

BOARD of SUPERVISORS



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December 23, 2019

**File No. 191285**

Lisa Gibson  
Environmental Review Officer  
Planning Department  
1650 Mission Street, Ste. 400  
San Francisco, CA 94103

Dear Ms. Gibson:

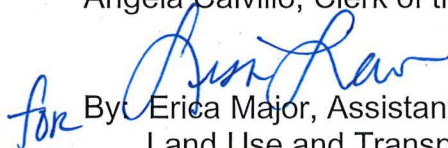
On December 17, 2019, Supervisor Yee introduced the following proposed legislation:

**File No. 191285**

**Ordinance amending the Planning Code to require consideration of smaller commercial spaces when creating large lots, limiting lot frontages to 50 feet on Ocean Avenue, creating an exception from neighborhood notices for certain uses in the Ocean Avenue Neighborhood Commercial Transit District, and adding Arts Activity as a use to the Ocean Avenue Neighborhood Commercial Transit District; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.**

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

*for*  Erica Major, Assistant Clerk

Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning  
Don Lewis, Environmental Planning

1 [Planning Code - Lot Mergers, Neighborhood Notice, and Zoning Controls]

2

3 **Ordinance amending the Planning Code to require consideration of smaller commercial**

4 **spaces when creating large lots, limiting lot frontages to 50 feet on Ocean Avenue,**

5 **creating an exception from neighborhood notices for certain uses in the Ocean Avenue**

6 **Neighborhood Commercial Transit District, and adding Arts Activity as a use to the**

7 **Ocean Avenue Neighborhood Commercial Transit District; affirming the Planning**

8 **Department's determination under the California Environmental Quality Act; and**

9 **making findings of consistency with the General Plan, and the eight priority policies of**

10 **Planning Code, Section 101.1, and findings of public necessity, convenience, and**

11 **welfare under Planning Code, Section 302.**

12 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.

13 **Additions to Codes** are in *single-underline italics Times New Roman font*.

14 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.

15 **Board amendment additions** are in double-underlined Arial font.

16 **Board amendment deletions** are in ~~strikethrough Arial font~~.

17 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code

18 subsections or parts of tables.

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

20 Section 1. Environmental and Land Use Findings.

21 (a) The Planning Department has determined that the actions contemplated in this

22 ordinance comply with the California Environmental Quality Act (California Public Resources

23 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of

24 Supervisors in File No. \_\_\_\_\_ and is incorporated herein by reference. The Board

25 affirms this determination.

1 (b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_,  
2 adopted findings that the actions contemplated in this ordinance are consistent, on balance,  
3 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The  
4 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of  
5 the Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.

6 (c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this  
7 ordinance will serve the public necessity, convenience and welfare for the reasons set forth in  
8 Planning Commission Resolution No. \_\_\_\_\_, and incorporates such reasons by this  
9 reference thereto. A copy of said Resolution is on file with the Clerk of the Board of  
10 Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.

11  
12  
13 Section 2. The Planning Code is hereby amended by revising Sections 121.1, 121.7,  
14 307, 311, and 755, to read as follows:

15 **SEC. 121.1. DEVELOPMENT OF LARGE LOTS, NEIGHBORHOOD COMMERCIAL**  
16 **DISTRICTS.**

17 \* \* \* \*

18 (b) Design Review Criteria. In addition to the criteria of Section 303(c) of this Code,  
19 the Planning Commission shall consider the extent to which the following criteria are met:

20 (1) The mass and facade of the proposed structure are compatible with the  
21 existing scale of the district.

22 (2) The facade of the proposed structure is compatible with design features  
23 of adjacent facades that contribute to the positive visual quality of the district.

1                   (3) Where 5,000 or more gross square feet of commercial space is proposed, that the  
2 project provides commercial spaces in a range of sizes, including one or more spaces of 1,000 square  
3 feet or smaller, to accommodate a diversity of neighborhood business types and business sizes.

4  
5                   **SEC. 121.7. RESTRICTION OF LOT MERGERS IN CERTAIN DISTRICTS AND ON**  
6 **PEDESTRIAN-ORIENTED STREETS.**

7                   (a) Purpose: In order to promote, protect, and maintain a fine-grain scale of  
8 development in residential districts and on important pedestrian-oriented commercial streets  
9 that is appropriate to each district; compatible with adjacent buildings; provide for a diverse  
10 streetscape; ensure the maintenance and creation of multiple unique buildings and building  
11 frontages rather than large single structures superficially treated; promote diversity and  
12 multiplicity of land ownership and discourage consolidation of property under single ownership  
13 merger of lots is regulated in accordance with this Section 121.7. as follows:

14                   (b) Controls. Merger of lots is regulated as follows:

15                   (1a) RTO Districts. In RTO Districts, merger of lots creating a lot greater than  
16 5,000 square feet shall not be permitted except according to the procedures and criteria in  
17 subsections (d) ~~and (e)~~ below.

18                   (2b) NCT, NC, and Mixed-Use Districts. In those NCT, NC, and Mixed Use  
19 Districts listed below, merger of lots resulting in a lot with a single street frontage greater than  
20 that stated in the table below on the specified streets or in the specified Districts is prohibited  
21 except according to the procedures and criteria in subsections (c) and (d) below.

22                   (3) WMUO District. Merger of lots in the WMUO zoning district resulting in a lot  
23 with a street frontage between 100 and 200 feet along Townsend Street is permitted so long as a  
24 publicly-accessible through-block pedestrian alley at least 20 feet in width and generally conforming to  
25 the design standards of Section 270.2(e)(5)-(12) of this Code is provided as a result of such merger.

1                   (4)     **Mission Street NCT District.** *In the Mission Street NCT District, projects that*  
 2 *propose lot mergers resulting in street frontages on Mission Street greater than 50 feet shall provide at*  
 3 *least one non-residential space of no more than 2,500 square feet on the ground floor fronting Mission*  
 4 *Street.*

5                   (5)     **Ocean Avenue NCT District.** *In the Ocean Avenue NCT District, mergers of lots*  
 6 *greater than 50 feet are permitted to create corner lots only and shall require a conditional use*  
 7 *authorization.*

Street or District	Lot Frontage Limit
Hayes, from Franklin to Laguna	50 feet
RED and RED-MX	50 feet
Church Street, from Duboce to 16th Street	100 feet
Divisadero Street NCT except for the east and west blocks between Oak and Fell, Fillmore Street NCT, Folsom Street NCT, RCD, WMUG, WMUO, and SALI	100 feet; <i>for WMUO District (see subsection (b)(3))</i>
Mission Street, within the Mission Street NCT	100 feet; <i>(see subsection (b)(4) below)</i>
Market, from Octavia to Noe	150 feet
Ocean Avenue in the Ocean Avenue NCT	<i>See subsection (e) 50 feet; see subsection (b)(5)</i>
Inner and Outer Clement NCDs	50 feet
North Beach NCD and SUD, Telegraph Hill-North Beach Residential SUD, Polk Street NCD, and Pacific Avenue NCD*	25 feet*

NC-2 districts on Balboa Street between 2nd Avenue and 8th Avenue, and between 32nd Avenue and 38th Avenue	50 feet
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\* For lots that do not have street frontage, the merger would not result in a lot with a width greater than 25 feet.

*Notwithstanding the foregoing, merger of lots in the WMUO zoning district resulting in a lot with a street frontage between 100 and 200 feet along Townsend Street is permitted so long as a publicly accessible through-block pedestrian alley at least 20 feet in width and generally conforming to the design standards of Section 270.2(e)(5)-(12) of this Code is provided as a result of such merger.*

(c) **Administrative Exceptions.** The Zoning Administrator may administratively waive certain lot mergers from the restrictions of ~~S~~subsections (b) *and* (e) only when one or more of the following conditions is present:

(1) One of the lots to be merged has total street frontage on the restricted street of less than 20 feet; or

(2) ~~The p~~Project sponsor is a government agency or institution subject to Section 304.5 of this Code, and the purpose of the project is for a public facility, public building, or institutional building; or

(3) The project involves normalizing ~~of substandard or irregular parcels~~ lots that are publicly owned or are being transferred from public to private ownership, including lots of the former Central Freeway; or

(4) The lots to be merged contain a pre-existing single building spanning multiple lots; or

(5) The lot merger will enable a specific residential project in which a majority of the units on-site will be affordable as defined by Section ~~402326.3(h)(2)~~.

