Appeal No. 23-047 @ 51 Prosper Street
Draft of Proposed Revised Reasonable Modification Decision submitted for the hearing on January 10, 2024

San Francisco Planning

49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103
628.652.7600
www.sfplanning.org

REVISED REASONABLE MODIFICATION DECISION

Date: January 10, 2024
Case No.: **2022-011807VAR**
Project Address: **51 PROSPER STREET**
Block/Lots: 3564 / 031
Zoning: RH-2 (RESIDENTIAL- HOUSE, TWO FAMILY)
Height/Bulk: 40-X Height and Bulk District
Applicant: Thomas Metz
51 Prosper Street, Apt. 5
San Francisco, CA 94114
Owner: Thomas Metz and David Brightman
51 Prosper Street, Apt. 5
San Francisco, CA 94114
Staff Contact: Matthew Dito – 628-652-7358
matthew.dito@sfgov.org

Description of Reasonable Modification Sought:

The proposal is to merge two dwelling units (Units 2 and 5) at the subject property by constructing an internal staircase connecting the units and removing the kitchen in Unit 2. The kitchen in Unit 2 would be converted to a bedroom.

Planning Code Section 317 requires a Conditional Use Authorization for the merger of two or more dwelling units, resulting in a net reduction in the number of dwelling units in a building. The proposal is to merge Unit 2 and Unit 5.

Procedural Background:

1. Planning Code Section 305.1 allows the Zoning Administrator to approve a request to grant a reasonable modification of certain regulations, policies, practices, or procedures of the Planning Code for people with disabilities. A person with a known disability resides at the subject property. Pursuant to Subsection (d)(4), a Reasonable Modification to allow an internal connection between two separate dwelling units without a Conditional Use Authorization for a dwelling unit merger may be approved without public notice or hearing.

2. The Project is exempt from the California Environmental Quality Act ("CEQA") as a Class 1 categorical exemption.

3. Pursuant to Planning Code Section 305.1(d)(4), this request for Reasonable Modification does not

Style Definition: Heading 1
Style Definition: Heading 2
Style Definition: Address Block
Deleted: September 25, 2023
Formatted: Font: Bold
Deleted:
Deleted: 5
Deleted: 5
Deleted: **The following Zoning Administrator interpretation was issued in 2003: "As reflected in the Planning Commission's Policy on Dwelling Unit Mergers (December 2001), the merger of dwelling units raises significant concerns regarding the loss of housing units and the impact upon the City's overall housing stock. Two legal apartments in a multiple-unit building could be combined by opening a party wall and could be used by one family while retaining both kitchens. This situation would be considered to be two units used by one family, and *is considered a dwelling unit merger* [emphasis added] subject to the Planning Commission's Policy. Although the two units still exist as legally separate units, they are, in effect, merged for the use of one family and should be reviewed against the dwelling unit merger policy, since they have a similar effect upon the City's housing stock."¶**
¶

require public notice and may be approved administratively without a public hearing.

4. The Zoning Administrator issued a decision letter on September 25, 2023, granting the Reasonable Modification, but on the condition that Units 2 and 5 not be legally merged into a single dwelling unit, but instead only be allowed to have an internal connection to address the applicant's need, and that such connection be removed once the need no longer existed. The decision also prohibited the removal of the kitchen in Unit 2.

5. The Board of Appeals heard Appeal No. 23-047 on December 13, 2023 and voted to continue the hearing to January 10, 2024 so that the Zoning Administrator, working with the appellant, could revise the Reasonable Modification Decision to allow for the legal merger of Units 2 and 5 on the basis that the applicant's unique circumstances warranted the merger.

Decision:

GRANTED, to legally merge Units 2 and 5, as shown in EXHIBIT A, subject to the following conditions:

1. The authorization and rights vested by virtue of this decision letter shall be deemed void and cancelled if a Site or Building Permit has not been issued within three (3) years from the effective date of this decision. However, this authorization may be extended by the Zoning Administrator when implementation of the project is delayed by a public agency, an appeal, or a legal challenge, and only by the length of time for which such public agency, appeal, or challenge has caused delay.

Criteria:

Section 305.1(f)(2) of the Planning Code states that when reviewing a request for reasonable modification, the Zoning Administrator shall consider whether:

CRITERION A.

The requested modification is requested by or on the behalf of one or more individuals with a disability protected under federal and state fair housing laws.

A. The San Francisco Mayor's Office on Disability verified that the requestor of the modification has a disability protected under federal and state fair housing laws.

CRITERION B.

The requested modification will directly enable the individual to access the individual's residence.

A. Merging Units 2 and 5 will provide additional habitable space for the applicant and allow for live-in, around-the-clock assistance with ADLs (Activities of Daily Living). The additional habitable space provided to the applicant enables him to remain in his residence.

CRITERION C.

The requested modification is necessary to provide the individual with a disability an equal opportunity to use

Deleted: September 25, 2023

Formatted: Indent: Left: 0.25", No bullets or numbering

Deleted: 5

Formatted: Indent: Left: 0.25", No bullets or numbering

Deleted: and to have the

Deleted: draft a new letter granting the

Deleted:

Deleted: modification from the dwelling unit merger controls

Deleted: construct an interior staircase connecting

Deleted: <#>This Reasonable Modification does not authorize the merger of Units 2 and 5, and is not a modification of the dwelling unit merger provisions of Planning Code Section 317. Instead, this Reasonable Modification is granted from the 2003 Zoning Administrator interpretation that prohibits an internal connection between two separate dwelling units. ¶
¶
Units 2 and 5 shall remain two separate and legally distinct dwelling units for the purpose of the Planning Code. As such, each unit must continue to include a kitchen. ¶
¶
Pursuant to Planning Code Section 305.1, this reasonable modification to allow an internal connection between two separate dwelling units without a Conditional Use Authorization for a dwelling unit merger is valid only for the period of time that there is a qualifying disabled occupant. Unless separate authorization is obtained to legally merge the two dwelling units, **the property owner must notify the Zoning Administrator within six (6) months of the end of occupancy by a qualifying disabled occupant, and file a building permit to remove the internal connection (and any other work necessary to fully separate the two units) within twelve (12) months of the end of occupancy by a qualifying disabled occupant.** Such building permit must be issued and diligently completed to remove the interior connection. ¶

Deleted: ¶
The proposed project must meet these conditions and all applicable City Codes. In case of conflict, the more ... [1]

Formatted: Font color: Black

Deleted: An interior staircase to connect

Deleted: medical care

Deleted: them

Deleted: their

Deleted: <#>Unit 2 is currently a one-bedroom dwelling unit. The proposal includes the removal of a kitchen, ... [2]

and enjoy a dwelling.

A. The requested modification provides the applicant the ability to remain in, use, and enjoy their dwelling by providing additional habitable space for live-in, around the clock assistance with ADLs.

CRITERION D.

There are alternatives to the requested modification that would provide an equivalent level of benefit.

A. The alternative of only allowing a temporary internal connection between Units 2 and 5 and not allowing the removal of the kitchen in Unit 2 was considered by the Zoning Administrator and the Board of Appeals. The Board determined this alternative to be inadequate and burdensome to the applicant in light of the applicant's disability and specific needs, and in part due to the multi-story nature of the necessary connection between the units. As such, there are no adequate alternatives to a legal merger of the units to allow for live-in, around-the-clock assistance with ADLs for the applicant.

CRITERION E.

The requested modification will not impose an undue financial or administrative burden on the City as "undue financial or administrative burden" is defined under federal and state fair housing laws.

A. The requested modification does not appear to be a cause for undue financial or administrative burden on the City. An "undue financial or administrative burden" takes place when there are substantial costs and processes required by the City to accommodate the property owner's request. This determination is based on reviewing Exhibit 2-6: Examples of Undue Financial and Administrative Burden from the HUD Occupancy Handbook.

CRITERION F.

The requested modification will, under the specific facts of the case, result in a fundamental alteration in the nature of the Planning Code or General Plan, as "fundamental alteration" is defined under federal and state fair housing laws.

A. The requested modification will not result in a fundamental alteration of the Planning Code or General Plan, as "fundamental alteration" is defined under federal and state fair housing laws. The Planning Code allows dwelling unit mergers to be approved by the Planning Commission pursuant to Section 317. In this case, the merger is deemed necessary to provide adequate assistance to the applicant and their specific situation.

CRITERION G.

The requested modification will, under the specific facts of the case, result in a direct threat to the health or safety of others or cause substantial physical damage to the property of others.

A. The requested modification will not result in a direct threat to the health or safety of others or cause substantial physical damage to the property of others. The proposal includes construction contained

Deleted: September 25, 2023

Deleted: medical care

Deleted: <#>Unit 2 is currently a one-bedroom dwelling unit. The proposal includes the removal of a kitchen, which is not necessary to enable the individual to continue to use and enjoy their dwelling, as an interior staircase provides sufficient access to the applicant for a live-in care provider.¶
¶

Deleted: .

Deleted: to

Deleted: 5

Deleted: for the

Deleted: re is no feasible area for the building to expand so that Unit 5 may add a bedroom, nor any existing common area or non-habitable space that could be converted to a bedroom with direct access to Unit 5.

Deleted: T

Deleted: that would provide additional habitable space for the applicant

Deleted: medical care

Deleted: two subject dwelling units will remain as two separate dwelling units. This determination is based on reviewing Exhibit 2-5: Examples of Fundamental Alteration from the HUD Occupancy Handbook. The modification, as granted by the Zoning Administrator, includes the minimum scope necessary to provide the applicant with the necessary medical care and access.

Deleted: September 25, 2023

within Units 2 and 5 and no exterior work.

Priority Planning Policies:

This development is consistent with the generally stated intent and purpose of the Planning Code to promote orderly and beneficial development. Planning Code Section 101.1 establishes eight priority-planning policies and requires review of Reasonable Modification applications for consistency with said policies. The project meets all relevant policies, including conserving neighborhood character, and maintaining housing stock.

1. Existing neighborhood retail uses will not be adversely affected by the proposed project.
2. The proposed project will be in keeping with the existing housing and neighborhood character. The reasonable modification includes no exterior work and will maintain the building as a multi-unit rent-controlled building.
3. The proposed project will have no effect on the City's supply of affordable housing.
4. The proposed project does not adversely affect neighborhood parking or public transit.
5. The project will have no effect on the City's industrial and service sectors.
6. The proposed project will have no effect on the City's preparedness to protect against injury and loss of life in an earthquake.
7. The project will have no effect on the City's landmarks or historic buildings.
8. The project would not affect any existing or planned public parks or open spaces.

Deleted: not change the number of legal dwelling units on the lot

The effective date of this decision shall be the date of the Notice of Decision and Order if the Revised Reasonable Modification Decision is adopted by the Board of Appeals.

Deleted: either the date of this decision letter if not appealed, or

Formatted: Not Highlight

Deleted: appealed to

Once any portion of the granted Reasonable Modification is used, all specifications and conditions of the Reasonable Modification authorization become immediately operative.

Protest of Fee or Exaction: You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development.

If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Reasonable Modification Decision Letter constitutes the approval or conditional approval of the development and the City hereby gives NOTICE that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject

development, then this document does not re-commence the 90-day approval period.

This is not a permit to commence any work or change occupancy. Permits from appropriate departments must be secured before work is started or occupancy is changed.

Deleted: September 25, 2023

Deleted: APPEAL: Any aggrieved person may appeal this Reasonable Modification decision to the Board of Appeals within ten (10) days after the date of the issuance of this Reasonable Modification Decision. For further information, please contact the Board of Appeals in person at 49 South Van Ness Ave, Suite 1475 (14th Floor), call 628-652-1150, or visit www.sfgov.org/bdappeal.¶

¶

Very truly yours,¶

¶

¶

¶

Deleted: Corey A. Teague, AICP

Deleted: *Zoning Administrator*

Page 2: [1] Deleted **Teague, Corey (CPC)** **1/2/2024 1:54:00 PM**

Page 2: [2] Deleted **Teague, Corey (CPC)** **12/19/2023 11:29:00 AM**

San Francisco Planning

49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103
628.652.7600
www.sfplanning.org

REVISED REASONABLE MODIFICATION DECISION

Date:	January 10, 2024
Case No.:	**2022-011807VAR**
Project Address:	**51 PROSPER STREET**
Block/Lots:	3564 / 031
Zoning:	RH-2 (RESIDENTIAL- HOUSE, TWO FAMILY)
Height/Bulk:	40-X Height and Bulk District
Applicant:	Thomas Metz 51 Prosper Street, Apt. 5 San Francisco, CA 94114
Owner:	Thomas Metz and David Brightman 51 Prosper Street, Apt. 5 San Francisco, CA 94114
Staff Contact:	Matthew Dito – 628-652-7358 matthew.dito@sfgov.org

Description of Reasonable Modification Sought:

The proposal is to merge two dwelling units (Units 2 and 5) at the subject property by constructing an internal staircase connecting the units and removing the kitchen in Unit 2. The kitchen in Unit 2 would be converted to a bedroom.

Planning Code Section 317 requires a Conditional Use Authorization for the merger of two or more dwelling units, resulting in a net reduction in the number of dwelling units in a building. The proposal is to merge Unit 2 and Unit 5.

Procedural Background:

1. Planning Code Section 305.1 allows the Zoning Administrator to approve a request to grant a reasonable modification of certain regulations, policies, practices, or procedures of the Planning Code for people with disabilities. A person with a known disability resides at the subject property. Pursuant to Subsection (d)(4), a Reasonable Modification to allow an internal connection between two separate dwelling units without a Conditional Use Authorization for a dwelling unit merger may be approved without public notice or hearing.

2. The Project is exempt from the California Environmental Quality Act ("CEQA") as a Class 1 categorical exemption.

3. Pursuant to Planning Code Section 305.1(d)(4), this request for Reasonable Modification does not

require public notice and may be approved administratively without a public hearing.

4. The Zoning Administrator issued a decision letter on September 25, 2023, granting the Reasonable Modification, but on the condition that Units 2 and 5 not be legally merged into a single dwelling unit, but instead only be allowed to have an internal connection to address the applicant's need, and that such connection be removed once the need no longer existed. The decision also prohibited the removal of the kitchen in Unit 2.

5. The Board of Appeals heard Appeal No. 23-047 on December 13, 2023 and voted to continue the hearing to January 10, 2024 so that the Zoning Administrator, working with the appellant, could revise the Reasonable Modification Decision to allow for the legal merger of Units 2 and 5 on the basis that the applicant's unique circumstances warranted the merger.

Decision:

GRANTED, to legally merge Units 2 and 5, as shown in EXHIBIT A, subject to the following conditions:

1. The authorization and rights vested by virtue of this decision letter shall be deemed void and cancelled if a Site or Building Permit has not been issued within three (3) years from the effective date of this decision. However, this authorization may be extended by the Zoning Administrator when implementation of the project is delayed by a public agency, an appeal, or a legal challenge, and only by the length of time for which such public agency, appeal, or challenge has caused delay.

Criteria:

Section 305.1(f)(2) of the Planning Code states that when reviewing a request for reasonable modification, the Zoning Administrator shall consider whether:

CRITERION A.

The requested modification is requested by or on the behalf of one or more individuals with a disability protected under federal and state fair housing laws.

A. The San Francisco Mayor's Office on Disability verified that the requestor of the modification has a disability protected under federal and state fair housing laws.

CRITERION B.

The requested modification will directly enable the individual to access the individual's residence.

A. Merging Units 2 and 5 will provide additional habitable space for the applicant and allow for live-in, around-the-clock assistance with ADLs (Activities of Daily Living). The additional habitable space provided to the applicant enables him to remain in his residence.

CRITERION C.

The requested modification is necessary to provide the individual with a disability an equal opportunity to use

and enjoy a dwelling.

A. The requested modification provides the applicant the ability to remain in, use, and enjoy their dwelling by providing additional habitable space for live-in, around the clock assistance with ADLs .

CRITERION D.

There are alternatives to the requested modification that would provide an equivalent level of benefit

A. The alternative of only allowing a temporary internal connection between Units 2 and 5 and not allowing the removal of the kitchen in Unit 2 was considered by the Zoning Administrator and the Board of Appeals. The Board determined this alternative to be inadequate and burdensome to the applicant in light of the applicant's disability and specific needs, and in part due to the multi-story nature of the necessary connection between the units. As such, there are no adequate alternatives to a legal merger of the units to allow for live-in, around-the-clock assistance with ADLs for the applicant.

CRITERION E.

The requested modification will not impose an undue financial or administrative burden on the City as "undue financial or administrative burden" is defined under federal and state fair housing laws.

A. The requested modification does not appear to be a cause for undue financial or administrative burden on the City. An "undue financial or administrative burden" takes place when there are substantial costs and processes required by the City to accommodate the property owner's request. This determination is based on reviewing Exhibit 2-6: Examples of Undue Financial and Administrative Burden from the HUD Occupancy Handbook.

CRITERION F.

The requested modification will, under the specific facts of the case, result in a fundamental alteration in the nature of the Planning Code or General Plan, as "fundamental alteration" is defined under federal and state fair housing laws.

A. The requested modification will not result in a fundamental alteration of the Planning Code or General Plan, as "fundamental alteration" is defined under federal and state fair housing laws. The Planning Code allows dwelling unit mergers to be approved by the Planning Commission pursuant to Section 317. In this case, the merger is deemed necessary to provide adequate assistance to the applicant and their specific situation.

CRITERION G.

The requested modification will, under the specific facts of the case, result in a direct threat to the health or safety of others or cause substantial physical damage to the property of others.

A. The requested modification will not result in a direct threat to the health or safety of others or cause substantial physical damage to the property of others. The proposal includes construction contained

within Units 2 and 5 and no exterior work.

Priority Planning Policies:

This development is consistent with the generally stated intent and purpose of the Planning Code to promote orderly and beneficial development. Planning Code Section 101.1 establishes eight priority-planning policies and requires review of Reasonable Modification applications for consistency with said policies. The project meets all relevant policies, including conserving neighborhood character, and maintaining housing stock.

1. Existing neighborhood retail uses will not be adversely affected by the proposed project.

2. The proposed project will be in keeping with the existing housing and neighborhood character. The reasonable modification includes no exterior work and will maintain the building as a multi-unit rent-controlled building.

3. The proposed project will have no effect on the City's supply of affordable housing.

4. The proposed project does not adversely affect neighborhood parking or public transit.

5. The project will have no effect on the City's industrial and service sectors.

6. The proposed project will have no effect on the City's preparedness to protect against injury and loss of life in an earthquake.

7. The project will have no effect on the City's landmarks or historic buildings.

8. The project would not affect any existing or planned public parks or open spaces.

The effective date of this decision shall be the date of the Notice of Decision and Order if the Revised Reasonable Modification Decision is adopted by the Board of Appeals.

Once any portion of the granted Reasonable Modification is used, all specifications and conditions of the Reasonable Modification authorization become immediately operative.

Protest of Fee or Exaction: You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development.

If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Reasonable Modification Decision Letter constitutes the approval or conditional approval of the development and the City hereby gives NOTICE that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject

development, then this document does not re-commence the 90-day approval period.

This is not a permit to commence any work or change occupancy. Permits from appropriate departments must be secured before work is started or occupancy is changed.

DOCUMENTS FOR THE HEARING ON DECEMBER 13, 2023

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
TOM METZ,)
Appellant(s))
)
vs.)
)
ZONING ADMINISTRATOR,)
Respondent

Appeal No. **23-047**

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on October 4, 2023, the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the ISSUANCE on September 25, 2023, of a Reasonable Modfication Decision (The proposal is to merge two dwelling units (Units 2 and 5) at the subject property by constructing an internal staircase connecting the units and removing the kitchen in Unit 5; the kitchen in Unit 5 would be converted to a bedroom; the Zoning Administrator allowed for the construction of an interior staircase connecting Units 2 & 5 but did not authorize the merger of the two units or the removal of the kitchen; the Reasonable Modification is valid only for the period that there is a qualifying disabled occupant) at 51 Prosper Street.

CASE NO. 2022-011807VAR

FOR HEARING ON January 10, 2024

Address of Appellant(s):	Address of Other Parties:
Tom Metz, Appellant(s) 51 Prosper Street, Apt 5 San Francisco, CA 94114	N/A

Date Filed: October 4, 2023

CITY & COUNTY OF SAN FRANCISCO
BOARD OF APPEALS

PRELIMINARY STATEMENT FOR APPEAL NO. 23-047

I / We, **Tom Metz**, hereby appeal the following departmental action: **ISSUANCE** of **Reasonable Modification Decision (Case No. 2022-011807VAR)** by the **Zoning Administrator** which was issued or became effective on: **September 25, 2023**, for the property located at: **51 Prosper Street**.

BRIEFING SCHEDULE:

Appellant's Brief is due on or before: 4:30 p.m. on **October 26, 2023**, **(no later than three Thursdays prior to the hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy shall be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, corey.teague@sfgov.org, and tina.tam@sfgov.org.

The Respondent Department's brief is due on or before: 4:30 p.m. on **Wednesday, November 8, 2023**, **(note this is one day earlier than the Board's regular briefing schedule due to the holiday on November 10, 2023)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be doubled-spaced with a minimum 12-point font. An electronic copy shall be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, and twmetz@gmail.com.

Hard copies of the briefs do NOT need to be submitted to the Board Office or to the other parties.

Hearing Date: **Wednesday, November 15, 2023, 5:00 p.m., Room 416 San Francisco City Hall, 1 Dr. Carlton B. Goodlett Place.** The parties may also attend remotely via Zoom. Information for access to the hearing will be provided before the hearing date.

All parties to this appeal must adhere to the briefing schedule above, however if the hearing date is changed, the briefing schedule MAY also be changed. Written notice will be provided of any changes to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should email all documents of support/opposition no later than one Wednesday prior to hearing date by 4:30 p.m. to boardofappeals@sfgov.org. Please note that names and contact information included in submittals from members of the public will become part of the public record. Submittals from members of the public may be made anonymously.

Please note that in addition to the parties' briefs, any materials that the Board receives relevant to this appeal, including letters of support/opposition from members of the public, are distributed to Board members prior to hearing. All such materials are available for inspection on the Board's website at www.sfgov.org/boa. You may also request a hard copy of the hearing materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

The reasons for this appeal are as follows:

See attachment to the preliminary Statement of Appeal

Appellant or Agent:

Signature: Via Email

Print Name: Tom Metz, appellant

SF Board of Appeals: On June 29, Commission President Rachel Tanner asked Planning and the City Attorney to come up with a "less adversarial" solution. Three months later, they responded with no substantive change. This five-unit building was originally a two-unit Edwardian an earlier owner chopped into smaller apartments. We live on the ground floor in an in-law unit behind the garage (Apt. 5: one-bedroom, 731 sq. ft.). We want to merge with the vacant apartment directly above us (Apt. 2: one-bedroom, 480 sq. ft. -- voluntarily vacated). After 43 years with a progressive motor neuron disease (MMN), I am reaching the stage where I anticipate needing live-in help, and merging with Apt. 2 will allow that.

1) The City ignores San Francisco's Director's Bulletin No. 7, which states there are "limited circumstances" where exceptions can be made. **2) They are misreading the California Housing Crisis Act of 2019**. It says nothing about merging units. It was intended to BUILD MORE HOUSING, not interfere with a disabled senior homeowner's attempt to age in place. **3) The restrictions defeat the actual purpose of the California Housing Crisis Act of 2019**. This merger creates MORE dwelling space. The combined unit will have three bedrooms instead of two. For future renters, it will provide more space for more people at a lower cost per person, providing desperately needed housing for seniors, persons with disabilities, or families who need more than one bedroom. **4) SF housing policy undermines the ADA**. SF policy excludes people with disabilities from equitable access. The chief vehicle for affordable housing (rent control) applies only to buildings constructed before 1979 -- 10 years before the ADA. They are NOT accessible: no ramps, elevators, or ground-floor access. **5) The HUD Occupancy Handbook exhibit 2-6**, describes exemptions from reasonable modifications because of "undue financial burden" on the owner (e.g., the City). In our case, the restrictions impose a nearly impossible burden on us even before the "end of occupancy." Merging would put us in the "residential" category (4 units) with residential lending and insurance, and thus secure the long-term viability of this rent-controlled multifamily home. The current 5-unit configuration places us in the "commercial" property category, with commercial lending and insurance. The risk and unpredictability make it increasingly difficult to stay in "business." (We don't make money.) The City is making it even harder. Why? Our request has no impact on the housing stock, and since it is a very specific exception, does not change policy at all.

San Francisco Planning

49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103
628.652.7600
www.sfplanning.org

REASONABLE MODIFICATION DECISION

Date:	September 25, 2023
Case No.:	**2022-011807VAR**
Project Address:	**51 PROSPER STREET**
Block/Lots:	3564 / 031
Zoning:	RH-2 (RESIDENTIAL- HOUSE, TWO FAMILY)
Height/Bulk:	40-X Height and Bulk District
Applicant:	Thomas Metz 51 Prosper Street, Apt. 5 San Francisco, CA 94114
Owner:	Thomas Metz and David Brightman 51 Prosper Street, Apt. 5 San Francisco, CA 94114
Staff Contact:	Matthew Dito – 628-652-7358 matthew.dito@sfgov.org

Description of Reasonable Modification Sought:

The proposal is to merge two dwelling units (Units 2 and 5) at the subject property by constructing an internal staircase connecting the units and removing the kitchen in Unit 5. The kitchen in Unit 5 would be converted to a bedroom.

Planning Code Section 317 requires a Conditional Use Authorization for the merger of two or more dwelling units, resulting in a net reduction in the number of dwelling units in a building. The proposal is to merge Unit 2 and Unit 5.

The following Zoning Administrator interpretation was issued in 2003: "As reflected in the Planning Commission's Policy on Dwelling Unit Mergers (December 2001), the merger of dwelling units raises significant concerns regarding the loss of housing units and the impact upon the City's overall housing stock. Two legal apartments in a multiple-unit building could be combined by opening a party wall and could be used by one family while retaining both kitchens. This situation would be considered to be two units used by one family, and *is considered a dwelling unit merger* [emphasis added] subject to the Planning Commission's Policy. Although the two units still exist as legally separate units, they are, in effect, merged for the use of one family and should be reviewed against the dwelling unit merger policy, since they have a similar effect upon the City's housing stock."

Procedural Background:

1. Planning Code Section 305.1 allows the Zoning Administrator to approve a request to grant a reasonable modification of certain regulations, policies, practices, or procedures of the Planning Code for people with disabilities. A person with a known disability resides at the subject property. Pursuant to Subsection (d)(4), a Reasonable Modification to allow an internal connection between two separate

dwelling units without a Conditional Use Authorization for a dwelling unit merger may be approved without public notice or hearing.

