

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Case Number: CPF-14-513453

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PETITION

IN RE: SMALL PROPERTY OWNERS OF SAN FRANCISCO INSTITUTE, (CEQA
Case)

001C04357726

Instructions:

Please place this sheet on top of the document to be scanned.

FOR COURT USE ONLY

FILED
Superior Court of California
County of San Francisco

JAN 28 2014

CLERK OF THE COURT

BY: *[Signature]*
Deputy Clerk

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Andrew M. Zacks 147794
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ATTORNEY FOR (Name):
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
STREET ADDRESS: 400 McAllister Street
MAILING ADDRESS:
CITY AND ZIP CODE: San Francisco, 94102
BRANCH NAME: Unlimited Civil Jurisdiction

CASE NAME:

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000)
 Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter **Joinder**
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
CPF-14 513453
JUDGE:
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- | | | |
|--|---|---|
| Auto Tort
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
<input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PI/PD/WD (23)
Non-PI/PD/WD (Other) Tort
<input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/WD tort (35)
Employment
<input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | Contract
<input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
Real Property
<input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
Judicial Review
<input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input checked="" type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20)
Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42)
Miscellaneous Civil Petition
<input type="checkbox"/> Partnership and corporate governance (21)
<input checked="" type="checkbox"/> Other petition (not specified above) (43) |
|--|---|---|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): **4**

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015)

Date: January 28, 2014
Ryan J. Patterson
(TYPE OR PRINT NAME)

[Signature]
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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9 Attorneys for Petitioner and Plaintiff
10 SMALL PROPERTY OWNERS OF SAN FRANCISCO INSTITUTE

FILED
Superior Court of California
County of San Francisco

JAN 28 2014

CLERK OF THE COURT
BY: *[Signature]* Deputy Clerk

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN FRANCISCO – UNLIMITED CIVIL JURISDICTION**

13 SMALL PROPERTY OWNERS OF SAN
14 FRANCISCO INSTITUTE, a California
15 corporation,

16 Petitioner and Plaintiff,

17 vs.

18 CITY AND COUNTY OF SAN
19 FRANCISCO, a municipal corporation,
20 BOARD OF SUPERVISORS OF THE CITY
21 AND COUNTY OF SAN FRANCISCO, SAN
22 FRANCISCO PLANNING COMMISSION,
23 and SAN FRANCISCO PLANNING
24 DEPARTMENT, inclusive,

25 Respondents and Defendants.

Case No. **CPF-14 513453**

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR
DECLARATORY RELIEF**

Date:
Time:
Dept.: 503 (CEQA case)
Judge: Hon. Teri L. Jackson

26 Petitioner and Plaintiff Small Property Owners of San Francisco Institute
27 (“Petitioner” or the “Institute”) alleges as follows:

28 **INTRODUCTION**

1. This action challenges the decisions by Respondents and Defendants City and County of San Francisco, Board of Supervisors of the City and County of San Francisco, San Francisco Planning Commission, and San Francisco Planning Department

1 (collectively the “City”) in connection with the enactment of San Francisco Ordinance
2 Number 286-13 (the “Ordinance”).

3 2. The Ordinance consists of substantial and significant amendments to the
4 San Francisco Planning Code (“Planning Code”), including an expansion of development
5 rights for nearly 52,000 “nonconforming units” within the city – accounting for
6 approximately 14% of the City’s existing housing units.

7 3. A “nonconforming unit” is a residential dwelling unit that exceeds the
8 permitted density of the zoning district in which it is located. For example, an RH-1
9 zoning district allows a maximum density of one dwelling unit per building. If a building
10 containing *two* dwelling units in an RH-1 district was lawfully constructed prior to the
11 Planning Code’s density restriction, then its second dwelling unit is deemed a
12 “nonconforming unit.”

13 4. Under current Planning Code Section 181 (“Section 181”), nonconforming
14 units are considered lawful nonconforming uses and are allowed to remain in use – so
15 long as they are not enlarged, reconstructed, or altered.

16 5. Current Section 181(b)(1) includes “ordinary maintenance and minor
17 repairs” as a subset of “construct[ion], reconstruct[ion], or alter[ation].” Such ordinary
18 maintenance and minor repairs of nonconforming units would otherwise be prohibited –
19 except for the fact that current Section 181(b)(1) includes a safe harbor, specifically
20 permitting ordinary maintenance and minor repairs “where necessary to keep the
21 structure in sound condition, as well as minor alterations, where such work is limited to
22 replacement of existing materials with similar materials placed in a similar manner.”

23 6. Section 181’s underlying public policy goal is to phase out nonconforming
24 uses over time. As it relates to Section 181, the Ordinance constitutes a significant
25 departure from this public policy.

26 7. The Ordinance authorizes the enlargement, reconstruction, or alteration of
27 any nonconforming unit in a zoning district where residential use is principally permitted
28 (*i.e.*, where residential use does not require discretionary approval).

1 8. The Ordinance also imposes punitive measures against nonconforming
2 units that have been the subject of certain lawful evictions. These punitive measures
3 include up to a ten-year-long prohibition against the issuance of building permits to do
4 work in nonconforming units – including ordinary maintenance, minor repairs, and
5 reconstruction after a fire or earthquake.

6 9. The City failed to comply with the California Environmental Quality Act
7 (“CEQA”), by issuing an erroneous determination (the “Determination”) that the
8 Ordinance was exempt from CEQA pursuant to 14 CA ADC § 15060(c)(2) [no physical
9 change], which occurred on or about August 14, 2013. A true and correct copy of the
10 Determination is attached hereto as **Exh. A**.

11 10. Petitioner challenges the City’s actions in enacting the Ordinance without
12 subsequent environmental review after the Ordinance was substantially amended on or
13 about November 11, 2013 and December 10, 2013. These amendments likely cause
14 additional substantial adverse environmental impacts, but the City made no determination
15 as to whether the amendments were exempt from environmental review as required by
16 CEQA and the San Francisco Administrative Code.

17 11. Additionally, the City failed to refer the Ordinance back to the City
18 Planning Commission for review and recommendations as required by City and County
19 of San Francisco Charter (“Charter”) Article IV, Section 4.105, and as specifically
20 prescribed by San Francisco Planning Code Section 302, following the Ordinance’s
21 substantial amendment.

22 12. Petitioner also challenges the Ordinance on the grounds that its prohibition
23 of basic maintenance and upkeep of property, and reconstruction following a fire or
24 earthquake, is irrational and therefore violates substantive due process rights.

25 13. Lastly, Petitioner challenges the Ordinance on the grounds that its
26 application to housing units that have been lawfully subjected to the Ellis Act (Govt.
27 Code Section 7060 *et seq.*) is facially preempted by state law.

28

1 14. Petitioner seeks a writ of mandate, *inter alia*, prohibiting enforcement of
2 the Ordinance and compelling the City to complete environmental review of the
3 Ordinance as substantially amended.

4 PARTIES

5 15. Petitioner Small Property Owners of San Francisco Institute is a California
6 nonprofit corporation. Petitioner advocates for Small Property Owners of San Francisco
7 (“SPOSF”), a San Francisco nonprofit organization. SPOSF is an organization of renters
8 and small property owners that advocates home ownership in San Francisco. SPOSF
9 includes members who have invoked the Ellis Act and who plan to do so in the
10 future. SPOSF actively supports the Ellis Act and responds to state and local attempts to
11 weaken the Act. The Institute was founded for the purpose of being, and acts as SPOSF’s
12 agent in advocating to protect property right through the judicial system. That is, while
13 SPOSF engages in grass-roots lobbying and organizing, when it does so through
14 litigation, particularly in protecting the right and ability of its members to invoke the Ellis
15 Act without unauthorized local impediments, it relies on the Institute. The Institute only
16 acts on behalf of SPOSF and its members though its actions benefit all similarly-situated
17 property owners. SPOSF’s members range from young families to the elderly on fixed
18 incomes, and its membership cuts across all racial, ethnic, and socio-economic strata. Its
19 members include San Francisco residents who own nonconforming residential units in
20 San Francisco. Thus, many of SPOSF’s members are subject to the Ordinance in some
21 way.

22 16. Petitioner has a substantial interest in ensuring that the City’s decisions are
23 in conformity with the requirements of law, and in having those requirements properly
24 executed and the public duties of the City enforced. SPOSF’s members, as well as the
25 general public, will be adversely affected by impacts resulting from the Ordinance and
26 are aggrieved by the acts, decisions, and omissions of the City as alleged in this petition.
27 Petitioner is suing on its behalf, on behalf of SPOSF’s members, and on behalf of others
28 who will be affected by the Ordinance, as well as all citizens of, and residential property
owners in, the City and County of San Francisco.

1 17. Petitioner is informed and believes, and based thereon alleges, that
2 Respondent and Defendant City and County of San Francisco is a charter city existing
3 under the Constitution and the laws of the State of California. The Ordinance is a project
4 within the jurisdictional limits of the City and County of San Francisco. The City and
5 County of San Francisco, including all its officials, boards, commissions, departments,
6 bureaus and offices constitute a single “local agency,” “public agency” or “lead agency”
7 as those terms are used in CEQA and is responsible under CEQA for evaluating the
8 environmental impacts of the Ordinance.

9 18. Petitioner is informed and believes, and based thereon alleges, that
10 Respondent and Defendant Board of Supervisors of the City and County of San Francisco
11 (the “Board”) is the elected governing body of the City and is the body responsible for
12 promulgating municipal ordinances, resolutions, and policies.

13 19. Petitioner is informed and believes, and based thereon alleges, that
14 Respondent and Defendant City and County of San Francisco Planning Commission (the
15 “Planning Commission”) is an executive commission constituted pursuant to Charter
16 Article IV, Section 4.105.

17 20. Petitioner is informed and believes, and based thereon alleges, that
18 Respondent and Defendant City and County of San Francisco Planning Department (the
19 “Planning Department”) is the executive agency charged with performing the
20 administrative actions required by CEQA, including, *inter alia*, the preparation of
21 environmental documents and the giving of notice, pursuant to City and County of San
22 Francisco Administrative Code Section 31.04(b).

23 21. The Ordinance was initially proposed by Supervisor John Avalos as part
24 of a larger proposal restricting the merger and demolition of certain housing units. That
25 proposal was subsequently split into two separate proposals, including the subject
26 Ordinance. Supervisor Avalos formally introduced an early, unamended version of the
27 Ordinance on or about July 30, 2013. That version was referred to the Planning
28 Department for its review on or about August 7, 2013. On or about August 14, 2013, the
Planning Department issued its Determination that the early, unamended version of the

1 Ordinance was exempt from CEQA. A true and correct copy of this early, unamended
2 version of the Ordinance is attached hereto as **Exh. B**.

3 22. The Determination was not filed with the County Clerk or posted on the
4 Planning Department's website.

5 23. The Planning Commission held a hearing on the early, unamended
6 Ordinance on or about September 19, 2013 and recommended its approval. At that time,
7 the Ordinance had not been amended, and the Planning Commission did not consider or
8 approve any proposed amendments to the Ordinance.

9 24. The Executive Summary staff report to the Planning Commission for its
10 hearing on the Ordinance inaccurately stated that the "proposed Ordinance (*sic*) reviewed
11 and determined to be **not a project . . .**" However, the Determination itself stated "**Non-**
12 **Physical Exemption . . .**"

13 25. Jeremy Pollack, a staff member for Supervisor John Avalos who proposed
14 the Ordinance, addressed the Planning Commission at its September 19, 2013 hearing on
15 the Ordinance. He stated:

16
17 At the July 17 meeting, we presented **another amendment that we're still**
18 **working with the City Attorney on**, which would deal with concerns that there
19 could be motivation for property owners to evict their tenants in order to alter
20 the unit, and so we're working on language that would not allow for alterations
21 in units that had had an eviction, a no-fault eviction, within the last ten years.
22 **The City Attorney is still working on that language . . .** (Emphasis added.)

23 26. Sophie Hayward, the City Planner in charge of the Ordinance, also
24 addressed the Planning Commission at its September 19, 2013 hearing on the Ordinance.
25 She stated:

26 First, [the proposed Ordinance] would allow nonconforming units to expand or
27 be altered, but not beyond the building's envelope as it existed January 1, 2013.
28 In addition, **the supervisor will likely propose a further amendment that is**
not before you today that would prohibit the expansion of nonconforming units
in units where there has been a no-fault eviction in the last ten years. (Emphasis
added.)

1 27. Commissioner Michael Antonini, a member of the Planning Commission,
2 stated at the September 19, 2013 hearing on the Ordinance:

3 I think, on its face, I'm not sure I can be supportive of something that is linked
4 to future trailing legislation that we don't know what it's actually – we know
5 essentially what it's going to say – but **we don't actually have that language**
6 **yet.**

7 ...

8 It's kind of a broad stroke. I'm not so sure what's really trying to be done by
9 this ordinance.

10 ...

11 I oppose this for another reason: It kind of **flies in the face of our zoning laws.**
12 **... Adds more cars to the street, probably adds more density . . .**
13 **overdensifying areas and making them less livable.** (Emphasis added.)

14 28. On or about November 25, 2011 (after the CEQA Determination was
15 issued), the Board of Supervisors' Land Use and Economic Development Committee,
16 consisting of three supervisors, met and voted to substantially amend the Ordinance and
17 refer it to the full Board of Supervisors. The amendment (hereinafter, the "Spite
18 Amendment") imposes punitive measures, including up to a ten-year-long prohibition of
19 the enlargement, alteration, or reconstruction of nonconforming units that have been the
20 subject of certain lawful evictions. Additionally, the Spite Amendment eliminates
21 Planning Code Section 181's safe harbor for ordinary maintenance and minor repairs for
22 nonconforming units that have been the subject of certain lawful evictions.

23 29. On or about December 10, 2013, the Board of Supervisors voted to adopt
24 the Spite Amendment (and added additional minor amendments dealing with the
25 Ordinance's applicable dates). A true and correct copy of the Spite Amendment is
26 attached hereto as **Exh. C.**

27 30. The Ordinance was not referred back to the Planning Department to
28 review the Spite Amendment for possible environmental impacts. The Planning
Department's Environmental Review Officer did not review the Spite Amendment to
determine whether the Spite Amendment was a substantial modification that required
reevaluation of the CEQA Determination, as required by San Francisco Administrative
Code Section 31.08(i)(1). The Environmental Review Officer did not post a notice of a

1 determination regarding whether the Spite Amendment constituted a substantial
2 modification in the offices of the Planning Department and on the Planning Department
3 website, as required by San Francisco Administrative Code Section 31.08(i)(2)-(3).

4 31. The Ordinance was not referred back to the Planning Commission to
5 review and make recommendations regarding the Spite Amendment.

6 32. On or about December 13, 2013, Petitioner submitted written comments
7 on, and objections to, the Ordinance to the City.