1 (d) **Conditionally Permitted Exceptions.** The Planning Commission may approve, as a  
2 ~~e~~Conditional ~~#~~Use according to the procedures of Section 303, ~~permit~~ mergers exceeding the  
3 restrictions of subsections (b) and (c) only when one or more of the following findings can  
4 affirmatively be made and the project meets the intent of this Section ~~as expressed in subsection~~  
5 ~~(a) 121.7:~~

6 (1) The lot merger will enable a specific residential project that provides  
7 housing on-site at affordability levels significantly exceeding the requirements of Section 415.1;  
8 or

9 (2) The lot merger will facilitate development of an underutilized site  
10 historically used as a single use and the new project is comprised of multiple individual  
11 buildings; or

12 (3) The lot merger serves a unique public interest that cannot be met by  
13 building a project on a smaller lot.

14 ~~(e) — In the Ocean Avenue NCT, no lot merger which increases the frontage width of any lot~~  
15 ~~on Ocean Avenue may be permitted except as permitted administratively by Subsection (e) above or~~  
16 ~~with a Conditional Use according to the procedures of Section 303 where such a merger creates a~~  
17 ~~corner parcel for the purpose of accommodating access to off street from a cross street to Ocean~~  
18 ~~Avenue.~~

19 ~~(f) — In the Mission Street NCT, projects that propose lot mergers resulting in street frontages~~  
20 ~~on Mission Street greater than 50 feet shall provide at least one non-residential space of no more than~~  
21 ~~2,500 square feet on the ground floor fronting Mission Street.~~

22 **SEC. 307. OTHER POWERS AND DUTIES OF THE ZONING ADMINISTRATOR.**

23 \* \* \* \*

24 (h) **Exceptions from Certain Specific Code Standards through Administrative**  
25 **Review.** The Zoning Administrator may allow complete or partial relief from certain standards

1 specifically identified below, in Section 161, or elsewhere in this Code when modification of  
2 the standard would result in a project fulfilling the criteria set forth below and in the applicable  
3 section.

4 (1) **Applicability.**

5 \* \* \* \*

6 (F) *Restriction of Lot Mergers in Certain Districts and on*  
7 *Pedestrian-Oriented Streets. For projects subject to the restrictions on lot mergers in Section 121.7,*  
8 *the Zoning Administrator may approve exceptions from those restrictions as provided in Section*  
9 *121.7(c).*

10  
11 **SEC. 311. PERMIT REVIEW PROCEDURES.**

12 \* \* \* \*

13 (b) **Applicability.** Except as indicated herein, all building permit applications in  
14 Residential, NC, NCT, and Eastern Neighborhoods Districts for a change of use;  
15 establishment of a Micro Wireless Telecommunications Services Facility; establishment of a  
16 Formula Retail Use; demolition, new construction, or alteration of buildings; and the removal  
17 of an authorized or unauthorized residential unit, shall be subject to the notification and review  
18 procedures required by this Section 311. In addition, all building permit applications that would  
19 establish Cannabis Retail or Medical Cannabis Dispensary uses, regardless of zoning district,  
20 shall be subject to the review procedures required by this Section 311. Notwithstanding the  
21 foregoing or any other requirement of this Section 311, a change of use to a Child Care  
22 Facility, as defined in Section 102, shall not be subject to the review requirements of this  
23 Section 311. Notwithstanding the foregoing or any other requirement of this Section 311,  
24 building permit applications to construct an Accessory Dwelling Unit pursuant to Section  
25 207(c)(6) shall not be subject to the notification or review requirements of this Section 311.



