

1 [Interim Zoning Controls - Conditional Use Requirement for Residential Mergers]

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3 **Resolution imposing interim zoning controls to require conditional use authorization**  
4 **for any residential merger, including mergers of both legal and illegal existing units;**  
5 **and making environmental findings, including findings of consistency with the eight**  
6 **priority policies of Planning Code, Section 101.1.**

7

8 WHEREAS, Planning Code, Section 306.7 provides for the imposition of interim zoning  
9 controls to accomplish several objectives, including preservation of residential and mixed  
10 residential and commercial areas in order to preserve the existing character of such  
11 neighborhoods and areas; development and conservation of the commerce and industry of  
12 the City in order to maintain the economic vitality of the City, provide its citizens with adequate  
13 jobs and business opportunities, and maintain adequate services for its residents, visitors,  
14 businesses and institutions; control of uses that have an adverse impact on open space and  
15 other recreational areas and facilities; control of uses that generate an adverse impact on  
16 pedestrian and vehicular traffic; and control of uses that generate an adverse impact on public  
17 transit; and

18 WHEREAS, Policy 2.2 of the City’s 2009 Housing Element states that “all proposals to  
19 merge units should be carefully considered within the local context and housing trends to  
20 assure that the resulting unit responds to identified housing needs, rather than creating fewer,  
21 larger and more expensive units;” and

22 WHEREAS, In California Government Code, Section 65852.150, the Legislature  
23 declared that second units are a valuable form of housing in California because they “provide  
24 housing for family members, students, the elderly, in-home health care providers, the  
25 disabled, and others, at below market prices within existing neighborhoods” and that

1 “homeowners who create second units benefit from added income, and an increased sense of  
2 security;” and

3 WHEREAS, Policy 1.5 of the City’s 2009 Housing Element states that secondary units  
4 in existing residential buildings “represent a simple and cost-effective method of expanding  
5 the City’s housing supply;” and

6 WHEREAS, Mayor Lee’s Executive Directive 13-01, “Housing Production and  
7 Preservation of Rental Stock” created a Working Group to make recommendations “to  
8 preserve and promote rental housing in San Francisco;” and

9 WHEREAS, The Working Group convened to implement Executive Directive 13-01, on  
10 Housing Production and the Protection of Rental Stock, recommended that “If a property  
11 owner seeks to remove an illegal dwelling unit, require the submittal of findings that outline  
12 why they are removing, rather than legalizing, the dwelling-unit;” and

13 WHEREAS, In 2014, the Board of Supervisors adopted ordinance No. 43-14 to provide a  
14 process for property owners to authorize one existing dwelling unit that was constructed  
15 without the required permits in an existing building; and

16 WHEREAS, On April 29, 2015, the Board of Appeals adopted a resolution that stated,  
17 “as San Francisco works to address a housing shortage, the Board of Appeals has  
18 experienced an increase in appeals of permits obtained by landlords seeking to remove  
19 residential units, including units that were created without the benefit of permits (“illegal  
20 units”);” and

21 WHEREAS, Policy 3 of the eight priority policies of the City’s General Plan and  
22 Planning Code, Section 101.1 establishes a policy “That the City’s supply of affordable  
23 housing be preserved and enhanced;” and

24 WHEREAS, Adoption of these interim controls will allow the Board of Supervisors time  
25 to consider whether to adopt permanent controls for Residential Mergers; and

1           WHEREAS, The Board has considered the impact on the public health, safety, peace,  
2 and general welfare if the interim controls proposed herein are not imposed; and

3           WHEREAS, The Board has determined that the public interest will be best served by  
4 imposition of these interim controls at this time, to ensure that the legislative scheme that may  
5 be ultimately adopted is not undermined during the planning and legislative process for  
6 permanent controls; and

7           WHEREAS, Planning Code, Section 306.7 requires consideration of the following  
8 objectives when determining whether to impose interim controls:

- 9           (1) Preservation of historic and architecturally significant buildings and areas;
- 10           (2) Preservation of residential neighborhoods;
- 11           (3) Preservation of neighborhoods and areas of mixed residential and commercial  
12 uses in order to preserve the existing character of such neighborhoods and areas;
- 13           (4) Preservation of the City's rental housing stock;
- 14           (5) Development and conservation of the commerce and industry of the City in order  
15 to maintain the economic vitality of the City, to provide its citizens with adequate jobs and  
16 business opportunities, and to maintain adequate services for its residents, visitors,  
17 businesses and institutions;
- 18           (6) Control of uses which have an adverse impact on open space and other  
19 recreational areas and facilities;
- 20           (7) Control of uses which generate an adverse impact on pedestrian and vehicular  
21 traffic; and
- 22           (8) Control of uses which generate an adverse impact on public transit; and

23           WHEREAS, Adoption of these interim controls will ensure that objectives 2, 3, 4 and 5  
24 above are met by considering the loss of potentially important housing stock—including  
25 smaller units, rent controlled units and unconventional, potentially unpermitted secondary

1 units that are more affordable by their nature and can now be legalized—that could have an  
2 adverse effect on the cultural and economic diversity that is essential to the character of San  
3 Francisco’s neighborhoods and commercial corridors; and

4 WHEREAS, The Planning Department has determined that the actions contemplated in  
5 this Resolution are in compliance with the California Environmental Quality Act (California  
6 Public Resources Code, Section 21000 et. seq.). Said determination is on file with the Clerk  
7 of the Board of Supervisors in File No. \_\_\_\_\_ and is hereby affirmed and incorporated by  
8 reference as though fully set forth; now, therefore, be it

9 RESOLVED, That a conditional use permit shall be required for all residential mergers,  
10 as defined in Planning Code, Section 317, for both legal and illegal existing residential units;  
11 and, be it

12 FURTHER RESOLVED, That these interim controls shall remain in effect for eighteen  
13 months from the effective date of this Resolution, or until the adoption of permanent legislation  
14 requiring conditional use authorization for residential mergers, whichever first occurs; and, be  
15 it

16 FURTHER RESOLVED, That these interim zoning controls advance and are consistent  
17 with Policies 2 and 3 of the Priority Policies set forth in Planning Code, Section 101.1, in that  
18 they require the Planning Commission to consider the merits of any proposed residential  
19 mergers and any potential adverse impact on the cultural and economic diversity of San  
20 Francisco neighborhoods—in particular through the elimination of rent controlled housing  
21 units or unconventional, potentially unpermitted housing units that are affordable by nature  
22 and can now be legalized; and, be it

23 FURTHER RESOLVED, With respect to Priority Policies 1, 4, 5, 6, 7 and 8, the Board  
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1 finds that these interim zoning controls do not, at this time, have an effect upon these policies,  
2 and thus will not conflict with said policies.

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4 APPROVED AS TO FORM:  
5 DENNIS J. HERRERA, City Attorney

6 By: \_\_\_\_\_  
7 KATE H. STACY  
8 Deputy City Attorney

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