2. The Project is exempt from the California Environmental Quality Act ("CEQA") as a Class 1 categorical exemption.

3. Pursuant to Planning Code Section 305.1(d)(4), this request for Reasonable Modification does not require public notice and may be approved administratively without a public hearing.

Decision:

GRANTED, to construct an interior staircase connecting Units 2 and 5, as shown in EXHIBIT A, subject to the following conditions:

1. This Reasonable Modification does not authorize the merger of Units 2 and 5, and is not a modification of the dwelling unit merger provisions of Planning Code Section 317. Instead, this Reasonable Modification is granted from the 2003 Zoning Administrator interpretation that prohibits an internal connection between two separate dwelling units.

2. Units 2 and 5 shall remain two separate and legally distinct dwelling units for the purpose of the Planning Code. As such, each unit must continue to include a kitchen.

3. Pursuant to Planning Code Section 305.1, this reasonable modification to allow an internal connection between two separate dwelling units without a Conditional Use Authorization for a dwelling unit merger is valid only for the period of time that there is a qualifying disabled occupant. Unless separate authorization is obtained to legally merge the two dwelling units, the property owner must notify the Zoning Administrator within six (6) months of the end of occupancy by a qualifying disabled occupant, and file a building permit to remove the internal connection (and any other work necessary to fully separate the two units) within twelve (12) months of the end of occupancy by a qualifying disabled occupant. Such building permit must be issued and diligently completed to remove the interior connection.

4. The authorization and rights vested by virtue of this decision letter shall be deemed void and cancelled if a Site or Building Permit has not been issued within three (3) years from the effective date of this decision. However, this authorization may be extended by the Zoning Administrator when implementation of the project is delayed by a public agency, an appeal, or a legal challenge, and only by the length of time for which such public agency, appeal, or challenge has caused delay.

5. The proposed project must meet these conditions and all applicable City Codes. In case of conflict, the more restrictive controls apply.

6. Minor modifications to this Reasonable Modifications may be authorized by the Zoning Administrator without granting a separate Reasonable Modification approval.

7. The owner of the subject property shall record on the land records of the City and County of San Francisco the conditions attached to this Reasonable Modification decision as a Notice of Special Restrictions in a form approved by the Zoning Administrator.

8. This Reasonable Modification Decision and the recorded Notice of Special Restrictions shall be reproduced on the Index Sheet of the construction plans submitted with the Site or Building Permit Application for the Project, if applicable.

Criteria:

Section 305.1(f)(2) of the Planning Code states that when reviewing a request for reasonable modification, the Zoning Administrator shall consider whether:

CRITERION A.

The requested modification is requested by or on the behalf of one or more individuals with a disability protected under federal and state fair housing laws.

A. The San Francisco Mayor's Office on Disability verified that the requestor of the modification has a disability protected under federal and state fair housing laws.

CRITERION B.

The requested modification will directly enable the individual to access the individual's residence.

A. An interior staircase to connect Units 2 and 5 will provide additional habitable space for the applicant and allow for live-in, around-the-clock medical care. The additional habitable space provided to the applicant enables them to remain in their residence.

B. Unit 2 is currently a one-bedroom dwelling unit. The proposal includes the removal of a kitchen, which is not necessary to enable the applicant to receive the necessary medical care requested. The interior staircase provides sufficient access to the applicant in Unit 5 for a live-in care provider in Unit 2.

CRITERION C.

The requested modification is necessary to provide the individual with a disability an equal opportunity to use and enjoy a dwelling.

A. The requested modification provides the applicant the ability to remain in, use, and enjoy their dwelling by providing additional habitable space for live-in, around the clock medical care.

B. Unit 2 is currently a one-bedroom dwelling unit. The proposal includes the removal of a kitchen, which is not necessary to enable the individual to continue to use and enjoy their dwelling, as an interior staircase provides sufficient access to the applicant for a live-in care provider.

CRITERION D.

There are alternatives to the requested modification that would provide an equivalent level of benefit.

A. There is no feasible area for the building to expand so that Unit 5 may add a bedroom, nor any existing common area or non-habitable space that could be converted to a bedroom with direct access to Unit 5. There are no alternatives that would provide additional habitable space for the applicant to allow for live-in, around-the-clock medical care.

CRITERION E.

The requested modification will not impose an undue financial or administrative burden on the City as "undue financial or administrative burden" is defined under federal and state fair housing laws.

A. The requested modification does not appear to be a cause for undue financial or administrative burden on the City. An “undue financial or administrative burden” takes place when there are substantial costs and processes required by the City to accommodate the property owner's request. This determination is based on reviewing Exhibit 2-6: Examples of Undue Financial and Administrative Burden from the HUD Occupancy Handbook.

CRITERION F.

The requested modification will, under the specific facts of the case, result in a fundamental alteration in the nature of the Planning Code or General Plan, as "fundamental alteration" is defined under federal and state fair housing laws.

A. The requested modification will not result in a fundamental alteration of the Planning Code or General Plan, as "fundamental alteration" is defined under federal and state fair housing laws. The two subject dwelling units will remain as two separate dwelling units. This determination is based on reviewing Exhibit 2-5: Examples of Fundamental Alteration from the HUD Occupancy Handbook. The modification, as granted by the Zoning Administrator, includes the minimum scope necessary to provide the applicant with the necessary medical care and access.

CRITERION G.

The requested modification will, under the specific facts of the case, result in a direct threat to the health or safety of others or cause substantial physical damage to the property of others.

A. The requested modification will not result in a direct threat to the health or safety of others or cause substantial physical damage to the property of others. The proposal includes construction contained within Units 2 and 5 and no exterior work.

Priority Planning Policies:

This development is consistent with the generally stated intent and purpose of the Planning Code to promote orderly and beneficial development. Planning Code Section 101.1 establishes eight priority-planning policies and requires review of Reasonable Modification applications for consistency with said policies. The project meets all relevant policies, including conserving neighborhood character, and maintaining housing stock.

1. Existing neighborhood retail uses will not be adversely affected by the proposed project.

2. The proposed project will be in keeping with the existing housing and neighborhood character. The reasonable modification includes no exterior work and will not change the number of legal dwelling units on the lot.

3. The proposed project will have no effect on the City's supply of affordable housing.

4. The proposed project does not adversely affect neighborhood parking or public transit.

5. The project will have no effect on the City's industrial and service sectors.

6. The proposed project will have no effect on the City's preparedness to protect against injury and loss of life in an earthquake.

7. The project will have no effect on the City's landmarks or historic buildings.

8. The project would not affect any existing or planned public parks or open spaces.

The effective date of this decision shall be either the date of this decision letter if not appealed, or the date of the Notice of Decision and Order if appealed to the Board of Appeals.

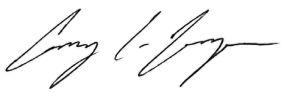
Once any portion of the granted Reasonable Modification is used, all specifications and conditions of the Reasonable Modification authorization become immediately operative.

Protest of Fee or Exaction: You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development.

If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Reasonable Modification Decision Letter constitutes the approval or conditional approval of the development and the City hereby gives NOTICE that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not re-commence the 90-day approval period.

APPEAL: Any aggrieved person may appeal this Reasonable Modification decision to the Board of Appeals within ten (10) days after the date of the issuance of this Reasonable Modification Decision. For further information, please contact the Board of Appeals in person at 49 South Van Ness Ave, Suite 1475 (14th Floor), call 628-652-1150, or visit www.sfgov.org/bdappeal.

Very truly yours,



Corey A. Teague, AICP
Zoning Administrator

This is not a permit to commence any work or change occupancy. Permits from appropriate departments must be secured before work is started or occupancy is changed.

BRIEF SUBMITTED BY THE APPELLANT(S)

Thomas W. Metz Tuesday 2023-11-21

51 Prosper St. Apt. 5

San Francisco CA 94114-1632

Block/Lot: 3564/031

BRIEF FOR APPEAL NO. 23-047 @ 51 PROSPER STREET

I wish to appeal the conditions and restrictions placed on the decision for 2022-011807PRJ Project Profile (PRJ) 51 PROSPER ST. You can see my original application and supporting documents on the PIM website:

https://sfplanninggis.org/pim/?pub=true

1. Enter “51 Prosper Street”.
2. Click the “Planning Applications” tab.
3. Under “2022-011807PRJ Project Profile (PRJ) 51 PROSPER ST” click “Related Documents.”

I am attaching these documents here as exhibits:

- Exhibit 1: Application (PRJ) - 51 Prosper St0.pdf
- Exhibit 2: Supplementa (CUA) - 51 Prosper St.pdf
- Exhibit 3: Supplemental (DUR) - 51 Prosper St0.pdf
- Exhibit 4: 3R Report - 51 Prosper St.pdf
- Exhibit 5: Plans - 51 Prosper St0.pdf

See also the Planning Department response:

- Exhibit 6: Signed RML_- 51 Prosper Street - 2022-011807VAR.pdf
- Exhibit 7: NSR Variance - 51 Prosper Street - 2022-011807VAR.pdf

On Dec. 6, 2022, I applied for the merger. The Planning Department turned me down. I appealed.

On June 29, 2022, I had a hearing before the Planning Commission. After hearing my request, Commissioner President Rachel Tanner asked the Department and the City Attorney to come up with a “less adversarial”

solution within three months. The Department then waived the need for a CUA, saying they would provide reasonable modification.

At the end of three months, the Department returned with a Reasonable Modification Letter that made no substantive changes to their original decision but which added several impossible restrictions. See exhibits:

- Exhibit 6: Signed RML_- 51 Prosper Street - 2022-011807VAR.pdf
- Exhibit 7: NSR Variance - 51 Prosper Street - 2022-011807VAR.pdf

MY GOAL

51 Prosper Street is a small five-unit building, zoned RH-2. It was originally a two-unit Edwardian that a previous owner divided into smaller units, presumably to maximize rents during the post-war housing shortage. We live on the ground floor in Apt. 5, an in-law unit behind the garage (one-bedroom, 731 sq. ft.). My spouse David and I plan to live the rest of our lives here, that is, to "age in place." We want to merge our apartment with the one directly above us (Apt. 2, also one-bedroom, 480 sq. ft.) so we can have live-in help when the time comes, which could be any day now. I have a progressive motor neuron disease (MMN). I have been sick for 43 years, and I am reaching the stage where I need frequent help throughout the day.

RESPONSE FROM THE PLANNING DEPARTMENT

The Department will not permit us to merge, citing the "California Housing Crisis Act of 2019," as interpreted by Director's Bulletin no. 7. See

- Exhibit 8: California Housing Crisis Act of 2019 - 20190SB330_88.pdf
- Exhibit 9: Director Bulletin No. 7 - DB_07_Housing_Crisis_Act_2019 AMENDED.pdf

See especially p. 4 of Director's Bulletin No. 7.

ONEROUS RESTRICTIONS

The Department has proposed for us to build a temporary stair between the two apartments, with these restrictions:

- The stair cannot be permanent.
- The kitchen in Apt. 2 cannot be repurposed as a bedroom for my assistant.
- The proposal will not allow us to officially merge Apt. 5 (our apartment) with Apt. 2 (the one above us) to create a single apartment.
- A covenant must be added to the building's deed that requires the stair to be removed "at the end of my occupancy."

MY OBJECTIONS

These conditions are problematic/impossible for the reasons described below.

***** UPDATE *****

On Nov. 9 – after I was already scheduled for a hearing before this Board --- **the Department changed their interpretation in Director's Bulletin no. 7.** (See the document link above.) Note the amendment on p. 4: "**The HCA speaks specifically to demolition of units; therefore, dwelling unit merger procedures will not be impacted** and continue to require the Planning Commission to grant a Conditional Use Authorization."

***** END OF UPDATE *****

I believe that the Department's new interpretation means that the HCA no longer applies in my case. NOTE: The Department has already waived a CUA.

MY REQUEST OF THE BOARD

If the Board agrees that the HCA no longer applies and a CUA has been waived, then please approve my merger application without further consideration and without restrictions.

If the Board disagrees with this interpretation, then please consider this appeal a request to remove onerous restrictions from the Reasonable Modification Letter.

Please support my proposed merger for the following reasons.

CONTEXT

My husband and I bought this property in this location specifically to accommodate my disability. It has a combination of features that was extremely hard to find:

- It is in a central walkable neighborhood.
- It is well served by transit.
- It has ground floor entry.
- It has off-street parking.
- It has rental income.
- It is subject to rent control.

We needed all of these things. Finding this combination was nearly impossible. We cannot replicate this elsewhere. We can only afford to live here because it has rental income; we could only afford to buy it because it is rent-controlled.

SF housing policy largely excludes seniors and people with disabilities from equitable access to housing. The City's chief vehicle for providing affordable housing – rent control – applies only to buildings constructed before 1979, which was 10 years before the Americans with Disabilities Act. These buildings are almost 100 percent NOT accessible, lacking ramps, elevators, or ground-floor access. Because of how San Francisco prescribes rent control, most rent-controlled buildings in San Francisco are thus completely inaccessible to someone with a mobility impairment, whether as a renter or an owner.

The location itself is also supportive of independent living. Because 51 Prosper Street is in a central location, I can use my wheelchair to access services and participate in the life of the community. This is important because San Francisco transportation policy likewise excludes people with disabilities. I love Muni, especially the kneeling buses and surface-level street cars. I can safely travel to all sorts of places I haven't been to in years. But not all the stops are accessible, the automated lifts are usually broken, and so are the elevators. And I am denied any access whatsoever to taxis, Uber, Lyft, Waymo, and Cruise.

PRINCIPLES OF INDEPENDENT LIVING

The merger of Apt. 5 and Apt. 2 supports disability access and independent living. My husband currently assists me in many, many ways, but this is not sustainable. Besides, my spouse should not be my full-time caregiver in perpetuity. It is against all the principles of Independent Living. David already does way too much. The principles of Independent Living also prescribe that a live-in attendant should be contiguously available but have separate personal space.

REASONING

#1 THE DEPARTMENT MISINTERPRETS THE CALIFORNIA HOUSING CRISIS ACT OF 2019

The Department denied my request through a misinterpretation of the California Housing Crisis Act of 2019. It says nothing about merging units. The Act was intended to BUILD MORE HOUSING, not to DENY housing for seniors, people with disabilities, or families.

#2 THE DEPARTMENT IGNORES DIRECTOR'S BULLETIN NO. 7; FAILS TO USE DISCRETION

The Department fails to use proper discretion. San Francisco's Director's Bulletin No. 7 specifically states on page 4 that there are "limited circumstances" where exceptions can be made. They are ignoring this part of the memo. My project is definitely one of these "limited circumstances."

#3 THE DEPARTMENT IMPOSES AN UNFAIR BURDEN

The Department's restrictions impose impossible burdens on me, David, or my estate. There are three likely scenarios that would trigger the "the end of my occupancy" at 51 Prosper:

- I could need to vacate and move to skilled nursing.
- I could die and David would inherit (presumably as an old person).
- My energy/finances could be exhausted by owning/managing this property.

In any of these circumstances, taking on a final renovation project to deconstruct the combined unit would be impossible. How is someone in need of skilled nursing going to manage a construction project? And who is going to pay for this? Should I be saving for this from my SSDI disability payments? In the most optimistic scenario where a capable buyer does the deconstruction work, how will they close a purchase transaction with residential lending and insurance, do this work, and then turn around and secure commercial lending and insurance? It would effectively make the building impossible to sell for me, my spouse/widow, or estate.

#4 THE DEPARTMENT MISINTERPRETS THE HUD OCCUPANCY HANDBOOK EXHIBIT 2-6

The Department cited HUD Occupancy Handbook exhibit 2-6 about undue financial burden. They are misreading this document, too. This document describes when reasonable modifications are not required because the modifications would impose an "undue financial burden" on the building owner. The City does not own my property. I own my property. And the restrictions they want to impose do indeed create undue financial burden because of the commercial lending, insurance, and regulation associated with a five-unit building (see above, and see my application) vs. a four-unit building, which is eligible for regular residential lending, insurance, and regulation.

#5 PROPOSED MERGER SECURES LONG-TERM VIABILITY OF THIS RENT-CONTROLLED MULTIFAMILY HOME

The Department's restrictions impose nearly impossible burdens on us even before the "end of occupancy." The merger secures the long-term viability of this property as a rent-controlled multifamily home – which is our goal. Our current five-unit configuration means that we require commercial lending and commercial insurance. The administrative, legal, and financial headaches and unpredictability of falling into the "commercial" category is making it increasingly impossible for us to stay in "business." (After expenses, our income is negligible or nonexistent.) The restrictions make it significantly more difficult, risky, and expensive. We want to remain in business and continue to behave with integrity. The Department is making it very, very difficult.

#6 PROPOSED MERGER SUPPORTS THE CALIFORNIA HOUSING CRISIS ACT OF 2019

This merger advances the goals of the California Housing Crisis Act of 2019 by creating additional dwelling space. The combined unit will have THREE legal bedrooms instead of the current TWO, each with a window, door, and closet. When some future owner rents it out, it will thus provide more space for more people at a lower cost per person.

#7 PROPOSED MERGER HOUSES MORE PEOPLE AT LOWER COST PER PERSON

According to Zumper, the median San Francisco rent for a one-bedroom is $2,850. The median price for a three-bedroom apartment is $4,650. The restored apartment will thus accommodate three persons/couples for $1,550 per bedroom. That's $1,300 less rent per bedroom, and up to two more occupants. If we can reduce this building to four units, I will happily forego the additional revenue because we will improve our long-term financial sustainability.

#8 PROPOSED MERGER PROVIDES MORE HOUSING FOR UNDERSERVED RENTERS

The configuration will also have flexibility to provide desperately needed housing for:

- Seniors who need to age in place.
- Persons with disabilities who need to live independently.

- Families who need an apartment with more than one bedroom.

Deconstructing the combined unit would exacerbate renting conditions for seniors, families, and people with disabilities.

#9 PROPOSED MERGER WILL NOT SET A PRECEDENT

According to the Planning Department, I am the only person requesting something like this, and the reason the Department is having so much trouble coming up with an equitable resolution is that they have never done this before. There is not a flood of elderly disabled property owners looking to age in place by merging two units. Granting my request will not create a flood of such applicants.

#10 PROPOSED MERGER RESTORES HISTORIC CONFIGURATION (PARTIALLY)

The proposed merger partially restores Apt. 2 to its historic configuration. Each floor was originally a single Edwardian flat. If you look at the floor plan you will see where a previous owner constructed a jerry-rigged barrier in the middle of the hallway. I believe this was done in 1951, presumably to maximize rents during the post-War II housing shortage, and then grandfathered in the 1970s. See the 3R report (above), "3R Report - 51 Prosper St.pdf."

In each rear "apartment," two of the historic bedrooms were reconfigured to create a small, dark, and unpleasant "living room" and a small "kitchen" with no eating space.

#11 PROPOSED MERGER CONFORMS TO RH2 ZONING

The proposed merger more closely conforms to the assessor/recorder's zoning for the house. Our house is zoned "RH-2 - Residential- House, Two Family."

#12 PROPOSED MERGER CONFORMS TO NEIGHBORHOOD CONTEXT

The merger more closely conforms to the neighborhood context. Every house on our street is zoned RH-2. Most truly are two-unit buildings. Several are used as single-family homes. There is one three-unit building and one four-unit building on the street. Ours is the only home with more than four units.

#13 PROPOSED MERGER DOES NOT DISPLACE RENTERS

The proposed merger does not displace renters. The units to be combined are owner occupied. All previous renters in our building have left voluntarily for their own reasons and with no prompting from me.

ADDITIONAL CONSIDERATIONS

WE ARE GOOD RENTAL PROPERTY OWNERS

We are good, responsible rental property owners. We are not trying to evict people or get rich. Since we bought this building in 2013, we have prioritized good relations with our renters. We have obeyed every detail of the rent ordinances, and we have treated people with courtesy and respect. Our renters say so. See Exhibit 10, letters from our renters, also attached to our original application on the PIM website.

- Apt 1 Thank you - 2021-06-15 X_Redacted0.pdf
- Apt 2 notice to vacate - 2022-02-23 X_Redacted2.pdf
- Apt 3 notice to vacate - 2019-09-26 X_Redacted0.pdf
- Apt 4 notice to vacate - 2020-11-22 X_Redacted0.pdf
- Apt 4 notice to vacate - 2021-01-07 X_Redacted0.pdf
- Apt 4 notice to vacate - 2021-01-07a X_Redacted2.pdf

We are the kind of rental property owners San Francisco should want to keep.

DAVID AND I OBEY THE RULES

We performed our seismic retrofit before we were required by law to do so. We are also decarbonizing our building by removing gas appliances and converting to high efficiency all-electric appliances -- in advance of upcoming legal requirements.

PLEASE DO WHAT THE HOUSING CRISIS ACT OF 2019 ACTUALLY SAYS

Maintaining the status of my 480-square-foot apartment will not solve the City's housing crisis. Preventing one homeowner from using his own resources to build an accommodation for disability and old age is beyond unreasonable when there are so many other resources available. If the Department wants to address a housing shortage, they can abide by the true intent of HCA 2019 and actually provide more housing. If the City doesn't have enough resources, we can request state and federal assistance. This is a national issue. But in fact, the City of San Francisco already has resources to do better, with a budget of $14B (and $1.1B specifically dedicated to homeless services). The City owns or leases (mostly owns) 5,176 properties:

- https://sfgov.org/services/city-owned-property

Surely some of this could be turned into housing.

In addition, 40 percent of San Francisco hotel rooms are vacant:

- https://www.sfchronicle.com/projects/2023/downtown-sf-map-recovery/

And 33.9 percent of San Francisco office space is vacant (almost 30 million sq. ft.):

- https://www.sfchronicle.com/sf/article/s-f-office-vacancy-record-30-million-square-feet-18386268.php

Studies indicate that 15 percent of these could be converted to housing. Other cities are already doing it:

- https://www.rentcafe.com/blog/rental-market/market-snapshots/adaptive-reuse-apartments-2021/

The City does not need my apartment. With all this money and all these resources, the City could provide more housing if it chose to do so. Instead, as of Nov. 21 the City is currently out of compliance with California's Housing Element Law and shows no sign of coming into compliance without State intervention:

- https://www.sfchronicle.com/sf/article/s-f-housing-deadline-california-18504255.php

Thank you for your consideration.

EXHIBIT 1

San Francisco Planning

49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103
www.sfplanning.org

PROJECT APPLICATION (PRJ)

A Project Application must be submitted for any Building Permit Application that requires an intake for Planning Department review, including for environmental evaluation or neighborhood notification, or for any project that seeks an entitlement from the Planning Department, such as a Conditional Use Authorization or Variance. For more, see the Project Application Informational Packet.

Cost for Time and Materials: Any time and materials exceeding initial fees charged for services provided are subject to billing.

For questions, you can call the Planning counter at 628.652.7300 or email pic@sfgov.org where planners are able to assist you.

Español: Si desea ayuda sobre cómo llenar esta solicitud en español, por favor llame al 628.652.7550. Tenga en cuenta que el Departamento de Planificación requerirá al menos un día hábil para responder.

中文：如果您希望獲得使用中文填寫這份申請表的幫助，請致電628.652.7550。請注意，規劃部門需要至少一個工作日來回應。

Filipino: Kung gusto mo ng tulong sa pagkumpleto ng application na ito sa Filipino, paki tawagan ang 628.652.7550. Paki tandaan na mangangailangan ang Planning Department ng hindi kukulangin sa isang araw na pantrabaho para makasagot.

BUILDING PERMIT APPLICATIONS

HOW TO SUBMIT:

For projects that do not require an entitlement action by the Planning Department, but require Planning Department review of a Building Permit Application, please present a complete signed Project Application along with the Building Permit Application for intake at https://sfdbi.org/inhousereview.

WHAT TO SUBMIT:

- ☐ One (1) complete and signed application.
- ☐ Two (2) hard copy sets of plans that meet the Department of Building Inspection's submittal standards. Please see the Planning Department's Plan Submittal Guidelines for more information.
- ☐ A Letter of Authorization from the owner(s) designating an Authorized Agent to communicate with the Planning Department on their behalf.
- ☐ Pre-Application Meeting materials, if required. See the Pre-Application Meeting Informational Packet for more information.

Note: The applicable fee amount for Building Permit Applications will be assessed and collected at intake by the Department of Building Inspection at the Permit Center at 49 South Van Ness Ave, 2nd Floor.

(See Fee Schedule and/or Calculator).

ENTITLEMENTS

HOW TO SUBMIT:

For projects that require an entitlement from the Planning Department (e.g., Conditional Use, Variance), submit a Project Application with any required supplemental applications online at sfplanning.org/resource/prj-application.

WHAT TO SUBMIT:

- ☐ One (1) complete and signed PRJ application, or complete online submittal, including the following:
- ☐ An electronic copy of plans in pdf format, formatted to print at 11" x 17". Please see the Department's Plan Submittal Guidelines for more information about the required contents of plan submittals.
- ☐ A Letter of Authorization from the owner(s) designating an Authorized Agent to communicate with the Planning Department on their behalf.
- ☐ Pre-Application Meeting materials, if required. See the Pre-Application Meeting Informational Packet for more information.
- ☐ Current or historic photograph(s) of the property.
- ☐ All supplemental entitlement applications (e.g., Conditional Use, Variance) and information for environmental review, as indicated in this Project Application or in the Preliminary Project Assessment (PPA) letter.
- ☐ Payment for the required intake fee amount(See Fee Schedule and/or Calculator). Electronic payment is preferred. Non-electronic forms of payment are also accepted. For questions related to the Fee Schedule or fee payment, you can call the Planning counter at 628.652.7300 or email pic@sfgov.org.

PLANNING APPLICATION RECORD NUMBER

San Francisco Planning

PROJECT APPLICATION (PRJ)

GENERAL INFORMATION

Property Information

ProjectAddress: 51 Prosper Street

Block/Lot(s): 3564/031

Property Owner's Information

Name: Thomas Metz

Address: 51 Prosper St. Apt. 5
San Francisco CA 94114

Email Address: twmetz@gmail.com

Telephone: 415-238-6405

Applicant Information

☑ Same as above

Name:

Company/Organization:

Address:

Email Address:

Telephone:

Please Select Billing Contact: ☑ Owner ☐ Applicant ☐ Other (see below for details)

Name: _____ Email: _____ Phone: _____

Please Select Primary Project Contact: ☐ Owner ☐ Applicant ☐ Billing

RELATED APPLICATIONS

Related Building Permit Applications (any active building permits associated with the project)

☑ N/A

Building Permit Application No(s):

Related Preliminary Project Assessments (PPA)

☑ N/A

PPA Application No:

PPA Letter Date:

PROJECT INFORMATION

PROJECT DESCRIPTION:

Please provide a narrative project description that summarizes the project and its purpose. Please list any required approvals (e.g. Variance) or changes to the Planning Code or Zoning Maps if applicable.