8 33. On or about December 17, 2013, the Board of Supervisors voted to finally
9 pass the Ordinance, including the Spite Amendment. On or about December 26, 2013, the
10 Ordinance was signed by Mayor Ed Lee.

11 34. A true and correct copy of the enacted Ordinance is attached hereto as
12 **Exh. D.**

13 35. The reasonably foreseeable effects of the Ordinance are increased
14 population density in the City due to a Citywide up-zoning; the physical expansion of
15 52,000 nonconforming units, including additional bedrooms and additional occupants;
16 and the decay of units for which repair, maintenance, and reconstruction permits are
17 denied – all of which are reasonably likely to cause significant adverse environmental
18 impacts.
19

20 36. Jeremy Pollack, a staff member for Supervisor John Avalos who proposed
21 the Ordinance, addressed the Planning Commission at its September 19, 2013 hearing on
22 the Ordinance. He stated:
23

24 In response to staff's concern about the possibility of alterations affecting the
25 affordability, we've made one amendment that restricts the alterations to the
26 existing building envelope as it currently is. . . . [W]e would hope there would
27 be the potential for alterations that fit within the building that might, say, **add
a bedroom, which would make the unit more affordable and house more
people in it.** (Emphasis added.)
28

1 37. 14 CA ADC § 15060(c)(2) states: “An activity is not subject to CEQA if: .
2 . . (2) The activity will not result in a direct or reasonably foreseeable indirect physical
3 change in the environment”

4 38. It is not rational to state that an ordinance that increases population density
5 through a city-wide up-zoning and the expansion of nonconforming units, as well as the
6 decay of units for which repair and maintenance permits are denied will not result in a
7 direct or reasonably foreseeable indirect physical change in the environment.
8

9 39. California law states that zoning changes are subject to CEQA. (Friends of
10 Sierra Madre v. City of Sierra Madre (2001) 25 Cal.4th 165).

11 40. The record shows that the City simply decided, by fiat [*i.e.*, because it said
12 so], that the Ordinance was exempt from CEQA, despite the obvious likely
13 environmental impacts. Accordingly, the City’s CEQA Determination was erroneous on
14 its face.
15

16 41. On November 25, 2013, after the CEQA Determination was issued, the
17 City added the Spite Amendment. This amendment provides that property owners who
18 have evicted tenants pursuant to Rent Ordinance sections 37.9(a)(9)-(14) cannot obtain
19 any building permit for enlargement, alteration, or reconstruction (including ordinary
20 maintenance and minor repairs) for ten years, or five years for Rent Ordinance Section
21 37.9(a)(8). (See **Exh. C**, page 4, lines 7-24.) In short, property owners who effect no-fault
22 permanent evictions cannot receive government authorization for any work on said units
23 that require a building permit, solely because they lawfully evicted tenants under these
24 provisions.
25
26
27
28

1 42. The purpose of the Spite Amendment is to discourage property owners
2 from exercising their rights under local ordinance (Rent Ordinance §§ 37.9(a)(8)-(14))
3 and California law (the Ellis Act, Gov't Code § 7060 et seq., implemented locally via
4 Rent Ordinance § 37.9(a)(13)).

5
6 43. The City failed to conduct an initial CEQA analysis for the Spite
7 Amendment, which substantially exacerbated the Ordinance's likely environmental
8 impacts. This was legally incorrect.

9
10 44. It is reasonably foreseeable that an ordinance that increases density limits
11 for 52,000 parcels – 14% of all parcels – and prohibits property owners from repairing
12 and maintaining their property, and from reconstructing it after a fire or earthquake, for
13 up to 10 years will result in a direct, or reasonably foreseeable indirect, physical change
14 in the environment. Increased density will have myriad environmental impacts on public
15 utilities and services, land use and planning, parking, and transportation and traffic, and
16 public safety, to name a few.

17
18 45. Additionally, the Spite Amendment will inarguably result in the
19 perpetuation of blight and the spread of urban decay, among other adverse impacts.

20 46. Because of these impacts, the Ordinance was not exempt from CEQA, and
21 the City was required to complete an environmental impact report.

22
23 47. The City's action in approving the Ordinance is a prejudicial abuse of
24 discretion in that the City failed to proceed in the manner required by law and failed to
25 support its decision by substantial evidence. Among other things, the City:

26 a. Failed to adequately analyze the Spite Amendment's significant
27 impacts on the environment;
28

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b. Failed to adequately analyze whether the Spite Amendment constituted a substantial change to the unamended Ordinance;

c. Failed to adequately disclose or analyze the Ordinance's significant impacts on the environment;

d. Improperly deferred impact analysis and mitigation measures; and

e. Failed to complete an environmental impact report.

48. Petitioner has exhausted all administrative remedies.

49. Petitioner has performed all actions imposed by law precedent to filing this action, including complying with the requirement of Public Resources Code Section 21167.5 by mailing notice to the City that this action would be filed.

50. Petitioner will also serve a copy of this petition on the California Attorney General as required by law.

51. Petitioner does not have a plain, speedy, or adequate remedy in the ordinary course of law, and therefore writ relief is necessary. Petitioner and the public generally will suffer irreparable harm if the City is not required to comply with CEQA and the City Charter and Planning Code and to vacate and set aside the Ordinance and Determination.

52. Each of the allegations above is incorporated into each cause of action below.

CAUSES OF ACTION

I. MANDATE TO COMPEL CEQA COMPLIANCE

1 1. The City is required to complete an initial environmental review to
2 determine whether the proposed Ordinance, as amended, may result in a direct or
3 reasonably foreseeable indirect physical change in the environment.
4

5 2. The City is required to complete an environmental impact report if there is
6 substantial evidence that the proposed Ordinance, as amended, may have a significant
7 effect on the environment.
8

9 3. The City could not rely on the original CEQA exemption Determination
10 reached for the Ordinance because the Spite Amendment materially changed the
11 Ordinance from its initially proposed form at the time the Determination was issued.
12

13 4. Petitioner has a beneficial interest in ensuring that Respondents comply
14 with CEQA.
15

16 5. As a result of the City's violations of CEQA, Petitioner has been harmed
17 in that Petitioner and other members of the public were not fully informed about the
18 significant environmental impacts of the Ordinance prior to the City's enactment of the
19 Ordinance.
20

21 6. Petitioner, as well as members of the general public, will suffer irreparable
22 harm if the relief requested herein is not granted and the Ordinance is implemented in the
23 absence of a full and adequate environmental impact report and absent compliance with
24 all other applicable provisions of CEQA and other laws.
25

26 II. MANDATE TO COMPEL COMPLIANCE WITH THE CITY CHARTER,
27 PLANNING CODE, AND ADMINISTRATIVE CODE
28

 7. The City is required by Charter Article IV, Section 4.105 and Planning
Code Section 302 to refer the Ordinance back to the Planning Commission for its review
and recommendations following the Ordinance's substantial amendment.

1 8. The City is required by Administrative Code Section 31.08(i)(1) to review
2 the Spite Amendment to determine whether the Spite Amendment was a substantial
3 modification that required reevaluation of the Ordinance's CEQA Determination. The
4 Spite Amendment was a substantial modification of the Ordinance, but it received no
5 environmental review whatsoever.

7 9. The City is further required by Administrative Code Sections 31.08(i)(2)-
8 (3) to post a notice of its determination regarding whether the Spite Amendment
9 constituted a substantial modification in the offices of the Planning Department and on
10 the Planning Department website.

12 10. Petitioner has a beneficial interest in ensuring that Respondents comply
13 with the City Charter, Planning Code, and Administrative Code.

