

1 [Planning, Administrative Codes - Zoning Controls and Fees in the C-3-R (Downtown Retail
District]

2

3 **Ordinance amending the Planning Code to change zoning controls for Non-Retail Sales**
4 **and Service Uses in the C-3-R (Downtown Retail) Zoning District; amending the**
5 **Planning and Administrative Codes to create the Union Square Park, Recreation, and**
6 **Open Space Fund and Fee; affirming Planning Department’s determination under the**
7 **California Environmental Quality Act; making findings of consistency with the General**
8 **Plan, and the eight priority policies of Planning Code, Section 101.1; and making**
9 **findings of public necessity, convenience, and welfare pursuant to Planning Code,**
10 **Section 302.**

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

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

19 Section 1. Environmental and Land Use Findings.

20 (a) The Planning Department has determined that the actions contemplated in this
21 ordinance comply with the California Environmental Quality Act (California Public Resources
22 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
23 Supervisors in File No. 180916 and is incorporated herein by reference. The Board affirms
24 this determination.

25 (b) On _____, the Planning Commission, in Resolution No. _____,
adopted findings that the actions contemplated in this ordinance are consistent, on balance,

1 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
2 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
3 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

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

8
9 Section 2. Findings About the Need for Permanent Controls for Non-Retail Sales and
10 Service Uses.

11 (a) Adopted in 1985, the Downtown Area Plan sets forth policies that guide land use
12 decisions to create the physical form and pattern of a vibrant, compact, pedestrian-oriented,
13 livable, and vital downtown San Francisco. The Downtown Area Plan grew out of a
14 contemporaneous awareness of the public concern over the degree of change occurring
15 downtown and the need to balance the often conflicting civic objectives of fostering a vital
16 economy and retaining the urban patterns and structures which collectively form the physical
17 essence of San Francisco.

18 (b) The twenty-three core objectives of the Downtown Area Plan continue to guide
19 the evolution of one of the most successful core areas of any American city. The vitality, job
20 and housing density, retail activity, and overall character of San Francisco's downtown area
21 have improved dramatically since the inception of the Downtown Area Plan.

22 (c) Objective 3 of the Downtown Area Plan calls for the improvement of downtown
23 San Francisco's position as the region's prime location for specialized retail trade. Policy 3.1
24 of the Downtown Area Plan mandates the maintenance of high quality, specialty retail
25 shopping facilities in the retail core, and notes that the concentration of quality stores and

1 merchandise allows the retail area to function as a regional, as well as a citywide attraction.
2 Policy 3.1 also provides that the appeal of the downtown area is enhanced by the “sunny
3 pedestrian environment” in and around Union Square, and directs that further development
4 retain the area’s compact and pleasant environmental setting.

5 (d) To enhance the viability of a vibrant retail environment, the Downtown Area Plan
6 created the C-3-R Downtown Retail Zoning District (C-3-R District), and prioritized the
7 concentration of retail uses within the district while recognizing that too much retail space in
8 other scattered locations could weaken the strength of a concentrated retail district. The C-3-
9 R District represented a retail core, and regulations were crafted to protect against retail to
10 non-retail conversions. In spite of some decentralization and fragmentation of retail uses over
11 the years, the retail environment of Union Square has remained strong.

12 (e) The C-3-R District is one of the more compact Downtown C-3 Zoning Districts
13 and encompasses the Union Square neighborhood, with boundaries extending from Bush
14 Street to the North, Kearny Street to the East, Mission Street to the South and Powell Street
15 to the West. Also referred to as the Downtown Retail District, the C-3-R District is a regional
16 center for comparison shopper retailing and direct consumer services. It covers a compact
17 area with a distinctive urban character, consists of uses with cumulative customer attraction
18 and compatibility, and is easily traversed by foot.

19 (f) The Planning Department and Planning Commission have been studying
20 ongoing trends and changes in the retail market in San Francisco. In response to applications
21 seeking to convert existing retail space to office use within the C-3-R District, the Planning
22 Commission held hearings on March 16, 2017, and February 22, 2018, to discuss
23 conversions from retail to other uses in that district.

24 (g) At the March 16, 2017, Planning Commission hearing, the Office of Economic
25 and Workforce Development (OEWD) reported on the trends in the C-3-R District as

1 compared to local, regional, and national trends in retail (2017 OEWD Report). At that
2 hearing, Planning Department staff outlined three potential approaches to reviewing retail-to-
3 office conversions in the C-3-R District, which included (1) continuing to review projects
4 seeking upper level retail-to-office conversions on a case-by-case basis; (2) adopting a policy
5 that provides specific additional criteria that such projects must meet in order for approval; or
6 (3) initiating changes to the Planning Code to codify the criteria that such projects must meet
7 in order for approval. The 2017 OEWD Report is on file with the Clerk of the Board of
8 Supervisors in Board File No. 180916 and is incorporated by reference.

9 (h) Since March 16, 2017, OEWD conducted additional research and analysis
10 related to lease rates, vacancies, and tenant space sizes specific to the C-3-R District and
11 found, in pertinent part, that Union Square retail lease rates have surpassed Citywide lease
12 rates, and that Union Square has higher lease rates than any part of the City in all classes of
13 office.

14 (i) At the February 22, 2018, Planning Commission hearing, OEWD reported on
15 these changes (2018 OEWD Report), and cited dramatic changes in the retail landscape over
16 the past 40 years in San Francisco and ongoing major restructuring in the national retail
17 industry. OEWD found that although San Francisco's retail economy has somewhat slowed,
18 retail stores and restaurants here have largely been insulated from national trends due to San
19 Francisco's many competitive advantages, including the City's strong local economy,
20 significant regional and international tourism, and granular approach to zoning controls aimed
21 at enhancing the City's existing retail corridors and zoning districts. The 2018 OEWD Report
22 is on file with the Clerk of the Board of Supervisors in Board File No. 180916 and is
23 incorporated by reference.

24 (j) The Union Square area continues to be a world-class retail destination that
25 draws both tourists and Bay Area residents with its combination of walkable shopping and

1 dining, excellent transit access, and top-tier hospitality. A 2016 study showed that Union
2 Square merchants generate approximately 37% of San Francisco’s sales tax in general
3 consumer goods, and 15% of all City sales tax dollars.

4 (k) To ensure that the City does not lose the opportunity to preserve the existing
5 character of the C-3-R District, and to continue to develop and conserve the economic vitality
6 of the City, it is necessary to consider the effects of conversions from Retail to Non-Retail
7 Sales and Service use in the C-3-R District.

8 (l) On May 22, 2018, the Board of Supervisors passed Resolution No. 153-18, an
9 interim controls resolution. In addition to the findings required by Planning Code Section 303,
10 Resolution No. 153-18 requires the City to make additional findings regarding the viability of
11 Retail in the C-3-R District to approve any conditional use permit seeking to convert from a
12 Retail Use to Non-Retail Sales and Service Use. An applicant must also provide information
13 regarding the vacancy and rental rates for Retail and Non-Retail Sales and Services Uses,
14 and any other relevant information regarding neighborhood development, economic or
15 demand changes in the C-3-R District. Resolution No. 153-18 became effective on June 1,
16 2018, and will expire 18 months from that date, or until the Board of Supervisors adopts
17 permanent legislation regulating conversions from Retail to Non-Retail Sales and Service Use
18 in the C-3-R District, whichever comes first.

19 (m) The Board of Supervisors hereby enacts permanent controls for Non-Retail
20 Sales and Service Use in the C-3-R District, including conversions from Retail Use.

21
22 Section 3. The Planning Code is hereby amended by revising Section 210.2, to read
23 as follows:

24 **SEC. 210.2. C-3 DISTRICTS: DOWNTOWN COMMERCIAL.**

1 Downtown San Francisco, a center for City, regional, national, and international
 2 commerce, is composed of five separate districts, as follows:

3 * * * *

4 **C-3-R District: Downtown Retail.** This District is a regional center for comparison
 5 shopper retailing and direct consumer services. It covers a compact area with a distinctive
 6 urban character, consists of uses with cumulative customer attraction and compatibility, and is
 7 easily traversed by foot. Like the adjacent Downtown Office District, this District is well-served
 8 by City and regional transit, with automobile parking best located at its periphery. Within the
 9 District, continuity of retail and consumer service uses is emphasized, with encouragement of
 10 pedestrian interest and amenities and minimization of conflicts between shoppers and motor
 11 vehicles. A further merging of this District with adjacent, related Districts is anticipated,
 12 partially through development of buildings which combine retailing with other functions.

13 * * * *

14 **Table 210.2**

15 **ZONING CONTROL TABLE FOR C-3 DISTRICTS**

Zoning Category	§ References	C-3-O	C-3-O(SD)	C-3-R	C-3-G	C-3-S
* * * *						
NON-RESIDENTIAL STANDARDS AND USES						
* * * *						
Sales and Service Category						
* * * *						
Non-Retail Sales and Service*	§ 102	P (1)	P (1)	<u>NP</u> (2)	P (1)	P (1)
Catering	§ 102	P	P	P	P	P
Design Professional	§ 102	P	P	<u>NP</u> (2)	P	P

1	Laboratory	§ 102	P	P	P	P	P
2	Life Science	§ 102	P	P	P	P	P
3	Storage, Commercial	§ 102	NP	NP	NP	NP	NP
4	Storage, Wholesale	§ 102	NP	NP	NP	NP	NP
5	Wholesale Sales	§ 102	P	P	P	P	P
6	* * * *						

7 * Not listed below.

8 (1) C ~~is~~ required if at or below the ground floor.

9 (2) P if located on floors one through three ~~the ground floor~~ and offers on-site services
10 to the general public. ~~NP on the ground floor if it does not provide onsite services to the general~~
11 ~~public.~~ C ~~is~~ required if located on floors four through six and the use is larger than 5,000 gross
12 square feet in size ~~or located above the ground floor.~~ P if located on floor seven and above.

13 In ~~the C-3-R District, in~~ addition to the criteria set forth in Section 303, a Conditional Use
14 Authorization pursuant to this note approval shall be given upon a determination that the use will
15 not detract from the District's primary function as an area for comparison shopper retailing and
16 direct consumer services.

17 (3) C ~~R~~ required if operated on an open lot.

18 (4) Required to be in an enclosed building, NP if operated on open lot.

19 (5) C required if taller than 25 feet above roof, grade, or height limit depending on
20 site or if within 1000 feet of an R District and includes a parabolic antenna with a diameter in
21 excess of 3 meters or a composite diameter of antennae in excess of 6 meters. See definition
22 in Section 102 for more information.

23 (6) C required for Formula Retail on properties in the C-3-G District with frontage on
24 Market Street, between 6th Street and the intersection of Market Street, 12th Street, and
25 Franklin Street.

1 (7) Construction of Accessory Dwelling Units may be permitted pursuant to Section
2 207(c)(4).

3
4 Section 4. Findings Regarding Park, Recreation, and Open Space Requirements in
5 the Union Square C-3-R Downtown Retail Zoning District.

6 (a) In addition to the findings in Section 2 of this ordinance, the Board of
7 Supervisors further finds that Union Square is both a neighborhood and open space attraction
8 within the heart of Downtown San Francisco that is an incredibly popular destination for San
9 Francisco residents, the regional San Francisco Bay Area, and for visitors and tourists from
10 around the world. Union Square consists of many of the City's finest shops and hotels and is
11 one of the strongest downtown retail districts in the country. The loss of retail space in the C-
12 3-R District will diminish the existing character of the Union Square area by reducing the
13 number of retailers, which may cause some shoppers to leave sooner than they might
14 otherwise if a greater density of retailers were present.

