

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 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 ~~s~~Section, 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.~~
25

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)(4~~3~~) 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

24 n:\legana\as2015\1500751\01015271.docx