14 III. MANDATE TO BAR THE CITY FROM ENFORCING THE SPITE
15 AMENDMENT WHERE PROPERTY OWNERS HAVE INVOKED THE
16 ELLIS ACT

17 11. The Ordinance, through the Spite Amendment, violates the Ellis Act by
18 compelling residential rental use, which is both the intent and actual effect of the
19 Ordinance. It conflicts with and is preempted by the Ellis Act. The primary and admitted
20 purpose of the Spite Amendment is to stop owners from exercising their right under the
21 Ellis Act to remove their property from residential rental use. The Spite Amendment
22 further penalizes property owners who utilize the Ellis Act by putting a prohibitive price
23 on the exercise of their right to withdraw property from residential rental use.

25 12. Petitioner has a beneficial interest in ensuring that the Ordinance is not
26 enforced so as to deprive San Francisco property owners of their statutory rights.

28

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1 13. Petitioner does not have a plain, speedy, or adequate remedy in the
2 ordinary course of law, and therefore writ relief is necessary.

3 IV. SUBSTANTIVE DUE PROCESS (14th Amendment to the United States
4 Constitution)

5 14. There is no rational basis for denying property owners the right to obtain
6 building permits that they would otherwise qualify for but for their decision to avail
7 themselves of certain state and local rights.
8

9 15. It is particularly irrational to prohibit these owners from doing ordinary
10 maintenance and minor repairs.

11 16. There is no legitimate state interest in denying to affected owners the right
12 to obtain otherwise-obtainable building permits. First, the City has no legitimate interest
13 in burdening the invocation of the Ellis Act, a state law, under preemption principles.
14 Second, since the City has already authorized evictions for owner move-in, condominium
15 conversion and sale, unit removal, capital improvement, substantial rehabilitation,
16 withdrawal from the rental market, and lead abatement, it has no legitimate interest in
17 discouraging such evictions by encouraging the decay and growing obsolescence of the
18 subject nonconforming units. If the City has a legitimate state interest in discouraging
19 such evictions, it should use its police power to eliminate these bases as grounds for
20 recovery of possession. Third, the City has no legitimate interest in perpetuating or
21 fostering urban decay or blight.
22
23
24

25 PRAYER

- 26 1. First cause of action – writ compelling City to set aside the actions
27 approving the Ordinance and all related approvals; to conduct
28

ZACKS & FREEDMAN, P.C.
235 MONTGOMERY STREET, SUITE 400
SAN FRANCISCO, CALIFORNIA 94104


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environmental review of the Ordinance, as amended; and to prohibit the City from enforcing the Ordinance until such review is completed.

- 2. Second cause of action – writ compelling the City to refer the Ordinance, as amended, to the Planning Commission for its review and recommendations.
- 3. Third cause of action – writ barring the City from enforcing the Spite Amendment as to properties that have been withdrawn from residential rental use under the Ellis Act.
- 4. Fourth cause of action – judgment barring the City from enforcing the Spite Amendment at all.
- 5. All causes of action – a declaration of the parties’ rights and duties vis-a-vis the Ordinance; and attorneys’ fees, including pursuant to Code of Civil Procedure Section 1021.5, for costs of suit, and for such other and further relief as the Court may deem just and proper.

ZACKS & FREEDMAN, P.C.

Date: January 28, 2013

By 

Andrew M. Zacks
Attorneys for Petitioners and Plaintiffs

VERIFICATION

1
2 I am an attorney for petitioner Small Property Owners of San Francisco Institute
3 and am authorized to execute this verification on behalf of petitioner. I have read the
4 foregoing petition and complaint and am familiar with its contents. The facts recited in
5 the petition and complaint are true of my personal knowledge, except as to those matters
6 which are therein stated on information and belief, and as to those matters, I believe them
7 to be true.
8

9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct.
11

12 Date: January 28, 2014



Andrew M. Zacks

ZACKS & FREEDMAN, P.C.
235 MONTGOMERY STREET, SUITE 400
SAN FRANCISCO, CALIFORNIA 94104

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EXHIBIT

A

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

August 7, 2013

Planning Commission and
Attn: Jonas Ionin
1660 Mission Street, 5th Floor
San Francisco, CA 94103

Dear Commissioners:

On July 30, 2013, Supervisor Avalos introduced the following proposed legislation:

File No. 130783

Ordinance amending 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 making environmental findings and findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1.

The proposed ordinance is being transmitted pursuant to Planning Code Section 302(b) for public hearing and recommendation. The ordinance is pending before the Land Use & Economic Development Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script that reads "Alisa Miller".

By: Alisa Miller, Committee Clerk

Land Use & Economic Development Committee

- c: John Rahaim, Director of Planning
Scott Sanchez, Zoning Administrator
Sarah Jones, Chief, Major Environmental Analysis
AnMarie Rodgers, Legislative Affairs
Monica Pereira, Environmental Planning
Joy Navarrete, Environmental Planning

Non-Physical Exemption
CEQA Section 15062 (c)(2)
JN 8/14/13
Joy Navarrete
2013.1164E

EXHIBIT B

1 [Planning Code - Nonconforming Uses: Enlargement, Alteration or Reconstruction]

2
3 **Ordinance amending the Planning Code to permit the enlargement, alteration or**
4 **reconstruction of a dwelling or other housing structure that exceeds the permitted**
5 **density of the district if dwelling units are principally permitted in the district and the**
6 **enlargement, alteration or reconstruction does not extend beyond the building**
7 **envelope as it existed on January 1, 2013; and making environmental findings and**
8 **findings of consistency with the General Plan and the eight priority policies of Planning**
9 **Code, Section 101.1.**

10 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
11 **Additions to Codes** are in *single-underline italics Times New Roman font*.
12 **Deletions to Codes** are in ~~*italics Times New Roman font*~~.
13 **Board amendment additions** are in double-underlined Arial font.
14 **Board amendment deletions** are in ~~Arial font~~.
15 **Asterisks (* * * *)** indicate the omission of unchanged Code
16 subsections or parts of tables.

15 Be it ordained by the People of the City and County of San Francisco:

16
17 Section 1. Findings.

18 (a) The Planning Department has determined that the actions contemplated in this
19 ordinance comply with the California Environmental Quality Act (California Public Resources
20 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
21 Supervisors in File No. 130783 and is incorporated herein by reference.

22 (b) On September 19, 2013, the Planning Commission, in Resolution No. 18967,
23 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
24 with the City's General Plan and the eight priority policies of Planning Code, Section 101.1.
25

1 The Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk
2 of the Board of Supervisors in File No. 130783, and is incorporated herein by reference.

3
4 Section 2. The Planning Code is hereby amended by revising Section 181, to read as
5 follows:

6 **SEC. 181. NONCONFORMING USES: ENLARGEMENTS, ALTERATIONS AND**
7 **RECONSTRUCTION.**

8 The following provisions shall apply to ~~non-conforming~~ nonconforming uses with respect
9 to enlargements, alterations and reconstruction:

10 (a) Increases in nonconformity. A nonconforming use, and any structure occupied by
11 such use, shall not be enlarged, intensified, extended, or moved to another location, with the
12 exception of the construction of a mezzanine within a live/work unit and expansion of dwelling
13 units in PDR Districts, unless the result will be elimination of the nonconforming use, except
14 as provided ~~in Paragraph (b)(3) and (i)~~ below and in Section 186.1 of this Code. A
15 nonconforming use shall not be extended to occupy additional space in a structure, or
16 additional land outside a structure, or space in another structure, or to displace any other use,
17 except as provided in Sections 182 and 186.1 of this Code.

