and participating in the merger process.

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

16 (4) The Planning Commission shall not approve an application for merger if any  
17 tenant has been evicted pursuant to Administrative Code Sections 37.9(a)(9) through  
18 37.9(a)(14) where the tenant was served with a notice of eviction after December 10, 2013 if  
19 the notice was served within ten (10) years prior to filing the application for merger.  
20 Additionally, the Planning Commission shall not approve an application for merger if any  
21 tenant has been evicted pursuant to Administrative Code Section 37.9(a)(8) where the tenant  
22 was served with a notice of eviction after December 10, 2013 if the notice was served within  
23 five (5) years prior to filing the application for merger. This Subsection (e)(43) shall not apply if  
24 the tenant was evicted under Section 37.9(a)(11) or 37.9(a)(14) and the applicant(s) either (A)  
25 have certified that the original tenant reoccupied the unit after the temporary eviction or (B)



1 have submitted to the Planning Commission a declaration from the property owner or the  
2 tenant certifying that the property owner or the Rent Board notified the tenant of the tenant's  
3 right to reoccupy the unit after the temporary eviction and that the tenant chose not to  
4 reoccupy it.

5 \* \* \* \*

6  
7 Section 3. Effective Date. This ordinance shall become effective 30 days after  
8 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
9 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
10 of Supervisors overrides the Mayor's veto of the ordinance.

11  
12 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
13 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
14 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
15 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
16 additions, and Board amendment deletions in accordance with the "Note" that appears under  
17 the official title of the ordinance.

18  
19 APPROVED AS TO FORM:  
20 DENNIS J. HERRERA, City Attorney

21 By: \_\_\_\_\_  
22 Kate H. Stacy  
23 Deputy City Attorney

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## LEGISLATIVE DIGEST

[Planning Code - Residential Mergers; Permeable Surfaces and Landscaping Requirements]

**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.**

### Existing Law

The Planning Code currently subjects residential mergers to a mandatory discretionary review process or a conditional use authorization requirement and provides an exemption for residential mergers that are demonstrably not affordable units.

The Planning Code requires that certain kinds of permits trigger the requirement to provide landscaping and permeable surfaces, including construction of a new building; the addition of a new dwelling unit, a garage, or additional parking; or paving or repaving more than 200 square feet of the front setback.

### Amendments to Current Law

This ordinance would require conditional use authorization for all residential mergers, for both legal and illegal existing units, and would provide no exemption for such requirement. Prior to the hearing, the Planning Department would provide a special notice to other residents in the building to provide them information about the hearing and the merger process.

This ordinance would require compliance with the provisions for landscaping and permeable surfaces for residential mergers and for any addition to a building that would result in an increase of 20% or more of the existing Gross Floor Area.

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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. [ ]
- 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

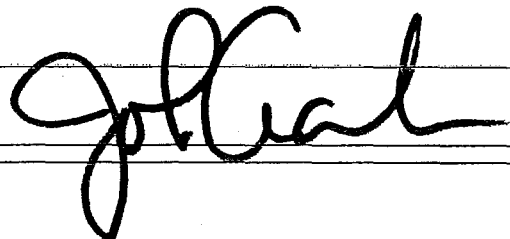
**Subject:**

Resolution - Approval of a 60-Day Extension for Planning Commission Review of conditional use authorization for all residential mergers (File No. 150494)

**The text is listed below or attached:**

[Empty box for text listing]

Signature of Sponsoring Supervisor: \_\_\_\_\_



For Clerk's Use Only:

