



# SAN FRANCISCO PLANNING DEPARTMENT

**MEMO**

**DATE:** May 8, 2014  
**TO:** Planning Commissioners  
**FROM:** Elizabeth Watty  
Assistant Director of Current Planning  
**RE:** Executive Directive 13-01 – Status Update

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On December 18, 2013, Mayor Edwin Lee issued Executive Directive 13-01: Housing Production and Preservation of Rental Stock. In that Directive, the Mayor charged the Directors of the Planning Department and Department of Building Inspection (DBI) to form a working group and to implement three primary tasks: 1) recommend City policies and administrative actions to preserve and promote rental housing in San Francisco; 2) implement a process for Planning Commission Discretionary Review hearings when a loss of housing is proposed; and 3) serve as an advisory body to municipal departments with permitting authority and as a clearinghouse for code compliance checks for buildings that are being withdrawn from the rental market

On February 03, 2014, the Department issued a joint response with DBI. The Department identified several process-improvement changes to help facilitate the production of affordable units and the retention of existing units. Since February, the Department has been implementing the Department's response to the Executive Directive through short-term, administrative changes that accelerate the review and approval of new housing permits, particularly affordable housing, while reducing the loss of existing, habitable units.

The purpose of the hearing on May 15, 2014 is to provide an update of the Department's implementation of the short-term objectives of the Executive Directive, and provide an overview regarding the second phase of the Mayor's Executive Directive, which involves the creation of a Housing Working Group that is divided into three subcommittees: Legislation, Process Improvements, and Resources. The Planning Department is actively involved in the Housing Working Group process, and is taking a leadership role in two of the three subcommittees.

For the short-term administrative changes that were outlined in the joint DBI/Planning response to Executive Directive 13-01, the Department has created Director's Bulletin No. 5 (Draft attached) to provide clarity in the Department's procedural changes that resulted from this Mayoral Directive. This Director's Bulletin clarifies the following changes:

- Priority Processing procedures
- Merger of Dwelling Units (specifically treatment of demonstrably unaffordable unit mergers)
- Procedures for how to Remove Illegal Dwelling Units
- Establishment of Concurrent Review by Planning, DBI, and Fire

As it relates to the second phase of the Mayor's Executive Directive, the Mayor's Housing Working Group is working on three related paths to increase production of housing, particularly affordable housing.

Through its **Legislative Subcommittee**, members are exploring changes to the City's Inclusionary Housing Program, specifically the establishment of a dial program that would create more affordable dwelling units at a higher area median income (AMI) as well as potential amendments to the off-site inclusionary housing alternative to encourage greater use of this option and to and create more partnerships between market-rate and affordable housing developers. Planning Department staff is participating in all efforts relating to this subcommittee, and is also leading the group's effort to shape a density bonus ordinance for the City.

Through the **Process Improvement Subcommittee**, members are debating ways to improve the City's entitlement and environmental review process. The Planning Department is playing a leadership role in this group, which has a significant focus on administrative changes that could facilitate faster processing or reduce CEQA complications.

Through the **Resources Subcommittee**, members are exploring a range of potential funding sources to support low-income and middle-income housing development. Ideas under exploration include: use of public land; state law changes such as tax credits for a wider band of incomes; expansion of welfare tax exemption to allow property tax abatement for affordable housing projects; development of a catalyst fund that could provide funding for land acquisition; capital funding for development of low-, middle-, and mixed-income housing projects; and an expanded down payment assistance program.

The Mayor's Office expects that the subcommittees will conclude – with recommendations to the full Working Group – by late July. Once final recommendations are made by the Working Group, Planning staff will present them to the Planning Commission as an informational item in late summer/early fall 2014.

Planning staff and Mayor's Office staff will be available at the May 15, 2014, hearing to discuss Executive Directive 13-01 in more detail.

EMW/  
Attachments.

## PLANNING DIRECTOR

# BULLETIN NO. 5

## Planning Department Policy – ED 13-01 Implementation Guidelines

This Bulletin provides guidelines to ensure clear and consistent implementation of the Mayor's Executive Directive 13-01: Housing Production and Preservation of Rental Stock, particularly as it relates to changes in policy that affect the processing of certain housing projects.