18 (b) Permitted alterations. A structure occupied by a nonconforming use shall not be
19 constructed, reconstructed or altered, unless the result will be elimination of the
20 nonconforming use, except as provided in Section 186.1 of this Code and in Subsections (a)
21 above and (d), (e), (f) ~~and (g), (h) and (i)~~ below, and except as follows:

22 (1) Ordinary maintenance and minor repairs shall be permitted where necessary
23 to keep the structure in sound condition, as well as minor alterations, where such work is
24 limited to replacement of existing materials with similar materials placed in a similar manner.

1 (2) Minor alterations shall be permitted where ordered by an appropriate public
2 official to correct immediate hazards to health or safety, or to carry out newly enacted
3 retroactive requirements essential to health or safety.

4 (3) Alterations otherwise allowed by this Code shall be permitted for any portion
5 of the structure that will not thereafter be occupied by the nonconforming use, provided the
6 nonconforming use is not enlarged, intensified, extended, or moved to another location.

7 (4) All other alterations of a structural nature shall be permitted only to the extent
8 that the aggregate total cost of such other structural alterations, as estimated by the
9 Department of *Building Inspection Public Works*, is less than ½ of the assessed valuation of the
10 improvements prior to the first such alteration, except that structural alterations required to
11 reinforce the structure to meet the standards for seismic loads and forces of the Building Code
12 shall be permitted without regard to cost.

13 (c) **Dwellings nonconforming as to density.** A dwelling or other housing structure
14 exceeding the permitted density of dwelling units or other housing units set forth in Sections
15 207.5, 208, 209.1, 209.2, or 215 of this Code for the district in which it is located shall be
16 classified as a nonconforming use under Section 180 of this Code, but only to the extent that
17 such dwelling or other housing structure exceeds the permitted density. *In districts where a*
18 *dwelling unit is a principally permitted use, this* This Section 181 shall *not* apply with respect to
19 enlargements, alterations and reconstruction of the nonconforming portion of such dwelling or
20 other housing structure, consisting of those dwelling units or other housing units which exceed
21 the permitted density, *so long as such enlargements, alterations, or reconstruction do not otherwise*
22 *extend beyond the building envelope as it existed on January 1, 2013.* Any dwelling unit or other
23 housing unit coming within the density limit shall not be affected by this Section 181. Except
24 as provided in Sections 181(h) and 182(e), no dwelling or other housing structure exceeding
25 the permitted density of dwelling units or other housing units shall be altered to increase the

1 number of dwelling units or other housing units therein, or to increase or create any other
2 nonconformity with respect to the dwelling unit or other housing unit density limitations of
3 Section 209.1 or Section 209.2.

4 (d) Structures damaged or destroyed by calamity. Notwithstanding the foregoing provisions
5 of this Section 181, a structure occupied by a nonconforming use that is damaged or
6 destroyed by fire, or other calamity, or by Act of God, or by the public enemy, may be restored
7 to its former condition and use; provided that such restoration is permitted by the Building
8 Code, and is started within eighteen months and diligently prosecuted to completion. The age
9 of such a structure for the purposes of Sections 184 and 185 shall nevertheless be computed
10 from the date of the original construction of the structure. Except as provided in Subsection (e)
11 below, no structure occupied by a nonconforming use that is voluntarily razed or required by
12 law to be razed by the owner thereof may thereafter be restored except in full conformity with
13 the use limitations of this Code.

14 For purposes of this Subsection (d), "started within eighteen months" shall mean that
15 within eighteen months of the fire or other calamity or Act of God, the structure's owner shall
16 have filed a building permit application to restore the structure to its former condition and use.

17 (e) Unreinforced masonry buildings. In order that major life safety hazards in structures
18 may be eliminated as expeditiously as possible, a structure containing nonconforming uses
19 and constructed of unreinforced masonry that is inconsistent with the requirements of the
20 UMB Seismic Retrofit Ordinance, Ordinance No. 227-92, may be demolished and
21 reconstructed with the same nonconforming use or a use as permitted by Planning Code
22 Section 182; provided that:

23 (1) there is no increase in any nonconformity, or any new nonconformity, with
24 respect to the use limitations of this Code;

25

1 ~~(2) provided further that~~ the current requirements of the Building Code, the
2 Housing Code and other applicable portions of the Municipal Code are met; and

3 ~~(3) provided further that~~ such restoration or reconstruction is started within one
4 year after razing or other demolition work on the structure and diligently prosecuted to
5 completion.

6 (f) Nighttime Entertainment Uses in certain Mixed-Use Districts. A nighttime entertainment
7 use within the RSD, MUG, MUR, or SLR Districts may be enlarged, intensified, extended or
8 expanded, including the expansion to an adjacent lot or lots, provided that:

9 (1) the enlargement, intensification, extension or expansion is approved as a
10 conditional use pursuant to Sections 303 and 316 of this Code;

11 (2) the use as a whole meets the parking and signage requirements, floor area
12 ratio limit, height and bulk limit, and all other requirements of this Code which would apply if
13 the use were a permitted one; and

14 (3) the provisions of Section 803.5(b) of this Code are satisfied.

15 (g) Automotive Sales and Service Signs in the Automotive Special Use District. Automotive
16 sales and service signs within the Automotive Special Use District which have all required
17 permits but which do not comply with the controls for new signs established in Section 607.3
18 of this Code shall be permitted to remain as nonconforming uses and shall be permitted to
19 modify the signage text to describe new automobile ownerships and dealerships that may
20 occur from time to time.

21 (h) Dwellings in PDR and M-2 Districts. In PDR and M-2 Districts, no building containing
22 a residential use shall be altered to increase the number of dwelling units or other housing
23 units therein. However, individual dwelling units or other housing units may be expanded,
24 subject to height, bulk, and all other provisions of this Code which would otherwise be
25 applicable to dwelling units or other housing units in the Urban Mixed Use District.

1 (i) Nonconforming Non-Residential Uses in the Eastern Neighborhoods Mixed Use, PDR-1-
2 D, and PDR-1-G Districts. In the Eastern Neighborhoods Mixed Use, PDR-1-D, and PDR-1-G
3 Districts, a non-residential nonconforming use may expand in gross floor area by no more
4 than 25 percent with conditional use authorization pursuant to Section 303 of this Code. Such
5 conditional use authorization may not be granted for any subsequent or additional expansion
6 beyond the initial 25 percent.

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 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
12 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
13 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
14 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
15 additions, and Board amendment deletions in accordance with the "Note" that appears under
16 the official title of the ordinance.

17
18 APPROVED AS TO FORM:
19 DENNIS J. HERRERA, City Attorney

20 By: _____
21 JUDITH A. BOYAJIAN
22 Deputy City Attorney

23 n:\legana\as2013\1300041\00862711.doc
24
25

EXHIBIT C

1 [Planning Code - Nonconforming Uses; Enlargements and Alterations]

2

3 **Ordinance amending the Planning Code to permit the enlargement, alteration or**
4 **reconstruction of a dwelling or other housing structure that exceeds the permitted**
5 **density of the district if dwelling units are principally permitted in the district and the**
6 **enlargement, alteration or reconstruction does not extend beyond the building**
7 **envelope as it existed on January 1, 2013 and if no tenants were evicted under certain**
8 **provisions of the Rent Ordinance; making environmental findings and findings of**
9 **consistency with the General Plan and the eight priority policies of Planning Code**
10 **Section 101.1.**

11 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
12 **Additions to Codes** are in *single-underline italics Times New Roman font*.
13 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
14 **Board amendment additions** are in double-underlined Arial font.
15 **Board amendment deletions** are in ~~strikethrough Arial font~~.
16 **Asterisks (* * * *)** indicate the omission of unchanged Code
17 subsections or parts of tables.