15 (b) Fundamental to the C-3-R District at the time of its creation was its emphasis on
16 a continuity of retail and consumer service uses, its ongoing encouragement of pedestrian
17 interest and amenities, and efforts to minimize conflicts between shoppers and motor
18 vehicles.

19 (c) The C-3-R District was created specifically to protect against conversions of
20 retail use to other non-retail uses. Although the retail landscape was different in the 1980s
21 when the Downtown Area Plan was initially crafted and conceived, the rapid growth of office
22 space was and remains a threat to existing retail space, particularly on the upper floors. In
23 furtherance of a dense, pedestrian-oriented retail environment, Downtown Area Plan Policy
24 3.3 requires City policymakers to prioritize retail service businesses in upper floor offices in
25 the retail district.

1 (d) The 2017 OEWD Report found that (1) rents for smaller retail spaces in the C-3-
2 R District had outpaced citywide rates, (2) space available for rent was at an all-time low, (3)
3 the C-3-R District continued to contribute a large portion of City sales tax revenue to the
4 economy, and (4) over the last 5 years, sales of General Consumer Goods had in fact grown
5 both in the C-3-R District and citywide. The 2017 OEWD Report also identified trends in the
6 retail industry, among them: (1) a shift away from the general department store model, (2) a
7 general desire for smaller “footprints”, and (3) an increase in retailers seeking to provide a
8 more targeted “lifestyle specific” consumer experience.

9 (e) Meanwhile, the market for leasing office space throughout San Francisco
10 continues to thrive, presenting external pressure on the competitiveness of retail space within
11 the C-3-R District. According to the Jones Lang Lasalle Office Outlook Report for Q1 2018,
12 leasing activity maintained its strong momentum from previous years, with tenants rushing to
13 lease space in new office developments in the City, even before construction is finished. That
14 report also found that San Francisco office tenants value spaces with creative and flexible
15 build-outs that are move-in ready, meaning many office tenants are willing to convert existing
16 retail spaces within the Downtown C-3-R to Office Use. The Jones Lang Lasalle Office
17 Outlook Report for Q1 2018 is on file with the Clerk of the Board of Supervisors in Board File
18 No. 180916.

19 (f) Applicants continue to seek to convert retail space to office and other non-retail
20 space. The applications to convert existing retail space contribute to the rising rents for
21 existing retail space and limited amount of available retail space.

22 (g) The proposed conversion of retail to office space in the C-3-R District brings with
23 it new impacts on the public realm, by virtue of bringing new office workers to this vibrant
24 predominantly-retail area. When a space converts from retail to office, generally, there are
25 more office workers per square foot than retail workers per square foot.

1 (h) As office space is approved, either as new construction or by way of conversion,
2 public facilities will be more heavily and consistently used throughout the full day. This results
3 in a more intense use for public facilities due to the larger worker population. The stress on
4 these public facilities and the need for new and improved open space amenities and
5 infrastructure is anticipated to increase as the creation of new office space occurs in the
6 Downtown C-3-R.

7 (i) In 2012, the City contracted with Hausrath Economics Group to prepare the
8 Downtown San Francisco Park, Recreation, and Open Space Development Impact Fee
9 Nexus Study (Nexus Study). The Nexus Study examined the impacts of people living in new
10 housing and working in new buildings in downtown San Francisco and the resulting increase
11 in demand for park, recreation, and open space facilities created by the expected
12 development of several land uses, including housing, office, retail, hotel and institutional
13 development in the downtown area. The Nexus Study is on file with the Clerk of the Board of
14 Supervisors in Board File No. 180916, and incorporated by reference.

