

PLANNING CODE AMENDMENT

EFFECTIVE MAY 18, 2008

1 **Section 317. Loss of Dwelling Units through Merger, Conversion, and Demolition.**

2 (a) Findings. San Francisco faces a continuing shortage of affordable housing. There is a high
3 ratio of rental to ownership tenure among the City's residents. The General Plan recognizes that
4 existing housing is the greatest stock of rental and financially accessible residential units, and is a
5 resource in need of protection. Therefore, a public hearing will be held prior to approval of any
6 permit that would remove existing housing, with certain exceptions, as described below. The
7 Planning Commission shall develop a Code Implementation Document setting forth procedures and
8 regulations for the implementation of this Section 317 as provided further below. The Zoning
9 Administrator shall modify economic criteria related to property values and construction costs in the
10 Implementation Document as warranted by changing economic conditions to meet the intent of this
11 Section.

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

14 (1) "Conversion of Residential Unit" shall mean the removal of cooking facilities in a
15 Residential Unit or the change of occupancy (as defined and regulated by the Building Code), or the
16 change of use (as defined and regulated by the Planning Code), of any Residential Unit to a non-
17 residential use.

18 (2) "Demolition of Residential Buildings" shall mean any of the following:

19 (A) Any work on a Residential Building for which the Department of Building Inspection
20 determines that an application for a demolition permit is required, or

21 (B) A major alteration of a Residential Building that proposes the Removal of more than 50%
22 of the sum of the Front Façade and Rear Facade and also proposes the Removal of more than 65% of
23 the sum of all exterior walls, measured in lineal feet at the foundation level, or

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1 (C) A major alteration of a Residential Building that proposes the Removal of more than 50%
2 of the Vertical Envelope Elements and more than 50% of the Horizontal Elements of the existing
3 building, as measured in square feet of actual surface area.

4 (D) The Planning Commission may reduce the above numerical elements of the criteria in
5 subsections (b)(2)(B) and (b)(2)(C), by up to 20% of their values should it deem that adjustment is
6 necessary to implement the intent of this Section 317, to conserve existing sound housing and preserve
7 affordable housing.

8 (3) "Facade" shall mean an entire exterior wall assembly, including but not limited to all
9 finishes and siding, fenestration, doors, recesses, openings, bays, parapets, sheathing and framing.

10 (4) "Front Facade" shall mean the portion of the Façade fronting a right-of-way, or the portion
11 of the Façade most closely complying with that definition, as in the case of a flag lot. Where a lot has
12 more than one frontage on rights-of-way, all such frontages shall be considered Front Facades except
13 where a façade meets the definition of "Rear Façade."

14 (5) "Horizontal Elements" shall mean all roof areas and all floor plates, except floor plates at or
15 below grade.

16 (6) "Mandatory Discretionary Review" shall mean a hearing before the Planning Commission
17 that is required by this Section 317 at which the Commission will determine whether to approve,
18 modify or disapprove a permit application.

19 (7) "Merger" shall mean the combining of two or more legal Residential Units, resulting in a
20 decrease in the number of Residential Units within a building, or the enlargement of one or more
21 existing units while substantially reducing the size of others by more than 25% of their original floor
22 area, even if the number of units is not reduced. The Planning Commission may reduce the numerical
23 element of this criterion by up to 20% of its value should it deem that adjustment is necessary to

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1 implement the intent of this Section 317, to conserve existing housing and preserve affordable
2 housing.

3 (8) "Rear Façade" shall mean that portion of the Façade facing the part of a lot that most closely
4 complies with the applicable Planning Code rear yard requirements.

5 (9) "Removal" shall mean, with reference to a wall, roof or floor structure, its dismantling, its
6 relocation or its alteration of the exterior function by construction of a new building element exterior
7 to it. Where a portion of an exterior wall is removed, any remaining wall with a height less than the
8 Building Code requirement for legal head room shall be considered demolished. Where exterior
9 elements of a building are removed and replaced for repair or maintenance, in like materials, with no
10 increase in the extent of the element or volume of the building, such replacement shall not be
11 considered Removal for the purposes of this Section. The foregoing does not supersede any
12 requirements for or restrictions on noncomplying structures and their reconstruction as governed by
13 Article 1.7 of this Code.

