

BOARD of SUPERVISORS



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## 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

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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

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

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

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

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

20 Section 1. Findings.

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

1 (b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_,  
2 adopted findings that the actions contemplated in this ordinance are consistent, on balance,  
3 with the City's General Plan and the eight priority policies of Planning Code Section 101.1.  
4 The Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk  
5 of the Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.

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

10  
11 Section 2. The Planning Code is hereby amended by revising Sections 132 and 317,  
12 to read as follows:

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

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

22 \* \* \* \*

23 (g) **Landscaping and Permeable Surfaces.** The landscaping and permeable surface  
24 requirements of this Section and Section (h) below shall be met by the permittee in the case  
25 of construction of a new building; the addition of a new ~~d~~Dwelling ~~u~~Unit, a garage, or

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

17 \* \* \* \*

18 **SEC. 317. LOSS OF DWELLING UNITS THROUGH DEMOLITION, MERGER AND**  
19 **CONVERSION.**

20 \* \* \* \*

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

23 \* \* \* \*

24 (7) "Residential Merger" shall mean the combining of two or more *legal*  
25 Residential Units, whether legal or illegal, resulting in a decrease in the number of Residential

1 Units within a building, or the enlargement of one or more existing units while substantially  
2 reducing the size of others by more than 25% of their original floor area, even if the number of  
3 units is not reduced. The Planning Commission may reduce the numerical element of this  
4 criterion by up to 20% of its value should it deem that adjustment is necessary to implement  
5 the intent of this Section 317, to conserve existing housing and preserve affordable housing.

6 \* \* \* \*

7 (12) "Residential Unit" shall mean a legal conforming or *legal* nonconforming  
8 Dwelling Unit, ~~or~~ a legal nonconforming Live/Work Unit or Group Housing, which are defined  
9 in Section 102 of this Code; provided, however, this definition shall not include a Residential  
10 Unit in a Residential Hotel, as defined and regulated by Chapter 41 of the *San Francisco*  
11 Administrative Code.

12 (13) "Unauthorized Unit" shall mean one or more rooms within a building that have  
13 been used, without the benefit of a building permit, as a separate and distinct living or sleeping space  
14 independent from Residential Units on the same property. "Independent" shall mean that (i) the space  
15 has independent access that does not require entering a Residential Unit on the property and (ii) there  
16 is no open, visual connection to a Residential Unit on the property.

17 (14) "Vertical Envelope Elements" shall mean all exterior walls that provide  
18 weather and thermal barriers between the interior and exterior of the building, or that provide  
19 structural support to other elements of the building envelope.

20 \* \* \* \*

21 (c) **Applicability.** ~~Any~~ Any application for a permit that would result in the ~~loss~~  
22 Removal of one or more Residential Units or Unauthorized Units is required to obtain  
23 Conditional Use authorization; provided, however, that in the RTO, RTO-M, NCT, and Upper  
24 Market NCD Zoning Districts, as well as the loss of any residential unit above the ground floor in the  
25 C-3 Zoning District, only the Removal of a Residential Unit or Unauthorized Unit above the ground

1 floor requires a Conditional Use authorization. The application for a replacement building or  
2 alteration permit shall also be subject to Conditional Use requirements. ~~When considering~~  
3 ~~whether to grant Conditional Use authorization for the loss of dwelling unit(s) in the C-3 districts, in~~  
4 ~~lieu of the criteria set forth in Planning Code Section 303, consideration shall be given to the adverse~~  
5 ~~impact on the public health, safety, and general welfare of the loss of housing stock in the district and~~  
6 ~~to any unreasonable hardship to the applicant if the permit is denied. Any application for a permit that~~  
7 ~~would result in the loss or Removal of three or more Residential Units, notwithstanding any other~~  
8 ~~sections of this Code, shall require a Conditional Use authorization for the Removal and replacement~~  
9 ~~of the units. Approval of any other application that would result in the loss or Removal of up to two~~  
10 ~~Residential Units is prohibited unless the Planning Commission approves such permit application and~~  
11 ~~the replacement structure permit application at a Mandatory Discretionary Review hearing, with~~  
12 ~~certain exceptions specified below.~~