Date: May 2014

### References:

#### **Executive Directive 13-01: Housing Production and Preservation of Rental Stock**

This Bulletin relates to the implementation of the Mayor Edwin Lee's Executive Directive 13-01, issued on December 18, 2013. The Mayor's Executive Directive tasked City department heads with prioritizing any administrative policies that would lead to the production of more affordable housing or that would provide proper market incentives to foster private development of rental units. The Directive also implemented procedures aimed at reducing the loss of housing units by requiring a Mandatory Discretionary Review hearing before the Planning Commission for any proposal to remove a unit (legal or otherwise) from a building with at least three legal dwelling units. In general, the Planning Department will continue to process applications to add or remove housing as regulated under existing requirements of the Planning Code. However, under the guidelines provided herein, some housing projects may be prioritized in order to advance identified housing production goals of the City, while other projects that result in a reduction in housing may be required to undergo additional process, and may ultimately be recommended for disapproval. Officers and employees of the City shall use reasonable judgment in the application of these guidelines, and shall consult with their supervisors when questions arise. These guidelines have been established in accordance with the requirements of San Francisco Campaign and Government Conduct Code Section 3.400 and with the Permit Processing Code of Conduct adopted by the San Francisco Ethics Commission.

### IMPLEMENTATION OF EXECUTIVE DIRECTIVE 13-01

The Planning Department will continue to process applications to add or remove housing as regulated under existing requirements of the Planning Code, except for the following types of housing projects, which are subject to new procedures as a result of Mayor Edwin Lee's Executive Directive 13-01.

#### **Priority Processing**

*(Task 1)*

A new category of housing projects – those providing at least 20% on-site or 30% off-site as affordable housing – will be prioritized, second to 100% affordable housing projects, which already receive expedited review.

[Planning Director's Bulletin Number Two](#) has been revised to prioritize 100% affordable housing projects, followed by projects with at least 20% on-site or 30% off-site affordable housing, as the Planning Department's

highest priority. Market-rate housing projects will be prioritized based on how the Project intends to satisfy its inclusionary affordable housing obligation. Priority will be based on the project's proportion of affordable units produced – either on-site or off-site. The [Affidavit for Compliance](#) with the Inclusionary Affordable Housing Program must be completed and submitted in conjunction with the filing of the Environmental Evaluation Application, entitlement, or Building Permit Application (whichever is filed first), in order to determine a project's eligibility for Priority Processing. An applicant must also submit and be approved for [Priority Processing](#) before the Department will begin the priority processing for these projects.

### **Concurrent Review**

*(Task 1)*

For 100% affordable housing projects, and projects with at least 20% on-site or 30% off-site affordable housing, the City will provide concurrent review to expedite the permitting process. The Planning Department, Department of Public Works, Mayor's Office of Disability, Department of Building Inspection, and Fire Departments will review applications simultaneously for housing projects, when appropriate. These projects are required to request a pre-application meeting with all relevant City agencies before filing for any building permits so that the City can determine the appropriate timing for concurrent review. Concurrent review should occur when projects are well-defined and unlikely to substantially change in such a way that would compromise the efficiencies gained by concurrent review.

### **Merger of Dwelling Units**

*(Task 2)*

For buildings that have three legal dwelling units or more, the loss of any housing from that building (including for the purposes of this Bulletin, Live-Work units), is subject to a [Mandatory Discretionary Review](#) hearing before the Planning Commission (unless such merger requires a Conditional Use, or is not permitted, based on other provisions of the Planning Code). The applicant must submit additional findings to be considered by the Commission that outline why the unit in question is proposed to be removed, rather than retained.

For projects proposing to merge two dwelling-units within a building that has at least three legal units, where the units proposed for merger are both demonstrably unaffordable (meaning the least valuable unit, based on credible appraisals from within the last six months, is valued at or above \$1.506M), the Department will continue to process these applications administratively, as allowed under Planning Code Section 317. The Planning Code allows these projects to be approved administratively since the loss of demonstrably unaffordable housing does not affect the City's current shortage of housing that is financially accessible for the majority of the City's population. The City's current housing crisis is not due to the loss of housing at or above this value, and thus requiring a more extensive review process for the loss of these units does not advance the City's housing policies.

