



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 18652

HEARING DATE: JUNE 21, 2012

Continued from the May 17, 2012 Hearing

Date: May 10, 2012
Case No.: 2011.0206T
Project Address: **Planning Code Amendments: Student Housing**
Initiated by: Planning Commission
Legislative Sponsor: Supervisor Wiener & Supervisor Kim
Staff Contact: AnMarie Rodgers, Manager, Legislative Affairs
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Recommendation: **Approval with Modifications**

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT WITH MODIFICATIONS A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO ADD A NEW SECTION 102.36 TO CREATE A DEFINITION OF STUDENT HOUSING, TO AMEND SECTION 135(D)(2) TO ADJUST THE MINIMUM OPEN SPACE REQUIREMENTS FOR DWELLING UNITS THAT DO NOT EXCEED 350 SQUARE FEET PLUS A BATHROOM, TO AMEND SECTION 207(B)(3) TO EXEMPT STUDENT HOUSING FROM THE UNIT MIX REQUIREMENT IN RTO, NCT, DTR, AND EASTERN NEIGHBORHOOD MIXED-USE DISTRICTS, TO AMEND SECTION 307 TO PERMIT THE CONVERSION OF STUDENT HOUSING TO RESIDENTIAL USES THAT DO NOT QUALIFY AS STUDENT HOUSING, TO AMEND SECTION 312 TO REQUIRE NOTICE FOR A CHANGE OF USE TO GROUP HOUSING IN NC DISTRICTS, TO AMEND SECTION 317 TO PROHIBIT THE CONVERSION OF RESIDENTIAL USES TO STUDENT HOUSING, AND TO AMEND SECTION 401 TO MAKE CONFORMING AMENDMENTS AND TO MODIFY THE DEFINITION OF QUALIFIED STUDENT HOUSING.

PREAMBLE

WHEREAS, the existing Code does not include a clear definition of Student Housing based on occupancy and ownership or control that is applicable citywide; and

WHEREAS, the Code sections controlling loss of dwelling units do not specifically address the conversion from housing to Student Housing; and

WHEREAS, the Code does not provide a clear process for converting Student Housing to housing; and

WHEREAS, the open space requirements for dwelling units that are smaller than 350 square feet plus a bathroom may be greater than the actual need; and

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WHEREAS, the dwelling unit mix requirement within the RTO, NCT, DTR, and Eastern Neighborhood Mixed-Use Districts may not facilitate the production of new Student Housing; and

WHEREAS, no neighborhood notification is currently required for the addition of new Group Housing within the NC Districts, which appears to be inconsistent with other noticing requirements within the NC Districts; and

Whereas, pursuant to Planning Code Section 306.3 the Planning Commission adopted Resolution No. 18477 initiating amendments to the Planning Code on October 27, 2011; and

Whereas, on November 10, 2011, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, on November 10, 2011, the Commission approved Resolution No. 18485 recommending approval of the proposed Ordinance; and

WHEREAS, On January 10, 2012, Supervisor Wiener signed on as a Board Sponsor and introduced the legislation at the Board of Supervisors; and

WHEREAS, March 26, 2012, Land Use Hearing, Supervisor Wiener recommended the following amendments. Supervisor Wiener proposed to amend Section 317(b)(1) of the proposed Ordinance to allow the following limited exceptions where the conversion of existing housing and SROs would be allowed to student housing if:

- 1) the housing was built by the post-secondary Educational Institution that will own, operate or otherwise control the Student Housing,
- 2) is in a convent monastery (or similar religious order facility), or
- 3) is on a lot directly adjacent to the post-secondary Educational Institution that will own operate or otherwise control the Student Housing, so long as the lot has been owned by the post-secondary Educational Institution for at least ten years as of the effective date of this ordinance.

WHEREAS, Supervisor Wiener also proposed to amend the proposed Ordinance by amending Section 124¹, to create a new subsection (k), to permit additional square footage above the floor area ratio limits for Qualified Student Housing projects in buildings in the C-3-G and C-3-S Districts, that are not designated as Significant or Contributory pursuant to Article 11.

WHEREAS, since the Land Use hearing, the Department has received a letter dated April 10, 2012 from the San Francisco Housing Action Coalition (SFHAC) that described additional modifications. **Supervisor Wiener's** office has indicated that the Supervisor would support these

¹ In Board File No 111374-2 as referred to the Planning Commission, the Legislative Digest and long titled of the Ordinance refer to amendments to Planning Code Section 214. There is no Section 214. The amendments described in the Ordinance are actually to 124 Basic Floor Area Ratio.

modifications from SFHAC upon the Commission's recommendation. The amendments proposed by SFHAC include the following:

- 1) replacing the requirement that institutions be in "long-term master lease for a period of at least 20 years" with a requirement of being in an "other contractual agreement";
- 2) specifying that those projects which convert a "non-residential" building are eligible for the exemption from the inclusionary requirement;
- 3) adding a requirement that the Zoning Administrator may approve the conversion of a "Student Housing" use to "Non-Student Residential Use" only if the building owner has made an "extensive and good faith effort" to find another qualified institution to lease the space;
- 4) minor technical clarifications such as specifying that more than one "Qualified Student Housing Project" may be in a building and that a project may remain "Qualified Student Housing" if the owner or lease-holder transitions from one "Qualified Educational Institution" to another.

WHEREAS, on April 11, 2012 Supervisor Kim sent a memorandum to this Commission proposing further amendments to the proposed Ordinance. Specifically, Supervisor Kim proposed that residential and SRO buildings that have been vacant for at least one year or underutilized for at least two years and create blight could be converted to student housing via Conditional Use authorization. To be considered "vacant" a Residential Building would have to be completely vacant and listed on the Department of Building Inspection's Vacant Building Registry for at least one year from the time of application. To be considered "underutilized" a building would need to be 20% or less occupied for at least two years prior to application, as proven by an affidavit of the buildings owner.

WHEREAS, the proposed legislation is intended to resolve the aforementioned issues; and

WHEREAS, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties; and

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2); and

WHEREAS, the pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Commission has reviewed the proposed Ordinance.

MOVED, that the Commission hereby adopts this Resolution to recommend *approval with modifications* of the draft Ordinance to the Board of Supervisors; and

First and foremost, the Commission strongly recommends that the proposed Ordinance generally keep the prohibition on the conversion of existing housing into student housing.

The Commission's recommended modifications to the proposed Ordinance include:

- **Previous Recommendation:** Modify Planning Code Section 317(f)(1) to clarify that for the purposes of conversion residential uses are defined as follows: "For the purposes of this subsection, residential uses that have been defined as such by the time a First Certificate of Occupancy has been issued by the Department of Building Inspection for new construction shall not be converted to Student Housing".

- **New Overall Recommendations:**
 - **Add a minor modification to the definition of "Student Housing".** The proposed change stresses that the definition includes "owned & operated by educational" by moving the clause earlier in the definition as follows: "Student Housing is a living space for students of accredited post-secondary Educational Institutions that may take the form of dwelling units, group housing, or a SRO, and is owned, operated or otherwise controlled by an accredited post-secondary Educational Institution, as defined in Section 209.3(i) of this Code. Unless expressly provided for elsewhere in this Code, the use of Student Housing is permitted where the form of housing is permitted in the underlying Zoning District in which it is located. ~~Student Housing must be owned, operated or otherwise controlled by an accredited post-secondary Educational Institution, as defined in Section 209.3(i) of this Code.~~ Student Housing may consist of all or part of a building."
 - **SF Housing Action Coalition Amendments.** The Commission recommends support for most of the SF HAC proposed amendments, primarily these are minor in nature. The major substantive change would be to relieve educational institutions from entering into a 20 year lease for buildings which were not owned by the institution. The Mayor's Office of Housing (MOH) stated a preference for maintaining a requirement for at least a 5 year lease. The Commission defers to the MOH on enforceability of this clause and therefore also recommends requiring at a lease for at least five years in order to qualify for the exemption from the Inclusionary Affordable Housing requirement.
 - **Technical Amendment.** The Commission recommends a minor technical modification. In the long title of the Ordinance this FAR exemption cites Section 214. The proper section should be 124.
 - **Recommendations from the Mayor's Office of Housing.** In consultation with MOH, the Commission would recommend the following modifications:
 - The definition of Qualified Student Housing in Section 401 should be replaced with the newly proposed the definition for "Student Housing" in Section 102.36.
 - The definition of Qualified Educational Institution in Section 401 should be replaced with the existing definition of Post Secondary Educational Institution in Section 209.3 (i).
 - The definition of Qualified Student in Section 401 should be amended to replace the need based criteria with a description "a student who is

enrolled at least part-time or more in a Qualified Educational Institution”.

