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June 19th, 2019

San Francisco Planning Commission
San Francisco Building Inspection Commission
1660 Mission Street
San Francisco, CA
946103

Dear Commissioners,

Thank you for the opportunity to provide our comments on the proposed legislation creating new controls on residential demolition, merger, conversion and alterations. As we understand it, this legislation was created in response to concerns over illegal demolitions and "serial permitting" as a means to work around existing demolition controls. These are legitimate policy concerns that should be addressed. **However we are concerned that the proposed legislation goes far beyond these issues and if enacted would make it significantly more difficult to construct housing in San Francisco.** Additionally, we are concerned about the staff capacity that would be required to implement this legislation, which is simultaneously extremely complicated, labor intensive in its implementation requirements and challenging to interpret.

We strongly recommend that instead of moving this legislation forward that a task force be assembled to craft a more targeted proposal aimed at correcting the specific challenge presented by serial permitting and other "work arounds" that have been used to circumvent existing rules. The task force should include planning department staff, building department staff, architects specializing in small projects and affected community members. Simultaneously, legislation that increases fines and penalties for illegal demolitions should be adopted.

The remainder of this letter focuses on the significant concerns we have regarding the proposed legislation as it is currently drafted.

1. **The legislation makes it almost impossible to approve demolition and replacement projects that create more housing, including more affordable housing.**
   The proposed legislation creates extensive new conditional use criteria for issuing demolition permits and permits for replacement projects, rendering it nearly impossible to achieve all the requirements to demolish and replace a residential building, even if it results in more affordable housing. To take one example: the legislation states that in order to issue a conditional use permit, the Planning Commission needs to find that the proposed project will not result in the loss or removal of any affordable housing unit, and/or any unit that was occupied by a tenant within seven years prior to the filing of the

conditional use application.[1] However, current law already requires that replacement projects must replace affordable and rent controlled housing units[2] in addition to meeting the inclusionary requirement. The proposed legislation will undermine the ability to rebuild or substantially rehabilitate severely distressed affordable housing projects (such as HOPE SF) as well as mixed-income projects that could potentially create more than the existing number of affordable housing units on site.

A separate section of the ordinance details the requirements for issuing residential demolition permits and replacement permits. It will be extremely challenging for any project to meet *all* of these requirements (as mandated under the proposed legislation). One requirement, that the proposed project provide "affordability equal to or greater than the existing residential units"[3] is particularly confusing and challenging to implement. Does this mean that the proposed units need to sell or rent for less than the existing market rate units? Who would make this determination and how would they do so, particularly since the comparison would need to be between an existing unit (at the time of CU application) and a future unit (coming to market at a future date in a future market scenario)? Since no affordable unit can be demolished, there can be no comparison between deed restricted affordable units. And rent controlled units can only be demolished and replaced after being left vacant for seven years, which makes it even more difficult to accurately assess the prior and future affordability of a unit.

Additionally, the requirement that replacement buildings conform to the height, scale, form, materials, architectural details and character of the surrounding neighborhood[4] is concerning and will impact the ability of the city to produce more housing at all income levels. Neighborhoods that have recently undergone a community planning process may have adopted upzonings in some areas. Projects that fit within the new zoning would therefore not confirm to the height, scale etc., of the surrounding neighborhood. Does that mean that their conditional use application should be denied regardless of whether they meet the new zoning requirements? Such an outcome would be extremely concerning.

We recommend that the entire conditional use framework contemplated in this legislation be reconsidered.

2. **The definition of "demolition" in the legislation is confusing.**
One of the key benefits this legislation should provide would be to offer a clear and easily implementable definition of what constitutes a demolition. While section 103A.3.3 does provide a definition of demolition, other areas of the legislation are more confusing. For example, Section 103A.3.1 asserts that a demolition permit is required to remove dry rot.

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[1] Section 317(g)(1)(b) of the proposed legislation, pg 43.
[2] See Section 415 of the Planning Code.
[3] Section 317(g)(6)(B)(iii) of the proposed legislation, page 50.
[4] Section 317(g)(6)(B)(i) of the proposed legislation, page 49

Does this mean that dry rot removal triggers all the conditional use requirements for demolitions outlined in the proposed legislation? We hope not. Regardless, the definition of what constitutes a demolition should be reasonable, clear and reside in only one section of the legislation.

3. **The historic preservation provisions of the legislation are excessive.**
Under the proposed legislation, residential buildings cannot be demolished if they are a historic resource, located within an existing or potential national, state or local historic district, as identified in any local, state or national survey.[5] These provisions fail to differentiate between true historic resources, buildings within historic districts that are not contributory to the district (and therefore not historic resources), and buildings that are just older than 50 years (many of which could be considered potential contributors to potential unidentified districts).

   Landmarked buildings and contributors to adopted historic districts should be protected and are currently under the purview of the Historic Preservation Commission. However, buildings that are within historic districts but which are not contributory should not be treated as though they are the same as contributory buildings. The protection of potential contributors to potential districts in the proposed ordinance is even more concerning. Many properties older than 50 years could fall into this category. Under this ordinance, the discretion of the Planning Commission and the Historic Preservation Commission to approve demolition and replacements to potential contributors to potential districts (as well as to non-contributors in established districts) would be eliminated.

4. **The FAR triggers for expansions are confusing to interpret and may not result in the intended result of limiting "monster home" renovations.**
The FAR triggers outlined in section Section 319(d)[6] require additional review. We strongly recommend that the Planning Department work with a series of architects to develop examples of what types of buildings these triggers would result in if implemented. Additionally the question of whether these FAR triggers are applied to the square footage of the building as a whole, or just to the proposed addition, need to be clarified. We also question whether the FAR triggers are necessary. Instead it would seem to make more sense to continue to regulate building size through height, bulk and setback requirements.

5. **This legislation will require significant additional resources to implement.**
If enacted, the proposed legislation creates substantial new review requirements, including requiring staff to evaluate all the new conditional use applications that would be required, defining what constitutes "affordability equal or than the existing residential units,"

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[5] Section 317(g)(6)(A)(iii) of the proposed legislation, page 48

[6] Page 58 of the proposed legislation.

analyzing the new FAR triggers for major expansions etc. We are concerned that that the volume and complexity of staff analysis for each project will be challenging to complete. We suggest that the Planning Department and Building Department provide their respective commissions within information regarding what would be required (staff time, etc) to implement this legislation.

Thank you for considering our comments. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Sarah Karlinsky
Director of Policy