15 (j) The Nexus Study examined development horizons through 2030 and found that
16 the downtown area is expected to accommodate a substantial amount of the population and
17 employment growth projected for San Francisco. The scenario reflects state, regional and
18 local policies directing new development to dense urban centers served by transit. Office
19 employment accounted for 75 percent of the total expected employment growth from 2005
20 through 2030.

21 (k) The Nexus Study found that new facilities and improvements to existing facilities
22 are required to accommodate additional demand for park, recreation and open space facilities
23 in order to maintain the current level of service. The Nexus Study found that any fee revenue
24 would not be used to correct existing standards, but instead would be used to maintain the
25 existing standards to meet the growing population and employment growth. If facility inventory

1 were not expended or improved to accommodate increased demand, then the level of service
2 would deteriorate as the increased activity associated with growth and new development
3 would occur within the confines of constrained existing facilities.

4 (l) The Nexus Study found that costs for park, recreation, and open space facilities
5 in the downtown area are higher than elsewhere in the City. The Nexus Study found that the
6 higher cost is driven by: (1) the higher cost of land in the downtown area attributable to the
7 limited amount of suitable open land, (2) space and locational restrictions that lead to higher
8 development costs, and (3) the need for more expensive improvements due to the density of
9 the existing development and intensity of expected use.

10 (m) According to the Nexus Study, park, recreation, and open space facilities are
11 critical components of a quality of life analysis because they sustain the social, physical and
12 mental health of residents and workers, and provide economic benefits as well. Adequate
13 open space provides essential relief from the density and congestion associated with
14 downtown high-rise development. The Nexus Study found that as development occurs,
15 additional park and open space facilities are needed to maintain the quality of urban
16 experience that makes downtown San Francisco an attractive place to do business, live, and
17 visit.

18 (n) The Board of Supervisors recognizes that the Union Square Park, Recreation,
19 and Open Space Fee is only one part of the City's overall strategy for addressing the need of
20 open space. The Downtown Park Fee is a longstanding commercial development impact fee,
21 initiated in 1985, which supports recreational space in the downtown area for the
22 neighborhood's daytime employee population. In adopting the Downtown Park Fee, the Board
23 of Supervisors recognized that continued office development downtown area increased the
24 daytime population and created a need for additional public park and recreation facilities. The
25 Downtown Park Fee is currently set at \$2 per square foot.

1 (o) The Board of Supervisors finds that park, recreation, and open space facilities
2 provide economic benefits, by sustaining the social, physical and mental health of residents,
3 visitors, and workers. New park, recreation, and open space facilities may also attract
4 shoppers to the retail core and offset any loss created by the conversion to office.

5 (p) The Board of Supervisors has reviewed the Nexus Study and finds that the
6 study supports the current requirements for the Union Square Park, Recreation, and Open
7 Space Fee. The Board of Supervisors finds that the Nexus Study: identifies the purpose of
8 the fee to mitigate impacts on the demand for park, recreation, and open space in the
9 downtown area, which includes the C-3-R District; identifies the facilities and improvements
10 that the fee would support; and demonstrates a reasonable relationship between the planned
11 new development and the use of the fee, the type of new development planned and the need
12 for facilities to accommodate growth, and the amount of the fee and the cost of facilities and
13 improvements.

14 (q) The Board of Supervisors finds that the Union Square Park, Recreation, and
15 Open Space Fee would fund new improvements required by new developments, and would
16 not be used to remedy existing deficiencies or used for maintenance or operation purposes.

17 (r) The Board of Supervisors finds that the Union Square Park, Recreation, and
18 Open Space Fee is similar to the existing Downtown Park Fee, and that the Nexus Study
19 establishes that the current requirements for both fees is less than the cost of mitigation
20 created by new office development. The City may also fund the cost of remedying existing
21 deficiencies through other public and private funds.