SEE ATTACHMENT:
00 Dwelling Unit Removal - Merger ATTACHMENT - 2022-12-19 Tom Metz 51 Prosper redacted.pdf

PROJECT DETAILS:

☐ Change of Use ☐ New Construction ☐ Demolition ☐ Facade Alterations ☐ ROW Improvements

☐ Additions ☐ Legislative/Zoning Changes ☐ Lot Line Adjustment-Subdivision ☐ Other:

Merge Apt. 2 and 5

Residential: ☐ Senior Housing ☐ 100% Affordable ☐ Student Housing ☐ Dwelling Unit Legalization

☐ Inclusionary Housing Required ☐ State Density Bonus ☐ Accessory Dwelling Unit

Indicate whether the project proposes rental or ownership units: ☐ Rental Units ☑ Ownership Units ☐ Don't Know

Indicate whether a Preliminary Housing Development Application (SB-330) is or has been submitted: ☐ Yes ☐ No

Non-Residential: ☐ Formula Retail ☐ Medical Cannabis Dispensary ☐ Tobacco Paraphernalia Establishment

☐ Financial Service ☐ Massage Establishment ☐ Other: _____

Estimated Construction Cost: between $1,332.00 and $6,660

ENVIRONMENTAL EVALUATION SCREENING FORM

This form will determine if further environmental review is required.

If you are submitting a Building Permit Application only, please respond to the below questions to the best of your knowledge. You do not need to submit any additional materials at this time, and an environmental planner will contact you with further instructions.

If you are submitting an application for entitlement, please submit the required supplemental applications, technical studies, or other information indicated below along with this Project Application.

Environmental Topic	Information	Applicable to Proposed Project?	Notes/Requirements
1a. General	Estimated construction duration (months):	N/A	1
1b. General	Does the project involve replacement or repair of a building foundation? If yes, please provide the foundation design type (e.g., mat foundation, spread footings, drilled piers, etc.)	☐ Yes ☑ No	
1c. General	Does the project involve a change of use of 10,000 square feet or greater?	☐ Yes ☑ No	
1d. General	Does Chapter 29 of the San Francisco Administrative Code apply to the proposed project?	☐ Yes ☑ No	If yes, please attach feasibility study to application. If applicant is unclear about Chapter 29 applicability, please contact your City Attorney. Planning will not accept the application without applicant verification that Chapter 29 does not apply, or a completed feasibility study.
2a. Transportation	Does the project involve a child care facility or school with 30 or more students, or a location 1,500 square feet or greater?	☐ Yes ☑ No	If yes, submit an Environmental Supplemental- School and Child Care Drop-Off & Pick-Up Management Plan.
2b. Transportation	Would the project involve the intensification of or a substantial increase in vehicle trips at the project site or elsewhere in the region due to autonomous vehicle or for-hire vehicle fleet maintenance, operations, or charging?	☐ Yes ☑ No	
3. Shadow	Would the project result in any construction over 40 feet in height?	☐ Yes ☑ No	If yes, an initial review by a shadow expert, including a recommendation as to whether a shadow analysis is needed, may be required, as determined by Planning staff. (If the project already underwent Preliminary Project Assessment, refer to the shadow discussion in the PPA letter.) An additional fee for a shadow review may be required.
4a. Historic Preservation	Would the project involve changes to the front façade or an addition visible from the public right-of-way of a structure built 45 or more years ago or located in a historic district?	☐ Yes ☑ No	If yes, submit a complete Historic Resource Determination Supplemental Application. Include all materials required in the application, including a complete record (with copies) of all building permits.
4b. Historic Preservation	Would the project involve demolition of a structure constructed 45 or more years ago, or a structure located within a historic district?	☐ Yes ☑ No	If yes, a historic resource evaluation (HRE) report will be required. The scope of the HRE will be determined in consultation with CPC-HRE@sfgov.org.

Please see the Property Information Map or speak with staff at the Planning Counter to determine if this applies.

Environmental Topic	Information	Applicable to Proposed Project?	Notes/Requirements
5. Archeology	Would the project result in soil disturbance/ modification greater than two (2) feet below grade in an archeologically sensitive area or eight (8) feet below grade in a non-archeologically sensitive area?	☐ Yes ☑ No	If Yes, provide depth of excavation/ disturbance below grade (in feet*): *Note this includes foundation work
6a. Geology and Soils	Is the project located within a Landslide Hazard Zone, Liquefaction Zone or on a lot with an average slope of 25% or greater? – Area of excavation/disturbance (in square feet): _____ Amount of excavation (in cubic yards): _____	☐ Yes ☑ No	A geotechnical report prepared by a qualified professional must be submitted if one of the following thresholds apply to the project: The project involves: • new building construction, except one-story storage or utility occupancy; • horizontal additions, if the footprint area increases more than 50%; • horizontal and vertical additions increase more than 500 square feet of new projected roof area; or • grading performed at a site in the landslide hazard zone. A geotechnical report may also be required for other circumstances as determined by Environmental Planning staff.
6b. Geology and Soils	Does the project involve a lot split located on a slope equal to or greater than 20 percent?	☐ Yes ☑ No	A categorical exemption cannot be issued. Please contact CPC.EPIntake@sfgov.org, once a Project Application has been submitted.
7. Air Quality	Would the project add new sensitive receptors (residences, schools, child care facilities, hospitals or senior-care facilities) within an Air Pollutant Exposure Zone?	☐ Yes ☑ No	If yes, submit an Article 38 Compliance application with the Department of Public Health.
8a. Hazardous Materials	Is the project site located within the Maher area or on a site containing potential subsurface soil or groundwater contamination and would it involve ground disturbance of at least 50 cubic yards or a change of use from an industrial use to a residential or institutional use?	☐ Yes ☑ No	If yes, submit a Maher Application Form to the Department of Public Health and submit documentation of Maher enrollment with this Project Application. Certain projects may be eligible for a waiver from the Maher program. For more information, refer to the Department of Public Health's Environmental Health Division. Maher enrollment may also be required for other circumstances as determined by Environmental Planning staff.
8b. Hazardous Materials	Is the project site located on a Cortese site or would the project involve work on a site with an existing or former gas station, parking lot, auto repair, dry cleaners, or heavy manufacturing use, or a site with current or former underground storage tanks?	☐ Yes ☑ No	If yes, submit documentation of enrollment in the Maher Program (per above), or a Phase I Environmental Site Assessment prepared by a qualified consultant.
9. FEMA Floodplan	Is the project site located within a FEMA Special Flood Hazard Area (AE, AO, and/or VE Zone)?	☐ Yes ☑ No	If yes, please submit a Flood Hazard Zone Protection Checklist with the Department of Building Inspection.

Please see the Property Information Map or speak with staff at the Planning Counter to determine if this applies.

PROJECT AND LAND USE TABLES

All fields relevant to the project **must be completed** in order for this application to be accepted.

General Land Use

	Existing	Proposed
Parking GSF	428	428
Residential GSF	3001	3001
Retail/Commercial GSF	0	0
Office GSF	0	0
Industrial-PDR	0	0
Medical GSF	0	0
Visitor GSF	0	0
CIE (Cultural, Institutional, Educational)	0	0

Project Features

Dwelling Units - Affordable	0	0
Dwelling Units - Market Rate	5	4
Dwelling Units - Total	0	0
Hotel Rooms	0	0
Number of Building(s)	1	1
Number of Stories	3	3
Parking Spaces	1	1
Loading Spaces	0	0
Bicycle Spaces	0	0
Car Share Spaces	0	0
Useable Open Space GSF	0	0
Public Open Space GSF	0	0
Roof Area GSF - Total	0	0
Living Roof GSF	0	0
Solar Ready Zone GSF	0	0
Other:_____		

Land Use - Residential

Studio Units	0	0
One Bedroom Units	5	3
Two Bedroom Units	0	0
Three Bedroom (or +) Units	0	1
Group Housing - Rooms	0	0
Group Housing - Beds	0	0
SRO Units	0	0
Micro Units	0	0
Accessory Dwelling Units For ADUs, list all ADUs and include unit type (e.g. studio, 1 bedroom, 2 bedroom, etc.) and the square footage area for each unit.	0	0

APPLICANT'S AFFIDAVIT

Under penalty of perjury the following declarations are made:

a) The undersigned is the owner or authorized agent of the owner of this property.

b) The information presented is true and correct to the best of my knowledge.

c) Other information or applications may be required.

d) I hereby authorize City and County of San Francisco Planning staff to conduct a site visit of this property as part of the City's review of this application, making all portions of the interior and exterior accessible through completion of construction and in response to the monitoring of any condition of approval.

e) I attest that personally identifiable information (PII) - i.e. social security numbers, driver's license numbers, bank accounts - have not been provided as part of this application. Furthermore, where supplemental information is required by this application, PII has been redacted prior to submittal to the Planning Department. I understand that any information provided to the Planning Department becomes part of the public record and can be made available to the public for review and/or posted to Department websites.

	Thomas Metz
Signature	Name (Printed)
10/07/2022	
Date	

Owner	415-238-6405	twmetz@gmail.com
Relationship to Project (i.e. Owner, Architect, etc.)	Phone	Email

For Department Use Only

Application received by Planning Department:

By: _____ Date: _____

San Francisco Planning

EXHIBIT 2

49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103
www.sfplanning.org

CONDITIONAL USE AUTHORIZATION

INFORMATIONAL AND SUPPLEMENTAL APPLICATION PACKET

ATTENTION: A Project Application must be completed and/or attached prior to submitting this Supplemental Application. See the Project Application for instructions.

Pursuant to Planning Code Section 303, the Planning Commission shall hear and make determinations regarding Conditional Use Authorization applications.

For questions, you can call the Planning counter at 628.652.7300 or email pic@sfgov.org where planners are able to assist you.

Español: Si desea ayuda sobre cómo llenar esta solicitud en español, por favor llame al 628.652.7550. Tenga en cuenta que el Departamento de Planificación requerirá al menos un día hábil para responder.

中文：如果您希望獲得使用中文填寫這份申請表的幫助，請致電628.652.7550。請注意，規劃部門需要至少一個工作日來回應。

Filipino: Kung gusto mo ng tulong sa pagkumpleto ng application na ito sa Filipino, paki tawagan ang 628.652.7550. Paki tandaan na mangangailangan ang Planning Department ng hindi kukulangin sa isang araw na pantrabaho para makasagot.

WHAT IS A CONDITIONAL USE AUTHORIZATION?

A Conditional Use refers to a use that is not principally permitted in a particular Zoning District. Conditional Uses require a Planning Commission hearing in order to determine if the proposed use is necessary or desirable to the neighborhood, whether it may potentially have a negative effect on the surrounding neighborhood, and whether the use complies with the San Francisco General Plan. During this public hearing the Planning Commission will "condition" the use by applying operational conditions that may minimize neighborhood concerns as well as other conditions that may be required by the Department and the Planning Code. Conditional Use Authorizations are entitlements that run with the property, not the operator.

WHEN IS A CONDITIONAL USE AUTHORIZATION NECESSARY?

For each Zoning District, the Planning Code contains use charts that list types of uses and whether each is permitted as of right (P), conditionally permitted (C), or not permitted (NP or blank). In addition to those particular uses, the Conditional Use Authorization process is utilized for various other applications included but not limited to dwelling unit removal, Planned Unit Developments (PUD's), and for off-street parking in certain Zoning Districts. Please consult a planner at the Planning counter at the Permit Center for additional information regarding these applications.

FEES

Please refer to the Planning Department Fee Schedule available at **www.sfplanning.org.** For questions related to the Fee Schedule, you can call the Planning counter at 628.652.7300 or email pic@sfgov.org where planners are able to assist you.

Fees will be determined based on the estimated construction costs. Should the cost of staff time exceed the initial fee paid, an additional fee for time and materials may be billed upon completion of the hearing process or permit approval. Additional fees may also be collected for preparation and recordation of any documents with the San Francisco Assessor-Recorder's office and for monitoring compliance with any conditions of approval.

PROJECT APPLICATION RECORD NUMBER (PRJ)

San Francisco Planning

CONDITIONAL USE AUTHORIZATION

SUPPLEMENTAL APPLICATION

Property Information

Project Address: 51 Prosper St. Block/Lot(s): 3564/031

Action(s) Requested

Action(s) Requested (Including Planning Code Section(s) which authorizes action)

Merge Apt. 2 and Apt. 5.
Remove kitchen from Apt. 2.
Add stairway from Apt. 2 living room to Apt. 5 laundry.

Conditional Use Findings

Pursuant to Planning Code Section 303(c), before approving a conditional use authorization, the Planning Commission needs to find that the facts presented are such to establish the findings stated below. In the space below and on separate paper, if necessary, please present facts sufficient to establish each finding. For some Conditional Use Authorizations, additional findings that are unique the specific Conditional Use request must also be made by the Planning Commission. If such findings are required, as outlined in Planning Code Sections 303(g)-(z), please provide those separately and append to this application.

1. That the proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community. If the proposed use exceeds the non-residential use size limitations for the zoning district, additional findings must be provided per Planning Code Section 303(c)(1)(A-C).

The proposed change will comply with zoning, neighborhood context, historic and permitted use, and will increase affordable housing supply to more people at a lower per-person rent.

Current use is out of compliance.

2. That such use or feature as proposed will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:

   a. The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;
   b. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;
   c. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;
   d. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs.

No change.

3. That such use or feature as proposed will comply with the applicable provisions of this Code and will not adversely affect the General Plan.

The proposed change will comply with zoning, neighborhood context, historic and permitted use, and will increase affordable housing supply to more people at a lower per-person rent.

Current use is out of compliance.

4. The use or feature satisfies any criteria specific to the use of features listed in Planning Code Section 303(g), et seq.

Not applicable.

Priority General Plan Policies Findings - Planning Code Section 101.1

Proposition M was adopted by the voters on November 4, 1986. It requires that the City shall find that proposed alterations and demolitions are consistent with eight priority policies set forth in Section 101.1 of the Planning Code. These eight policies are listed below. Please state how the Project is consistent or inconsistent with each policy. Each statement should refer to specific circumstances or conditions applicable to the property. Each policy must have a response. If a given policy does not apply to your project, explain why it is not applicable.

(Add additional sheets if necessary)

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

Not retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed change will comply with zoning, neighborhood context, historic and permitted use, and will increase affordable housing supply to more people at a lower per-person rent.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed change will comply with zoning, neighborhood context, historic and permitted use, and will increase affordable housing supply to more people at a lower per-person rent.

4. That commuter traffic not impede Muni transit service or overburden our streets or neighborhood parking;

No change.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

Not applicable.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

Seismic retrofit completed.

7. That landmarks and historic buildings be preserved; and

The proposed change will bring building back into compliance with zoning, neighborhood context, historic and permitted use.

8. That our parks and open space and their access to sunlight and vistas be protected from development.

Not applicable.

APPLICANT'S AFFIDAVIT

Under penalty of perjury the following declarations are made:

a) The undersigned is the owner or authorized agent of the owner of this property.

b) The information presented is true and correct to the best of my knowledge.

c) Other information or applications may be required.

d) I hereby authorize City and County of San Francisco Planning staff to conduct a site visit of this property as part of the City's review of this application, making all portions of the interior and exterior accessible through completion of construction and in response to the monitoring of any condition of approval.

e) I attest that personally identifiable information (PII) - i.e. social security numbers, driver's license numbers, bank accounts - have not been provided as part of this application. Furthermore, where supplemental information is required by this application, PII has been redacted prior to submittal to the Planning Department. I understand that any information provided to the Planning Department becomes part of the public record and can be made available to the public for review and/or posted to Department websites.

	Thomas Metz
Signature	Name (Printed)
11/14/2022	
Date	

Owner	415-238-6405	twmetz@gmail.com
Relationship to Project (i.e. Owner, Architect, etc.)	Phone	Email

For Department Use Only

Application received by Planning Department:

By: _____ Date: _____

San Francisco Planning

EXHIBIT 3

49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103
www.sfplanning.org

DWELLING UNIT REMOVAL: MERGER, CONVERSION OR DEMOLITION

INFORMATIONAL AND SUPPLEMENTAL APPLICATION PACKET

ATTENTION: A Project Application must be completed and/or attached prior to submitting this Supplemental Application. See the Project Application for instructions.

Pursuant to Planning Code Section 317, the Planning Commission shall hear and make determinations regarding the loss of dwelling units including the loss of unauthorized dwelling units, with some codified exceptions.

For questions, you can call the Planning counter at 628.652.7300 or email pic@sfgov.org where planners are able to assist you.

Español: Si desea ayuda sobre cómo llenar esta solicitud en español, por favor llame al 628.652.7550. Tenga en cuenta que el Departamento de Planificación requerirá al menos un día hábil para responder.

中文：如果您希望獲得使用中文填寫這份申請表的幫助，請致電628.652.7550。請注意，規劃部門需要至少一個工作日來回應。

Filipino: Kung gusto mo ng tulong sa pagkumpleto ng application na ito sa Filipino, paki tawagan ang 628.652.7550. Paki tandaan na mangangailangan ang Planning Department ng hindi kukulangin sa isang araw na pantrabaho para makasagot.

WHAT IS A DWELLING UNIT REMOVAL APPLICATION?

The Dwelling Unit Removal application is intended for any requests involving the removal of existing housing. This application is designed to determine if the proposed dwelling unit removal is desirable, utilizing the review criteria set forth in Planning Code Section 317. The Code provides for some administrative exceptions where Planning staff may approve an application to remove dwelling units without a public hearing, but only if the project meets certain specific requirements. For more information, please refer to Planning Code Section 317, or consult a planner at the Planning counter at the Permit Center.

WHEN IS A DWELLING UNIT REMOVAL APPLICATION NECESSARY?

The Planning Commission requires Conditional Use hearings for all projects that would result in the removal of existing housing units, whether by demolition, merger with other dwellings, or by conversion to non-residential uses. This application is also required when an alteration is considered tantamount to demolition.

Please note that pursuant to Planning Code Section 317(g)(2), the Planning Commission will not approve an application for a Residential Merger if any tenant has been evicted where the tenant was served with an eviction notice after December 10, 2013 and:

- pursuant to Administrative Code Sections 37.9(a)(9) through 37.9(a)(14) if the eviction notice was served within 10 years prior to filing this application for a merger; or
- pursuant to Administrative Code Section 37.9(a)(8) if the eviction notice was served within 5 years prior to filing this application for a merger.

Please consult a planner at the Planning counter for additional information regarding these applications.

HOW DOES THE PROCESS WORK?

If the proposed project results in the loss or removal of one (1) or more residential dwelling units, please submit the required materials with the completed Dwelling Unit Removal suppolemental application

- Project Application
- Conditional Use Authorization supplemental application

The Project Application and required supplemental application materials can be submitted electronically through the San Francisco Planning's Public Portal. Once the application is deemed complete, you will receive an email notification regarding an electronic payment.

HOUSING CRISIS ACT OF 2019

Effective January 1, 2020, and further amended in 2021, "The Housing Crisis Act of 2019," (HCA) establishes through Government Code Section 66300 (d)1 a statewide "housing emergency" until January 1, 2030. During the housing emergency:

- the Housing Crisis Act suspends certain restrictions on the development of new housing, prohibits the loss of housing, and expedites the permitting of housing;
- cities and localities in urban areas, such as San Francisco, are generally prohibited from rezoning or imposing new development standards that would reduce the capacity for housing or adopting new design standards that are not objective; and
- the loss of existing housing units (through merger, conversion, or demolition) is only permitted if the same number of units are created as part of the same development project.

In addition, pursuant to state law, additional conditions shall be applied to dwelling unit removal projects through January 1, 2025, including requirements for replacement units and relocation benefits.

In order to implement these conditions, this application now requires additional information from all applicants related to the occupancy history of existing occupied or vacant rental units. If the applicant affirms that such information is unknown, replacement unit requirements may still apply.

For more information, please see Planning Director's Bulletin No. 7 , available at sfplanning.org.

FEES

Please refer to the Planning Department Fee Schedule available at **www.sfplanning.org**. For questions related to the Fee Schedule, you can call the Planning counter at 628.652.7300 or email pic@sfgov.org where planners are able to assist you.

Fees will be determined based on the estimated construction costs. Should the cost of staff time exceed the initial fee paid, an additional fee for time and materials may be billed upon completion of the hearing process or permit approval. Additional fees may also be collected for preparation and recordation of any documents with the San Francisco Assessor-Recorder's office and for monitoring compliance with any conditions of approval.

PROJECT APPLICATION RECORD NUMBER (PRJ)

22TMP-008276

San Francisco Planning

DWELLING UNIT REMOVAL: MERGER, CONVERSION OR DEMOLITION

SUPPLEMENTAL APPLICATION

Property Information

Project Address: 51 Prosper St.

Block/Lot(s): 3564/031

Project Details

UNITS	EXISTING:	PROPOSED:	NET CHANGE:
Owner-occupied Units:	2	1	-1
Rental Units:	3	3	0
Total Units:	5	4	-1
Units subject to Rent Control:	3	3	0
Vacant Units:	2	0	-2

BEDROOMS	EXISTING:	PROPOSED:	NET CHANGE:
Owner-occupied Bedrooms:	2	2	0
Rental Bedrooms:	3	4	+1
Total Bedrooms:	5	6	+1
Bedrooms subject to Rent Control:	3	3	0

QUESTION	YES	NO
Has the property, to the best of your knowledge, ever had an unauthroized unit on the property?	☐	☑
Are you currently renting out units on the property?	☑	☐
Are you currently renting out bedrooms on the property?	☐	☑
Are you actively having relocation conversations with existing tenants? If yes, please attach documentation to this specific application demonstrating compliance with relevant Rent Board requirements.	☐	☑
If there is only one unit at this property, do the tenants have separate lease agreements with the landlord?	☐	☐

Unit Specific Information

	UNIT NO.	NO. OF BEDROOMS	GSF	OCCUPANCY	ADDITIONAL INFORMATION
EXISTING	2	2	1,212	☑ OWNER OCCUPIED ☐ RENTAL ☐ VACANT*	☐ Ellis Act eviction in past 10 years ☑ Rent Control in past 5 years ☐ Below-Market Rate in past 5 years
	If vacant, indicate the most recent year occupied:				_____
	Indicate the number of persons in the household, or most recent household in occupancy:				2 ☐ Unknown
	Indicate the approximate income of the current or most recent household in occupancy:				$_____ ☑ Unknown
PROPOSED	1	3	1,212	Occupancy: Two owners plus personal attendant.	

RESIDENTIAL MERGER
(SUPPLEMENTAL INFORMATION)

Pursuant to Planning Code Section 317(c), any application that would result in the removal of one or more residential units or unauthorized units is required to obtain a Conditional Use Authorization. In addition to filing a Conditional Use Authorization application, this Dwelling Unit Removal application, along with responses to the specific conditional use criteria listed below, as described in Planning Code Section 317(g)(2), must be submitted to the Planning Department.

Please note that pursuant to Planning Code Section 317(g)(2), the Planning Commission shall not approve an application for residential merger if any tenant has been evicted pursuant to Administrative Code Sections 37.9(a)(9) through 37.9(a)(14) where the tenant was served with a notice of eviction after December 10, 2013 if the notice was served within 10 years prior to filing the application for merger. Additionally, the Planning Commission shall not approve an application for residential merger if any tenant has been evicted pursuant to Administrative Code Section 37.9(a)(8) where the tenant was served with a notice of eviction after December 10, 2013 if the notice was served within five (5) years prior to filing the application for merger.

Please answer the following questions to determine how the project does or does not meet the Planning Code requirements:

	DWELLING UNIT MERGER CRITERIA:	YES	NO
1	Does the removal of the unit(s) eliminate only owner-occupied housing? If yes, for how long was the unit(s) proposed for removal owner-occupied? 9 ☐ months or ☑ years *(check one)*	☑	☐
2	Is the removal of the unit(s) and the merger with another intended for owner occupancy?	☑	☐
3	Will the removal of the unit(s) remove an affordable housing unit as defined in Section 401 of the Planning Code or housing subject to the Rent Stabilization and Arbitration Ordinance? If yes, will replacement housing be provided which is equal or greater in size, number of bedrooms, affordability, and suitability to households with children to the units being removed? ☐ YES ☐ NO	☐	☑
4	If the unit(s) proposed for removal was occupied by a tenant or tenants, please specify the date of when it was last occupied: 2/282022		
5	Will the number of bedrooms provided in the merged unit be equal to or greater than the number of bedrooms in the separate units?	☑	☐
6	Is the removal of the unit(s) necessary to correct design or functional deficiencies that cannot be corrected through interior alterations?	☑	☐
7	If the merger does not involve an unauthorixed unit, what is the appraised value of the least expensive unit to be merged? N/A Please include an attachment of the appraisal dated within six months of filing this application.		

RESIDENTIAL CONVERSION
(SUPPLEMENTAL INORMATION)

Pursuant to Planning Code Section 317(g) (3), the conversion of residential dwelling units to a non-residential use is required to obtain a Conditional Use Authorization.

In reviewing proposals for the conversion of residential dwelling units to other forms of occupancy, the Planning Commission will review the criteria below.

Please answer the following questions to inform the Planning Commission as to how the project does or does not meet the following criteria:

	DWELLING UNIT CONVERSION CRITERIA:	YES	NO
1	Will the conversion of the unit(s) eliminate only owner occupied housing? If yes, for how long was the unit(s) proposed for removal owner-occupied? _____ months or years (check one)	☑	☐
2	Will the conversion of the unit(s) provide desirable new non-residential use(s) appropriate for the neighborhood and adjoining district(s)?	☐	☐
3	Is the property located in a district where Residential Uses are not permitted? If yes, will the Residential Conversion bring the building closer into conformance with the uses permitted in the zoning distirt? ☐ YES ☐ NO	☐	☐
4	Will the conversion of the unit(s) be detrimental to the City's housing stock?	☐	☐
5	Is the conversion of the unit(s) necessary to eliminate design, functional, or habitability deficiencies that cannot otherwise be corrected?	☐	☐
6	Will the Residential Conversion remove Affordable Housing, or unit(s) subject to the Rent Stabilization and Arbitration Ordinance?	☐	☐

DWELLING UNIT DEMOLITION
(SUPPLEMENTAL INFORMATION)

Pursuant to Planning Code Section 317(d), residential demolition is subject to a Conditional Use Authorization or will qualify for administrative approval.

Administrative approval only applies to single-family residential buildings that are found to be unsound housing [Sec. 317(c)(5) & (d)(3)].