- The monitoring requirements of the Mayor’s Office of Housing in Section 415.3 (c) (5) (C) (i) and (ii) should be amended to clarify that the Qualified Educational Institution can present a lease with at least a five year term and that the report will not include information on rents and the type of dwelling unit provided for each student.

- **New Recommendations in Response to Supervisor Wiener’s Proposals:**

- **Three Permitted Conversions.** Allow Supervisor Wiener’s proposed amendments to provide avenues for allowing the conversion of a relatively small amount of existing housing to student housing use, however, the circumstances whereby such conversions would be allowed are very limited.
- **FAR Exemption.** True to the original spirit of the Ordinance, Supervisor Wiener also introduces additional incentives for building new student housing. Under the proposal student housing in the C-3-G and C-3-S districts would be permitted above the FAR limits, provided that the housing was not in a designated Significant or Contributory building as designated in Article 11. This type of FAR exemption is already provided for affordable housing and parking in these districts. The Commission recommends approval.
- **Clarify “adjacent”.** The Commission recommends clarifying the Supervisor’s intent on allowing an exemption for lots that are “directly adjacent to the post-secondary Educational Institution”. The Commission believes that instead of “adjacent” the term “shared lot line” or “adjoining lot” be used.
- **Remove “similar”.** The Commission recommends limiting the language for the Supervisor’s proposal that “convent, monastery (or similar religious order facility)” that would be exempt from the prohibition on conversions. The Commission recommends striking the term “similar” so that the proposed Ordinance would read “convent, monastery (or religious order facility)”.
- **Add another exemption for Student Housing currently in existence that is operated or owned by an institution that has a Commission accepted Institutional Master Plan on file prior to August 10, 2010 and where the occupancy by those other than students had been reported to be less than 20% occupied as of August 10, 2010.** For the purposes of determining previous occupancy, such vacancy or low rate of occupancy to be demonstrated by reports filed as required by the Residential Hotel Conversion Ordinance with the Department of Building Inspection and/or, as applicable, verified information from such Educational Institution regarding its rental or lease of such units for its students as of such date. No such change in occupancy recorded as of the time of occupancy by students as provided herein shall cause such units to be deemed exempt from the Residential Stabilization and Arbitration Ordinance.

- **New Recommendations in Response to Supervisor Kim's Proposals:**
 - The Commission has recently taken two actions: first in November 2010 and later in 2011 to affirm that institutions seeking to establish Student Housing should build new housing and should not convert existing housing. For this reason, the Commission maintains **that conversion of existing housing stock should generally be prohibited.**
 - **If the Board enacts specific provisions enabling the conversions for Vacant or Underutilized Residential Buildings into Student Housing**, ensure that these conversions shall be subject to existing Conditional Use requirements in Section 303 *and* the new requirements below:
 - A Vacant Building is a Residential Building that has been completely vacant for at least one year from the time of application, and that has been on the Department of Building Inspection's Vacant Building Registry pursuant to Section 103A.4 of the San Francisco Building Code for at least one year prior to the application.
 - An Underutilized Building is a Residential Building where 20% or less of the residential units have been occupied during the two years prior to the time of application. At the time of application, the project sponsor shall submit an affidavit declaring, to the best of his or her knowledge, what the total number of occupied residential units in the Residential Building has been during the last two years.
 - **Further, if the Board enacts any provisions enabling conversions via Conditional Use authorization, the Commission recommends adding protections for tenants from unfair evictions and to ensure rent control protections. The Department recommends the following:**
 - At the time of the conditional use application, the applicant shall submit an affidavit certifying that no eviction, as defined in San Francisco Administrative Code Section 37.9(a)(8)-(16) has occurred since the effective date of this ordinance, or, if such an eviction has occurred, that the original tenant reoccupied the unit after a temporary eviction. Prior to approving the conditional use application the Department must verify with the Rent Stabilization and Arbitration Board the contents of the affidavit. This requirement applies to all applicants, regardless of whether the current owner initiated or otherwise participated in the eviction(s). For purposes of this subsection, "eviction" means the issuance of a written notice terminating tenancy pursuant to Administrative Code Sections 37.9(a)(8)-(16); provided, however, that if the property owner issues and then withdraws the eviction notice prior to its expiration and the tenant receiving the notice remains in tenancy for at least 120 days following the expiration of the notice, the property owner's action shall not be deemed an eviction pursuant to this subsection. To avoid risk of increased evictions, the City should require the signing of an affidavit stating that no evictions have occurred similar to the condo conversion Ordinance.