13 (d) **Demolition.**

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

20 (2) ~~If~~ Conditional Use authorization is required for approval of the permit for a  
21 Residential Demolition ~~by other sections of this Code, and~~ the Commission shall consider the  
22 replacement structure as part of its decision on the Conditional Use application. If Conditional  
23 Use authorization is required for the replacement structure by other sections of this Code, the  
24 Commission shall consider the demolition as part of its decision on the Conditional Use  
25 application. ~~In either case, Mandatory Discretionary Review is not required, although the Commission~~

1 ~~shall apply appropriate criteria adopted under this Section 317 in addition to the criteria in Section~~  
2 ~~303 of the Planning Code in its consideration of Conditional Use authorization. If neither permit~~  
3 ~~application is subject to Conditional Use authorization, then separate Mandatory Discretion Review~~  
4 ~~eases shall be heard to consider the permit applications for the demolition and the replacement~~  
5 ~~structure.~~

6 ~~(3) For those applications for a Residential Demolition in districts that require~~  
7 ~~Mandatory Discretionary Review, administrative review criteria shall ensure that only applications to~~  
8 ~~demolish Single Family Residential Buildings that are demonstrably not affordable or financially~~  
9 ~~accessible housing, or Residential Buildings of two units or fewer that are found to be unsound~~  
10 ~~housing, are exempt from Mandatory Discretionary Review hearings. Specific numerical criteria for~~  
11 ~~such analyses shall be adopted by the Planning Commission in the Code Implementation Document, in~~  
12 ~~accordance with this Section 317, and shall be adjusted periodically by the Zoning Administrator based~~  
13 ~~on established economic real estate and construction indicators.~~

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

24 ~~(B) The Planning Commission, in the Code Implementation Document, shall~~  
25 ~~adopt criteria and procedures for determining the soundness of a structure proposed for demolition,~~

1 ~~where "soundness" is an economic measure of the feasibility of upgrading a residence that is deficient~~  
2 ~~with respect to habitability and Housing Code requirements, due to its original construction. The~~  
3 ~~"soundness factor" for a structure shall be the ratio of a construction upgrade cost (i.e., an estimate of~~  
4 ~~the cost to repair specific habitability deficiencies) to the replacement cost (i.e., an estimate of the~~  
5 ~~current cost of building a structure the same size as the existing building proposed for demolition),~~  
6 ~~expressed as a percent. A building is unsound if its soundness factor exceeds 50%. A Residential~~  
7 ~~Building that is unsound may be approved for demolition.~~

8 ~~(C) The Planning Commission shall consider the following additional criteria in~~  
9 ~~the review of applications for Residential Demolition:~~

10 ~~(i) whether the property is free of a history of serious, continuing Code~~  
11 ~~violations;~~

12 ~~(ii) whether the housing has been maintained in a decent, safe, and~~  
13 ~~sanitary condition;~~

14 ~~(iii) whether the property is an "historical resource" under CEQA;~~

15 ~~(iv) whether the removal of the resource will have a substantial adverse~~  
16 ~~impact under CEQA;~~

17 ~~(v) whether the project converts rental housing to other forms of tenure~~  
18 ~~or occupancy;~~

19 ~~(vi) whether the project removes rental units subject to the Rent~~  
20 ~~Stabilization and Arbitration Ordinance or affordable housing;~~

21 ~~(vii) whether the project conserves existing housing to preserve cultural~~  
22 ~~and economic neighborhood diversity;~~

23 ~~(viii) whether the project conserves neighborhood character to preserve~~  
24 ~~neighborhood cultural and economic diversity;~~



1 ~~(ix) whether the project protects the relative affordability of existing~~  
2 ~~housing;~~

3 ~~(x) whether the project increases the number of permanently affordable~~  
4 ~~units as governed by Section 415;~~

5 ~~(xi) whether the project locates in-fill housing on appropriate sites in~~  
6 ~~established neighborhoods;~~

7 ~~(xii) whether the project increases the number of family-sized units on-~~  
8 ~~site;~~

9 ~~(xiii) whether the project creates new supportive housing;~~

10 ~~(xiv) whether the project is of superb architectural and urban design,~~  
11 ~~meeting all relevant design guidelines, to enhance existing neighborhood character;~~

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

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

14 ~~(4) (3)~~ Nothing in this Section is intended to permit Residential Demolition in  
15 those areas of the City where other sections of this Code prohibit such demolition or  
16 replacement structure.