The Planning Commission will consider the following criteria in the review of residential demolitions Please answer the following questions to inform the Planning Commission as to how the project does or does not meet the following criteria, as described in Planning Code Section 317(g)(5):

EXISTING VALUE AND SOUNDNESS		**YES**	**NO**
1	Is the property free of a history of serious, continuing code violations?	☐	☐
2	Has the housing been maintained in a decent, safe, and sanitary condition?	☐	☐
3	Is the property a *historical resource* under CEQA?	☐	☐
RENTAL PROTECTION		**YES**	**NO**
4	Does the Project convert rental housing to other forms of tenure or occupancy?	☐	☐
5	Does the Project remove rental units subject to the Rent Stabilization and Arbitration Ordinance or affordable housing?	☐	☐
PRIORITY POLICIES		**YES**	**NO**
6	Does the Project conserve existing housing to preserve cultural and economic neighborhood diversity?	☐	☐
7	Does the Project conserve neighborhood character to preserve neighborhood cultural and economic diversity?	☐	☐
8	Does the Project protect the relative affordability of existing housing?	☐	☐
9	Does the Project increase the number of permanently affordable units as governed by Section 415?	☐	☐
REPLACEMENT STRUCTURE		**YES**	**NO**
10	Does the Project locate in-fill housing on appropriate sites in established neighborhoods?	☐	☐
11	Does the Project increase the number of family-sized units on-site?	☐	☐
12	Does the Project create new supportive housing?	☐	☐
13	Is the Project of superb architectural and urban design, meeting all relevant design guidelines, to enhance the existing neighborhood character?	☐	☐
14	Does the Project increase the number of on-site dwelling units?	☐	☐
15	Does the Project increase the number of on-site bedrooms?	☐	☐
16	Does the Project maximize density on the subject lot?	☐	☐
17	If the building is not subject to Rent Stabilization and Arbitration Ordinance or affordable housing, will the Project replace all of the exiting units with new dwelling units of similar size and with the same number of bedrooms?	☐	☐

REMOVAL OF UNAUTHORIZED UNIT(S)
(SUPPLEMENTAL INFORMATION)

The Planning Commission will consider the following criteria in the review of applications for removal of unauthorized units, pursuant to Planning Code Section 317 (g)(6). Please fill out answers to the criteria below:

	DWELLING UNIT REMOVAL OF UNAUTHORIZED UNIT(S) CRITERIA:	YES	NO
1	Is it financially feasible to legalize the unauthorized unit(s)? If no, please provide the cost to legalize the unauthorized unit(s) _____	☐	☐
2	What is the apprised value of the building with the unauthorized unit(s)? _____ Please include an attachment of the appraisal dated within six months of filing this application.		
3	What is the appraised value of the building with the unit(s) legalized? _____ Please include an attachment of the appraisal dated within six months of filing this application.		

TENANCY AFFIDAVIT TO FILLED OUT BY OWNER

If tenant occupied, project sponsors must verify by check box they understand the following statements

- ☐ Tenants who have occupied a unit for 32 days require a Just Cause for eviction.
- ☐ Owner or relative move-ins, demolitions or Substantial Rehabs (with permits in hand) are a Just Cause, however owners are required to give tenants 60 day written notice to move out and provide relocation compensation.
- ☐ Making a tenant sign a statement that they "voluntarily agree" to move out in order to stay is not legal. A tenant cannot sign away their rights to a Just Cause.

_____ _____

Signature Name (Printed)

_____

Date

APPLICANT'S AFFIDAVIT

Under penalty of perjury the following declarations are made:

a) The undersigned is the owner or authorized agent of the owner of this property.

b) The information presented is true and correct to the best of my knowledge.

c) Other information or applications may be required.

d) I hereby authorize City and County of San Francisco Planning staff to conduct a site visit of this property as part of the City's review of this application, making all portions of the interior and exterior accessible through completion of construction and in response to the monitoring of any condition of approval.

e) I attest that personally identifiable information (PII) - i.e. social security numbers, driver's license numbers, bank accounts - have not been provided as part of this application. Furthermore, where supplemental information is required by this application, PII has been redacted prior to submittal to the Planning Department. I understand that any information provided to the Planning Department becomes part of the public record and can be made available to the public for review and/or posted to Department websites.

	Thomas W. Metz
Signature	Name (Printed)
10/07/2022	
Date	

Owner	415-238-6405	twmetz@gmail.com
Relationship to Project (i.e. Owner, Architect, etc.)	Phone	Email

For Department Use Only

Application received by Planning Department:

By: _____ Date: _____

City and County of San Francisco
Department of Building Inspection

Edwin M. Lee, Mayor
Tom C. Hui, S.E., Acting Director

EXHIBIT 4

Report of Residential Building Record (3R)

(Housing Code Section 351(a))

BEWARE: This report describes the current legal use of this property as compiled from records of City Departments. There has been no physical examination of the property itself. This record contains no history of any plumbing or electrical permits. The report makes no representation that the property is in compliance with the law. Any occupancy or use of the property other than that listed as authorized in this report may be illegal and subject to removal or abatement, and should be reviewed with the Planning Department and the Department of Building Inspection. Errors or omissions in this report shall not bind or stop the City from enforcing any and all building and zoning codes against the seller, buyer and any subsequent owner. The preparation or delivery of this report shall not impose any liability on the City for any errors or omissions contained in said report, nor shall the City bear any liability not otherwise imposed by law.

Address of Building ***51 PROSPER ST*** **Block** ***3564*** **Lot** ***031***

Other Addresses

1. A. Present authorized Occupancy or use: FIVE FAMILY DWELLING
   B. Is this building classified as a residential condominium? Yes No ✓
   C. Does this building contain any Residential Hotel Guest Rooms as defined in Chap. 41, S.F. Admin. Code? Yes No ✓
2. Zoning district in which located: RH-2 3. Building Code Occupancy Classification: R2
4. Do Records of the Planning Department reveal an expiration date for any non-conforming use of this property? Yes No ✓
   If Yes, what date? **The zoning for this property may have changed. Call Planning Department, (415) 558-6377, for the current status.**
5. Building Construction Date (Completed Date): UNKNOWN
6. Original Occupancy or Use: UNKNOWN
7. Construction, conversion or alteration permits issued, if any:

Application #	Permit #	Issue Date	Type of Work Done	Status
123455	123455	Jan 12, 1924	PRESENT BUILDING TO BE MOVED TO STREET LINE, CONVERT TO TWO FAMILY DWELLING	N
136621	124311	May 15, 1951	ADD KITCHEN & BATHROOM TO REAR OF BUILDING 2 STORIES HIGH CFC 3FD	C
419546	378777	Jul 05, 1973	COMPLY WITH DIVISION OF APARTMENT AND HOTEL INSPECTION CHECKLIST 8/10/77 CFC 5FD	C
7803341	434850	Apr 27, 1978	COMPLY WITH DIVISION OF APARTMENT AND HOTEL INSPECTION REPORT CFC 4FD	C
200603227280	1082169	Mar 22, 2006	REROOFING	C
200802215267	1146925	Feb 21, 2008	TO CORRECT HIS NOTICE OF VIOLATION 200844731, ITEM# 2. REPLACE DAMAGE WOOD ON BACK STAIRS, LESS THAN 50% OF STAIRS	C
201007196890	1216778	Jul 19, 2010	APT #5 -CODE CORRECTION OF VIOLATION NOTICE #201041634: CONVERT PORTION OF EXISTING GARAGE INTO ENTRY VESTIBULE TO APT 5. ADD NEW DOOR AT EXTERIOR WALL TO ACCESS EXISTING EXIT PATHWAY CFC 5FD	C

8. A. Is there an active Franchise Tax Board Referral on file? Yes No ✓
   B. Is this property currently under abatement proceedings for code violations? Yes No ✓
9. Number of residential structures on property? 1
10. A. Has an energy inspection been completed? Yes No ✓ B. If yes, has a proof of compliance been issued? Yes No ✓

Records Management Division
1660 Mission Street - San Francisco CA 94103
Office (415) 558-6080 - FAX (415) 558-6402 - www.sfgov.org/dbi

Address of Building ***51 PROSPER ST*** **Block** ***3564*** **Lot** ***031***

Other Addresses

Date of Issuance: 22 JAN 2013
Date of Expiration: 22 JAN 2014
By: NOREEN MURPHY
Report No: ***201301166976***

Patty Herrera, Manager, Records Management Division

Pamela J Levin

Pamela J. Levin, Deputy Director
Department of Building Inspection

THIS REPORT IS VALID FOR ONE YEAR ONLY.

The law requires that, prior to the consummation of the sale or exchange of this property, the seller must deliver this report to the buyer and the buyer must sign it.

(For Explanation of terminology, see attached)

EXHIBIT 5 FLOOR PLANS BELOW

51 Prosper St. Apt. 4 San Francisco CA 94114
Owner:Tom Metz

SHEET INDEX:
A1- Existing Floors
A2- Build stairs connecting

APPLICABLE CODES:
2019 CALIFORNIA BUILDING CODE
2019 CALIFORNIA ELECTRICAL CODE
2019 CALIFORNIA ENERGY CODE
2019 CALIFORNIA FIRE CODES
2019 CALIFORNIA MECHANICAL CODE
2019 CALIFORNIA PLUMBING CODE

Scope of Work:

- No New Construction outside existing footprint
- Build stairs connecting apartment 5 and 2, remove kitchen from unit 2 and convert 5 and 2 in one single unit with 4 bedrooms one kitchen.

LEGEND:

Existing Wall

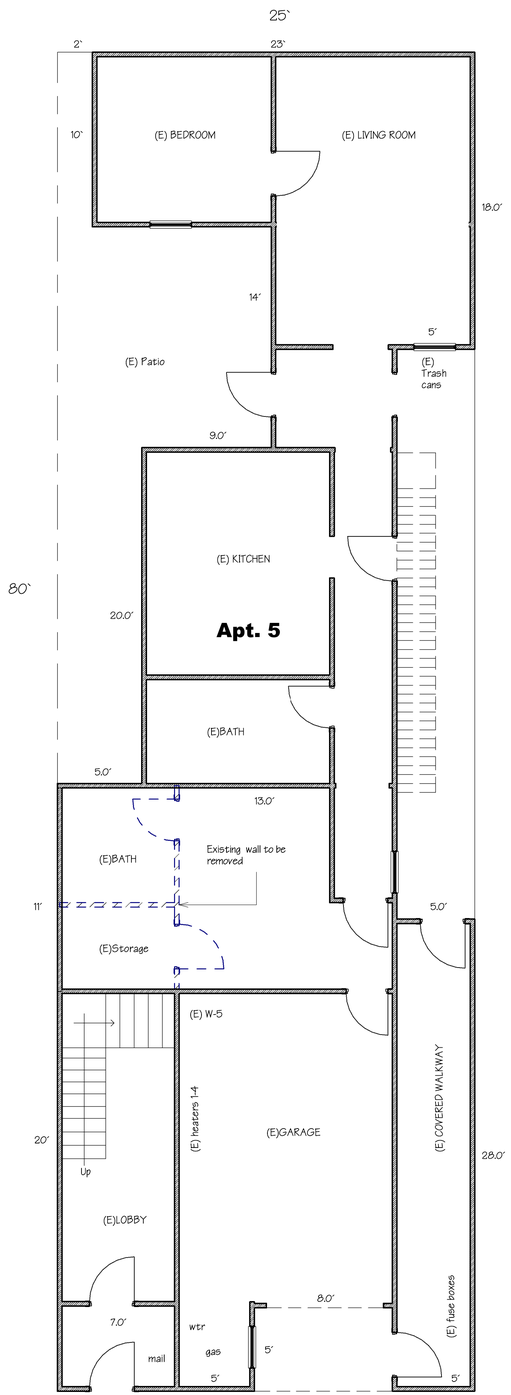
New Wall

Existing wall to be removed

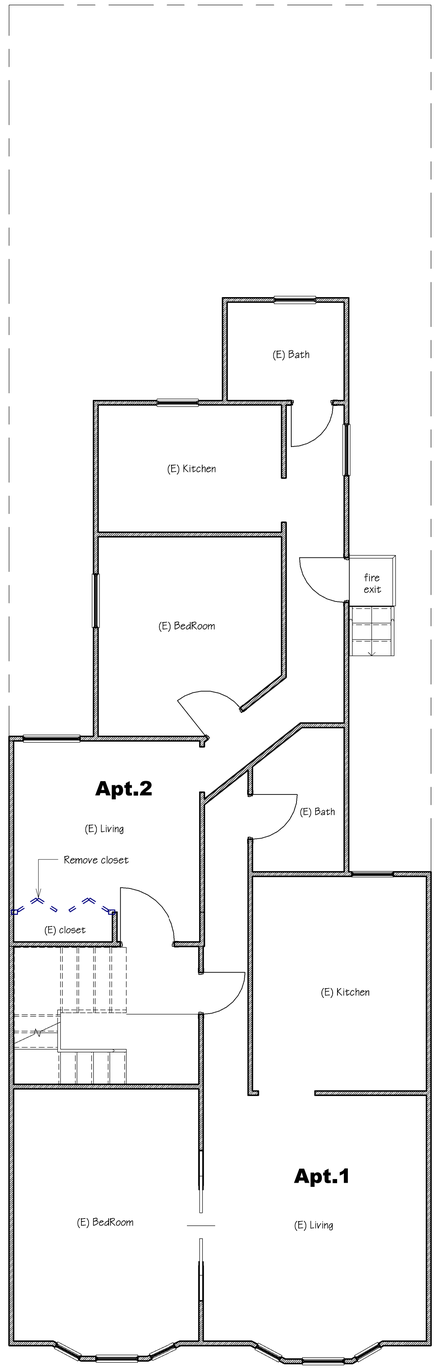
Property line

GENERAL NOTES:

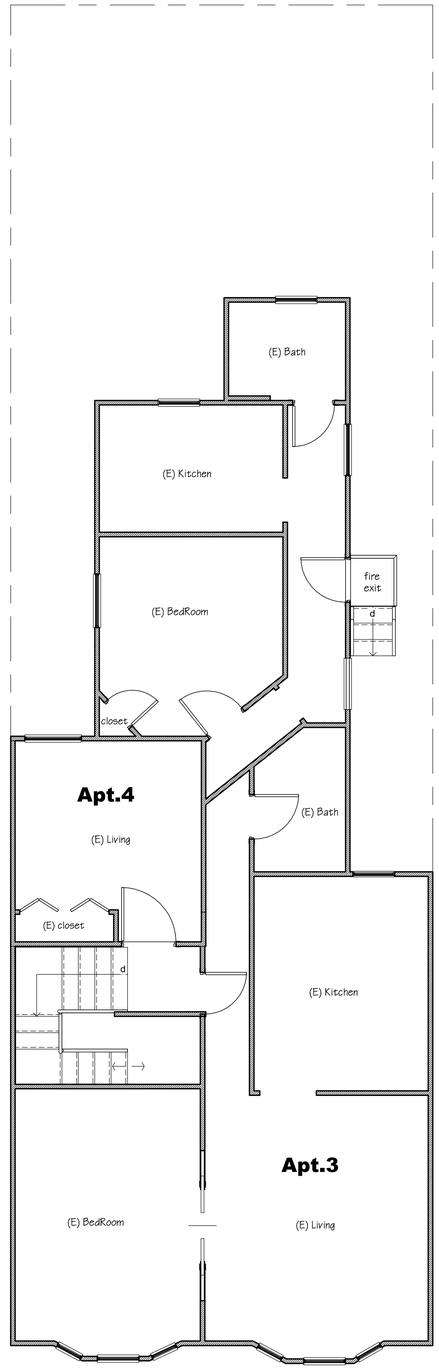
1. THE CONTRACTOR SHALL FULLY EXECUTE ALL CONDITIONS OF THE CONTRACT, INCLUDING THE REQUIREMENTS OF THE GENERAL CONDITIONS.
2. THE CONTRACTOR SHALL VERIFY ALL EXISTING CONDITIONS IN THE FIELD PRIOR TO COMMENCING WORK, AND SHALL REPORT ANY CONDITIONS OF DISCREPANCIES BETWEEN DRAWINGS AND FIELD CONDITIONS REQUIRING MODIFICATIONS BEFORE PROCEEDING WITH WORK TO THE OWNER.
3. MINOR DETAILS NOT USUALLY SHOWN OR SPECIFIED, BUT NECESSARY FOR PROPER CONSTRUCTION OF ANY PART OF THE WORK SHALL BE INCLUDED AS IF THEY WERE INDICATED IN THE DRAWINGS AND SPECIFICATIONS.
4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL CONDITIONS AND MATERIALS WITHIN THE PROPOSED CONSTRUCTION AREA. THE CONTRACTOR SHALL DESIGN AND INSTALL ADEQUATE SHORING AND BRACING FOR ALL STRUCTURAL OR REMOVAL TASKS.
5. THE CONTRACTOR SHALL HAVE SOLE RESPONSIBILITY FOR ANY DAMAGE OR INJURIES CAUSED BY OR DURING THE EXECUTION OF THE WORK.
6. THE CONTRACTOR SHALL LAYOUT HIS OWN WORK, AND SHALL PROVIDE ALL DIMENSIONS REQUIRED FOR OTHER TRADES (PLUMBING, ELECTRICAL, ETC.).
7. THE CONTRACTOR SHALL REPORT TO THE OWNER ANY DISCREPANCIES FOUND BETWEEN THE DRAWINGS THAT REQUIRE MODIFICATIONS BEFORE PROCEEDING WITH WORK.
9. THE CONTRACTOR SHALL COOPERATE WITH OWNER S CONTRACTORS AND/OR SELF PERFORMED WORK OR FOR SCHEDULING, ACCESS, AND/OR INSTALLATION OF ALL ASSOCIATIVE EQUIPMENT WITHIN THE WORK AREA.
9. REVIEW AND COORDINATE SCHEDULING OF OWNER FURNISHED MATERIALS.
10. PLUMBING AND ELECTRICAL WORK SHALL BE PERFORMED BY PERSONS LICENSED IN THEIR TRADES.
11. THE CONTRACTOR SHALL DO ALL CUTTING, PATCHING, REPAIRING AS REQUIRED TO PERFORM ALL OF THE WORK INDICATED ON THE DRAWINGS, AND ALL OTHER WORK THAT MAY BE REQUIRED TO COMPLETE THE JOB.
12. REFER TO MECHANICAL, PLUMBING, AND ELECTRICAL DRAWINGS AND SPECIFICATIONS. FOR ADDITIONAL GENERAL NOTES, ABBREVIATIONS AND SYMBOLS LEGENDS, ALL NOTES ARE TO BE REVIEWED AND APPLIED TO RELATED BUILDING COMPONENTS.
13. NOTES APPEAR ON VARIOUS SHEETS FOR DIFFERENT SYSTEMS AND MATERIAL SHEETS ARE TO BE REVIEWED AND NOTES ON ANY ONE SHEET ARE TO BE APPLIED TO RELATED SYSTEMS AND MATERIALS DEPICTED ON OTHER DRAWINGS.
14. DETAILS NOT SHOWN ARE SIMILAR IN CHARACTER TO THOSE THAT ARE WHERE SPECIFIED DIMENSIONS, DETAILS OR DESIGN INTENT CANNOT BE DETERMINED; CONSULT THE OWNER BEFORE PROCEEDING WITH THE WORK.
15. UNLESS OTHERWISE NOTED OR INDICATED DIMENSIONS ON THE PLANS SHALL BE FROM FACE OF EXISTING GYPSUM BOARD AND/OR FINISH. FIELD VERIFY ALL PROPOSED WORK AND NOTIFY OWNER WITH ANY DISCREPANCIES PRIOR TO ORDERING MATERIALS AND/OR BEGINNING WORK.
16. ALL EXTERIOR OPENINGS SHALL BE FLASHED IN SUCH A WAY AS TO MAKE THEM WEATHERPROOF.



1 A1 Floor Plan Level 1
1/4" = 1'-0"



2 A1 Floor Plan Level 2
1/4" = 1'-0"



verify all dimention in field

3 A1 Floor Plan Level 3
1/4" = 1'-0"

GOLDEN BAY
CONTRACTOR

1725 Novato Blvd 30, Novato CA 94947

No.	Description	Date

Owner:Tom Metz

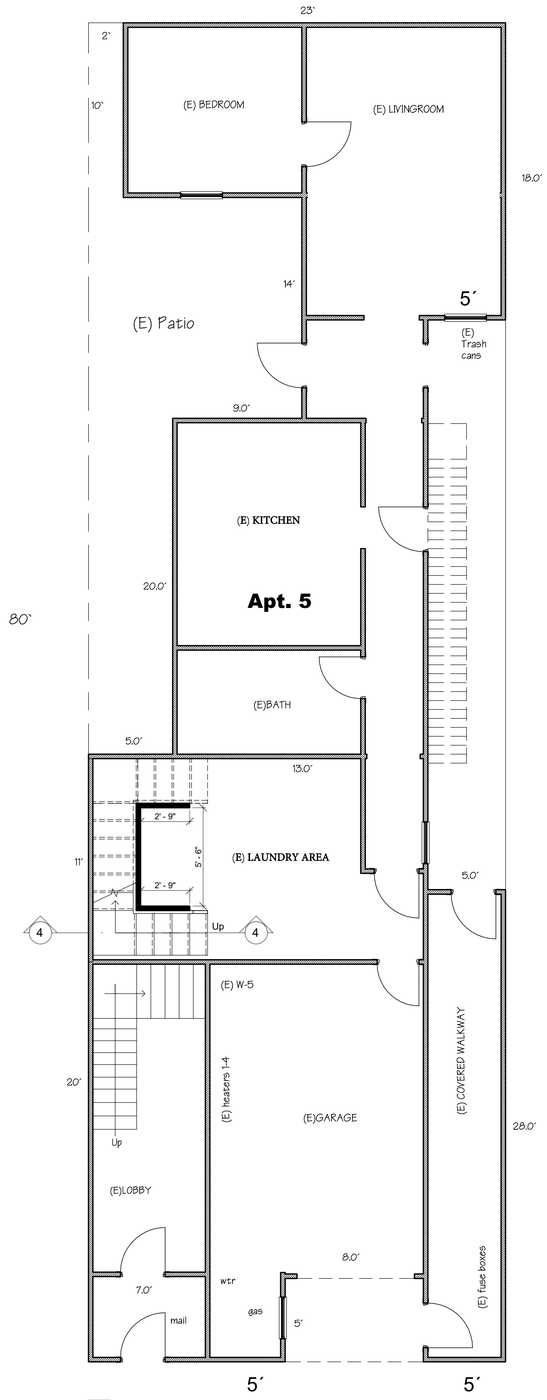
51 Prosper St. Apt. 4 San Francisco CA 94114

Existing Floors

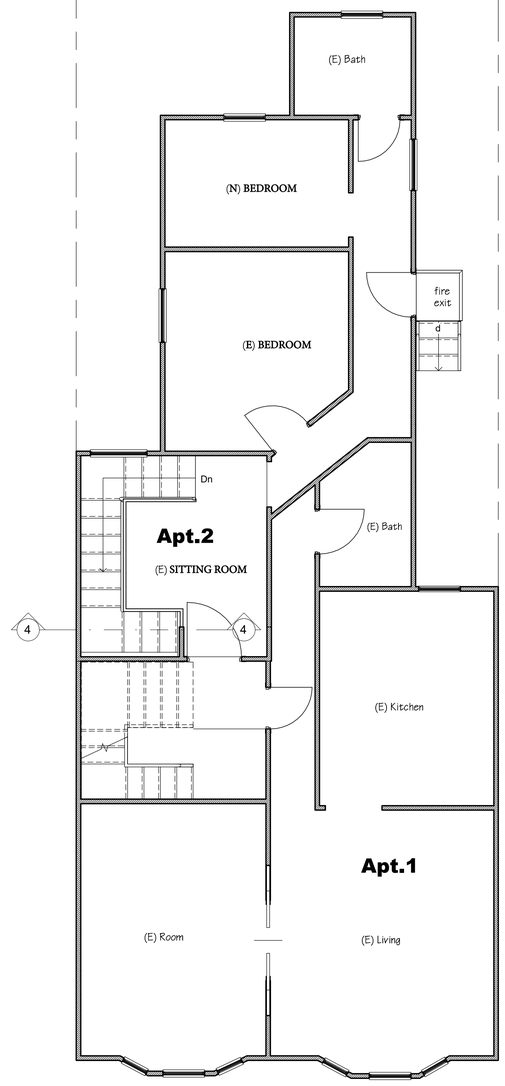
Project number	0001
Date	12/5/2022
Drawn by	MANUEL ESCOBAR
Checked by	M. Escobar

A1

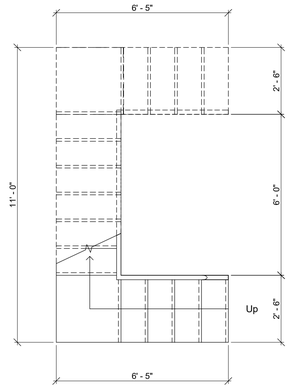
Scale Indicated



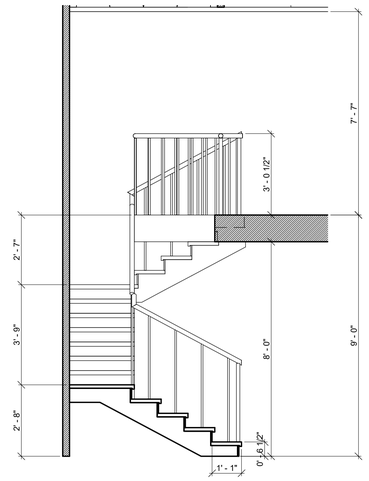
1 A2 Floor Plan Remodel Stairs
1/4" = 1'-0"



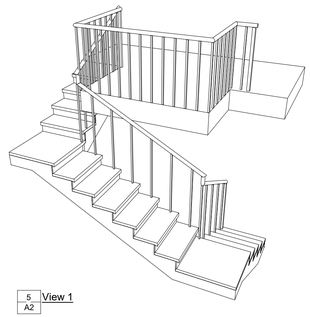
2 A2 Floor Plan Remodel Level 2
1/4" = 1'-0"



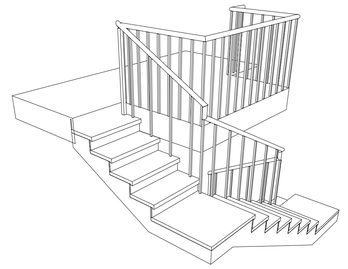
3 A2 Stairs
3/8" = 1'-0"



4 A2 Section Stairs
3/8" = 1'-0"



5 A2 View 1



6 A2 View 2

Scope of Work:

- No New Construction outside existing footprint
- Build stairs connecting apartment 5 and 2, remove kitchen from unit 2 and convert 5 and 2 in one single unit with 4 bedrooms one kitchen.