14 (10) "Removal" shall mean, with reference to a Residential Unit, its Conversion, Demolition, or
15 Merger.

16 (11) "Residential Building" shall be mean any structure containing one or more Residential
17 Units as a principal use, regardless of any other uses present in the building.

18 (12) "Residential Unit" shall mean a legal conforming or non-conforming dwelling unit as
19 defined in Planning Code Section 102.7, or a legal non-conforming Live/Work Unit as defined in
20 Planning Code Section 102.13.

21 (13) "Vertical Envelope Elements" shall mean all exterior walls that provide weather and
22 thermal barriers between the interior and exterior of the building, or that provide structural support to
23 other elements of the building envelope.

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1 (c) Applicability. Where an application for a permit that would result in the loss of one or
2 more Residential Units is required to obtain Conditional Use authorization by other sections of this
3 Code, the application for a replacement building or alteration permit shall also be subject to
4 Conditional Use requirements. Any application for a permit that would result in the loss or Removal
5 of three or more Residential Units, notwithstanding any other sections of this Code, shall require a
6 Conditional Use authorization for the Removal and replacement of the units. Approval of any other
7 application that would result in the loss or Removal of up to two Residential Units is prohibited unless
8 the Planning Commission approves such permit application and the replacement structure permit
9 application at a Mandatory Discretionary Review hearing, with certain exceptions specified below.

10 (d) Loss of Residential Units through Demolitions.

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

17 (2) If Conditional Use authorization is required for approval of the permit to Demolish a
18 Residential Building by other sections of this Code, the Commission shall consider the replacement
19 structure as part of its decision on the Conditional Use application. If Conditional Use authorization is
20 required for the replacement structure by other sections of this Code, the Commission shall consider
21 the demolition as part of its decision on the Conditional Use application. In either case, Mandatory
22 Discretionary Review is not required, although the Commission shall apply appropriate criteria
23 adopted under this Section 317 in addition to the criteria in Section 303 of the Planning Code in its
24 consideration of Conditional Use authorization. If neither permit application is subject to Conditional
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1 Use authorization, then separate Mandatory Discretion Review cases shall be heard to consider the
2 permit applications for the demolition and the replacement structure.

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

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

21 (B) The Planning Commission, in the Code Implementation Document, shall adopt criteria and
22 procedures for determining the soundness of a structure proposed for demolition, where "soundness"
23 is an economic measure of the feasibility of upgrading a residence that is deficient with respect to
24 habitability and Housing Code requirements, due to its original construction. The "soundness factor"

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1 for a structure shall be the ratio of a construction upgrade cost (i.e., an estimate of the cost to repair
2 specific habitability deficiencies) to the replacement cost (i.e., an estimate of the current cost of
3 building a structure the same size as the existing building proposed for demolition), expressed as a
4 percent. A building is unsound if its soundness factor exceeds 50%. A Residential Building that is
5 unsound may be approved for demolition.

6 (C) The Planning Commission shall consider the following additional criteria in the review of
7 applications to demolish Residential Buildings:

- 8 (i) whether the property is free of a history of serious, continuing code violations;
- 9 (ii) whether the housing has been maintained in a decent, safe, and sanitary condition;
- 10 (iii) whether the property is an "historical resource" under CEQA;
- 11 (iv) whether the removal of the resource will have a substantial adverse impact under CEQA;
- 12 (v) whether the project converts rental housing to other forms of tenure or occupancy;
- 13 (vi) whether the project removes rental units subject to the Rent Stabilization and Arbitration
14 Ordinance;
- 15 (vii) whether the project conserves existing housing to preserve cultural and economic
16 neighborhood diversity;
- 17 (viii) whether the project conserves neighborhood character to preserve neighborhood cultural
18 and economic diversity;
- 19 (ix) whether the project protects the relative affordability of existing housing;
- 20 (x) whether the project increases the number of permanently affordable units as governed by
21 Section 315;
- 22 (xi) whether the project locates in-fill housing on appropriate sites in established neighborhoods;
- 23 (xii) whether the project creates quality, new family housing;
- 24 (xiii) whether the project creates new supportive housing;