For all mergers in buildings with three or more units where at least one of the units is valued under \$1.506M, the Department will recommend that the current housing affordability crisis creates an "exceptional and extraordinary" circumstance such that the Commission should deny the merger request and preserve the independent unit.

## Removal of Unpermitted Units

(Task 2)

For buildings that have three legal dwelling units or more, the loss of any unpermitted housing from that building (including for the purposes of this Bulletin, Live-Work units), is subject to a [Mandatory Discretionary Review](#) hearing before the Planning Commission. The applicant must submit additional findings to be considered by the Commission that outline why the unit in question is proposed to be removed, rather than retained.

For building permits to remove an unpermitted unit where there is a feasible path to legalize the unit, the Department will recommend that the current housing affordability crises creates an “exceptional and extraordinary” circumstance such that the Commission should deny the permit and preserve the unit.

For building permits where there is no feasible path to legalize the unit, the Department will place the Discretionary Review on the consent calendar with a recommendation to approve the permit.

The Planning Department has established guidelines for how this determination is made, in consultation with the Department of Building Inspection and the Fire Department. Applicants seeking to remove an unpermitted unit will be required to submit a report by a qualified professional outlining the upgrades (and the associated costs of those upgrades) that would be required to legalize the unit under the Building, Fire, and Planning Codes. The Department of Building Inspection and Fire will review the report and provide Planning staff with a recommendation for the unit’s retention or removal prior to the Planning Commission’s Mandatory Discretionary Review hearing. The Building Department’s recommendation to Planning will be based on whether the cost to upgrade the unit and/or building exceeds a certain percent of the value of the unit (exact percent is under development).

## QUALITY ASSURANCE PROCEDURES

The processing of applications subject to this policy shall be subject to ongoing review to confirm that its intent is fulfilled and to make changes as necessary to optimize the efficient and fair review of applications submitted to the Department.

Approved:

John Rahaim  
Director of Planning



SAN FRANCISCO  
**PLANNING DEPARTMENT**



**DATE:** February 3, 2014  
**TO:** Honorable Mayor Edwin M. Lee  
**FROM:** DBI Director Tom C. Hui and Planning Director John S. Rahaim  
**RE:** Executive Directive 13-01

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This memorandum responds to your Executive Directive 13-01: Housing Production and Preservation of Rental Stock. In that Directive, you charged the Directors of the Planning Department and Department of Building Inspection (DBI) to form a working group and to implement three primary tasks: 1) recommend City policies and administrative actions to preserve and promote rental housing in San Francisco; 2) implement a process for Planning Commission Discretionary Review hearings when a loss of housing is proposed; and 3) serve as an advisory body to municipal departments with permitting authority and as a clearinghouse for code compliance checks for buildings that are being withdrawn from the rental market (collectively, the “Executive Directive Tasks” or “Tasks”).

To this end, we co-chaired a working group including representatives from the Mayor’s Office, Planning Department, DBI, Mayor’s Office of Housing, Rent Board, Fire Department, SFPDW, SFPUC, MoD, OCII, City Attorney’s Office, Planning Commission, and Building Inspection Commission, as well as representatives from non-City agencies, such as SPUR, Council of Community Housing Organizations, SF Apartment Association, Small Property Owners, and the Housing Rights Committee. The Working Group met three times in public meetings during January, 2014. This document memorializes the Working Group’s recommendations.

The Working Group organized the recommendations under each of the three Executive Directive tasks, with a specific focus on short-term tasks that the Departments can implement without legislation or further extensive study. We are committed to implement immediately the responses under each Task. These responses include:

Tasks 1 and 2: Thirteen short-term, administrative changes that will speed review and approval of new housing permits; retain existing, habitable units; and encourage private parties to build more housing, consistent with our General Plan.