(E) = Existing to Remain
(R) = Replace / Remodel per Plan Main House

GOLDEN BAY
CONTRACTOR
1725 Novato Blvd 30, Novato CA 94947

No.	Description	Date

Owner:Tom Metz

51 Prosper St. Apt. 4 San Francisco CA 94114

Build stairs connecting

Project number	0001
Date	12/5/2022
Drawn by	MANUEL ESCOBAR
Checked by	M. ESCOBAR

A2

Scale Indicated

49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103
628.652.7600
www.sfplanning.org

REASONABLE MODIFICATION DECISION

Date:	September 25, 2023
Case No.:	**2022-011807VAR**
Project Address:	**51 PROSPER STREET**
Block/Lots:	3564 / 031
Zoning:	RH-2 (RESIDENTIAL- HOUSE, TWO FAMILY)
Height/Bulk:	40-X Height and Bulk District
Applicant:	Thomas Metz 51 Prosper Street, Apt. 5 San Francisco, CA 94114
Owner:	Thomas Metz and David Brightman 51 Prosper Street, Apt. 5 San Francisco, CA 94114
Staff Contact:	Matthew Dito – 628-652-7358 matthew.dito@sfgov.org

Description of Reasonable Modification Sought:

The proposal is to merge two dwelling units (Units 2 and 5) at the subject property by constructing an internal staircase connecting the units and removing the kitchen in Unit 5. The kitchen in Unit 5 would be converted to a bedroom.

Planning Code Section 317 requires a Conditional Use Authorization for the merger of two or more dwelling units, resulting in a net reduction in the number of dwelling units in a building. The proposal is to merge Unit 2 and Unit 5.

The following Zoning Administrator interpretation was issued in 2003: "As reflected in the Planning Commission's Policy on Dwelling Unit Mergers (December 2001), the merger of dwelling units raises significant concerns regarding the loss of housing units and the impact upon the City's overall housing stock. Two legal apartments in a multiple-unit building could be combined by opening a party wall and could be used by one family while retaining both kitchens. This situation would be considered to be two units used by one family, and *is considered a dwelling unit merger* [emphasis added] subject to the Planning Commission's Policy. Although the two units still exist as legally separate units, they are, in effect, merged for the use of one family and should be reviewed against the dwelling unit merger policy, since they have a similar effect upon the City's housing stock."

Procedural Background:

1. Planning Code Section 305.1 allows the Zoning Administrator to approve a request to grant a reasonable modification of certain regulations, policies, practices, or procedures of the Planning Code for people with disabilities. A person with a known disability resides at the subject property. Pursuant to Subsection (d)(4), a Reasonable Modification to allow an internal connection between two separate

dwelling units without a Conditional Use Authorization for a dwelling unit merger may be approved without public notice or hearing.

2. The Project is exempt from the California Environmental Quality Act ("CEQA") as a Class 1 categorical exemption.

3. Pursuant to Planning Code Section 305.1(d)(4), this request for Reasonable Modification does not require public notice and may be approved administratively without a public hearing.

Decision:

GRANTED, to construct an interior staircase connecting Units 2 and 5, as shown in EXHIBIT A, subject to the following conditions:

1. This Reasonable Modification does not authorize the merger of Units 2 and 5, and is not a modification of the dwelling unit merger provisions of Planning Code Section 317. Instead, this Reasonable Modification is granted from the 2003 Zoning Administrator interpretation that prohibits an internal connection between two separate dwelling units.

2. Units 2 and 5 shall remain two separate and legally distinct dwelling units for the purpose of the Planning Code. As such, each unit must continue to include a kitchen.

3. Pursuant to Planning Code Section 305.1, this reasonable modification to allow an internal connection between two separate dwelling units without a Conditional Use Authorization for a dwelling unit merger is valid only for the period of time that there is a qualifying disabled occupant. Unless separate authorization is obtained to legally merge the two dwelling units, the property owner must notify the Zoning Administrator within six (6) months of the end of occupancy by a qualifying disabled occupant, and file a building permit to remove the internal connection (and any other work necessary to fully separate the two units) within twelve (12) months of the end of occupancy by a qualifying disabled occupant. Such building permit must be issued and diligently completed to remove the interior connection.

4. The authorization and rights vested by virtue of this decision letter shall be deemed void and cancelled if a Site or Building Permit has not been issued within three (3) years from the effective date of this decision. However, this authorization may be extended by the Zoning Administrator when implementation of the project is delayed by a public agency, an appeal, or a legal challenge, and only by the length of time for which such public agency, appeal, or challenge has caused delay.

5. The proposed project must meet these conditions and all applicable City Codes. In case of conflict, the more restrictive controls apply.

6. Minor modifications to this Reasonable Modifications may be authorized by the Zoning Administrator without granting a separate Reasonable Modification approval.

7. The owner of the subject property shall record on the land records of the City and County of San Francisco the conditions attached to this Reasonable Modification decision as a Notice of Special Restrictions in a form approved by the Zoning Administrator.

8. This Reasonable Modification Decision and the recorded Notice of Special Restrictions shall be reproduced on the Index Sheet of the construction plans submitted with the Site or Building Permit Application for the Project, if applicable.

Criteria:

Section 305.1(f)(2) of the Planning Code states that when reviewing a request for reasonable modification, the Zoning Administrator shall consider whether:

CRITERION A.

The requested modification is requested by or on the behalf of one or more individuals with a disability protected under federal and state fair housing laws.

A. The San Francisco Mayor's Office on Disability verified that the requestor of the modification has a disability protected under federal and state fair housing laws.

CRITERION B.

The requested modification will directly enable the individual to access the individual's residence.

A. An interior staircase to connect Units 2 and 5 will provide additional habitable space for the applicant and allow for live-in, around-the-clock medical care. The additional habitable space provided to the applicant enables them to remain in their residence.

B. Unit 2 is currently a one-bedroom dwelling unit. The proposal includes the removal of a kitchen, which is not necessary to enable the applicant to receive the necessary medical care requested. The interior staircase provides sufficient access to the applicant in Unit 5 for a live-in care provider in Unit 2.

CRITERION C.

The requested modification is necessary to provide the individual with a disability an equal opportunity to use and enjoy a dwelling.

A. The requested modification provides the applicant the ability to remain in, use, and enjoy their dwelling by providing additional habitable space for live-in, around the clock medical care.

B. Unit 2 is currently a one-bedroom dwelling unit. The proposal includes the removal of a kitchen, which is not necessary to enable the individual to continue to use and enjoy their dwelling, as an interior staircase provides sufficient access to the applicant for a live-in care provider.

CRITERION D.

There are alternatives to the requested modification that would provide an equivalent level of benefit.

A. There is no feasible area for the building to expand so that Unit 5 may add a bedroom, nor any existing common area or non-habitable space that could be converted to a bedroom with direct access to Unit 5. There are no alternatives that would provide additional habitable space for the applicant to allow for live-in, around-the-clock medical care.

CRITERION E.

The requested modification will not impose an undue financial or administrative burden on the City as "undue financial or administrative burden" is defined under federal and state fair housing laws.

A. The requested modification does not appear to be a cause for undue financial or administrative burden on the City. An “undue financial or administrative burden” takes place when there are substantial costs and processes required by the City to accommodate the property owner's request. This determination is based on reviewing Exhibit 2-6: Examples of Undue Financial and Administrative Burden from the HUD Occupancy Handbook.

CRITERION F.

The requested modification will, under the specific facts of the case, result in a fundamental alteration in the nature of the Planning Code or General Plan, as "fundamental alteration" is defined under federal and state fair housing laws.

A. The requested modification will not result in a fundamental alteration of the Planning Code or General Plan, as "fundamental alteration" is defined under federal and state fair housing laws. The two subject dwelling units will remain as two separate dwelling units. This determination is based on reviewing Exhibit 2-5: Examples of Fundamental Alteration from the HUD Occupancy Handbook. The modification, as granted by the Zoning Administrator, includes the minimum scope necessary to provide the applicant with the necessary medical care and access.

CRITERION G.

The requested modification will, under the specific facts of the case, result in a direct threat to the health or safety of others or cause substantial physical damage to the property of others.

A. The requested modification will not result in a direct threat to the health or safety of others or cause substantial physical damage to the property of others. The proposal includes construction contained within Units 2 and 5 and no exterior work.

Priority Planning Policies:

This development is consistent with the generally stated intent and purpose of the Planning Code to promote orderly and beneficial development. Planning Code Section 101.1 establishes eight priority-planning policies and requires review of Reasonable Modification applications for consistency with said policies. The project meets all relevant policies, including conserving neighborhood character, and maintaining housing stock.

1. Existing neighborhood retail uses will not be adversely affected by the proposed project.

2. The proposed project will be in keeping with the existing housing and neighborhood character. The reasonable modification includes no exterior work and will not change the number of legal dwelling units on the lot.

3. The proposed project will have no effect on the City's supply of affordable housing.

4. The proposed project does not adversely affect neighborhood parking or public transit.

5. The project will have no effect on the City's industrial and service sectors.

6. The proposed project will have no effect on the City's preparedness to protect against injury and loss of life in an earthquake.

7. The project will have no effect on the City's landmarks or historic buildings.

8. The project would not affect any existing or planned public parks or open spaces.

The effective date of this decision shall be either the date of this decision letter if not appealed, or the date of the Notice of Decision and Order if appealed to the Board of Appeals.

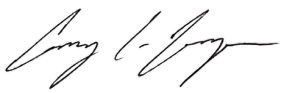
Once any portion of the granted Reasonable Modification is used, all specifications and conditions of the Reasonable Modification authorization become immediately operative.

Protest of Fee or Exaction: You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development.

If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Reasonable Modification Decision Letter constitutes the approval or conditional approval of the development and the City hereby gives NOTICE that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not re-commence the 90-day approval period.

APPEAL: Any aggrieved person may appeal this Reasonable Modification decision to the Board of Appeals within ten (10) days after the date of the issuance of this Reasonable Modification Decision. For further information, please contact the Board of Appeals in person at 49 South Van Ness Ave, Suite 1475 (14th Floor), call 628-652-1150, or visit www.sfgov.org/bdappeal.

Very truly yours,



Corey A. Teague, AICP
Zoning Administrator

This is not a permit to commence any work or change occupancy. Permits from appropriate departments must be secured before work is started or occupancy is changed.

NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

RECORDING REQUESTED BY

And When Recorded Mail To:

Name:

Address:

City:

State: **ZIP:**

EXHIBIT 7

(Space Above This Line For Recorder's Use)

I (We) _____, the owner(s) of that certain real property situated in the City and County of San Francisco, State of California more particularly described as follows: (or see attached sheet marked "Exhibit A" on which property is more fully described):

BEING ASSESSOR'S BLOCK: 3564; LOT: 031;

COMMONLY KNOWN AS: 51 PROSPER STREET;

hereby give notice that there are special restrictions on the use of said property under the Planning Code.

Said Restrictions consist of conditions attached to **Variance Application No. 2022-011807VAR** authorized by the Zoning Administrator of the City and County of San Francisco on **September 25, 2023, to construct an interior staircase connecting Units 2 and 5, as shown in EXHIBIT A.**

The restrictions and conditions of which notice is hereby given are:

1. This Reasonable Modification does not authorize the merger of Units 2 and 5, and is not a modification of the dwelling unit merger provisions of Planning Code Section 317. Instead, this Reasonable Modification is granted from the 2003 Zoning Administrator interpretation that prohibits an internal connection between two separate dwelling units.

2. Units 2 and 5 shall remain two separate and legally distinct dwelling units for the purpose of the Planning Code. As such, each unit must continue to include a kitchen.

3. Pursuant to Planning Code Section 305.1, this reasonable modification to allow an internal connection between two separate dwelling units without a Conditional Use Authorization for a dwelling unit merger is valid only for the period of time that there is a qualifying

disabled occupant. Unless separate authorization is obtained to legally merge the two dwelling units, **the property owner must notify the Zoning Administrator within six (6) months of the end of occupancy by a qualifying disabled occupant, and file a building permit to remove the internal connection (and any other work necessary to fully separate the two units) within twelve (12) months of the end of occupancy by a qualifying disabled occupant.** Such building permit must be issued and diligently completed to remove the interior connection.

4. The authorization and rights vested by virtue of this decision letter **shall be deemed void and cancelled** if a Site or Building Permit has not been issued within three (3) years from the effective date of this decision. However, this authorization may be extended by the Zoning Administrator when implementation of the project is delayed by a public agency, an appeal, or a legal challenge, and only by the length of time for which such public agency, appeal, or challenge has caused delay.

5. The proposed project must meet these conditions and all applicable City Codes. In case of conflict, the more restrictive controls apply.

6. Minor modifications to this Reasonable Modifications may be authorized by the Zoning Administrator without granting a separate Reasonable Modification approval.

7. The owner of the subject property shall record on the land records of the City and County of San Francisco the conditions attached to this Reasonable Modification decision as a Notice of Special Restrictions in a form approved by the Zoning Administrator.

8. This Reasonable Modification Decision and the recorded Notice of Special Restrictions shall be reproduced on the Index Sheet of the construction plans submitted with the Site or Building Permit Application for the Project, if applicable.

NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

The use of said property contrary to these special restrictions shall constitute a violation of the Planning Code, and no release, modification or elimination of these restrictions shall be valid unless notice thereof is recorded on the Land Records by the Zoning Administrator of the City and County of San Francisco.

_____ _____

(Signature) (Printed Name)

Dated: _____, 20____ at _____, California.

(Month, Day) (City)

_____ _____

(Signature) (Printed Name)

Dated: _____, 20____ at _____, California.

(Month, Day) (City)

_____ _____

(Signature) (Printed Name)

Dated: _____, 20____ at _____, California.

(Month, Day) (City)

Each signature must be acknowledged by a notary public before recordation; add Notary Public Certification(s) and Official Notarial Seal(s).

SB-330 Housing Crisis Act of 2019. (2019-2020)

Date Published: 10/10/2019 09:00 PM

Senate Bill No. 330

EXHIBIT 8

CHAPTER 654

An act to amend Section 65589.5 of, to amend, repeal, and add Sections 65940, 65943, and 65950 of, to add and repeal Sections 65905.5, 65913.10, and 65941.1 of, and to add and repeal Chapter 12 (commencing with Section 66300) of Division 1 of Title 7 of, the Government Code, relating to housing.

[Approved by Governor October 09, 2019. Filed with Secretary of State October 09, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 330, Skinner. Housing Crisis Act of 2019.

(1) The Housing Accountability Act, which is part of the Planning and Zoning Law, prohibits a local agency from disapproving, or conditioning approval in a manner that renders infeasible, a housing development project for very low, low-, or moderate-income households or an emergency shelter unless the local agency makes specified written findings based on a preponderance of the evidence in the record. The act specifies that one way to satisfy that requirement is to make findings that the housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete. The act requires a local agency that proposes to disapprove a housing development project that complies with applicable, objective general plan and zoning standards and criteria that were in effect at the time the application was deemed to be complete, or to approve it on the condition that it be developed at a lower density, to base its decision upon written findings supported by substantial evidence on the record that specified conditions exist, and places the burden of proof on the local agency to that effect. The act requires a court to impose a fine on a local agency under certain circumstances and requires that the fine be at least $10,000 per housing unit in the housing development project on the date the application was deemed complete.

This bill, until January 1, 2025, would specify that an application is deemed complete for these purposes if a preliminary application was submitted, as described below.

Existing law authorizes the applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization to bring an action to enforce the Housing Accountability Act. If, in that action, a court finds that a local agency failed to satisfy the requirement to make the specified findings described above, existing law requires the court to issue an order or judgment compelling compliance with the act within 60 days, as specified.

This bill, until January 1, 2025, would additionally require a court to issue the order or judgment previously described if the local agency required or attempted to require certain housing development projects to comply with an ordinance, policy, or standard not adopted and in effect when a preliminary application was submitted.

Existing law authorizes a local agency to require a housing development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need, as specified.

This bill, until January 1, 2025, would, notwithstanding those provisions or any other law and with certain exceptions, require that a housing development project only be subject to the ordinances, policies, and standards adopted and in effect when a preliminary application is submitted, except as specified.

(2) The Planning and Zoning Law, except as provided, requires that a public hearing be held on an application for a variance from the requirements of a zoning ordinance, an application for a conditional use permit or equivalent development permit, a proposed revocation or modification of a variance or use permit or equivalent development permit, or an appeal from the action taken on any of those applications. That law requires that notice of a public hearing be provided in accordance with specified procedures.

This bill, until January 1, 2025, would prohibit a city or county from conducting more than 5 hearings, as defined, held pursuant to these provisions, or any other law, ordinance, or regulation requiring a public hearing, if a proposed housing development project complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete, as defined. The bill would require the city or county to consider and either approve or disapprove the housing development project at any of the 5 hearings consistent with the applicable timelines under the Permit Streamlining Act.

(3) The Permit Streamlining Act, which is part of the Planning and Zoning Law, requires each state agency and each local agency to compile one or more lists that specify in detail the information that will be required from any applicant for a development project. That law requires the state or local agency to make copies of this information available to all applicants for development projects and to any persons who request the information.

The bill, until January 1, 2025, for purposes of any state or local law, ordinance, or regulation that requires a city or county to determine whether the site of a proposed housing development project is a historic site, would require the city or county to make that determination, which would remain valid for the pendency of the housing development, at the time the application is deemed complete, except as provided. The bill, until January 1, 2025, would also require that each local agency make copies of any above-described list with respect to information required from an applicant for a housing development project available both (A) in writing to those persons to whom the agency is required to make information available and (B) publicly available on the internet website of the local agency.

The Permit Streamlining Act requires public agencies to approve or disapprove of a development project within certain timeframes, as specified. The act requires a public agency, upon its determination that an application for a development project is incomplete, to include a list and a thorough description of the specific information needed to complete the application. Existing law authorizes the applicant to submit the additional material to the public agency, requires the public agency to determine whether the submission of the application together with the submitted materials is complete within 30 days of receipt, and provides for an appeal process from the public agency's determination. Existing law requires a final written determination by the agency on the appeal no later than 60 days after receipt of the applicant's written appeal.

This bill, until January 1, 2025, would provide that a housing development project, as defined, shall be deemed to have submitted a preliminary application upon providing specified information about the proposed project to the city or county from which approval for the project is being sought. The bill would require each local agency to compile a checklist and application form that applicants for housing development projects may use for that purpose and would require the Department of Housing and Community Development to adopt a standardized form for applicants seeking approval from a local agency that has not developed its own application form. After the submittal of a preliminary application, the bill would provide that a housing development project would not be deemed to have submitted a preliminary application under these provisions if the development proponent revises the project such that the number of residential units or square footage of construction changes by 20% or more until the development proponent resubmits the information required by the bill so that it reflects the revisions. The bill would require a development proponent to submit an application for a development project that includes all information necessary for the agency to review the application under the Permit Streamlining Act within 180 days of submitting the preliminary application.

The bill, until January 1, 2025, would require the lead agency, as defined, if the application is determined to be incomplete, to provide the applicant with an exhaustive list of items that were not complete, as specified.

The Permit Streamlining Act generally requires that a public agency that is the lead agency for a development project approve or disapprove a project within 120 days from the date of certification by the lead agency of an environmental impact report prepared for certain development projects, but reduces this time period to 90 days from the certification of an environmental impact report for development projects meeting certain additional conditions relating to affordability. Existing law defines "development project" for these purposes to mean a use consisting of either residential units only or mixed-use developments consisting of residential and nonresidential uses that satisfy certain other requirements.

This bill, until January 1, 2025, would reduce the time period in which a lead agency under these provisions is required to approve or disapprove a project from 120 days to 90 days, for a development project generally described above, and from 90 days to 60 days, for a development project that meets the above-described affordability conditions. The bill would recast the definition of "development project" for these purposes to mean a housing development project, as defined in the Housing Accountability Act.

(4) The Planning and Zoning Law, among other things, requires the legislative body of each county and city to adopt a comprehensive, long-term general plan for the physical development of the county or city and of any land outside its boundaries that relates to its planning. That law authorizes the legislative body, if it deems it to be in the public interest, to amend all or part of an adopted general plan, as provided. That law also authorizes the legislative body of any county or city, pursuant to specified procedures, to adopt ordinances that, among other things, regulate the use of buildings, structures, and land as between industry, business, residences, open space, and other purposes.

This bill, until January 1, 2025, with respect to land where housing is an allowable use, except as specified, would prohibit a county or city, including the electorate exercising its local initiative or referendum power, in which specified conditions exist, determined by the Department of Housing and Community Development as provided, from enacting a development policy, standard, or condition, as defined, that would have the effect of (A) changing the land use designation or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing zoning district below what was allowed under the general plan or specific plan land use designation and zoning ordinances of the county or city as in effect on January 1, 2018; (B) imposing or enforcing a moratorium on housing development within all or a portion of the jurisdiction of the county or city, except as provided; (C) imposing or enforcing new design standards established on or after January 1, 2020, that are not objective design standards, as defined; or (D) establishing or implementing certain limits on the number of permits issued by, or the population of, the county or city, unless the limit was approved prior to January 1, 2005, in a predominantly agricultural county, as defined. The bill would, notwithstanding these prohibitions, allow a city or county to prohibit the commercial use of land zoned for residential use consistent with the authority of the city or county conferred by other law. The bill would state that these prohibitions would apply to any zoning ordinance adopted or amended on or after the effective date of these provisions, and that any development policy, standard, or condition on or after that date that does not comply would be deemed void.

This bill would also require a project that requires the demolition of housing to comply with specified requirements, including the provision of relocation assistance and a right of first refusal in the new housing to displaced occupants, as provided. The bill would provide that these provisions do not supersede any provision of a locally adopted ordinance that places greater restrictions on the demolition of residential dwelling units or that requires greater relocation assistance to displaced households. The bill would require a county or city subject to these provisions to include information necessary to determine compliance with these provisions in the list or lists that specify the information that will be required from any applicant for a development project under the Permit Streamlining Act.

The bill would state that these prohibitions would prevail over any conflicting provision of the Planning and Zoning Law or other law regulating housing development in this state, except as specifically provided. The bill would also require that any exception to these provisions, including an exception for the health and safety of occupants of a housing development project, be construed narrowly.

(5) This bill would include findings that the changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

(6) By imposing various new requirements and duties on local planning officials with respect to housing development, and by changing the scope of a crime under the State Housing Law, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(7) This bill would provide that its provisions are severable.
Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known, and may be cited, as the Housing Crisis Act of 2019.

SEC. 2. (a) The Legislature finds and declares the following:

(1) California is experiencing a housing supply crisis, with housing demand far outstripping supply. In 2018, California ranked 49th out of the 50 states in housing units per capita.

(2) Consequently, existing housing in this state, especially in its largest cities, has become very expensive. Seven of the 10 most expensive real estate markets in the United States are in California. In San Francisco, the median home price is $1.6 million.

(3) California is also experiencing rapid year-over-year rent growth with three cities in the state having had overall rent growth of 10 percent or more year-over-year, and of the 50 United States cities with the highest United States rents, 33 are cities in California.

(4) California needs an estimated 180,000 additional homes annually to keep up with population growth, and the Governor has called for 3.5 million new homes to be built over the next 7 years.

(5) The housing crisis has particularly exacerbated the need for affordable homes at prices below market rates.

(6) The housing crisis harms families across California and has resulted in all of the following:

(A) Increased poverty and homelessness, especially first-time homelessness.

(B) Forced lower income residents into crowded and unsafe housing in urban areas.

(C) Forced families into lower cost new housing in greenfields at the urban-rural interface with longer commute times and a higher exposure to fire hazard.

(D) Forced public employees, health care providers, teachers, and others, including critical safety personnel, into more affordable housing farther from the communities they serve, which will exacerbate future disaster response challenges in high-cost, high-congestion areas and increase risk to life.

(E) Driven families out of the state or into communities away from good schools and services, making the ZIP Code where one grew up the largest determinate of later access to opportunities and social mobility, disrupting family life, and increasing health problems due to long commutes that may exceed three hours per day.

(7) The housing crisis has been exacerbated by the additional loss of units due to wildfires in 2017 and 2018, which impacts all regions of the state. The Carr Fire in 2017 alone burned over 1,000 homes, and over 50,000 people have been displaced by the Camp Fire and the Woolsey Fire in 2018. This temporary and permanent displacement has placed additional demand on the housing market and has resulted in fewer housing units available for rent by low-income individuals.

(8) Individuals who lose their housing due to fire or the sale of the property cannot find affordable homes or rental units and are pushed into cars and tents.

(9) Costs for construction of new housing continue to increase. According to the Terner Center for Housing Innovation at the University of California, Berkeley, the cost of building a 100-unit affordable housing project in the state was almost $425,000 per unit in 2016, up from $265,000 per unit in 2000.

(10) Lengthy permitting processes and approval times, fees and costs for parking, and other requirements further exacerbate cost of residential construction.

(11) The housing crisis is severely impacting the state's economy as follows:

(A) Employers face increasing difficulty in securing and retaining a workforce.

(B) Schools, universities, nonprofits, and governments have difficulty attracting and retaining teachers, students, and employees, and our schools and critical services are suffering.

(C) According to analysts at McKinsey and Company, the housing crisis is costing California $140 billion a year in lost economic output.

(12) The housing crisis also harms the environment by doing both of the following:

(A) Increasing pressure to develop the state's farmlands, open space, and rural interface areas to build affordable housing, and increasing fire hazards that generate massive greenhouse gas emissions.

(B) Increasing greenhouse gas emissions from longer commutes to affordable homes far from growing job centers.

(13) Homes, lots, and structures near good jobs, schools, and transportation remain underutilized throughout the state and could be rapidly remodeled or developed to add affordable homes without subsidy where they are needed with state assistance.

(14) Reusing existing infrastructure and developed properties, and building more smaller homes with good access to schools, parks, and services, will provide the most immediate help with the lowest greenhouse gas footprint to state residents.

(b) In light of the foregoing, the Legislature hereby declares a statewide housing emergency, to be in effect until January 1, 2025.

(c) It is the intent of the Legislature, in enacting the Housing Crisis Act of 2019, to do both of the following:

(1) Suspend certain restrictions on the development of new housing during the period of the statewide emergency described in subdivisions (a) and (b).

(2) Work with local governments to expedite the permitting of housing in regions suffering the worst housing shortages and highest rates of displacement.

SEC. 3. Section 65589.5 of the Government Code is amended to read:

65589.5. (a) (1) The Legislature finds and declares all of the following:

(A) The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California.

(B) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(C) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(D) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects.

(2) In enacting the amendments made to this section by the act adding this paragraph, the Legislature further finds and declares the following:

(A) California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and

businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives.