18 Be it ordained by the People of the City and County of San Francisco:

19 Section 1. Findings.

20 (a) The Planning Department has determined that the actions contemplated in this
21 ordinance comply with the California Environmental Quality Act (California Public Resources
22 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
23 Supervisors in File No. 130783 and is incorporated herein by reference.

24 (b) On September 19, 2013, the Planning Commission, in Resolution No. 18967,
25 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
with the City's General Plan and eight priority policies of Planning Code Section 101.1. The

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. 130783, and is incorporated herein by reference.

3 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code
4 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth
5 in Planning Commission Resolution No. 18967 and the Board incorporates such reasons
6 herein by reference.

7 (d) This Board intends to allow the enlargement, alteration and reconstruction of non-
8 conforming uses, as long as such permission does not result in additional tenant evictions in
9 order to use these benefits. Accordingly, this Board intends to strike a balance between
10 allowing the non-conforming uses to be altered as described and the need to protect
11 important housing resources.

12 Section 2. The Planning Code is hereby amended by revising Section 181, to read as
13 follows:

14 **SEC. 181. NONCONFORMING USES: ENLARGEMENTS, ALTERATIONS AND**
15 **RECONSTRUCTION.**

16 The following provisions shall apply to ~~non-conforming~~ nonconforming uses with respect
17 to enlargements, alterations and reconstruction:

18 (a) Increases in nonconformity. A nonconforming use, and any structure occupied by
19 such use, shall not be enlarged, intensified, extended, or moved to another location, with the
20 exception of the construction of a mezzanine within a live/work unit and expansion of dwelling
21 units in PDR Districts, unless the result will be elimination of the nonconforming use, except
22 as provided ~~in Paragraph (b)(3) and (i)~~ below and in Section 186.1 of this Code. A
23 nonconforming use shall not be extended to occupy additional space in a structure, or
24 additional land outside a structure, or space in another structure, or to displace any other use,
25 except as provided in Sections 182 and 186.1 of this Code.

1 (b) Permitted alterations. A structure occupied by a nonconforming use shall not be
2 constructed, reconstructed or altered, unless the result will be elimination of the
3 nonconforming use, except as provided in Section 186.1 of this Code and in Subsections (a)
4 above and (d), (e), (f), ~~and (g), (h) and (i)~~ below, and except as follows:

5 (1) Ordinary maintenance and minor repairs shall be permitted where necessary
6 to keep the structure in sound condition, as well as minor alterations, where such work is
7 limited to replacement of existing materials with similar materials placed in a similar manner.

8 (2) Minor alterations shall be permitted where ordered by an appropriate public
9 official to correct immediate hazards to health or safety, or to carry out newly enacted
10 retroactive requirements essential to health or safety.

11 (3) Alterations otherwise allowed by this Code shall be permitted for any portion
12 of the structure that will not thereafter be occupied by the nonconforming use, provided the
13 nonconforming use is not enlarged, intensified, extended, or moved to another location.

14 (4) All other alterations of a structural nature shall be permitted only to the extent
15 that the aggregate total cost of such other structural alterations, as estimated by the
16 Department of Building Inspection ~~Public Works~~, is less than ½ of the assessed valuation of the
17 improvements prior to the first such alteration, except that structural alterations required to
18 reinforce the structure to meet the standards for seismic loads and forces of the Building Code
19 shall be permitted without regard to cost.

20 (c) Dwellings nonconforming as to density.

21 (1) A dwelling or other housing structure exceeding the permitted density of
22 dwelling units or other housing units set forth in Sections 207.5, 208, 209.1, 209.2, or 215 of
23 this Code for the district in which it is located shall be classified as a nonconforming use under
24 Section 180 of this Code, but only to the extent that such dwelling or other housing structure
25 exceeds the permitted density.

1 (2) In districts where a dwelling unit is a principally permitted use, this This Section
2 181 shall *not* apply with respect to enlargements, alterations and reconstruction of the
3 nonconforming portion of such dwelling or other housing structure, consisting of those
4 dwelling units or other housing units which exceed the permitted density, *so long as such*
5 *enlargements, alterations, or reconstruction do not otherwise extend beyond the building envelope as it*
6 *existed on January 1, 2013.*

7 (3) No such enlargements, alterations, or reconstruction shall be permitted
8 under Subsection (c)(2) for any dwelling unit if any tenant has been evicted where a tenant
9 was served with a notice of eviction pursuant to San Francisco Administrative Code Sections
10 37.9(a)(8) 37.9(a)(9) through 37.9(a)(14) where the tenant was served with the notice of
11 eviction after October 24, 2013 December 10, 2013 and if the notice was served within ten
12 (10) years prior to filing an application to enlarge, alter or reconstruct such dwelling or other
13 housing unit. Additionally, no such enlargements, alterations, or reconstruction shall be
14 permitted for any dwelling unit if any tenant has been evicted pursuant to Administrative Code
15 Section 37.9(a)(8) where the tenant was served with a notice of eviction after December 10,
16 2013 if the notice was served within five (5) years prior to filing an application to enlarge, alter
17 or reconstruct such dwelling or other housing unit. This Subsection (c)(3) shall not apply
18 provided that if an eviction has taken place if the tenant was evicted under Section
19 37.9(a)(11), 37.9(a)(12) or 37.9(a)(14), then and the applicant(s) shall certify that either (A)
20 have certified that the original tenant reoccupied the unit after the temporary eviction or (B)
21 have submitted to the Planning Commission a declaration from the property owner or the
22 tenant certifying that the property owner or the Rent Board notified the tenant of the tenant's
23 right to reoccupy the unit after the temporary eviction and that the tenant chose not to
24 reoccupy it.

25

1 (4) Any dwelling unit or other housing unit coming within the density limit shall
2 not be affected by this Section 181. Except as provided in Sections 181(h) and 182(e), no
3 dwelling or other housing structure exceeding the permitted density of dwelling units or other
4 housing units shall be altered to increase the number of dwelling units or other housing units
5 therein, or to increase or create any other nonconformity with respect to the dwelling unit or
6 other housing unit density limitations of Section 209.1 or Section 209.2.

7 (d) Structures damaged or destroyed by calamity. Notwithstanding the foregoing provisions
8 of this Section 181, a structure occupied by a nonconforming use that is damaged or
9 destroyed by fire, or other calamity, or by Act of God, or by the public enemy, may be restored
10 to its former condition and use; provided that such restoration is permitted by the Building
11 Code, and is started within eighteen months and diligently prosecuted to completion. The age
12 of such a structure for the purposes of Sections 184 and 185 shall nevertheless be computed
13 from the date of the original construction of the structure. Except as provided in Subsection (e)
14 below, no structure occupied by a nonconforming use that is voluntarily razed or required by
15 law to be razed by the owner thereof may thereafter be restored except in full conformity with
16 the use limitations of this Code.

17 For purposes of this Subsection (d), "started within eighteen months" shall mean that
18 within eighteen months of the fire or other calamity or Act of God, the structure's owner shall
19 have filed a building permit application to restore the structure to its former condition and use.