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1 (xiv) whether the project promotes construction of well-designed housing to enhance existing
2 neighborhood character;

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

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

5 (4) Nothing in this Section is intended to permit the Demolition of Residential Buildings in
6 those areas of the City where other sections of this Code prohibit such demolition or replacement
7 structure.

8 (5) Nothing in this Section is intended to exempt buildings or sites where demolition is
9 proposed from undergoing review with respect to Articles 10 and 11 of the Code, where the
10 requirements of those articles apply. Notwithstanding the definition of "Demolition of Residential
11 Buildings" in this section and as further described in the Code Implementation Document with regard
12 to the loss of Residential Units, the criteria of Section 1005 shall apply to projects subject to review
13 under the requirements of Article 10 with regard to the structure itself.

14 (e) Loss of Residential Units through Merger.

15 (1) The Merger of Residential Units not otherwise subject to Conditional Use authorization by
16 this Code, shall be prohibited, unless the Planning Commission approves the building permit
17 application at a Mandatory Discretionary Review hearing, applying criteria-in subsection (2) below, or
18 the project qualifies for administrative approval and the Planning Department approves the project
19 administratively in accordance with subsections (3) and (4) below.

20 (2) The Planning Commission shall consider these criteria in the review of applications to
21 merge Residential Units:

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

24 (ii) whether removal of the unit(s) and the merger with another is intended for owner occupancy;

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1 (iii) whether removal of the unit(s) will bring the building closer into conformance with the
2 prevailing density in its immediate area and in the same zoning district;

3 (iv) whether removal of the unit(s) will bring the building closer into conformance with prescribed
4 zoning;

5 (v) whether removal of the unit(s) is necessary to correct design or functional deficiencies that
6 cannot be corrected through interior alterations.

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

16 (4) Projects that meet a supermajority of the merger criteria, in subsection (d)(2) above, may be
17 approved administratively by the Planning Department, consistent with this Section 317.

18 (f) Loss of Residential Units through Conversion.

19 (1) Conversion of Residential Units not otherwise subject to Conditional Use authorization by
20 this Code, shall be prohibited, unless the Planning Commission approves the building permit
21 application at a Mandatory Discretionary Review hearing.

22 (2) The Planning Commission shall consider these criteria in the review of applications for
23 Conversion of Residential Units;

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1 (i) whether conversion of the unit(s) would eliminate only owner occupied housing, and if so, for
2 how long the unit(s) proposed to be removed were owner occupied;

3 (ii) whether conversion of the unit(s) would provide desirable new non-residential use(s)
4 appropriate for the neighborhood and adjoining district(s);

5 (iii) whether conversion of the unit(s) will bring the building closer into conformance with the
6 prevailing character of its immediate area and in the same zoning district;

7 (iv) whether conversion of the unit(s) will be detrimental to the City's housing stock;

8 (v) whether conversion of the unit(s) is necessary to eliminate design, functional, or habitability
9 deficiencies that cannot otherwise be corrected.

10 (g) This Section 317 shall not apply to property:

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

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

14 (3) Under the jurisdiction of the Port of San Francisco or the San Francisco Redevelopment
15 Agency where the application of this ordinance is prohibited by State or local law; or

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

19 Section 3. This section is uncodified. This ordinance shall apply to all residential building
20 permit applications that would remove dwellings, for which public notice of the demolition, as
21 required under the Planning Code or Planning Commission Resolution 16700, has not been mailed by
22 the effective date of this legislation.

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