(B) While the causes of this crisis are multiple and complex, the absence of meaningful and effective policy reforms to significantly enhance the approval and supply of housing affordable to Californians of all income levels is a key factor.

(C) The crisis has grown so acute in California that supply, demand, and affordability fundamentals are characterized in the negative: underserved demands, constrained supply, and protracted unaffordability.

(D) According to reports and data, California has accumulated an unmet housing backlog of nearly 2,000,000 units and must provide for at least 180,000 new units annually to keep pace with growth through 2025.

(E) California's overall homeownership rate is at its lowest level since the 1940s. The state ranks 49th out of the 50 states in homeownership rates as well as in the supply of housing per capita. Only one-half of California's households are able to afford the cost of housing in their local regions.

(F) Lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians.

(G) The majority of California renters, more than 3,000,000 households, pay more than 30 percent of their income toward rent and nearly one-third, more than 1,500,000 households, pay more than 50 percent of their income toward rent.

(H) When Californians have access to safe and affordable housing, they have more money for food and health care; they are less likely to become homeless and in need of government-subsidized services; their children do better in school; and businesses have an easier time recruiting and retaining employees.

(I) An additional consequence of the state's cumulative housing shortage is a significant increase in greenhouse gas emissions caused by the displacement and redirection of populations to states with greater housing opportunities, particularly working- and middle-class households. California's cumulative housing shortfall therefore has not only national but international environmental consequences.

(J) California's housing picture has reached a crisis of historic proportions despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing for all income levels, including this section.

(K) The Legislature's intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters. That intent has not been fulfilled.

(L) It is the policy of the state that this section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.

(3) It is the intent of the Legislature that the conditions that would have a specific, adverse impact upon the public health and safety, as described in paragraph (2) of subdivision (d) and paragraph (1) of subdivision (j), arise infrequently.

(b) It is the policy of the state that a local government not reject or make infeasible housing development projects, including emergency shelters, that contribute to meeting the need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, for very low, low-, or moderate-income

households, or an emergency shelter, or condition approval in a manner that renders the housing development project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the housing development project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The housing development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

(3) The denial of the housing development project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.

(4) The housing development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) The housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article. For purposes of this section, a change to the zoning ordinance or general plan land use designation subsequent to the date the application was deemed complete shall not constitute a valid basis to disapprove or condition approval of the housing development project or emergency shelter.

(A) This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the housing development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.

(B) If the local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of the regional housing need for the very low, low-, and moderate-income categories.

(C) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the congestion management program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) (1) Except as provided in subdivision (o), nothing in this section shall be construed to prohibit a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development.

(2) Except as provided in subdivision (o), nothing in this section shall be construed to prohibit a local agency from requiring an emergency shelter project to comply with objective, quantifiable, written development standards, conditions, and policies that are consistent with paragraph (4) of subdivision (a) of Section 65583 and appropriate to, and consistent with, meeting the jurisdiction's need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. However, the development standards, conditions, and policies shall be applied by the local agency to facilitate and accommodate the development of the emergency shelter project.

(3) Except as provided in subdivision (o), nothing in this section shall be construed to prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the housing development project or emergency shelter.

(4) For purposes of this section, a housing development project or emergency shelter shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing, including emergency shelter, is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Housing development project" means a use consisting of any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.

(C) Transitional housing or supportive housing.

(3) "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to persons and families of moderate income as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income,

as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate-income eligibility limits are based.

(4) "Area median income" means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(5) Notwithstanding any other law, until January 1, 2025, "deemed complete" means that the applicant has submitted a preliminary application pursuant to Section 65941.1.

(6) "Disapprove the housing development project" includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit.

(B) Fails to comply with the time periods specified in subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(7) "Lower density" includes any conditions that have the same effect or impact on the ability of the project to provide housing.

(8) Until January 1, 2025, "objective" means involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.

(9) Notwithstanding any other law, until January 1, 2025, "determined to be complete" means that the applicant has submitted a complete application pursuant to Section 65943.

(i) If any city, county, or city and county denies approval or imposes conditions, including design changes, lower density, or a reduction of the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the housing development project's application is deemed complete, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of conditions on the development is the subject of a court action which challenges the denial or the imposition of conditions, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d), and that the findings are supported by a preponderance of the evidence in the record, and with the requirements of subdivision (o).

(j) (1) When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(2) (A) If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity as follows:

(i) Within 30 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains 150 or fewer housing units.

(ii) Within 60 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains more than 150 units.

(B) If the local agency fails to provide the required documentation pursuant to subparagraph (A), the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.

(3) For purposes of this section, the receipt of a density bonus pursuant to Section 65915 shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.

(4) For purposes of this section, a proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan. If the local agency has complied with paragraph (2), the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning which is consistent with the general plan, however, the standards and criteria shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project.

(k) (1) (A) (i) The applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization may bring an action to enforce this section. If, in any action brought to enforce this section, a court finds that any of the following are met, the court shall issue an order pursuant to clause (ii):

(I) The local agency, in violation of subdivision (d), disapproved a housing development project or conditioned its approval in a manner rendering it infeasible for the development of an emergency shelter, or housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section or without making findings supported by a preponderance of the evidence.

(II) The local agency, in violation of subdivision (j), disapproved a housing development project complying with applicable, objective general plan and zoning standards and criteria, or imposed a condition that the project be developed at a lower density, without making the findings required by this section or without making findings supported by a preponderance of the evidence.

(III) (ia) Subject to sub-subclause (ib), the local agency, in violation of subdivision (o), required or attempted to require a housing development project to comply with an ordinance, policy, or standard not adopted and in effect when a preliminary application was submitted.

(ib) This subclause shall become inoperative on January 1, 2025.

(ii) If the court finds that one of the conditions in clause (i) is met, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the housing development project or emergency shelter. The court may issue an order or judgment directing the local agency to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney’s fees and costs of suit to the plaintiff or petitioner, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section.

(B) (i) Upon a determination that the local agency has failed to comply with the order or judgment compelling compliance with this section within 60 days issued pursuant to subparagraph (A), the court shall impose fines on a local agency that has violated this section and require the local agency to deposit any fine levied pursuant to this subdivision into a local housing trust fund. The local agency may elect to instead deposit the fine into the Building Homes and Jobs Fund, if Senate Bill 2 of the 2017–18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund. The fine shall be in a minimum amount of ten thousand dollars ($10,000) per housing unit in the housing development project on the date the application was deemed complete pursuant to Section 65943. In determining the amount of fine to impose, the court shall consider the local agency's progress in attaining its target allocation of the regional housing need pursuant to Section 65584 and any prior violations of this section. Fines shall not be paid out of funds already dedicated to affordable housing, including, but not limited to, Low and Moderate Income Housing Asset Funds, funds dedicated to housing for very low, low-, and moderate-income households, and federal HOME Investment Partnerships Program and Community Development Block Grant Program funds. The local agency shall commit and expend the money in the local housing trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households. After five years, if the funds have not been expended, the money shall revert to the state and be deposited in the Building Homes and Jobs Fund, if Senate Bill 2 of the 2017–18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund, for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households.

(ii) If any money derived from a fine imposed pursuant to this subparagraph is deposited in the Housing Rehabilitation Loan Fund, then, notwithstanding Section 50661 of the Health and Safety Code, that money shall be available only upon appropriation by the Legislature.

(C) If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency and to approve the housing development project, in which case the application for the housing development project, as proposed by the applicant at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed to be approved unless the applicant consents to a different decision or action by the local agency.

(2) For purposes of this subdivision, "housing organization" means a trade or industry group whose local members are primarily engaged in the construction or management of housing units or a nonprofit organization whose mission includes providing or advocating for increased access to housing for low-income households and have filed written or oral comments with the local agency prior to action on the housing development project. A housing organization may only file an action pursuant to this section to challenge the disapproval of a housing development by a local agency. A housing organization shall be entitled to reasonable attorney's fees and costs if it is the prevailing party in an action to enforce this section.

(l) If the court finds that the local agency (1) acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section and (2) failed to carry out the court's order or judgment within 60 days as described in subdivision (k), the court, in addition to any other remedies provided by this section, shall multiply the fine determined pursuant to subparagraph (B) of paragraph (1) of subdivision (k) by a factor of five. For purposes of this section, "bad faith" includes, but is not limited to, an action that is frivolous or otherwise entirely without merit.

(m) Any action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure, and the local agency shall prepare and certify the record of proceedings in accordance with subdivision (c) of Section 1094.6 of the Code of Civil Procedure no later than 30 days after the petition is served, provided that the cost of preparation of the record shall be borne by the local agency, unless the petitioner elects to prepare the record as provided in subdivision (n) of this section. A petition to enforce the provisions of this section shall be filed and served no later than 90 days from the later of (1) the effective date of a decision of the local agency imposing conditions on, disapproving, or any other final action on a housing development project or (2) the expiration of the time periods specified in subparagraph (B) of paragraph (5) of subdivision (h). Upon entry of the trial court's order, a party may, in order to obtain appellate review of the order, file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow, or may appeal the judgment or order of the trial court under Section 904.1 of the Code of Civil Procedure. If the local agency

appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.

(n) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure or subdivision (m) of this section, all or part of the record may be prepared (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

(o) (1) Subject to paragraphs (2), (6), and (7), and subdivision (d) of Section 65941.1, a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application including all of the information required by subdivision (a) of Section 65941.1 was submitted.

(2) Paragraph (1) shall not prohibit a housing development project from being subject to ordinances, policies, and standards adopted after the preliminary application was submitted pursuant to Section 65941.1 in the following circumstances:

(A) In the case of a fee, charge, or other monetary exaction, to an increase resulting from an automatic annual adjustment based on an independently published cost index that is referenced in the ordinance or resolution establishing the fee or other monetary exaction.

(B) A preponderance of the evidence in the record establishes that subjecting the housing development project to an ordinance, policy, or standard beyond those in effect when a preliminary application was submitted is necessary to mitigate or avoid a specific, adverse impact upon the public health or safety, as defined in subparagraph (A) of paragraph (1) of subdivision (j), and there is no feasible alternative method to satisfactorily mitigate or avoid the adverse impact.

(C) Subjecting the housing development project to an ordinance, policy, standard, or any other measure, beyond those in effect when a preliminary application was submitted is necessary to avoid or substantially lessen an impact of the project under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(D) The housing development project has not commenced construction within two and one-half years following the date that the project received final approval. For purposes of this subparagraph, "final approval" means that the housing development project has received all necessary approvals to be eligible to apply for, and obtain, a building permit or permits and either of the following is met:

(i) The expiration of all applicable appeal periods, petition periods, reconsideration periods, or statute of limitations for challenging that final approval without an appeal, petition, request for reconsideration, or legal challenge having been filed.

(ii) If a challenge is filed, that challenge is fully resolved or settled in favor of the housing development project.

(E) The housing development project is revised following submittal of a preliminary application pursuant to Section 65941.1 such that the number of residential units or square footage of construction changes by 20 percent or more, exclusive of any increase resulting from the receipt of a density bonus, incentive, concession, waiver, or similar provision. For purposes of this subdivision, "square footage of construction" means the building area, as defined by the California Building Standards Code (Title 24 of the California Code of Regulations).

(3) This subdivision does not prevent a local agency from subjecting the additional units or square footage of construction that result from project revisions occurring after a preliminary application is submitted pursuant to Section 65941.1 to the ordinances, policies, and standards adopted and in effect when the preliminary application was submitted.

(4) For purposes of this subdivision, "ordinances, policies, and standards" includes general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, and any other rules, regulations, requirements, and policies of a local agency, as defined in Section 66000, including those relating to development impact fees, capacity or connection fees or charges, permit or processing fees, and other exactions.

(5) This subdivision shall not be construed in a manner that would lessen the restrictions imposed on a local agency, or lessen the protections afforded to a housing development project, that are established by any other law, including any other part of this section.

(6) This subdivision shall not restrict the authority of a public agency or local agency to require mitigation measures to lessen the impacts of a housing development project under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(7) With respect to completed residential units for which the project approval process is complete and a certificate of occupancy has been issued, nothing in this subdivision shall limit the application of later enacted ordinances, policies, and standards that regulate the use and occupancy of those residential units, such as ordinances relating to rental housing inspection, rent stabilization, restrictions on short-term renting, and business licensing requirements for owners of rental housing.

(8) This subdivision shall become inoperative on January 1, 2025.

(p) This section shall be known, and may be cited, as the Housing Accountability Act.

SEC. 4. Section 65905.5 is added to the Government Code, to read:

65905.5. (a) Notwithstanding any other law, if a proposed housing development project complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete, after the application is deemed complete, a city, county, or city and county shall not conduct more than five hearings pursuant to Section 65905, or any other law, ordinance, or regulation requiring a public hearing in connection with the approval of that housing development project. If the city, county, or city and county continues a hearing subject to this section to another date, the continued hearing shall count as one of the five hearings allowed under this section. The city, county, or city and county shall consider and either approve or disapprove the application at any of the five hearings allowed under this section consistent with the applicable timelines under the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920)).

(b) For purposes of this section:

(1) "Deemed complete" means that the application has met all of the requirements specified in the relevant list compiled pursuant to Section 65940 that was available at the time when the application was submitted.

(2) "Hearing" includes any public hearing, workshop, or similar meeting conducted by the city or county with respect to the housing development project, whether by the legislative body of the city or county, the planning agency established pursuant to Section 65100, or any other agency, department, board, commission, or any other designated hearing officer or body of the city or county, or any committee or subcommittee thereof. "Hearing" does not include a hearing to review a legislative approval required for a proposed housing development project, including, but not limited to, a general plan amendment, a specific plan adoption or amendment, or a zoning amendment, or any hearing arising from a timely appeal of the approval or disapproval of a legislative approval.

(3) "Housing development project" has the same meaning as defined in paragraph (2) of subdivision (h) of Section 65589.5.

(c) (1) For purposes of this section, a housing development project shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project is consistent, compliant, or in conformity.

(2) A proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria, but the zoning for the project site is inconsistent with the general plan. If the local agency complies with the written documentation requirements of paragraph (2) of subdivision (j) of Section 65589.5, the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning that is consistent with the general plan; however, the standards and criteria shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project.

(d) Nothing in this section supersedes, limits, or otherwise modifies the requirements of, or the standards of review pursuant to, Division 13 (commencing with Section 21000) of the Public Resources Code.

(e) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

SEC. 5. Section 65913.10 is added to the Government Code, to read:

65913.10. (a) For purposes of any state or local law, ordinance, or regulation that requires the city or county to determine whether the site of a proposed housing development project is a historic site, the city or county shall make that determination at the time the application for the housing development project is deemed complete. A determination as to whether a parcel of property is a historic site shall remain valid during the pendency of the housing development project for which the application was made unless any archaeological, paleontological, or tribal cultural resources are encountered during any grading, site disturbance, or building alteration activities.

(b) For purposes of this section:

(1) "Deemed complete" means that the application has met all of the requirements specified in the relevant list compiled pursuant to Section 65940 that was available at the time when the application was submitted.

(2) "Housing development project" has the same meaning as defined in paragraph (2) of subdivision (h) of Section 65589.5.

(c) (1) Nothing in this section supersedes, limits, or otherwise modifies the requirements of, or the standards of review pursuant to, Division 13 (commencing with Section 21000) of the Public Resources Code.

(2) Nothing in this section supersedes, limits, or otherwise modifies the requirements of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code).

(d) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

SEC. 6. Section 65940 of the Government Code is amended to read:

65940. (a) (1) Each public agency shall compile one or more lists that shall specify in detail the information that will be required from any applicant for a development project. Each public agency shall revise the list of information required from an applicant to include a certification of compliance with Section 65962.5, and the statement of application required by Section 65943. Copies of the information, including the statement of application required by Section 65943, shall be made available to all applicants for development projects and to any person who requests the information.

(2) An affected city or affected county, as defined in Section 66300, shall include the information necessary to determine compliance with the requirements of subdivision (d) of Section 66300 in the list compiled pursuant to paragraph (1).

(b) The list of information required from any applicant shall include, where applicable, identification of whether the proposed project is located within 1,000 feet of a military installation, beneath a low-level flight path or within special use airspace as defined in Section 21098 of the Public Resources Code, and within an urbanized area as defined in Section 65944.

(c) (1) A public agency that is not beneath a low-level flight path or not within special use airspace and does not contain a military installation is not required to change its list of information required from applicants to comply with subdivision (b).

(2) A public agency that is entirely urbanized, as defined in subdivision (e) of Section 65944, with the exception of a jurisdiction that contains a military installation, is not required to change its list of information required from applicants to comply with subdivision (b).

(d) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

SEC. 7. Section 65940 is added to the Government Code, to read:

65940. (a) Each public agency shall compile one or more lists that shall specify in detail the information that will be required from any applicant for a development project. Each public agency shall revise the list of information required from an applicant to include a certification of compliance with Section 65962.5, and the statement of application required by Section 65943. Copies of the information, including the statement of application required by Section 65943, shall be made available to all applicants for development projects and to any person who requests the information.

(b) The list of information required from any applicant shall include, where applicable, identification of whether the proposed project is located within 1,000 feet of a military installation, beneath a low-level flight path or within special use airspace as defined in Section 21098 of the Public Resources Code, and within an urbanized area as defined in Section 65944.

(c) (1) A public agency that is not beneath a low-level flight path or not within special use airspace and does not contain a military installation is not required to change its list of information required from applicants to comply with subdivision (b).

(2) A public agency that is entirely urbanized, as defined in subdivision (e) of Section 65944, with the exception of a jurisdiction that contains a military installation, is not required to change its list of information required from applicants to comply with subdivision (b).

(d) This section shall become operative on January 1, 2025.

SEC. 8. Section 65941.1 is added to the Government Code, to read:

65941.1. (a) An applicant for a housing development project, as defined in paragraph (2) of subdivision (h) of Section 65589.5, shall be deemed to have submitted a preliminary application upon providing all of the following information about the proposed project to the city, county, or city and county from which approval for the project is being sought and upon payment of the permit processing fee:

(1) The specific location, including parcel numbers, a legal description, and site address, if applicable.

(2) The existing uses on the project site and identification of major physical alterations to the property on which the project is to be located.

(3) A site plan showing the location on the property, elevations showing design, color, and material, and the massing, height, and approximate square footage, of each building that is to be occupied.

(4) The proposed land uses by number of units and square feet of residential and nonresidential development using the categories in the applicable zoning ordinance.

(5) The proposed number of parking spaces.

(6) Any proposed point sources of air or water pollutants.

(7) Any species of special concern known to occur on the property.

(8) Whether a portion of the property is located within any of the following:

(A) A very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178.

(B) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(C) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code.

(D) A special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency.

(E) A delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(F) A stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code.

(9) Any historic or cultural resources known to exist on the property.

(10) The number of proposed below market rate units and their affordability levels.

(11) The number of bonus units and any incentives, concessions, waivers, or parking reductions requested pursuant to Section 65915.

(12) Whether any approvals under the Subdivision Map Act, including, but not limited to, a parcel map, a tentative map, or a condominium map, are being requested.

(13) The applicant's contact information and, if the applicant does not own the property, consent from the property owner to submit the application.

(14) For a housing development project proposed to be located within the coastal zone, whether any portion of the property contains any of the following:

(A) Wetlands, as defined in subdivision (b) of Section 13577 of Title 14 of the California Code of Regulations.

(B) Environmentally sensitive habitat areas, as defined in Section 30240 of the Public Resources Code.

(C) A tsunami run-up zone.

(D) Use of the site for public access to or along the coast.

(15) The number of existing residential units on the project site that will be demolished and whether each existing unit is occupied or unoccupied.

(16) A site map showing a stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code and an aerial site photograph showing existing site conditions of environmental site features that would be subject to regulations by a public agency, including creeks and wetlands.

(17) The location of any recorded public easement, such as easements for storm drains, water lines, and other public rights of way.

(b) (1) Each local agency shall compile a checklist and application form that applicants for housing development projects may use for the purpose of satisfying the requirements for submittal of a preliminary application.

(2) The Department of Housing and Community Development shall adopt a standardized form that applicants for housing development projects may use for the purpose of satisfying the requirements for submittal of a preliminary application if a local agency has not developed its own application form pursuant to paragraph (1). Adoption of the standardized form shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(3) A checklist or form shall not require or request any information beyond that expressly identified in subdivision (a).

(c) After submittal of all of the information required by subdivision (a), if the development proponent revises the project such that the number of residential units or square footage of construction changes by 20 percent or more, exclusive of any increase resulting from the receipt of a density bonus, incentive, concession, waiver, or similar provision, the housing development project shall not be deemed to have submitted a preliminary application that satisfies this section until the development proponent resubmits the information required by subdivision (a) so that it reflects the revisions. For purposes of this subdivision, "square footage of construction" means the building area, as defined by the California Building Standards Code (Title 24 of the California Code of Regulations).

(d) (1) Within 180 calendar days after submitting a preliminary application with all of the information required by subdivision (a) to a city, county, or city and county, the development proponent shall submit an application for a development project that includes all of the information required to process the development application consistent with Sections 65940, 65941, and 65941.5.

(2) If the public agency determines that the application for the development project is not complete pursuant to Section 65943, the development proponent shall submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information. If the development proponent does not submit this information within the 90-day period, then the preliminary application shall expire and have no further force or effect.

(3) This section shall not require an affirmative determination by a city, county, or city and county regarding the completeness of a preliminary application or a development application for purposes of compliance with this section.

(e) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

SEC. 9. Section 65943 of the Government Code is amended to read:

65943. (a) Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project. If the application is determined to be incomplete, the lead agency shall provide the applicant with an exhaustive list of items that were not complete. That list shall be limited to those items actually required on the lead agency's submittal requirement checklist. In any subsequent review of the application determined to be incomplete, the local agency shall not request the applicant to provide any new information that was not stated in the initial list of items that were not complete. If the written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this chapter. Upon receipt of any resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application. If the application is determined not to be complete, the agency's determination shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application. The applicant shall submit materials to the public agency in response to the list and description.

(b) Not later than 30 calendar days after receipt of the submitted materials described in subdivision (a), the public agency shall determine in writing whether the application as supplemented or amended by the submitted materials is complete and shall immediately transmit that determination to the applicant. In making this determination, the public agency is limited to determining whether the application as supplemented or amended includes the information required by the list and a thorough description of the specific information needed to complete the application required by subdivision (a). If the written determination is not made within that 30-day period, the application together with the submitted materials shall be deemed complete for purposes of this chapter.

(c) If the application together with the submitted materials are determined not to be complete pursuant to subdivision (b), the public agency shall provide a process for the applicant to appeal that decision in writing to the governing body of the agency or, if there is no governing body, to the director of the agency, as provided by that agency. A city or county shall provide that the right of appeal is to the governing body or, at their option, the planning commission, or both.

There shall be a final written determination by the agency on the appeal not later than 60 calendar days after receipt of the applicant's written appeal. The fact that an appeal is permitted to both the planning commission and to the governing body does not extend the 60-day period. Notwithstanding a decision pursuant to subdivision (b) that the application and submitted materials are not complete, if the final written determination on the appeal is not made within that 60-day period, the application with the submitted materials shall be deemed complete for the purposes of this chapter.

(d) Nothing in this section precludes an applicant and a public agency from mutually agreeing to an extension of any time limit provided by this section.

(e) A public agency may charge applicants a fee not to exceed the amount reasonably necessary to provide the service required by this section. If a fee is charged pursuant to this section, the fee shall be collected as part of the application fee charged for the development permit.

(f) Each city and each county shall make copies of any list compiled pursuant to Section 65940 with respect to information required from an applicant for a housing development project, as that term is defined in paragraph (2) of subdivision (h) of Section 65589.5, available both (1) in writing to those persons to whom the agency is required to make information available under subdivision (a) of that section, and (2) publicly available on the internet website of the city or county.

(g) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

SEC. 10. Section 65943 is added to the Government Code, to read:

65943. (a) Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project. If the written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this chapter. Upon receipt of any resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application. If the application is determined not to be complete, the agency's determination shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application. The applicant shall submit materials to the public agency in response to the list and description.

(b) Not later than 30 calendar days after receipt of the submitted materials, the public agency shall determine in writing whether they are complete and shall immediately transmit that determination to the applicant. If the written determination is not made within that 30-day period, the application together with the submitted materials shall be deemed complete for purposes of this chapter.

(c) If the application together with the submitted materials are determined not to be complete pursuant to subdivision (b), the public agency shall provide a process for the applicant to appeal that decision in writing to the governing body of the agency or, if there is no governing body, to the director of the agency, as provided by that agency. A city or county shall provide that the right of appeal is to the governing body or, at their option, the planning commission, or both.

There shall be a final written determination by the agency on the appeal not later than 60 calendar days after receipt of the applicant's written appeal. The fact that an appeal is permitted to both the planning commission and to the governing body does not extend the 60-day period. Notwithstanding a decision pursuant to subdivision (b) that the application and submitted materials are not complete, if the final written determination on the appeal is not made within that 60-day period, the application with the submitted materials shall be deemed complete for the purposes of this chapter.

(d) Nothing in this section precludes an applicant and a public agency from mutually agreeing to an extension of any time limit provided by this section.

(e) A public agency may charge applicants a fee not to exceed the amount reasonably necessary to provide the service required by this section. If a fee is charged pursuant to this section, the fee shall be collected as part of the application fee charged for the development permit.

(f) This section shall become operative on January 1, 2025.

SEC. 11. Section 65950 of the Government Code is amended to read:

65950. (a) A public agency that is the lead agency for a development project shall approve or disapprove the project within whichever of the following periods is applicable:

(1) One hundred eighty days from the date of certification by the lead agency of the environmental impact report, if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for the development project.

(2) Ninety days from the date of certification by the lead agency of the environmental impact report, if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for a development project defined in subdivision (c).

(3) Sixty days from the date of certification by the lead agency of the environmental impact report, if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for a development project defined in subdivision (c) and all of the following conditions are met:

(A) At least 49 percent of the units in the development project are affordable to very low or low-income households, as defined by Sections 50105 and 50079.5 of the Health and Safety Code, respectively. Rents for the lower income units shall be set at an affordable rent, as that term is defined in Section 50053 of the Health and Safety Code, for at least 30 years. Owner-occupied units shall be available at an affordable housing cost, as that term is defined in Section 50052.5 of the Health and Safety Code.

(B) Prior to the application being deemed complete for the development project pursuant to Article 3 (commencing with Section 65940), the lead agency received written notice from the project applicant that

an application has been made or will be made for an allocation or commitment of financing, tax credits, bond authority, or other financial assistance from a public agency or federal agency, and the notice specifies the financial assistance that has been applied for or will be applied for and the deadline for application for that assistance, the requirement that one of the approvals of the development project by the lead agency is a prerequisite to the application for or approval of the application for financial assistance, and that the financial assistance is necessary for the project to be affordable as required pursuant to subparagraph (A).