20 (e) Unreinforced masonry buildings. In order that major life safety hazards in structures
21 may be eliminated as expeditiously as possible, a structure containing nonconforming uses
22 and constructed of unreinforced masonry that is inconsistent with the requirements of the
23 UMB Seismic Retrofit Ordinance, Ordinance No. 227-92, may be demolished and
24 reconstructed with the same nonconforming use or a use as permitted by Planning Code
25 Section 182; provided that:

1 (1) there is no increase in any nonconformity, or any new nonconformity, with
2 respect to the use limitations of this Code;

3 (2) ~~provided further that~~ the current requirements of the Building Code, the
4 Housing Code and other applicable portions of the Municipal Code are met; and

5 (3) ~~provided further that~~ such restoration or reconstruction is started within one
6 year after razing or other demolition work on the structure and diligently prosecuted to
7 completion.

8 (f) Nighttime Entertainment Uses in certain Mixed-Use Districts. A nighttime entertainment
9 use within the RSD, MUG, MUR, or SLR Districts may be enlarged, intensified, extended or
10 expanded, including the expansion to an adjacent lot or lots, provided that:

11 (1) the enlargement, intensification, extension or expansion is approved as a
12 conditional use pursuant to Sections 303 and 316 of this Code;

13 (2) the use as a whole meets the parking and signage requirements, floor area
14 ratio limit, height and bulk limit, and all other requirements of this Code which would apply if
15 the use were a permitted one; and

16 (3) the provisions of Section 803.5(b) of this Code are satisfied.

17 (g) Automotive Sales and Service Signs in the Automotive Special Use District. Automotive
18 sales and service signs within the Automotive Special Use District which have all required
19 permits but which do not comply with the controls for new signs established in Section 607.3
20 of this Code shall be permitted to remain as nonconforming uses and shall be permitted to
21 modify the signage text to describe new automobile ownerships and dealerships that may
22 occur from time to time.

23 (h) Dwellings in PDR and M-2 Districts. In PDR and M-2 Districts, no building containing
24 a residential use shall be altered to increase the number of dwelling units or other housing
25 units therein. However, individual dwelling units or other housing units may be expanded,

1 subject to height, bulk, and all other provisions of this Code which would otherwise be
2 applicable to dwelling units or other housing units in the Urban Mixed Use District.

3 (i) Nonconforming Non-Residential Uses in the Eastern Neighborhoods Mixed Use, PDR-1-
4 D, and PDR-1-G Districts. In the Eastern Neighborhoods Mixed Use, PDR-1-D, and PDR-1-G
5 Districts, a non-residential nonconforming use may expand in gross floor area by no more
6 than 25 percent with conditional use authorization pursuant to Section 303 of this Code. Such
7 conditional use authorization may not be granted for any subsequent or additional expansion
8 beyond the initial 25 percent.

9 Section 3. Effective Date. This ordinance shall become effective 30 days after
10 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
11 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
12 of Supervisors overrides the Mayor's veto of the ordinance.

13 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
17 additions, and Board amendment deletions in accordance with the "Note" that appears under
18 the official title of the ordinance.

19
20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22 By: _____
23 KATE H. STACY
24 Deputy City Attorney

25 n:\leganas2013\1300041\00890927.doc

EXHIBIT D

1 [Planning Code - Nonconforming Uses; Enlargements and Alterations]

2
3 **Ordinance amending the Planning Code to permit the enlargement, alteration or**
4 **reconstruction of a dwelling or other housing structure that exceeds the permitted**
5 **density of the district if dwelling units are principally permitted in the district and the**
6 **enlargement, alteration or reconstruction does not extend beyond the building**
7 **envelope as it existed on January 1, 2013 and if no tenants were evicted under certain**
8 **provisions of the Rent Ordinance; making environmental findings and findings of**
9 **consistency with the General Plan and the eight priority policies of Planning Code**
10 **Section 101.1.**

11 **NOTE:** **Unchanged Code text and uncodified text** are in plain Arial font.
12 **Additions to Codes** are in *single-underline italics Times New Roman font*.
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16 **Asterisks (* * * *)** indicate the omission of unchanged Code
17 subsections or parts of tables.

18 Be it ordained by the People of the City and County of San Francisco:

19 Section 1. Findings.

20 (a) The Planning Department has determined that the actions contemplated in this
21 ordinance comply with the California Environmental Quality Act (California Public Resources
22 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
23 Supervisors in File No. 130783 and is incorporated herein by reference.

24 (b) On September 19, 2013, the Planning Commission, in Resolution No. 18967,
25 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
with the City's General Plan and eight priority policies of Planning Code Section 101.1. The

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. 130783, and is incorporated herein by reference.

3 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code
4 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth
5 in Planning Commission Resolution No. 18967 and the Board incorporates such reasons
6 herein by reference.

7 (d) This Board intends to allow the enlargement, alteration and reconstruction of non-
8 conforming uses, as long as such permission does not result in additional tenant evictions in
9 order to use these benefits. Accordingly, this Board intends to strike a balance between
10 allowing the non-conforming uses to be altered as described and the need to protect
11 important housing resources.

12 Section 2. The Planning Code is hereby amended by revising Section 181, to read as
13 follows:

14 **SEC. 181. NONCONFORMING USES: ENLARGEMENTS, ALTERATIONS AND**
15 **RECONSTRUCTION.**

16 The following provisions shall apply to ~~non-conforming~~ *nonconforming* uses with respect
17 to enlargements, alterations and reconstruction:

18 (a) Increases in nonconformity. A nonconforming use, and any structure occupied by
19 such use, shall not be enlarged, intensified, extended, or moved to another location, with the
20 exception of the construction of a mezzanine within a live/work unit and expansion of dwelling
21 units in PDR Districts, unless the result will be elimination of the nonconforming use, except
22 as provided *in Paragraph (b)(3) and (i)* below and *in* Section 186.1 of this Code. A
23 nonconforming use shall not be extended to occupy additional space in a structure, or
24 additional land outside a structure, or space in another structure, or to displace any other use,
25 except as provided in Sections 182 and 186.1 of this Code.

1 **(b) Permitted alterations.** A structure occupied by a nonconforming use shall not be
2 constructed, reconstructed or altered, unless the result will be elimination of the
3 nonconforming use, except as provided in Section 186.1 of this Code and in Subsections (a)
4 above and (d), (e), (f), ~~and (g)~~, ~~(h)~~ and (i) below, and except as follows:

5 (1) Ordinary maintenance and minor repairs shall be permitted where necessary
6 to keep the structure in sound condition, as well as minor alterations, where such work is
7 limited to replacement of existing materials with similar materials placed in a similar manner.

8 (2) Minor alterations shall be permitted where ordered by an appropriate public
9 official to correct immediate hazards to health or safety, or to carry out newly enacted
10 retroactive requirements essential to health or safety.

11 (3) Alterations otherwise allowed by this Code shall be permitted for any portion
12 of the structure that will not thereafter be occupied by the nonconforming use, provided the
13 nonconforming use is not enlarged, intensified, extended, or moved to another location.

14 (4) All other alterations of a structural nature shall be permitted only to the extent
15 that the aggregate total cost of such other structural alterations, as estimated by the
16 Department of Building Inspection Public Works, is less than ½ of the assessed valuation of the
17 improvements prior to the first such alteration, except that structural alterations required to
18 reinforce the structure to meet the standards for seismic loads and forces of the Building Code
19 shall be permitted without regard to cost.

20 **(c) Dwellings nonconforming as to density.**

21 (1) A dwelling or other housing structure exceeding the permitted density of
22 dwelling units or other housing units set forth in Sections 207.5, 208, 209.1, 209.2, or 215 of
23 this Code for the district in which it is located shall be classified as a nonconforming use under
24 Section 180 of this Code, but only to the extent that such dwelling or other housing structure
25 exceeds the permitted density.