17 ~~(5) (4)~~ Nothing in this Section is intended to exempt buildings or sites where  
18 demolition is proposed from undergoing review with respect to Articles 10 and 11 of the  
19 Planning Code, where the requirements of those articles apply. Notwithstanding the definition  
20 of "Residential Demolition" in this section and as further described in the Code  
21 Implementation Document with regard to Residential Demolition, the criteria of Section 1005  
22 shall apply to projects subject to review under the requirements of Article 10 with regard to the  
23 structure itself.

24 (e) **Conversion to Student Housing.** The conversion of Residential Units to Student  
25 Housing is prohibited. For the purposes of this subsection, Residential Units that have been defined as

1 such by the time a First Certificate of Occupancy has been issued by the Department of Building  
2 Inspection for new construction shall not be converted to Student Housing.

3 (f) **Residential Merger.** The Merger of Residential Units, not otherwise subject to  
4 Conditional Use authorization by this Code, shall be prohibited.

5 (g) **Conditional Use Criteria.**

6 (1) **C-3 Districts.** When considering whether to grant Conditional Use authorization for  
7 the loss or Removal of Residential Unit(s) in the C-3 districts, in lieu of the criteria set forth in  
8 Planning Code Section 303, consideration shall be given to the adverse impact on the public health,  
9 safety, and general welfare of the loss of housing stock in the district and to any unreasonable hardship  
10 to the applicant if the permit is denied.

11 \* \* \* \*

12 ~~(e) (2) **Residential Merger.**~~

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

18 The Planning Commission shall consider the following criteria in the review of  
19 applications to merge Residential Units or Unauthorized Units:

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

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

1 (C) whether the removal of the unit(s) will remove an affordable housing unit as  
2 defined in Section ~~401 415~~ of this Code or housing subject to the Residential Rent Stabilization  
3 and Arbitration Ordinance;

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

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

11 (E) how recently the unit being removed was occupied by a tenant or tenants;

12 (F) whether the number of bedrooms provided in the merged unit will be equal to  
13 or greater than the number of bedrooms in the separate units;

14 (G) whether removal of the unit(s) is necessary to correct design or functional  
15 deficiencies that cannot be corrected through interior alterations;

16 (H) the appraised value of the least expensive Residential Unit proposed for merger only  
17 when the merger does not involve an Unauthorized Unit.

18 ~~(3) Administrative review criteria shall ensure that only those Residential Units~~  
19 ~~proposed for Merger that are demonstrably not affordable or financially accessible housing are exempt~~  
20 ~~from Mandatory Discretionary Review hearings. Applications for which the least expensive unit~~  
21 ~~proposed for merger has a value greater than at least 80% of the combined land and structure values~~  
22 ~~of single-family homes in San Francisco, as determined by a credible appraisal, made within six~~  
23 ~~months of the application to merge, are not subject to a Mandatory Discretionary Review hearing. The~~  
24 ~~Planning Commission, in the Code Implementation Document, may increase the numerical criterion in~~  
25

1 ~~this subsection by up to 10% of its value should it deem that adjustment is necessary to implement the~~  
2 ~~intent of this Section 317, to conserve existing housing and preserve affordable housing.~~

3 (4) The Planning Commission shall not approve an application for Residential  
4 ~~m~~Merger if any tenant has been evicted pursuant to Administrative Code Sections 37.9(a)(9)  
5 through 37.9(a)(14) where the tenant was served with a notice of eviction after December 10,  
6 2013 if the notice was served within ~~ten~~ (10) years prior to filing the application for merger.  
7 Additionally, the Planning Commission shall not approve an application for Residential  
8 ~~m~~Merger if any tenant has been evicted pursuant to Administrative Code Section 37.9(a)(8)  
9 where the tenant was served with a notice of eviction after December 10, 2013 if the notice  
10 was served within five (5) years prior to filing the application for merger. This Subsection ~~(e)(4)~~  
11 ~~(g)(2)(B)~~ shall not apply if the tenant was evicted under Section 37.9(a)(11) or 37.9(a)(14) and  
12 the applicant(s) either (A) have certified that the original tenant reoccupied the unit after the  
13 temporary eviction or (B) have submitted to the Planning Commission a declaration from the  
14 property owner or the tenant certifying that the property owner or the Rent Board notified the  
15 tenant of the tenant's right to reoccupy the unit after the temporary eviction and that the tenant  
16 chose not to reoccupy it.