(C) There is confirmation that the application has been made to the public agency or federal agency prior to certification of the environmental impact report.

(4) Sixty days from the date of adoption by the lead agency of the negative declaration, if a negative declaration is completed and adopted for the development project.

(5) Sixty days from the determination by the lead agency that the project is exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), if the project is exempt from that act.

(b) This section does not preclude a project applicant and a public agency from mutually agreeing in writing to an extension of any time limit provided by this section pursuant to Section 65957.

(c) For purposes of paragraphs (2) and (3) of subdivision (a) and Section 65952, "development project" means a housing development project, as that term is defined in paragraph (2) of subdivision (h) of Section 65589.5.

(d) For purposes of this section, "lead agency" and "negative declaration" have the same meaning as defined in Sections 21067 and 21064 of the Public Resources Code, respectively.

(e) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

SEC. 12. Section 65950 is added to the Government Code, to read:

65950. (a) A public agency that is the lead agency for a development project shall approve or disapprove the project within whichever of the following periods is applicable:

(1) One hundred eighty days from the date of certification by the lead agency of the environmental impact report, if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for the development project.

(2) One hundred twenty days from the date of certification by the lead agency of the environmental impact report, if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for a development project defined in subdivision (c).

(3) Ninety days from the date of certification by the lead agency of the environmental impact report, if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for a development project defined in subdivision (c) and all of the following conditions are met:

(A) At least 49 percent of the units in the development project are affordable to very low or low-income households, as defined by Sections 50105 and 50079.5 of the Health and Safety Code, respectively. Rents for the lower income units shall be set at an affordable rent, as that term is defined in Section 50053 of the Health and Safety Code, for at least 30 years. Owner-occupied units shall be available at an affordable housing cost, as that term is defined in Section 50052.5 of the Health and Safety Code.

(B) Prior to the application being deemed complete for the development project pursuant to Article 3 (commencing with Section 65940), the lead agency received written notice from the project applicant that an application has been made or will be made for an allocation or commitment of financing, tax credits, bond authority, or other financial assistance from a public agency or federal agency, and the notice specifies the financial assistance that has been applied for or will be applied for and the deadline for application for that assistance, the requirement that one of the approvals of the development project by the lead agency is a prerequisite to the application for or approval of the application for financial assistance, and that the financial assistance is necessary for the project to be affordable as required pursuant to subparagraph (A).

(C) There is confirmation that the application has been made to the public agency or federal agency prior to certification of the environmental impact report.

(4) Sixty days from the date of adoption by the lead agency of the negative declaration, if a negative declaration is completed and adopted for the development project.

(5) Sixty days from the determination by the lead agency that the project is exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), if the project is exempt from that act.

(b) This section does not preclude a project applicant and a public agency from mutually agreeing in writing to an extension of any time limit provided by this section pursuant to Section 65957.

(c) For purposes of paragraphs (2) and (3) of subdivision (a) and Section 65952, "development project" means a use consisting of either of the following:

(1) Residential units only.

(2) Mixed-use developments consisting of residential and nonresidential uses in which the nonresidential uses are less than 50 percent of the total square footage of the development and are limited to neighborhood commercial uses and to the first floor of buildings that are two or more stories. As used in this paragraph, "neighborhood commercial" means small-scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood.

(d) For purposes of this section, "lead agency" and "negative declaration" have the same meaning as defined in Sections 21067 and 21064 of the Public Resources Code, respectively.

(e) This section shall become operative on January 1, 2025.

SEC. 13. Chapter 12 (commencing with Section 66300) is added to Division 1 of Title 7 of the Government Code, to read:

CHAPTER 12. Housing Crisis Act of 2019

66300. (a) As used in this section:

(1) (A) Except as otherwise provided in subparagraph (B), "affected city" means a city, including a charter city, that the Department of Housing and Community Development determines, pursuant to subdivision (e), is in an urbanized area or urban cluster, as designated by the United States Census Bureau.

(B) Notwithstanding subparagraph (A), "affected city" does not include any city that has a population of 5,000 or less and is not located within an urbanized area, as designated by the United States Census Bureau.

(2) "Affected county" means a census designated place, based on the 2013-2017 American Community Survey 5-year Estimates, that is wholly located within the boundaries of an urbanized area, as designated by the United States Census Bureau.

(3) Notwithstanding any other law, "affected county" and "affected city" includes the electorate of an affected county or city exercising its local initiative or referendum power, whether that power is derived from the California Constitution, statute, or the charter or ordinances of the affected county or city.

(4) "Department" means the Department of Housing and Community Development.

(5) "Development policy, standard, or condition" means any of the following:

(A) A provision of, or amendment to, a general plan.

(B) A provision of, or amendment to, a specific plan.

(C) A provision of, or amendment to, a zoning ordinance.

(D) A subdivision standard or criterion.

(6) "Housing development project" has the same meaning as defined in paragraph (2) of subdivision (h) of Section 65589.5.

(7) "Objective design standard" means a design standard that involve no personal or subjective judgment by a public official and is uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal of an application.

(b) (1) Notwithstanding any other law except as provided in subdivision (i), with respect to land where housing is an allowable use, an affected county or an affected city shall not enact a development policy, standard, or condition that would have any of the following effects:

(A) Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018, except as otherwise provided in clause (ii) of subparagraph (B). For purposes of this subparagraph, "less intensive use" includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or anything that would lessen the intensity of housing.

(B) (i) Imposing a moratorium or similar restriction or limitation on housing development, including mixed-use development, within all or a portion of the jurisdiction of the affected county or city, other than to specifically protect against an imminent threat to the health and safety of persons residing in, or within the immediate vicinity of, the area subject to the moratorium or for projects specifically identified as existing restricted affordable housing.

(ii) The affected county or affected city, as applicable, shall not enforce a zoning ordinance imposing a moratorium or other similar restriction on or limitation of housing development until it has submitted the ordinance to, and received approval from, the department. The department shall approve a zoning ordinance submitted to it pursuant to this subparagraph only if it determines that the zoning ordinance satisfies the requirements of this subparagraph. If the department denies approval of a zoning ordinance imposing a moratorium or similar restriction or limitation on housing development as inconsistent with this subparagraph, that ordinance shall be deemed void.

(C) Imposing or enforcing design standards established on or after January 1, 2020, that are not objective design standards.

(D) Except as provided in subparagraph (E), establishing or implementing any provision that:

(i) Limits the number of land use approvals or permits necessary for the approval and construction of housing that will be issued or allocated within all or a portion of the affected county or affected city, as applicable.

(ii) Acts as a cap on the number of housing units that can be approved or constructed either annually or for some other time period.

(iii) Limits the population of the affected county or affected city, as applicable.

(E) Notwithstanding subparagraph (D), an affected county or affected city may enforce a limit on the number of approvals or permits or a cap on the number of housing units that can be approved or constructed if the provision of law imposing the limit was approved by voters prior to January 1, 2005, and the affected county or affected city is located in a predominantly agricultural county. For the purposes of this subparagraph, "predominantly agricultural county" means a county that meets both of the following, as determined by the most recent California Farmland Conversion Report produced by the Department of Conservation:

(i) Has more than 550,000 acres of agricultural land.

(ii) At least one-half of the county area is agricultural land.

(2) Any development policy, standard, or condition enacted on or after the effective date of this section that does not comply with this section shall be deemed void.

(c) Notwithstanding subdivisions (b) and (f), an affected county or affected city may enact a development policy, standard, or condition to prohibit the commercial use of land that is designated for residential use, including, but not limited to, short-term occupancy of a residence, consistent with the authority conferred on the county or city by other law.

(d) Notwithstanding any other provision of this section, both of the following shall apply:

(1) An affected city or an affected county shall not approve a housing development project that will require the demolition of residential dwelling units unless the project will create at least as many residential dwelling units as will be demolished.

(2) An affected city or an affected county shall not approve a housing development project that will require the demolition of occupied or vacant protected units, unless all of the following apply:

(A) (i) The project will replace all existing or demolished protected units.

(ii) Any protected units replaced pursuant to this subparagraph shall be considered in determining whether the housing development project satisfies the requirements of Section 65915 or a locally adopted requirement that requires, as a condition of the development of residential rental units, that the project provide a certain percentage of residential rental units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income households, as specified in Sections 50079.5, 50093, 50105, and 50106 of the Health and Safety Code.

(iii) Notwithstanding clause (i), in the case of a protected unit that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government's valid exercise of its police power, and that is or was occupied by persons or families above lower income, the affected city or affected county may do either of the following:

(I) Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years.

(II) Require that the units be replaced in compliance with the jurisdiction's rent or price control ordinance, provided that each unit is replaced. Unless otherwise required by the affected city or affected county's rent or price control ordinance, these units shall not be subject to a recorded affordability restriction.

(B) The housing development project will include at least as many residential dwelling units as the greatest number of residential dwelling units that existed on the project site within the last five years.

(C) Any existing residents will be allowed to occupy their units until six months before the start of construction activities with proper notice, subject to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1.

(D) The developer agrees to provide both of the following to the occupants of any protected units:

(i) Relocation benefits to the occupants of those affordable residential rental units, subject to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1.

(ii) A right of first refusal for a comparable unit available in the new housing development affordable to the household at an affordable rent, as defined in Section 50053 of the Health and Safety Code, or an affordable housing cost, as defined in 50052.5.

(E) For purposes of this paragraph:

(i) "Equivalent size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced.

(ii) "Protected units" means any of the following:

(I) Residential dwelling units that are or were subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income within the past five years.

(II) Residential dwelling units that are or were subject to any form of rent or price control through a public entity's valid exercise of its police power within the past five years.

(III) Residential dwelling units that are or were occupied by lower or very low income households within the past five years.

(IV) Residential dwelling units that were withdrawn from rent or lease in accordance with Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 within the past 10 years.

(iii) "Replace" shall have the same meaning as provided in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65915.

(3) This subdivision shall not supersede any objective provision of a locally adopted ordinance that places restrictions on the demolition of residential dwelling units or the subdivision of residential rental units that are more protective of lower income households, requires the provision of a greater number of units affordable to lower income households, or that requires greater relocation assistance to displaced households.

(4) This subdivision shall only apply to a housing development project that submits a complete application pursuant to Section 65943 on or after January 1, 2020.

(e) The Department of Housing and Community Development shall determine those cities and counties in this state that are affected cities and affected counties, in accordance with subdivision (a) by June 30, 2020. The department may update the list of affected cities and affected counties once on or after January 1, 2021, to account for changes in urbanized areas or urban clusters due to new data obtained from the 2020 census. The department's determination shall remain valid until January 1, 2025.

(f) (1) Except as provided in paragraphs (3) and (4) and subdivisions (h) and (i), this section shall prevail over any conflicting provision of this title or other law regulating housing development in this state to the extent that this section more fully advances the intent specified in paragraph (2).

(2) It is the intent of the Legislature that this section be broadly construed so as to maximize the development of housing within this state. Any exception to the requirements of this section, including an exception for the health and safety of occupants of a housing development project, shall be construed narrowly.

(3) This section shall not be construed as prohibiting the adoption or amendment of a development policy, standard, or condition in a manner that:

(A) Allows greater density.

(B) Facilitates the development of housing.

(C) Reduces the costs to a housing development project.

(D) Imposes or implements mitigation measures as necessary to comply with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(4) This section shall not apply to a housing development project located within a very high fire hazard severity zone. For purposes of this paragraph, "very high fire hazard severity zone" has the same meaning as provided in Section 51177.

(g) This section shall not be construed to void a height limit, urban growth boundary, or urban limit established by the electorate of an affected county or an affected city, provided that the height limit, urban growth boundary, or urban limit complies with subparagraph (A) of paragraph (1) of subdivision (b).

(h) (1) Nothing in this section supersedes, limits, or otherwise modifies the requirements of, or the standards of review pursuant to, Division 13 (commencing with Section 21000) of the Public Resources Code.

(2) Nothing in this section supersedes, limits, or otherwise modifies the requirements of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). For a housing development project proposed within the coastal zone, nothing in this section shall be construed to prohibit an affected county or an affected city from enacting a development policy, standard, or condition necessary to implement or amend a certified local coastal program consistent with the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code).

(i) (1) This section does not prohibit an affected county or an affected city from changing a land use designation or zoning ordinance to a less intensive use if the city or county concurrently changes the development standards, policies, and conditions applicable to other parcels within the jurisdiction to ensure that there is no net loss in residential capacity.

(2) This section does not prohibit an affected county or an affected city from changing a land use designation or zoning ordinance to a less intensive use on a site that is a mobilehome park, as defined in Section 18214 of

the Health and Safety Code, as of the effective date of this section, and the no net loss requirement in paragraph (1) shall not apply.

(j) Notwithstanding subdivisions (b) and (f), this section does not prohibit an affected city or an affected county from enacting a development policy, standard, or condition that is intended to preserve or facilitate the production of housing for lower income households, as defined in Section 50079.5 of the Health and Safety Code, or housing types that traditionally serve lower income households, including mobilehome parks, single-room occupancy units, or units subject to any form of rent or price control through a public entity's valid exercise of its police power.

66301. This chapter shall remain in effect only until January 1, 2025, and as of that date is repealed.

SEC. 14. The Legislature finds and declares that the provision of adequate housing, in light of the severe shortage of housing at all income levels in this state, is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, the provisions of this act apply to all cities, including charter cities.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 16. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

EXHIBIT 9

San Francisco Planning

This Bulletin outlines how the Planning Department administers the provisions of the Housing Crisis Act of 2019 during the statewide housing emergency period through January 1, 2030. Please consult the references for additional information.

PLANNING DIRECTOR BULLETIN NO. 7

Housing Crisis Act of 2019 Project Review and Zoning Actions

First Issued:
DECEMBER 2019

Updated:
NOVEMBER 2023

References:
Government Code Sections 65905.5, 65913.10, 66300 (Housing Crisis Act)
Government Code Sec. 65589.5 (Housing Accountability Act)
Government Code Sec. 65940-50 (Permit Streamlining Act)

INTRODUCTION

Effective January 1, 2020, and further amended in 2021, "The Housing Crisis Act of 2019," (HCA) establishes a statewide "housing emergency" until January 1, 2030. During the housing emergency, the Housing Crisis Act suspends certain restrictions on the development of new housing and expedites the permitting of housing. This bulletin provides guidance on the application of the HCA to the review and approval processes for residential development projects and zoning actions in San Francisco during the housing emergency.

OVERVIEW

During the housing emergency, cities and localities in urban areas, such as San Francisco, are generally prohibited from rezoning or imposing new development standards that would reduce the capacity for housing or adopting new design standards that are not objective. In these jurisdictions, the demolition of existing housing units is only permitted if the same number of units are created, and the demolition of existing below-market rate, rent-controlled units, units rented by low-income households or units withdrawn from the rental market within the last ten years is only permitted if replaced by units that meet certain conditions related to affordability and tenant protections.

Additionally, all localities must comply with additional project review requirements and timelines for housing developments applications. These include a prohibition on applying new zoning regulations and development standards or listing the project as a local historic landmark after a project's application is submitted, except in certain circumstances. Housing developments that meet all applicable objective zoning standards may only be subject to five public hearings, including continuances and most appeal hearings.

The HCA does not establish any new ministerial approval programs, mandate any rezoning actions, prevent additional restrictions on short-term rentals or demolition of existing units, or supersede the requirements in the California Coastal Act or California Environmental Quality Act (CEQA).

HOUSING DEVELOPMENT PROJECTS

As used throughout this bulletin, a "housing development project" refers to 1) a development project consisting of one or more residential units, 2) a mixed-use development project where at least two-thirds of the square footage comprises residential uses, or 3) transitional or supportive housing development projects. The HCA applies to projects that involve both ministerial and discretionary approvals.

ZONING ACTIONS AND DESIGN STANDARDS

Zoning Actions

The HCA prohibits jurisdictions from taking any legislative action, including by voter initiative, that would reduce the zoned capacity of housing development below what was allowable as of January 1, 2018, including but not limited to actions that would:

- Reduce the maximum allowable height, density, or floor area ratio (FAR)
- Impose new or increased open space, lot size, setback or maximum lot coverage requirements
- Adopt or enforce a moratorium or cap on housing approvals

However, a city may reduce housing capacity if the city concurrently increases the housing capacity of other parcels elsewhere in the jurisdiction such that there would be no net loss in residential capacity. In most instances, "concurrently" means that the Board of Supervisors must approve both zoning changes at the same meeting.

Design Standards

For housing development projects, the city may not apply new design standards that were adopted on or after January 1, 2020 unless these design standards meet the state law definition of "objective standards." Specifically, an objective standard involves no personal or subjective judgement on the part of the city and is uniformly verifiable by reference to criteria that are available to the applicant at the time of application.

San Francisco will continue to apply all Design Guidelines that were adopted and in effect prior to January 1, 2020 to residential projects, including the Urban Design Guidelines, Residential Design Guidelines, and any special area or topic-based design guidelines. Non-residential projects may be subject to future non-objective design guidelines or standards.

PROJECT REVIEW PROCESS

Permit Streamlining Act

The Permit Streamlining Act (Government Code Sec. 65920-64) applies to housing development projects. During the housing emergency, the required timeframe to approve or disapprove a housing development project for which an environmental impact report (EIR) is prepared is decreased by 30 days. The new timelines are as follows: 1) 90 days after certification of an EIR for a housing development project; or 2) 60 days after certification of an EIR for a housing development project in which at least 50 percent of the units are affordable to low-income households and that receive public financing. All other required review timeframes in the Permit Streamlining Act continue to apply unchanged during the housing emergency.

Housing Accountability Act

The Housing Accountability Act ("HAA") (Government Code Sec. 65589.5) applies to certain housing development projects (at least two units, at least 2/3 residential, or transitional or supportive housing). Generally, the HAA limits the City's ability to deny or reduce the density of projects that comply with applicable objective zoning and development standards in effect at the time a development application is determined to be complete. During the housing emergency, however, these limitations apply to housing development projects that comply with the objective zoning and development standards in effect at the time a "preliminary application" is submitted, as described below.

Preliminary Applications

Requirements of State Law
The Housing Crisis Act establishes a new "preliminary application" under Government Code section 65941.1 separate and distinct from a development application. A preliminary application is required by state law to collect specific site and project information in order to determine the zoning, design, subdivision, and fee requirements that apply to a housing development project.

If an applicant submits a complete development application within 180 days of submitting a preliminary application, then the zoning, design, subdivision, and fee requirements in effect at the time the preliminary application was submitted remain in effect for the remainder of the entitlement and permitting process except under the following circumstances:

- The project does not commence construction within 30 months of the project's site permit being issued.
- The number of units or total square footage of the project changes by 20% or more, except as the project may be revised using the State Density Bonus.
- The requirement is necessary to avoid an adverse impact to public health or safety as defined in state law.
- The requirement is necessary to avoid or lessen an impact under CEQA.
- Development impact fees, application and permit processing fees, capacity or connection fees, or other charges may be annually adjusted based on a published cost index.

Implementation
For housing development projects that did not submit a complete Project Application before January 1, 2020, a preliminary housing development application may be submitted as an attachment to the Project Application (PRJ). A preliminary housing development application may also be submitted independently, prior to either a Project Application, provided that a Project Application is submitted within 180 days.

Housing development projects that submitted a complete Project Application prior to January 1, 2020 may submit a preliminary housing development application to the Planning Department at any time. The zoning, design, subdivision, and fee requirements in effect on the date such preliminary application is submitted shall apply except as listed above.

Historic Resource Determinations

Requirements of State Law
The HCA does not supersede, limit, or modify the requirements of CEQA. Accordingly, the Planning Department will continue to review the potential environmental impacts of proposed projects on historic and cultural resources, as required by CEQA, and may be required to prepare an Environmental Impact Report (EIR), as appropriate, to examine potential impacts to historic resources or impose mitigation measures necessary to avoid or lessen such impacts.

Other determinations that the site of a proposed housing development is a historic site must be made at the time the development application is deemed complete, and that determination remains valid for the duration of the project review process, except in limited circumstances where any archeological, paleontological, or tribal cultural resources are subsequently discovered at the project site. This determination does not modify the requirements of CEQA.

Implementation
Housing development projects that submitted a complete Project Application prior to January 1, 2020 may only be subject to requirements of Article 10 or Article 11 if the application to designate was approved prior to submittal of a complete Project Application. Housing development projects that submit a complete Project Application after January 1, 2020 may only be subject to the regulations in Planning Code Article 10 or 11 if the site is designated as a landmark or included in an historic district prior to submittal of a complete Project Application.

Limited Public Hearings

Under the HCA, housing development projects that comply with applicable zoning standards and that are not seeking any exceptions, rezoning, or other legislative actions, can be subject to a maximum of five public hearings to consider project approval by the city. These include informational hearings, hearings at which the project is continued to another date at the request of the government agency, sub-committee hearings, and appeal hearings. Public hearings required by CEQA, including those arising out of a timely appeal of a CEQA decision, do not count toward the five-hearing limit.

Implementation
Eligible projects that submitted a complete Project Application prior to January 1, 2020 will be subject to no more than five public hearings after January 1, 2020, regardless of any previous public hearings. Projects that submit a complete development application after January 1, 2020 shall be subject to a maximum of five public hearings. Independent requests from Project Sponsors for a continuance do not count toward the five-hearing limit.

REPLACEMENT HOUSING UNITS

Requirements of State Law

The Housing Crisis Act requires housing projects that will demolish existing residential units to create at least as many units as demolished. If the project demolishes "protected" units, as specified below, special provisions apply. The following requirements shall only be applied to housing development projects that submit a complete development application after January 1, 2020.

Replacement of Existing Housing Units
The City may not approve a housing development project that requires the demolition of existing residential units unless the replacement project includes at least as many residential units as demolished. Where the building on site was demolished within the past five years prior to submittal of a development application, the replacement project shall provide at least the maximum number of units that were present during the five-year period. Planning Code Section 317, defines a dwelling unit merger separately than demolition. The HCA speaks specifically to demolition of units; therefore, dwelling unit merger procedures will not be impacted and continue to require the Planning Commission to grant a Conditional Use Authorization.

Non-residential development projects are not subject to the HCA and may be approved, disapproved, or subject to conditions of approval in accordance with local requirements regarding the removal of existing residential units.

Replacement of "Protected" Units
Additionally, certain requirements apply to housing development projects that would demolish any existing "protected" units, including units that are or were in the five years prior to the development application: 1) affordable units deed-restricted to households earning below 80 percent of Area Median Income (AMI); 2) subject to a local rent control program; 3) rented by low-income households earning below 80 percent of AMI; or 4) withdrawn from the rental market under the Ellis Act within 10 years prior to development application. Single-family homes may be considered protected units. Units constructed without permit, or Unauthorized Units, may be considered protected units if they meet any of the criteria above.

Except in limited circumstances, any housing development project that would demolish any protected units shall as a condition of approval provide replacement units of the same number of bedrooms, and at an affordable rent or sales price to households of the same or lower income category as that of the last household in occupancy in the past five years. Such rental units shall remain under the affordability restriction for a period of at least 55 years. The low-income categories defined in state law are:
1) "extremely low income" households earning up to 30% of AMI, 2) "very-low income" households earning up to 50% of AMI, and 3) "lower income" households earning up to 80% of AMI.

Where the household income of current or previous occupants is not known, the replacement units shall be provided as affordable to very-low (earning up to 50% AMI) and low-income households (earning between 50% and 80% of AMI) in an amount proportional to the number of very low and low-income households present in the jurisdiction according to the most current data from the Comprehensive Housing Affordability Strategy (CHAS) database provided by the Department of Housing and Urban Development (HUD).

Where the existing units to be demolished are subject to a local rent control program and the last household in occupancy earned moderate or above moderate income (above 80 percent of AMI), the project shall provide either: 1) replacement units affordable to low-income households (i.e. earning up to 80 percent of AMI) for a period of at least 55 years: or 2) replacement units that are subject to the local rent control program. Effective January 1, 2022, Senate Bill 8 clarifies that replacement units can be constructed even if they exceed local density controls.

Relocation Assistance and Right of Return
Projects proposing the demolition of any protected units shall as a condition of approval provide all of the following to occupants of such protected units:

- For lower income households, a right of first refusal to a comparable unit in the replacement project that shall be provided at a rent or sale price affordable to households of the same or lower income category, except when the replacement project is a single residential unit, a single family home, or a 100% affordable project.
- For lower income households, relocation benefits pursuant to state or local law, whichever requires greater
- assistance.
- For all households, right to remain in the unit until six months before the start of construction.
- For all households, right to return if demolition does not proceed and units are returned to rental market.

The HCA was amended by Senate Bill 8 (2021) to apply to single-family homes. If a single-family home has been rented by a lower income household within five years preceding the date of the application, then the single-family home is considered a protected unit.

If a housing development project proposes to demolish a single-family home and construct a single-family home, then the project sponsor must provide relocation benefits to the current renters of the home but are not required to offer the existing renters a right of first refusal for the new single-family home. The new single-family home may be provided at any size and at any income level. If the housing development project proposes to demolish a single-family home and construct a building with two-units or more, then the project sponsor must comply with the replacement, relocation, and right of first refusal requirements as set forth above. If the protected single-family home included three bedrooms or fewer, the replacement unit must include at least the same number of bedrooms as the existing single-family home. If the protected single-family home contained four or more bedrooms, then the replacement unit must include at least three bedrooms. The replacement unit is not required to have the same or similar square footage or the same number of total rooms.

Implementation
The above requirements shall apply to any housing development project that submits a complete Project Application after January 1, 2020. Projects proposing to demolish, merge, or remove any existing unit are also subject to the provisions of Planning Code Sec. 317, and such projects shall be required to provide all necessary information regarding the occupancy, eviction, and household income history as part of a complete Project Application, and as may be verified during the project review process.

Manner of Replacement of Existing Units
Where multiple options are provided under state law as to the manner of replacement of any existing protected units, the Planning Department shall follow the guidance set forth below to determine the required restrictions on replacement unit(s). For purposes of implementing the HCA, there shall be a rebuttable presumption that any multifamily building constructed prior to 1979 is subject to the San Francisco Residential Rent Stabilization and Arbitration Ordinance (hereinafter "rent control").