Task 3: Two short-term measures will ensure that the Rent Board will be able to inform tenants about their rights to habitable units and that the City routinely checks on and enforces existing compliance as units transition under Rent Ordinance Sections 37.9(a)(8-10, 13).

We understand that in February you will convene a Task Force consisting of housing experts, City departments, tenant and housing advocates, realtors and property owners to work with you and the Board of Supervisors on housing issues. The goal of this group will be to set the stage for 30,000 new and rehabilitated homes by 2020 and to implement the seven pillars of your housing plan. We have

## Executive Directive 13-01 Recommendations

additional mid-term and long-term ideas that may either require community vetting and/or legislation to realize. We believe this Task Force would be the appropriate ad hoc body to vet the Working Group's ideas for mid-term and long-term strategies to produce and preserve housing that are not included in this document. We are pleased to offer these ideas to your Task Force, and to present them in more detail at the appropriate time.

### **Task 1: Recommendations to the Mayor.**

Prior to a final decision on implementing any of the measures listed below, to the degree that is required, appropriate environmental review as required by CEQA would be undertaken.

There are general process-improvement changes Planning and DBI could make to facilitate the production of affordable units and the retention of existing units. These changes include the following:

1. **Priority Processing.** Revise the Planning Director's Bulletin Number Two to prioritize 100% affordable housing projects, followed by projects with at least 20% on-site or 30% off-site affordable housing, as the Planning Department's highest priority. Market-rate housing projects will be prioritized based on how the Project intends to satisfy its inclusionary affordable housing obligation. Priority will be based on the project's proportion of affordable units produced – either on-site or off-site. The Planning Department will revise the *Affidavit for Compliance with the Inclusionary Affordable Housing Program* to indicate that if an affordable housing project is seeking priority processing, the *Affidavit for Compliance* must be completed and submitted in conjunction with the filing of the Environmental Evaluation Application, entitlement, or Building Permit Application (whichever is filed first).

Also, revise administrative polices for priority project review currently contained in DBI's Administrative Bulletin, AB-004, Priority Permit Processing Guidelines, in a similar fashion. Assist other City agencies in preparing administrative policies that prioritize affordable housing, if no such policies currently exist.

2. **Ombudsman for HOPE SF and Affordable Housing Projects.** Assign one primary staff person each in Planning and DBI to facilitate the entitlement and plan-check process for HOPE SF and affordable housing projects.
3. **Affordable Housing Policies and Procedures.** Establish inter-agency MOU's relating to the review and approval process for affordable housing projects, including internal agency policies and procedures to implement the goals and objectives of Mayor's ED 13-01.
4. **Encourage density.** Ask the Planning Commission to adopt a policy that encourages developers to maximize their permitted density when constructing major alterations or new construction projects.
5. **Training/Public Information.** Create informational bulletins and/or training sessions relating to the City's permitting process for housing projects.
6. **Justify Removal of Illegal Units.** If a property owner seeks to remove an illegal dwelling unit, require the submittal of findings that outline why they are removing, rather than legalizing, the dwelling-unit. These findings would be considered by the Planning Commission at a Mandatory Discretionary Review Hearing (see Task 2).

## Executive Directive 13-01 Recommendations

7. **Housing Element EIR.** Prioritize and support the Housing Element EIR so that the Planning Department can rely on it for housing initiatives.
8. **Concurrent Review.** Ensure that City agencies (Planning, DPW, MoD, DBI, Fire) review applications simultaneously for housing projects, when appropriate. For 100% affordable housing projects, and projects with at least 20% on-site or 30% off-site affordable housing, require pre-application meetings with all relevant City agencies before permits are filed, and establish a requirement for concurrent review for all reviewing agencies. Concurrent review should occur when projects are well-defined and unlikely to substantially change in such a way that would compromise the efficiencies gained by concurrent review. The Departments may consider offering a fee waiver for pre-applications meetings for 100% affordable housing projects if approved by the Board of Supervisors.
9. **Improve Tracking and Transparency of 100% Affordable Projects:** Implement a system to identify pipeline projects that are 100% affordable and implement a publically-accessible tracking system with an up-to-date status of all such projects. When housing projects are approved, an on-line tracking system should indicate the number of affordable units and market rate units approved for construction, and confirm when CFCs/TCOs have been issued.
10. **Agency Coordination on Affordable Housing Projects.** Interagency coordination – including coordination of design review – is of paramount importance for affordable housing projects. Key projects such as Mother Brown’s Emergency Shelter require efficient, timely cooperation from not only the permitting agencies but also asset-holding agencies such as the School District and the Human Services Agency. Those responding to agency comments and corrections also must act within agency-set response timelines/deadlines.
11. **Expedite Hiring of City Staff who Review Housing Permits.** The City’s hiring process is lengthy. Permitting agencies can commit to quick filling of positions but need the assistance of other agencies such as the Department of Human Resources to hire in an efficient manner.
12. **Accountability.** Create performance standards for recommendations that will be implemented as a result of this Executive Directive.