17 ~~(f)~~ (3) Residential Conversion.

18 ~~(1) Residential Conversion not otherwise prohibited or subject to Conditional Use~~  
19 ~~authorization by this Code, shall be prohibited, unless the Planning Commission approves the building~~  
20 ~~permit application at a Mandatory Discretionary Review hearing, or is exempted from such approval~~  
21 ~~as provided in subsections (f)(3) or (4) below. The conversion of Residential Units to Student Housing~~  
22 ~~is prohibited. For the purposes of this subsection, Residential Units that have been defined as such by~~  
23 ~~the time a First Certificate of Occupancy has been issued by the Department of Building Inspection for~~  
24 ~~new construction shall not be converted to Student Housing.~~

1           (2) The Planning Commission shall consider the following criteria in the review of  
2 applications for Residential Conversion Conversation;

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

6                   (B) whether Residential Conversation would provide desirable new non-  
7 residential use(s) appropriate for the neighborhood and adjoining district(s);

8                   (C) in districts where Residential Uses are not permitted, whether  
9 Residential Conversion will bring the building closer into conformance with the uses permitted  
10 in the zoning district;

11                   (D) whether conversion of the unit(s) will be detrimental to the City's  
12 housing stock;

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

15                   (F) whether the Residential Conversion will remove Affordable Housing,  
16 or units subject to the Rent Stabilization and Arbitration Ordinance.

17           \* \* \* \*

18                   **(4) Residential Demolition.** *The Planning Commission shall consider the following*  
19 *additional criteria in the review of applications for Residential Demolition:*

20                           (A) whether the property is free of a history of serious, continuing Code  
21 violations;

22                           (B) whether the housing has been maintained in a decent, safe, and sanitary  
23 condition;

24                           (C) whether the property is an "historical resource" under CEQA;  
25

1 (D) whether the removal of the resource will have a substantial adverse impact  
2 under CEQA;

3 (E) whether the project converts rental housing to other forms of tenure or  
4 occupancy;

5 (F) whether the project removes rental units subject to the Rent Stabilization and  
6 Arbitration Ordinance or affordable housing;

7 (G) whether the project conserves existing housing to preserve cultural and  
8 economic neighborhood diversity;

9 (H) whether the project conserves neighborhood character to preserve  
10 neighborhood cultural and economic diversity;

11 (I) whether the project protects the relative affordability of existing housing;

12 (J) whether the project increases the number of permanently affordable units as  
13 governed by Section 415;

14 (K) whether the project locates in-fill housing on appropriate sites in established  
15 neighborhoods;

16 (L) whether the project increases the number of family-sized units on-site;

17 (M) whether the project creates new supportive housing;

18 (N) whether the project is of superb architectural and urban design, meeting all  
19 relevant design guidelines, to enhance existing neighborhood character;

20 (O) whether the project increases the number of on-site dwelling units;

21 (P) whether the project increases the number of on-site bedrooms.

22 (5) **Removal of Unauthorized Units.** In addition to the criteria set forth in subsections  
23 (g)(1) through (g)(4) above, the Planning Commission shall consider the criteria below in the review of  
24 applications for removal of Unauthorized Units:

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

3 (B) whether the costs to legalize the Unauthorized Unit or Units under the  
4 Planning, Building, and other applicable Codes is reasonable based on how such cost compares to the  
5 average cost of legalization per square foot derived from the cost of projects on the Planning  
6 Department's Master List of Additional Dwelling Units Approved required by Section 207.3(k) of this  
7 Code;

8 (C) whether it is financially feasible to legalize the Unauthorized Unit or Units.  
9 Such determination will be based on the costs to legalize the Unauthorized Unit(s) under the Planning,  
10 Building, and other applicable Codes in comparison to the added value that legalizing said Units  
11 would provide to the subject property. The gain in the value of the subject property shall be based on  
12 the current value of the property with the Unauthorized Unit(s) compared to the value of the property if  
13 the Unauthorized Unit(s) is legalized. The calculation of the gain in value shall be conducted and  
14 approved by a California licensed property appraiser. Legalization would be deemed financially  
15 feasible if gain in the value of the subject property is equal to or greater than the cost to legalize the  
16 Unauthorized Unit.