If the protected unit that is being demolished is subject to **rent control**, then the following replacement provisions would apply:

- If the protected unit was not previously rented by a low-income tenant in the five years preceding the application, and the project will construct rental units, then the replacement unit(s) shall be subject to rent control. If the project will construct ownership units, then the replacement unit(s) shall be deed-restricted at 80 percent of AMI.
- • If the protected unit was previously rented by a low-income tenant in the five years preceding the application, then the replacement unit will be deed-restricted at the income category that most closely corresponds to the previous tenant's income.
- If the household income of current or previous occupants is not known, then 47 percent of the units must be replaced with deed restricted units. Of the units being replaced, 69 percent of such units shall be replaced by units affordable to very low-income households earning up to 50% of AMI and 31 percent of such units shall be replaced by units affordable to low-income households earning up to 80% of AMI for a period of at least 55 years.[1] The remaining 53 percent of replacement units shall be subject to rent-control.

If the protected unit that is being demolished is a **deed-restricted affordable unit**, then the replacement unit must also be deed-restricted at the income category that most closely corresponds to the protected unit.

If the protected unit that is being demolished is not subject to rent control and is not deed-restricted but has been **rented by a low-income tenant** in the five years preceding the application, then the replacement unit shall be deed-restricted at the income category that most closely corresponds to the protected unit being demolished. Where the household income of current or previous occupants of protected units is unknown, 47 percent of the units must be replaced with deed restricted units. Of the units being replaced, 69 percent of such units shall be replaced by units affordable to very low-income households earning up to 50% of AMI and 31 percent of such units shall be replaced by units affordable to low-income households earning up to 80% of AMI for a period of at least 55 years.[2] All replacement calculations resulting in fractional units shall be rounded up to the next whole number.

Inclusionary Housing Program
The HCA allows for jurisdictions to apply locally adopted objective provisions that further restrict or condition the demolition of existing units, including if the local provision requires a greater number of low-income households to be provided. Pursuant to Planning Code Sec. 415(a)(9), existing rent-control or affordable units must be replaced in addition to on-site units provided to comply with the requirements of the Inclusionary Housing Program. This provision shall also apply to replacement protected units required by state law. The sponsor of any housing development subject to both the replacement requirements in the HCA and the Inclusionary Housing Ordinance in Planning Code section 415 may appeal to the Planning Commission for authorization to impose rent control on any replacement units based on the absence of any reasonable relationship or nexus between the impact of the development and the total number of required on-site affordable housing units.

Relocation Payments
Where relocation benefits are required by state or local law, the amount of relocation payments to be provided shall be the applicable amount as published by the San Francisco Residential Rent Stabilization and Arbitration Board. Current relocation payment requirements and amounts can be found on the Rent Board website: sfrb.org/forms-center.

CONTACT

For more information, please contact:

Kate Conner
628.652.7535
kate.conner@sfgov.org

Carly Grob
628.652.7532
carly.grob@sfgov.org

Bridget Hicks
628.652.7528
bridget.hicks@sfgov.org

1 Pursuant to state law, this proportion reflects the most current data published by HUD on September 9, 2022 for the period of 2015 - 2019. (huduser.gov/portal/datasets/cp.html).

2 Pursuant to state law, this proportion reflects the most current data published by HUD on September 9, 2022 for the period of 2015 - 2019. (huduser.gov/portal/datasets/cp.html).

San Francisco Planning

FOR MORE INFORMATION:
Contact the San Francisco Planning Department

Central Reception
49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103

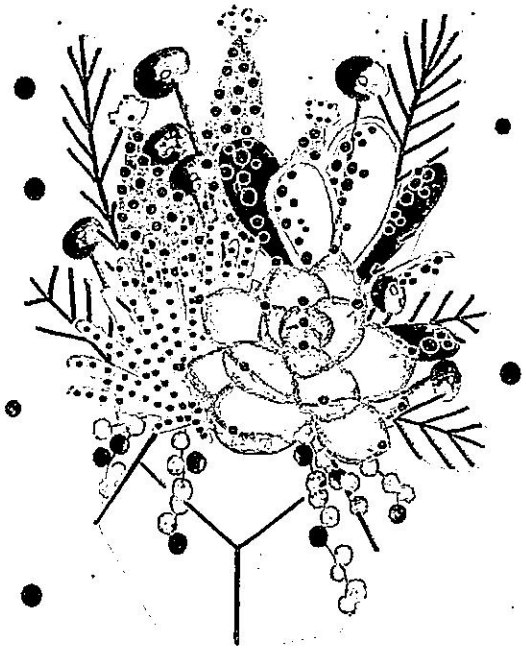
TEL: **628.652.7600**
WEB: **www.sfplanning.org**

Planning counter at the Permit Center
49 South Van Ness Avenue, 2nd Floor
San Francisco, CA 94103

EMAIL: **pic@sfgov.org**
TEL: **628.652.7300**

EXHIBIT 10 LETTERS FROM RENTERS BELOW

Thank YOU



Tom and David

Thank you so much
for your generosity
It is
appreciated
and I am grateful
Thanks again

[redacted]

twmetz@gmail.com

From: [redacted]
Sent: Wednesday, February 23, 2022 3:52 PM
To: Thomas Metz
Subject: Re: [EXTERNAL] RE: 30 Day Notice to Vacate 51 Prosper St #2

Hi Tom,
Quick update, we're still on track for the end of the month, will hopefully have everything moved by Sunday night.

Thanks again for everything, we really appreciate your and David's understanding, flexibility and positive-vibe-sending. Also thank you so much for [redacted]

Thanks,
[redacted] & [redacted]

On Jan 29, 2022, at 11:21 PM, Thomas Metz <twmetz@gmail.com> wrote:

Hi, [redacted]
Thanks for the update. End of February is fine. Please don't stress. Do what's best [redacted] nd let's touch base again later.
Take care and be well.
tm

On Sat, Jan 29, 2022, 10:56 AM [redacted] wrote:

Hi Tom,
We just wanted to give you a bit of an update since we're nearing the end of January. [redacted]
Since [redacted] we would prefer to stay at Prosper through February so he can [redacted]. We hope this works for you and David.
Thank you for all your support and understanding over the last few months. Being able to stay in the apartment and to s[redacted] has made a huge difference.

Sincerely,
[redacted]

On Oct 21, 2021, at 7:07 PM, twmetz@gmail.com wrote:

For heaven's sake, of course. [redacted], I am so sorry to hear this. David and I are both sending positive vibes for [redacted], for [redacted] and [redacted] Let's just assume end of January or thereabouts and reassess as the date approaches. We are in Ohio now to help my sister, but we will be back Nov. 15 or thereabouts (also [redacted]). Please let us know if we can do anything to help.

From: [redacted]
Sent: Thursday, October 21, 2021 9:48 PM
To: twmetz@gmail.com
Subject: RE: 30 Day Notice to Vacate 51 Prosper St #2

Hi Tom,

I hope you and David are doing well. [redacted] and I had a very sudden and stressful change in our lives on Tuesday night, and I am reaching out in hopes that you can help us.

[redacted]

The next few months will be a very difficult time for us, and if there is any way that we could push our last day back so that we can continue to live at home, close to [redacted], we would be humbly grateful for your help. [redacted]

I know this is a lot to absorb, please let me know if you'd like to talk or if you have any questions. Thank you so, so much for considering this and we really hope there is a way we can work something out.

Sincerely,

[redacted] & [redacted]

From: twmetz@gmail.com <twmetz@gmail.com>
Sent: Saturday, October 9, 2021 1:11 PM
To: [redacted]
Subject: RE: 30 Day Notice to Vacate 51 Prosper St #2

Hi, [redacted]

I am finally getting caught up on a few chores and had time to read this more closely.

You sent your 30-day notice on 10/3, but it looks like you will actually be vacating on the last day of this month (10/31). We do not need to get all legalistic about dates. I am happy to consider 10/31 as your official departure date.

According to my records from Andrew Rich (and, presumably from Rodrigo Uribe before him), you paid a security deposit of $1,395 when you moved in, but you did **not** pay "last month's rent." So if it works for you, I can just accept the October rent you paid last week as your final rent payment, and return your security deposit when you move out.

Do you have a forwarding address?? If so, you can drop your key in our mail slot and I will mail your security deposit.

Or …

Alternatively, I can ask Doreen to hold security deposit for you and you could stop by her apartment to pick up the check and give her your key.

?? Either works or me.

Thanks again for your thoughtful note. I am glad you enjoyed living here. We certainly did our best!

tm

From: [redacted]
Sent: Sunday, October 3, 2021 10:32 AM
To: twmetz@gmail.com
Subject: 30 Day Notice to Vacate 51 Prosper St #2

Hi Tom,

I found out that I will probably be working in [redacted] for at least 9 months, maybe longer. [redacted] and I have decided it is best for us to move out of 51 Prosper since we could be gone for a while. Please find our 30-day notice attached with more details, and please let me know if you have any questions. Please let me know if you would also like me to mail you a copy of this notice.

We really have spent some of the best years of our lives in that apartment and are sad to go. We appreciate the thought and the energy you put in to making 51 Prosper a great place to live.

Thanks,

[redacted]

[redacted]

<image001.jpg>

[redacted]

[redacted]

[redacted]

[redacted]

<image001.jpg>

twmetz@gmail.com

From: [redacted]
Sent: Thursday, September 26, 2019 5:41 AM
To: Tom Metz
Subject: Moving

Hi David and Tom,

I'm moving and my last day at Prosper Street will be October 31, 2019.

I want to thank you both for being wonderful landlords.

Best wishes,

[redacted]

twmetz@gmail.com

From: [redacted]
Sent: Thursday, November 12, 2020 6:07 AM
To: twmetz@gmail.com
Subject: SMS with 000 [redacted]

Hey Tom.. Sorry to bother you but can I was wondering if you can email me a copy of the document that outlines what amount you authorized PODS to be paid with your CC.
I know you agreed to a certain amount to pay PODS and I'm just trying to figure out if that means they continue to bill your card until the amount you authorized is used up and then it will switch to my card. Or do I cover the storage fees on my card until destination is determined and then your card is used by again.
I just want to keep this as simple as possible (especially since both our credit cards are involved). I also would like to mitigate any surprise expenses that can pop up at times as well as try to get your bill lower wherever I can. Any insight you can provide would be greatly appreciated.
Again, I can't express how much I appreciate all you both have done for me.

twmetz@gmail.com

From: 000 [redacted]
Sent: Thursday, January 7, 2021 11:22 AM
To: twmetz@gmail.com
Subject: SMS with [redacted]

I think off you not only as ex-landlords but friends as well

twmetz@gmail.com

From: [redacted]
Sent: Thursday, January 7, 2021 11:21 AM
To: twmetz@gmail.com
Subject: SMS with 000 [redacted]

Just tell me where to go to write the review and you can count on a glowing assessment. I can never thank you both for the kindness and support you have given me. I have started a new and exciting journey and you were an important part [redacted] I am forever grateful and if there is anything else you need... Please don't hesitate to ask

BRIEF(S) SUBMITTED BY RESPONDENT DEPARTMENT(S)

San Francisco Planning

49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103
628.652.7600
www.sfplanning.org

BOARD OF APPEALS BRIEF

HEARING DATE: December 13, 2023

December 7, 2023

Appeal No.:	23-047
Project Address:	51 Prosper Street
Subject:	Reasonable Modification Appeal
Staff Contact:	Corey Teague, Zoning Administrator – (628) 652-7328 corey.teague@sfgov.org

Introduction

This appeal may be the first Reasonable Modification appeal to come before the Board of Appeals. At the heart of this case are two somewhat competing policies: 1) to reasonably accommodate persons with disabilities, and 2) to preserve and protect existing housing in the City. It is unfortunate that such policies conflict for this case, and the Department continues to support the underlying policy of providing reasonable modifications. This brief will describe the Reasonable Modification process and provide additional information relevant to this case.

Property Information

The subject property is within the RH-2 Zoning District and 40-X Height and Bulk District. The existing building was constructed in 1906 and contains 5 dwelling units that are subject to rent control.

Reasonable Modifications

Planning Code Section 305.1 was adopted in 2015 to add a Reasonable Modification (RM) process to comply with the Federal Fair Housing Act, the Americans with Disabilities Act, and the California Fair Employment and Housing Act by reasonably modifying its regulations, policies, practices and procedures for people with disabilities. The Zoning Administrator may grant a RM in lieu of any approval that would otherwise be required. The ZA must consider the following criteria when making a determination on a RM request:

1. The requested modification is requested by or on the behalf of one or more individuals with a disability protected under federal and state fair housing laws;

2. The requested modification will directly enable the individual to access the individual's residence;

3. the requested modification is necessary to provide the individual with a disability an equal opportunity to use and enjoy a dwelling;

4. There are alternatives to the requested modification that would provide an equivalent level of benefit;

5. The requested modification will not impose an undue financial or administrative burden on the City as "undue financial or administrative burden" is defined under federal and state fair housing laws.

6. The requested modification will, under the specific facts of the case, result in a fundamental alteration in the nature of the Planning Code or General Plan, as "fundamental alteration" is defined under federal and state fair housing laws.

7. The requested modification will, under the specific facts of the case, result in a direct threat to the health

or safety of others or cause substantial physical damage to the property of others.

When a RM application is filed, the Department refers it to the Mayor's Office on Disability (MOD) to provide a third-party determination that the applicant has a qualifying disability. Depending on the nature of the request, a RM may require a public hearing or may be decided administratively. Additionally, the proposed Housing Constraints Reduction ordinance would eliminate the public hearing requirement for all RMs, and that ordinance passed its first reading at the Board of Supervisors on December 5th.

Background

The Appellant filed an application for Conditional Use Authorization (CUA) in December of 2022 to merger Units 5 and 2 in the subject building pursuant to Planning Code Section 317. At that time, the Department's interpretation of SB330 was that any removal of a legal dwelling unit would trigger a replacement requirement, such that there was no net loss of units. As such, the Department recommended disapproval of the proposed CUA. Around the time of the CUA hearing, the Department determined that the proposal may qualify for a RM due to the property owner's disability being the impetus for the project. However, it was communicated to the Appellant at that time that such a modification likely would not permit a legal merger of units, but only the internal connection between the two existing units.

In light of this information, the Appellant withdrew their CUA application and filed the RM request in July of 2023. The Zoning Administrator determined that the RM could be granted without a public hearing, and the final decision was issued on September 25th. As noted in the decision and the Appellant's brief, the RM was not granted to allow the legal merger of Units 5 and 2 (i.e., a net reduction from 5 to 4 legal dwelling units). Instead, it was specifically granted to exempt the property from the prohibition against having separate dwelling units maintain an interior connection (per prior Zoning Administrator interpretation), with the condition that the interior connection be removed when no longer needed to provide the accommodation. Additionally,

reasonable timelines were provided to inform the Zoning Administrator of such occurrence (6 months) and to file the necessary building permit to conduct the work (12 months).

In November of 2023, the City Attorney's Office, Planning Department, and Planning Commission updated the City's interpretation of SB330. Previously, the unit replacement requirements of SB330 had been interpreted to apply to the removal or loss of any legal dwelling unit. However, more recent analysis concluded that the specific language of SB330 only addressed "demolition" of legal dwelling units, and therefore mergers of existing units are not deemed to trigger the unit replacement requirements, but will continue to be subject to the CUA requirement of Planning Code Section 317 (See Director's Bulletin No. 7, Page 4). It's important to note that if this appeal is denied and Appellant desires to see a legal merger of Units 5 and 2, they could again apply for a CUA and request the PC to grant such a merger. However, it is by no means assured that the Planning Department would recommend approval, or that the PC would grant such a merger.

Key Points

The following points are key to understanding the Zoning Administrator's decision to grant the RM with specific conditions:

1. It is the clear policy of the State and City that not only should more housing be provided, but existing housing should also be preserved and protected. This is especially true in San Francisco for existing rent-controlled housing.

2. No RM has been previously granted to allow the full merger of dwelling units, resulting in a net loss of units. However, a similar RM was granted in August of 2023 for an internal connection between dwelling units at 301 Mission Street (Case No. 2023-001809VAR) that included the same conditions requiring the interior connection to be removed once no longer needed.

3. The RM decision at issue here does not prescribe exactly how the interior connection or the eventual

removal of that interior connection between Units 5 and 2 should be achieved. Depending on the current and/or future property owner's desire, finances, etc., the interior connection could be as minimal as necessary and the closing of the connection could be as minimal as walling off the stairway.

4. Planning Code determinations are not typically based on the specific financing and insurance mechanisms related to a property. RMs are designed to provide physical accommodations for persons with disabilities, but not to provide purely financial accommodations.

5. The MOD was consulted and is aware of the details of this case and has not expressed any concerns regarding the conditions placed on the RM to ensure that the accommodation does not also result in a net loss of rent-controlled units.

6. Ultimately, the basis of the final decision was to find a reasonable balance between the two competing policies; 1) to reasonably accommodate persons with disabilities, and 2) to preserve and protect existing housing in the City.

7. Criteria No. 4 for considering RMs is if there are alternatives that would provide an equal level of benefit. The original RM request was for a full, legal merger of Units 5 and 2. However, allowing the internal connection without legally merging the units is an alternative that will provide the same physical accommodation of providing interior access for a home health professional.

8. Criteria No. 6 for considering RMs is whether the request would result in a fundamental alteration in the nature of the Planning Code or General Plan. The current Housing Element and Planning Code both provide clear principles and controls related to the policy that existing housing should be preserved to the fullest extent possible, especially rent-controlled housing. And while SB330 does help support the creation of new housing, it also provides extremely strong protections against the removal of existing

housing as well (despite the legal distinction between demolition and merger).

Conclusion

To conclude, the Department acknowledges the Appellant's disability and associated challenges. By definition, a RM is intended to provide "reasonable" accommodations for persons with disabilities. As such, the final determination was crafted to provide an accommodation that will meet the Appellant's physical needs while also balancing the need of the City and State to protect and preserve existing rent-controlled housing. For the reasons stated above, the Department respectfully requests that the Board of Appeals uphold the RM as it was issued with conditions.

cc: Thomas Metz (Appellant)
Matt Dito (Planning Department)

PUBLIC COMMENT

From: aife radray.us
To: BoardofAppeals (PAB); Dito, Matthew (CPC)
Subject: Tom Metz, 51 Prosper St
Date: Thursday, December 7, 2023 12:49:43 PM

Dear Members of the SF Board of Appeals

This letter (originally sent to Matthew Dito in July) regards Tom Metz's proposal to make some modifications at 51 Prosper St. San Francisco CA 94114-1632 at Block/Lot: 3564/031

I support Mr. Metz's proposal to modify his building and combine two apartments to help him age in place, as a disabled person, by accommodating live-in caregivers.

I live about 8 blocks away and am a disabled senior aging in place with the help of my spouse. Should he pre-decease me, I have the space to accommodate a caregiver. I'd like to see the same for Tom.

Tom and his husband have developed a careful long term plan by securing an apartment building with an accessible unit for Tom. Addition of the second floor rear apartment will allow them to remain on Prosper Street.

It is optimal for a neighborhood when seniors, those disabled, families with children as well as younger people can live side by side. There is a fragility and vitality that helps make the heart more tender. San Francisco neighborhoods need all of that diversity.

Sincerely,

EA Murray
3530 19th Street
San Francisco, CA 94110-1612

December 7, 2023

Board of Appeals
Permit Center
49 South Van Ness
Suite 1475, 14th Floor
San Francisco, CA 94103

Re: 12/13/23 Agenda Item: 51 Prosper Street

President Rick Swig, Vice President Jose Lopez, Commissioner John Trasviña, Commissioner Alex Lemberg and Commissioner J.R. Epple:

My name is Elizabeth Chur, and I live in District 8 and am a lifelong Bay Area resident. I urge you to support Tom Metz's request to grant a limited circumstance exception at 51 Prosper Street, and to allow the merging of Apartment 5 with Apartment 2.

I've known Tom for 25 years. I've witnessed how his disability has progressively impacted his ability to work, prepare meals, walk, hold a pen, and conduct other activities of daily living. Despite the advances in his motor neuron disease, he has gone to extraordinary lengths to maintain his independence and ensure his ability to age in place.

I am someone who has lived in rent-controlled apartments in San Francisco since 1994, and I underwent an owner move-in eviction seven years ago. So I fully understand the pressing need to maintain the stock of rental housing. At the same time, it's incredibly important to prioritize the ability of elders and people with disabilities to remain in San Francisco, and to live as independently as possible. This merger would help accomplish both goals, by allowing Tom to have a live-in caregiver, and providing shared housing at a lower per-person cost.

I cared for both my aging parents for 18 years. Each of them needed on-site care at the end of their lives. Having a separate bedroom for caregivers is a requirement for many caregiving agencies; without this, people like Tom may be forced to move into an institutional setting, which is far more expensive and unnecessarily limits their independence. By approving this merge, you could not only help Tom and his husband age in place, but also would create a housing unit which would provide the same ability for another elder or disabled person in the future.

As Tom has stated throughout this process, there are almost no wheelchair-accessible units like this with access to transit and services in San Francisco. I urge you to approve this request under the "limited circumstances" provision. Thank you for your consideration.

Sincerely,

Elizabeth Chur

From: michael@allmusicservices.com
To: BoardofAppeals (PAB)
Subject: Re: Tom Metz and David Brightman, 51 Prosper St.
Date: Thursday, December 7, 2023 12:21:18 PM
Attachments: Attachment information
In support of Tom Metz & David Brightman.docx

December 7, 2023

To Whom It May Concern:

I am a neighbor of Tom Metz and David Brightman on Prosper St. and I am re-submitting (below, and also as an attached Word document) a letter I sent to Matt Dito last June in support of their efforts to join two of the apartments in the building they own, in order to make accomodations for Tom, who has significant disabilities, and for a live-in care worker to attend to his needs as his deteriorating physical condition progresses.

Apparently their request was only partially approved by the Zoning Administrator, and so they have to continue to plead for the accommodations necessary for Tom's disability. And I find myself once again in the position of having to support them in these efforts (which I will do as long, and as often, as necessary).

I cannot tell you how distressing—and frustrating--it is to me, both as a resident of San Francisco and a friend to these valued neighbors, to encounter the city's bureaucratic intransigence and lack of fundamental support for its residents.

In any case, here, again, is what I submitted, a few months ago:

My name is Michael Mascioli, and I've known Tom Metz and David Brightman ever since they moved onto Prosper St. 10 years ago. Everyone on our street knows them, and they are the kind of neighbors you could only wish for on a small, quiet block.

I've seen all the extensive—and expensive--work that they've put into their building, and I can say they are the best landlords on the block—and I'm saying this as a landlord myself. (I own a small, 4-unit building across the street.) I've seen what they've done to improve their building and refurbish their apartments over the last few years.

But at the same time, by socializing with them in their home and out in the neighborhood, I've also seen Tom's disabilities get worse, to the point where he often needs a wheelchair to get around. He probably wouldn't like me saying this, but his mobility is worse than the two 80-year-old people who live on our block.

Tom and David have told us about their desire to join their small one-bedroom apartment with an adjoining apartment in order to accommodate the live-in help that Tom will have to have in the future, as his health and mobility decline and his need for professional in-home care increases. Actually, it's typical of the thought and care that they've put into their building that they would start planning for this now, since the alternative is having to deal with it later, when they're caught between a rock and a hard place and

there are no good options for live-in care. They're doing this because they want to be prepared for the future, not because they enjoy throwing thousands of dollars at their building.

Frankly, as their friend and as a landlord myself, I was distressed to find out that that they were having so much difficulty, or that there'd even be an issue with this. And, quite honestly, I'm disappointed that someone in the city bureaucracy who doesn't know them--or their situation--could prevent them from making important adjustments to their own property, and could decide that their future health, safety and well-being are less important than having another market-rate apartment available in the city—not a low-income apartment but a market-rate apartment! There are already *plenty* of market-rate apartments available. I should know. I have vacancies sometimes in my own small building, and I see tons of them when I go online to check out my competition.

From talking to other people on our street, I can assure you that several people you have not heard from share my feeling that you should approve this permit for two people our entire block cares about, worries about and values as neighbors.

****

Michael Mascioli, All Music Services
michael@allmusicservices.com
44 Prosper St., #3
San Francisco, CA 94114-1633
Ph: (415) 864-8222

****

"I think we'd better get started, Schatze. Some of the kids are beginning to foam over."
--Loco Dempsey ("How to Marry a Millionaire")

"I have a list of people that almost killed me."
--Theda Blauough ("It Had to Be You")

I am a neighbor of Tom Metz and David Brightman on Prosper St. and I am re-submitting (below) a letter I sent to Matt Dito last June in support of their efforts to join two of the apartments in the building they own, in order to make accomodations for Tom, who has significant disabilities, and for a live-in care worker to attend to his needs as his deteriorating physical condition progresses.

Apparently their request was only partially approved by the Zoning Administrator, and so they have to continue to plead for the accommodations necessary for Tom's disability. And I find myself once again in the position of having to support them in these efforts (which I will do as long, and as often, as necessary).

I cannot tell you how distressing—and frustrating--it is to me, both as a resident of San Francisco and a friend to these valued neighbors, to encounter the city's bureaucratic intransigence and lack of fundamental support for its residents.

In any case, here, again, is what I submitted, a few months ago:

My name is Michael Mascioli, and I've known Tom Metz and David Brightman ever since they moved onto Prosper St. 10 years ago. Everyone on our street knows them, and they are the kind of neighbors you could only wish for on a small, quiet block.

I've seen all the extensive—and expensive--work that they've put into their building, and I can say they are the best landlords on the block—and I'm saying this as a landlord myself. (I own a small, 4-unit building across the street.) I've seen what they've done to improve their building and refurbish their apartments over the last few years.

But at the same time, by socializing with them in their home and out in the neighborhood, I've also seen Tom's disabilities get worse, to the point where he often needs a wheelchair to get around. He probably wouldn't like me saying this, but his mobility is worse than the two 80-year-old people who live on our block.

Tom and David have told us about their desire to join their small one-bedroom apartment with an adjoining apartment in order to accommodate the live-in help that Tom will have to have in the future, as his health and mobility decline and his need for professional in-home care increases. Actually, it's typical of the thought and care that they've put into their building that they would start planning for this now, since the alternative is having to deal with it later, when they're caught between a rock and a hard place and there are no good options for live-in care. They're doing this because they want to be prepared for the future, not because they enjoy throwing thousands of dollars at their building.

Frankly, as their friend and as a landlord myself, I was distressed to find out that that they were having so much difficulty, or that there'd even be an issue with this. And, quite honestly, I'm disappointed that someone in the city bureaucracy who doesn't know them--or their situation--could prevent them from making important adjustments to their own property, and could decide that their future health, safety and well-being are less important than having another market-rate apartment available in the city—not a low-income apartment but a market-rate apartment! There are already *plenty* of market-rate apartments available. I should know. I have vacancies sometimes in my own small building, and I see tons of them when I go online to check out my competition.

From talking to other people on our street, I can assure you that several people you have not heard from share my feeling that you should approve this permit for two people our entire block cares about, worries about and values as neighbors.