22
23 Section 5. The Administrative Code is hereby amended by adding section 10.100-354
24 and the Planning Code is hereby amended by revising sections 428, 428.1, 428.2, and 428.3
25 to read:

1 **SEC. 10.100-354. UNION SQUARE PARK, RECREATION, AND OPEN SPACE FUND.**

2 **(a) Establishment of Fund.** *The Union Square Park, Recreation, and Open Space Fund*
3 *(the “Fund”)* *is established as a category eight fund to receive any monies collected pursuant to the*
4 *Union Square Park, Recreation, and Open Space Fee, or donated to pay for City activities designed to*
5 *address park, recreation, or open space needs in the C-3-R Downtown Retail Zoning District.*

6 **(b) Use of Fund.** *Monies in the Fund shall be used exclusively by the Controller or his or*
7 *her designee (the “Controller”)* *to pay for new and improved facilities to meet the needs attributable to*
8 *new recreation, park, and open space users in the C-3-R Downtown Retail Zoning District.*

9 **(c) Administration of Fund.** *The Controller shall submit an annual written report to the*
10 *Board of Supervisors describing expenditures made from the Fund during the previous fiscal year.*

11
12 **SEC. 428. UNION SQUARE PARK, RECREATION, AND OPEN SPACE FEE.**

13 *Sections 428.1 through 428.3 hereinafter referred to as Section 428.1 et seq. set forth the*
14 *requirements and procedures for the Union Square Park, Recreation, and Open Space Fee.*

15
16 **SEC. 428.1 PURPOSE AND FINDINGS SUPPORTING UNION SQUARE PARK,**
17 **RECREATION, AND OPEN SPACE FEE.**

18 **(a) Purpose.** *The purpose of the Union Square Park, Recreation, and Open Space Fee is to*
19 *provide funding to increase the supply of park, recreation, and open space facilities to serve the needs*
20 *attributable to new office development in the C-3-R Downtown Retail Zoning District. The Board of*
21 *Supervisors hereby finds that the Union Square area, most of which is zoned as the C-3-R Downtown*
22 *Retail Zoning District, is a world-class retail destination that draws both tourists and Bay Area*
23 *residents with its combination of walkable shopping and dining, excellent transit access, and top-tier*
24 *hospitality. As new office development occurs, additional park, recreation, and open space facilities*

1 are needed to maintain the quality of urban experience that makes downtown San Francisco an
2 attractive place to do business, live, and visit.

3 (b) **Findings.** The Board of Supervisors has reviewed the Downtown San Francisco Park,
4 Recreation, and Open Space Development Impact Fee Nexus Study, prepared by Hausrath dated April
5 13, 2012 (“Nexus Study”), on file with the Clerk of the Board of Supervisors in File No. 180916. In
6 accordance with the California Mitigation Fee Act, Government Code 66001(a), the Board of
7 Supervisors adopts the findings and conclusions of that study, and incorporates those findings and
8 conclusions by reference to support the imposition of the fees under this Section.

9
10 **SEC. 428.2. DEFINITIONS.**

11 See Section 401 of this Article.

12
13 **SEC. 428.3. APPLICATION OF UNION SQUARE PARK, RECREATION, AND OPEN**
14 **SPACE FEE.**

15 (a) **Application.** Section 428.1 et seq., shall apply to any office development project in the
16 C-3-R Downtown Retail Zoning District.

17 (b) **Amount of fee.** The applicable fee shall be \$4 per square foot.

18 (c) **Other Fee Provisions.** The Union Square Park, Recreation, and Open Space Fee shall
19 be subject to the provisions of this Article, including, but not limited to Sections 401 through 410.

20
21 Section 6. Effective Date. This ordinance shall become effective 30 days after
22 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
23 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
24 of Supervisors overrides the Mayor’s veto of the ordinance.

1 Section 7. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
5 additions, and Board amendment deletions in accordance with the “Note” that appears under
6 the official title of the ordinance.

7
8
9 APPROVED AS TO FORM:
10 DENNIS J. HERRERA, City Attorney

11 By: _____
12 AUSTIN M. YANG
13 Deputy City Attorney

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