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

22 (h) Notice of Conditional Use Hearing. At least twenty days prior to any hearing to  
23 consider a Conditional Use authorization under Subsection (g)(2), (g)(3), (g)(4), or (g)(5), the Zoning  
24 Administrator shall cause a written notice containing the following information to be mailed to all  
25

1 Residential Units and if known any Unauthorized Units in the building, in addition to any other notice  
2 required under this Code:

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

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

7 ~~(g)~~ (i) Exemptions. This Section 317 shall not apply to property:

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

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

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

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

18  
19 Section 3. The Building Code is hereby amended by revising Section 102A, to read as  
20 follows:

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

22 All buildings, structures, property, or parts thereof, regulated by this code that are  
23 structurally unsafe or not provided with adequate egress, or that constitute a fire hazard, or  
24 are otherwise dangerous to human life, safety or health of the occupants or the occupants of  
25 adjacent properties or the public by reason of inadequate maintenance, dilapidation,



1 obsolescence or abandonment, or by reason of occupancy or use in violation of law or  
2 ordinance, or were erected, moved, altered, constructed or maintained in violation of law or  
3 ordinance are, for the purpose of this chapter, unsafe.

4 \* \* \* \*

5 **102A.3 Inspections and Complaints.** The Building Official is hereby authorized to  
6 inspect or cause the inspection of any building, structure or property for the purpose of  
7 determining whether or not it is unsafe in any of the following circumstances:

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

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

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

17 Upon the completion of any such inspection and the finding by the Building Official of  
18 any condition which renders the building, structure or property unsafe, the Building Official  
19 shall, within 15 days thereafter, serve a written notice of violation upon the building owner  
20 which shall contain specific allegations, setting forth each condition the Building Official has  
21 found which renders the building, structure or property unsafe. The Building Official shall,  
22 within three days of mailing of such notice of violation, post a copy thereof in a conspicuous  
23 place in or upon such building, structure or property and make available a copy of the notice  
24 of violation to each tenant thereof. Such notice shall also set forth the penalties for violation  
25 prescribed in Section 103A of this code. In addition to the civil penalties prescribed in Section

1 103A, the Department's cost of preparation for and appearance at the hearing required by  
2 Section 102A.4, and all prior and subsequent attendant and administrative costs, shall be  
3 assessed upon the property owner monthly, after failure to comply with a written notice of  
4 violation that has been served upon the property owner. Said violations will not be deemed  
5 legally abated until the property owner makes full payment of the assessment of costs to the  
6 Department of Building Inspection. See Section 110A, Table 1A-D – Standard Hourly Rates  
7 and Table 1A-K – Penalties, Hearings, Code Enforcement Assessments – for the applicable  
8 rate. Failure to pay the assessment of costs shall result in tax lien proceedings against the  
9 property per Section 102A.18.

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

14 All such unsafe buildings, structures, property, or portions thereof, are hereby declared  
15 to be public nuisances and shall be vacated, repaired, altered or demolished as hereinafter  
16 provided.

17 102A.3.1. Dwelling units constructed or installed without required permit(s). In the case of an  
18 unauthorized dwelling unit constructed or installed in an existing building without the required permit  
19 or permits, in addition to the above requirements the written notice of violation shall order the property  
20 owner to file an application for a building and other permits required to legalize the unit pursuant to  
21 Building Code Section 106A.3.1.3 and Planning Code Section 207.3 unless removal of the unit is  
22 approved by the Planning Commission pursuant to Planning Code Section 317.

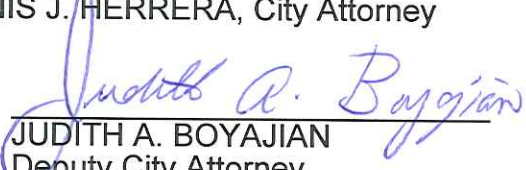
23  
24 Section 4. Effective Date. This ordinance shall become effective 30 days after  
25 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
2 of Supervisors overrides the Mayor's veto of the ordinance.

3  
4 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
5 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
6 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
7 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
8 additions, and Board amendment deletions in accordance with the "Note" that appears under  
9 the official title of the ordinance.

10  
11 APPROVED AS TO FORM:  
12 DENNIS J. HERRERA, City Attorney

13 By:

  
14 JUDITH A. BOYAJIAN  
Deputy City Attorney

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