



# SAN FRANCISCO PLANNING DEPARTMENT

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September 23, 2013

Ms. Angela Calvillo, Clerk  
Honorable Supervisor Avalos  
Board of Supervisors  
City and County of San Francisco  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

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

Reception:  
**415.558.6378**

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

Dear Ms. Calvillo and Supervisor Avalos,

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

The proposed amendments have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2). Pursuant to San Francisco's Administrative Code Section 8.12.5 "Electronic Distribution of Multi-page Documents", the Department is sending electronic documents and one hard copy. Additional hard copies may be requested by contacting Sophie Hayward at (415) 558-6372.

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

Sincerely,  


AnMarie Rodgers  
Manager of Legislative Affairs

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

Attachments (two hard copies of the following):

Planning Commission Resolution

Planning Department Executive Summary



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Resolution No. 18967 Planning Code Text Change

HEARING DATE: SEPTEMBER 19, 2013

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*Project Name:* **Nonconforming Units: Enlargement, Alteration, or Reconstruction**  
*Case Number:* 2013.1164T [Board File No. 130783]  
*Initiated by:* Supervisor Avalos / Introduced July 30<sup>th</sup>, 2013  
*Staff Contact:* Sophie Hayward, Legislative Affairs  
sophie.hayward@sfgov.org, 415-558-6372  
*Reviewed by:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395  
*Recommendation:* **Recommend Approval**

**RECOMMENDING THAT THE BOARD OF SUPERVISORS APPROVE A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO PERMIT THE ENLARGEMENT, ALTERATION, OR RECONSTRUCTION OF A DWELLING OR OTHER HOUSING STRUCTURE THAT EXCEEDS THE PERMITTED DENSITY OF THE DISTRICT IF DWELLING UNITS ARE PRINCIPALLY PERMITTED IN THE DISTRICT AND THE ENLARGEMENT, ALTERATION, OR RECONSTRUCTION DOES NOT EXTEND BEYOND THE BUILDING ENVELOPE AS IT EXISTED ON JANUARY 1, 2013; AND ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE PRIORITY POLICIES OF PLANNING CODE SECTION 101.**

WHEREAS, on July 30, 2013, Supervisors Avalos introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 13-0783, which would amend Section 181 of the Planning Code regarding nonconforming units;

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

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

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

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

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

**MOVED**, that the Commission hereby recommends that the Board of Supervisors *approve* the draft Ordinance and adopts the attached Resolution to that effect.

## FINDINGS

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

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

### I. HOUSING ELEMENT

#### OBJECTIVE 2

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

#### POLICY 2.4

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

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

#### OBJECTIVE 3

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

**POLICY 3.1**

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

**POLICY 3.4**

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

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

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

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

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

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

*The proposed Ordinance is intended to protect existing housing and neighborhood character through increased flexibility regarding expansion and alteration of nonconforming units.*

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

*The proposed Ordinance would encourage the improvement and enhancement of the existing unsubsidized affordable housing stock by allowing alterations and expansion of units that are nonconforming as relates to density.*

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

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

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

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

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

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

7. That the landmarks and historic buildings be preserved;

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

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

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

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

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

Jonas P. Ionin  
Acting Commission Secretary

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

NOES: Commissioner Antonini

ABSENT: None

ADOPTED: September 19, 2013



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Planning Code Text Change

HEARING DATE: SEPTEMBER 19, 2013

*Project Name:* **Nonconforming Units: Enlargement, Alteration, or Reconstruction**  
*Case Number:* 2013.1164T [Board File No. 130783]  
*Initiated by:* Supervisor Avalos / Introduced July 30<sup>th</sup>, 2013  
*Staff Contact:* Sophie Hayward, Legislative Affairs  
sophie.hayward@sfgov.org, 415-558-6372  
*Reviewed by:* AnMarie Rodgers, Manager Legislative Affairs  
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*Recommendation:* **Recommend Approval**

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### PLANNING CODE AMENDMENT

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

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

#### The Way It Is Now:

**Planning Code Section 181** describes the provisions for enlarging, altering, and reconstructing a nonconforming structure.<sup>2</sup>

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

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

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

#### The Way It Would Be:

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

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

#### REQUIRED COMMISSION ACTION

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

#### RECOMMENDATION

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

#### BASIS FOR RECOMMENDATION

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

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

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



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

## **ISSUES AND CONSIDERATIONS**

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

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

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

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

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

## **ENVIRONMENTAL REVIEW**

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

## **PUBLIC COMMENT**

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

<b>RECOMMENDATION:</b> <b>Recommendation of Approval</b>
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<sup>3</sup> 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.