1 (2) In districts where a dwelling unit is a principally permitted use, this This Section
2 181 shall not apply with respect to enlargements, alterations and reconstruction of the
3 nonconforming portion of such dwelling or other housing structure, consisting of those
4 dwelling units or other housing units which exceed the permitted density, so long as such
5 enlargements, alterations, or reconstruction do not otherwise extend beyond the building envelope as it
6 existed on January 1, 2013.

7 (3) No such enlargements, alterations, or reconstruction shall be permitted
8 under Subsection (c)(2) for any dwelling unit if any tenant has been evicted where a tenant
9 was served with a notice of eviction pursuant to San Francisco Administrative Code Sections
10 37.9(a)(8) 37.9(a)(9) through 37.9(a)(14) where the tenant was served with the notice of
11 eviction after October 24, 2013 December 10, 2013 and if the notice was served within ten
12 (10) years prior to filing an application to enlarge, alter or reconstruct such dwelling or other
13 housing unit. Additionally, no such enlargements, alterations, or reconstruction shall be
14 permitted for any dwelling unit if any tenant has been evicted pursuant to Administrative Code
15 Section 37.9(a)(8) where the tenant was served with a notice of eviction after December 10,
16 2013 if the notice was served within five (5) years prior to filing an application to enlarge, alter
17 or reconstruct such dwelling or other housing unit. This Subsection (c)(3) shall not apply
18 provided that if an eviction has taken place if the tenant was evicted under Section
19 37.9(a)(11), 37.9(a)(12) or 37.9(a)(14), then and the applicant(s) shall certify that either (A)
20 have certified that the original tenant reoccupied the unit after the temporary eviction or (B)
21 have submitted to the Planning Commission a declaration from the property owner or the
22 tenant certifying that the property owner or the Rent Board notified the tenant of the tenant's
23 right to reoccupy the unit after the temporary eviction and that the tenant chose not to
24 reoccupy it.

1 (4) Any dwelling unit or other housing unit coming within the density limit shall
2 not be affected by this Section 181. Except as provided in Sections 181(h) and 182(e), no
3 dwelling or other housing structure exceeding the permitted density of dwelling units or other
4 housing units shall be altered to increase the number of dwelling units or other housing units
5 therein, or to increase or create any other nonconformity with respect to the dwelling unit or
6 other housing unit density limitations of Section 209.1 or Section 209.2.

7 (d) Structures damaged or destroyed by calamity. Notwithstanding the foregoing provisions
8 of this Section 181, a structure occupied by a nonconforming use that is damaged or
9 destroyed by fire, or other calamity, or by Act of God, or by the public enemy, may be restored
10 to its former condition and use; provided that such restoration is permitted by the Building
11 Code, and is started within eighteen months and diligently prosecuted to completion. The age
12 of such a structure for the purposes of Sections 184 and 185 shall nevertheless be computed
13 from the date of the original construction of the structure. Except as provided in Subsection (e)
14 below, no structure occupied by a nonconforming use that is voluntarily razed or required by
15 law to be razed by the owner thereof may thereafter be restored except in full conformity with
16 the use limitations of this Code.

17 For purposes of this Subsection (d), "started within eighteen months" shall mean that
18 within eighteen months of the fire or other calamity or Act of God, the structure's owner shall
19 have filed a building permit application to restore the structure to its former condition and use.

20 (e) Unreinforced masonry buildings. In order that major life safety hazards in structures
21 may be eliminated as expeditiously as possible, a structure containing nonconforming uses
22 and constructed of unreinforced masonry that is inconsistent with the requirements of the
23 UMB Seismic Retrofit Ordinance, Ordinance No. 227-92, may be demolished and
24 reconstructed with the same nonconforming use or a use as permitted by Planning Code
25 Section 182; provided that:

1 (1) there is no increase in any nonconformity, or any new nonconformity, with
2 respect to the use limitations of this Code;

3 (2) ~~provided further that~~ the current requirements of the Building Code, the
4 Housing Code and other applicable portions of the Municipal Code are met; and

5 (3) ~~provided further that~~ such restoration or reconstruction is started within one
6 year after razing or other demolition work on the structure and diligently prosecuted to
7 completion.

8 (f) Nighttime Entertainment Uses in certain Mixed-Use Districts. A nighttime entertainment
9 use within the RSD, MUG, MUR, or SLR Districts may be enlarged, intensified, extended or
10 expanded, including the expansion to an adjacent lot or lots, provided that:

11 (1) the enlargement, intensification, extension or expansion is approved as a
12 conditional use pursuant to Sections 303 and 316 of this Code;

13 (2) the use as a whole meets the parking and signage requirements, floor area
14 ratio limit, height and bulk limit, and all other requirements of this Code which would apply if
15 the use were a permitted one; and

16 (3) the provisions of Section 803.5(b) of this Code are satisfied.

17 (g) Automotive Sales and Service Signs in the Automotive Special Use District. Automotive
18 sales and service signs within the Automotive Special Use District which have all required
19 permits but which do not comply with the controls for new signs established in Section 607.3
20 of this Code shall be permitted to remain as nonconforming uses and shall be permitted to
21 modify the signage text to describe new automobile ownerships and dealerships that may
22 occur from time to time.

23 (h) Dwellings in PDR and M-2 Districts. In PDR and M-2 Districts, no building containing
24 a residential use shall be altered to increase the number of dwelling units or other housing
25 units therein. However, individual dwelling units or other housing units may be expanded,

1 subject to height, bulk, and all other provisions of this Code which would otherwise be
2 applicable to dwelling units or other housing units in the Urban Mixed Use District.

3 (i) Nonconforming Non-Residential Uses in the Eastern Neighborhoods Mixed Use, PDR-1-
4 D, and PDR-1-G Districts. In the Eastern Neighborhoods Mixed Use, PDR-1-D, and PDR-1-G
5 Districts, a non-residential nonconforming use may expand in gross floor area by no more
6 than 25 percent with conditional use authorization pursuant to Section 303 of this Code. Such
7 conditional use authorization may not be granted for any subsequent or additional expansion
8 beyond the initial 25 percent.

9 Section 3. Effective Date. This ordinance shall become effective 30 days after
10 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
11 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
12 of Supervisors overrides the Mayor's veto of the ordinance.

13 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
17 additions, and Board amendment deletions in accordance with the "Note" that appears under
18 the official title of the ordinance.

19
20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22 By: 
23 KATE H. STACY
24 Deputy City Attorney

25 n:\legana\as2013\1300041\00890927.doc



City and County of San Francisco

**Tails
Ordinance**

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 130783

Date Passed: December 17, 2013

Ordinance amending 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 if no tenants were evicted under certain provisions of the Rent Ordinance; and making environmental findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

November 25, 2013 Land Use and Economic Development Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

November 25, 2013 Land Use and Economic Development Committee - CONTINUED AS AMENDED

December 09, 2013 Land Use and Economic Development Committee - REFERRED WITHOUT RECOMMENDATION AS AMENDED AS A COMMITTEE REPORT

December 10, 2013 Board of Supervisors - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

December 10, 2013 Board of Supervisors - AMENDED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

December 10, 2013 Board of Supervisors - AMENDED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

December 10, 2013 Board of Supervisors - PASSED ON FIRST READING AS AMENDED

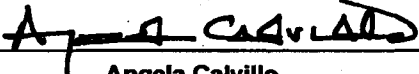
Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

December 17, 2013 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

File No. 130783

I hereby certify that the foregoing
Ordinance was FINALLY PASSED on
12/17/2013 by the Board of Supervisors of
the City and County of San Francisco.


Angela Calvillo
Clerk of the Board


Mayor


Date Approved