### **Task 2: Discretionary Review for Loss of Housing Units.**

The Working Group has identified two implementation measures for Task 2.

1. **DBI Housing Checklist.** DBI will create a new housing checklist for building permit applications connected to buildings larger than two units. Should any of the following occur in the building, the permit may not be approved over-the-counter and shall instead be referred to the Planning Department to be processed as a Mandatory Discretionary Review:
  - a. The work will result in the removal or loss of a housing unit, legal or otherwise.
  - b. The work will result in the permanent displacement of any tenant from their housing unit, legal or otherwise.
2. **Mandatory Discretionary Review for the loss of Dwelling Units.** For properties with more than two dwelling units, the Planning Department will initiate Discretionary Review for the loss of any dwelling units, legal or otherwise. For building permits to remove an unpermitted unit where there is a feasible path to legalize the unit, the Department will recommend that

## Executive Directive 13-01 Recommendations

the current housing affordability crises creates an “exceptional and extraordinary” circumstance such that the Commission should deny the permit and preserve the unit. For building permits where there is no feasible path to legalize the unit, the Department will place the Discretionary Review on the consent calendar with a recommendation to approve the permit. The Planning Department will work with DBI and with the City Attorney’s Office (and other relevant agencies, including the Fire Department) to ensure this policy addresses possible life-safety issues on the properties.

### **Task 3: Planning and Building Approvals & Notification.**

The Working Group has identified two implementation measures for Task 3.

1. The Department of Building Inspection and Planning Department will review the Notices received from the Rent Board under Task 3 and identify any properties subject to existing administrative code enforcement actions by either Department. The Departments will update the records on those existing violations and, where appropriate, initiate interdepartmental inspections in order to cure the violations.
2. The Rent Board will include information on applicable City Codes designed to ensure the habitability of residential units and each Departments' code enforcement process in the tenant information packet currently provided to tenants affected by a Notice of Intent to Withdraw units from the residential market under Rent Ordinance Section 37.9A.

We look forward to continue to work with you on ways to encourage the production of housing in the City, especially low and moderate income housing. We are available to discuss our proposal with you in detail and look forward to implementing these concepts as quickly as possible.



**Executive Directive 13-01**  
**Housing Production & Preservation of Rental Stock**  
*December 18, 2013*

Through this Executive Directive, I hereby direct all municipal departments that have the legal authority over the permitting or mapping of new or existing housing to prioritize in their administrative work plans the construction and development of all net new housing, including permanently affordable housing.

The directive should be understood to prioritize 100% permanently affordable developments and moderate-income residential developments based on the proportion of permanently affordable units produced onsite or offsite through the city's inclusionary housing program as set forth in Section 415 of the San Francisco Planning Code. The Departments shall follow existing requirements in establishing such priorities.

I also request that Department Heads form a Working Group, with three primary tasks:

- (1) making recommendations to the Mayor for City policies and administrative actions that could be implemented to preserve and promote rental housing in San Francisco;
- (2) implementing a process to have the Planning Commission consider Discretionary Review hearings when a loss of housing is proposed; and
- (3) serving as an advisory body to municipal departments with permitting authority and as a clearinghouse for code compliance checks for buildings that are being withdrawn from the rental market under Residential Rent Stabilization and Arbitration Ordinance sections 37.9(a)(8), 37.9(a)(9), 37.9(a)(10) and 37.9(a)(13), or a Notice of Intent to Withdraw units from the residential market under Section 37.9(a).