- Nothing herein shall be construed as limiting or diminishing a tenant's rights under the City's Residential Rent Stabilization and Arbitration Ordinance, set forth in Chapter 37 of the Administrative Code.
- Lastly, the Commission recommends that **further avenues be explored for increasing funding for acquisition and rehabilitation of existing SROs including but not limited to expanding the Small Site Acquisition and Rehabilitation Program and Mills Act Tax Relief.**

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The Ordinance, as modified, will encourage the production of new student housing while protecting the City's existing housing stock by prohibiting the conversion from any form of housing to student housing, and by providing incentives for the construction of new student housing;
2. The new definition of student housing acknowledges the different forms that new student housing may take, such as very small efficiency dwellings with individual kitchens and bathrooms in addition to group housing;
3. The Ordinance, as modified, provides incentives to construct new student housing such as an exemption from the unit mix requirements within RTO, NCT, DTR, and Eastern Neighborhood Mixed-Use districts, a reduction in the open space requirements for very small dwelling units, and a streamlined process by which student housing may be converted to standard housing.
4. In December, 2010, Ordinance Number 321-10 was passed providing an Affordable Housing Program exemption for Qualified Student Housing. When the Planning Commission considered this Ordinance, introduced by Supervisor Dufty, it recognized both the need for additional Student Housing and for protections for existing forms of housing from conversion to Student Housing.
5. The Commission believes the goal of the proposed Ordinance should be to encourage the production of new Student Housing while protecting the City's existing housing stock. Of primary concern is to prohibit the conversion from any form of housing to Student Housing.
6. The Commission recommended process would allow for conversion from Student Housing to other residential uses provided that the requirements for standard housing have been met.

7. The new proposed Ordinance initiated by the Planning Commission this fall and now sponsored by Supervisor Wiener is consistent with the 2010 Ordinance. The two-pronged approach of offering significant incentives by the relieving student housing from the Affordable Housing Inclusionary requirements and prohibiting the conversion of existing housing to student housing will ensure that the City will benefit from the production of new student housing without losing existing housing to purely institutional use.
8. The General Plan states that the City should “preserve and maintain the existing housing stock, which provides some of the City’s most affordable units”.
9. The Office of the Legislative Analyst report states, “The overwhelming increase in the numbers of homeless people in the last 20 years, combined with the shortage of affordable housing since the 1960s, has made SRO hotels an important housing option for many low-income adults.”
10. At the last inventory there are just over 18,000 Residential Hotel units in San Francisco. Housing more people than all of the City’s public housing, this represents no minor fraction of the housing stock, yet this is significantly less than the estimated existing shortfall of student housing. Once these units are converted to Student Housing, the units will no longer be available to the City’s general low-income population but instead will be only for student tenants.
11. Residential Hotels have typically not been attractive for other residential uses but as demand for Student Housing increases, the threat to this affordable housing stock will increase unless institutions are encouraged to build new housing.
12. The Residential Hotel Ordinance regulates and protects the existing stock of residential hotels. This ordinance requires that residential hotel rooms replaced with tourist rooms should be replaced at a 1 to 1 ratio.
13. According to a 2009 report commissioned by the Human Services Agency, “The City of San Francisco is unable to meet [existing] residents’ demand for affordable housing. Many of the city’s most vulnerable populations, including families with children seniors and adults with disabilities, and other public service recipients, are often at risk for homelessness. SROs account for a substantial portion of San Francisco’s affordable housing stock, as they provide housing for more low-income people than all the city’s public housing developments”.