The membership of the Working Group shall be:

- Director, Department of Building Inspection
- Director, Planning Department
- Chief, Fire Department
- Director, Rent Board
- Director, Mayor's Office of Housing

As needed:

- Representative from the Department of Public Works
- Representative from the Office of Community Investment & Infrastructure
- Representative from the San Francisco Public Utilities Commission
- Representative from City Attorney's Office
- Representative of Property Owner Organization
- Representative of Tenant Organization
- Representative of a Non-Profit Housing Organization
- Representative of Other Housing Organization

Task (1): Recommendations to the Mayor

I task department heads to prioritize any administrative policies that lead to direct building of more affordable housing or that provide the proper market incentives to foster private development of rental units, including infill housing or small-scale residential with affordable units. Equally important is the preservation of the existing stock. As such, I request that the Department Heads listed above convene and gather any feedback, materials, or research they need to make recommendations to me about potential legislative or citywide strategies to preserve rental units in San Francisco. These recommendations can be forwarded on a rolling basis as ideas arise, and do not need to be formally adopted by the working group.

Task (2): Discretionary Review for Loss of Housing Units

Any DBI permit form for a building larger than two units must include a box about whether said permit will result in the removal or loss of a rental housing unit, the removal or loss of a unit that is currently being used for housing, or results in the displacement of any tenant from their home. If this box is checked "yes," the permit would not be approved over the counter but would instead be referred to the Planning Commission for a hearing under existing Discretionary Review regulations. DBI staff would request all relevant information from the applicant, so it can be forwarded to Planning staff. The Planning Commission could then consider the reasons for the reduction in housing units, with special attention paid to preserving existing rental stock. . This section would not apply to any already approved development agreements and/or current or future planned HOPE SF developments.

Task (3): Planning and Building Approvals & Notification

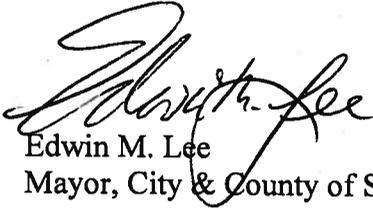
When a building owner files with the Rent Board a Notice of Termination of Tenancy under Rent Ordinance Sections 37.9(a)(8), 37.9(a)(9), 37.9(a)(10) and 37.9(a)(13), or a Notice of Intent to Withdraw units from the residential market under Section 37.9A, the Rent Board shall refer the notice to the Planning Department and to the Department of Building Inspection so that each agency can perform a site visit and research to verify that there are no Code violations, including life-safety and fire code violations. Any violations shall require compliance with all applicable Code requirements and identify any conflicts with Planning Department or DBI policies regarding preservation of affordable housing. Conflicts with city policies shall be forwarded to the Working Group to determine if that the establishment of new discretionary determinations would preserve or enhance the supply of affordable housing.

The Planning Department shall additionally notify the building owner in writing of any future restrictions or prohibitions on demolition, conversion, or mergers of units due to no-fault evictions performed under the above mentioned Rent Ordinance code sections. The building owner filing the notice of intent to withdraw units shall pay time and materials for all inspections, staff work and public hearings as described above as permitted under existing laws.

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Department Heads may designate staff members to serve in their place. All relevant Department Directors should provide a plan to me by February 1st on how their departments plan to operationalize this directive, including recommending any specific administrative changes that are discussed under Task (1) above.

This Executive Directive will take effect immediately and will remain in place until rescinded by future written communication. This Executive Directive cannot override any relevant code sections including those governing no-fault evictions and does not invalidate any legal rights of property owners or tenants, or impair any existing contracts.

A handwritten signature in black ink, appearing to read "Edwin M. Lee". The signature is fluid and cursive, with the first name being the most prominent.

Edwin M. Lee  
Mayor, City & County of San Francisco