14. **General Plan Compliance.** This Resolution is consistent with the following Objectives and Policies of the General Plan:

I. HOUSING ELEMENT

OBJECTIVE 1

TO PROVIDE NEW HOUSING, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING, IN APPROPRIATE LOCATIONS WHICH MEETS IDENTIFIED HOUSING NEEDS AND TAKES INTO ACCOUNT THE DEMAND FOR AFFORDABLE HOUSING CREATED BY EMPLOYMENT DEMAND.

POLICY 1.1

Plan for the full range of housing needs in the City and County of San Francisco, especially affordable housing.

POLICY 1.9

Require new commercial developments and higher educational institutions to meet the housing demand they generate, particularly the need for affordable housing for lower income workers and students.

POLICY 1.10

Support new housing projects, especially affordable housing, where households can easily rely on public transportation, walking and bicycling for the majority of daily trips.

OBJECTIVE 2

RETAIN EXISTING HOUSING UNITS, AND PROMOTE SAFETY AND MAINTENANCE STANDARDS, WITHOUT JEOPARDIZING AFFORDABILITY.

POLICY 2.2

Retain existing housing by controlling the merger of residential units, except where a merger clearly creates new family housing.

The proposed Ordinance with the Commission's recommended modifications would protect the existing housing stock from conversion from standard housing to student housing.

HOUSING ELEMENT POLICY 3.1

Preserve rental units, especially rent controlled units, to meet the City's affordable housing needs.

Sixty-two percent of San Francisco's residents are renters. In the interest of the long term health and diversity of the housing stock the City should work to preserve this approximate ratio of rental units. The City should pay particular attention to rent control units which contribute to the long term existence and affordability of the City's rental

housing stock without requiring public subsidy, by continuing their protection and supporting tenant's rights laws. Efforts to preserve rental units from physical deterioration include programs that support landlord's efforts to maintain rental housing such as: maintenance assistance programs, programs to support and enhance property management capacity, especially for larger companies, and programs to provide financial advice to landlords.

HOUSING ELEMENT POLICY 3.5

Retain permanently affordable residential hotels and single room occupancy (SRO) units. Residential or single-room occupancy hotels (SROs) offer a unique housing opportunity for lower income elderly, disabled, and single-person households.

The proximity of most SROs to the downtown area has fueled pressure to convert SRO's to tourist hotels. In response to this, the City adopted its Residential Hotel Ordinance, which regulates and protects the existing stock of residential hotels. This ordinance requires permits for conversion of residential hotel rooms, requires replacement on a 1 to 1 level in the case of conversion or demolition

The proposed Ordinance with the Commission's recommended modifications recognizes the need for new student housing, and is intended to encourage the production of new student housing while protecting the City's existing housing stock. The proposed Ordinance will provide incentives for providing new student housing in transit-rich neighborhoods such as RTO, NCT, DTR, certain C-3 Districts and Eastern Neighborhoods Mixed-Use Districts. In addition, the proposed Ordinance with the Commission's recommended modifications recognizes that the City's existing housing stock, particularly forms such as Group Housing and SROs that often provide housing for low-income residents, need protection from conversion to student housing.

15. This Resolution is consistent with the eight General Plan priority policies set forth in Section 101.1 in that:
 - A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced.
 - B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.
 - C) The City's supply of affordable housing will be preserved and enhanced.
 - D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking.
 - E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And

future opportunities for resident employment and ownership in these sectors will be enhanced.

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.
- G) That landmark and historic buildings will be preserved.
- H) Parks and open space and their access to sunlight and vistas will be protected from development.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on June 21, 2012.



Linda Avery
Commission Secretary

AYES: Fong, Wu, Borden, Miguel, Moore and Sugaya

NAYS: Antonini

ABSENT:

ADOPTED: June 21, 2012