1 (1) **Change of Use.** For ~~the~~ purposes of this Section 311, a change of use is  
2 defined as follows:

3 (A) **Residential, NC, and NCT Districts.** For all Residential, NC, and  
4 NCT Districts, a change of use is defined as a change to, or the addition of, any of the  
5 following land uses as defined in Section 102 of this Code: Adult Business, Bar, Cannabis  
6 Retail, General Entertainment, Group Housing, Limited Restaurant, Liquor Store, Massage  
7 Establishment, Medical Cannabis Dispensary, Nighttime Entertainment, Outdoor Activity Area,  
8 Post-Secondary Educational Institution, Private Community Facility, Public Community  
9 Facility, Religious Institution, Residential Care Facility, Restaurant, School, Tobacco  
10 Paraphernalia Establishment, Trade School, and Wireless Telecommunications Facility. A  
11 change of use from a Restaurant to a Limited-Restaurant shall not be subject to the provisions  
12 of this Section 311. Any accessory massage use in the Ocean Avenue Neighborhood  
13 Commercial Transit District shall be subject to the provisions of this Section 311.

14 \* \* \* \*

15 (iii) *Exception for the Ocean Avenue Neighborhood Commercial*  
16 *Transit District. Notwithstanding subsection 311(b)(1)(A), building permit applications in the Ocean*  
17 *Avenue Neighborhood Commercial Transit District for a change of use to the following uses shall be*  
18 *excepted from the provisions of subsections 311(d) and 311(e): General Entertainment, Limited*  
19 *Restaurant, Nighttime Entertainment, Outdoor Activity Area, Private Community Facility, Public*  
20 *Community Facility, Restaurant, and Tobacco Paraphernalia Establishment.*

21 \* \* \* \*

22 **SEC. 755. OCEAN AVENUE NEIGHBORHOOD COMMERCIAL TRANSIT**  
23 **DISTRICT.**

24 The Ocean Avenue Neighborhood Commercial Transit District is located on Ocean  
25 Avenue from Howth Street to Manor Drive. Ocean Avenue is a multi-purpose transit-oriented

1 small-scale commercial district ~~that is modeled on the NCT-2 District~~. Ocean Avenue was  
2 developed as a streetcar-oriented commercial district in the 1920s and continues to serve this  
3 function, with the K-line streetcar on Ocean Avenue. Numerous other bus lines serve the  
4 area, especially the eastern end, where the Phelan Loop serves as a major bus terminus. The  
5 eastern end of the district is anchored by the main City College campus and direct linkages to  
6 the Balboa Park BART/MUNI rail station a couple blocks to the east, which serves as the  
7 southernmost San Francisco station for BART and the terminus of the J, K, and M streetcar  
8 lines. Because of the immediate proximity of the BART/MUNI station the district has quick and  
9 easy transit access to downtown.

10 \* \* \* \*

11 The Ocean Avenue NCT District is intended to provide convenience goods and  
12 services to the surrounding neighborhoods as well as limited ~~comparison shopping~~ goods and  
13 services for a wider market. The range of ~~comparison~~ goods and services offered is varied and  
14 ~~often~~ includes ~~specialty~~ retail stores, retail services, restaurants, and neighborhood-serving arts,  
15 entertainment, and institutional community uses offices. Buildings may range in height, with height  
16 limits generally allowing up to four or five stories. Lots are generally small to medium in size  
17 and lot consolidation is ~~restricted prohibited~~ to preserve the fine grain character of the district,  
18 ~~unless the consolidation creates a corner parcel that enables off-street parking to be accessed from a~~  
19 ~~side street~~.

20 Rear yard requirements above the ground story and at residential levels preserve open  
21 space corridors of interior blocks.

22 Active Commercial, arts, entertainment, and institutional community uses are required at  
23 the ground level and permitted at the second story. For purposes of this Section, Arts Activities,  
24 Nighttime Entertainment, and Institutional Community Uses shall be considered "active commercial  
25 uses," as described in Section 145.4 of this Code.

\* \* \* \*

**Table 755. OCEAN AVENUE NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT  
ZONING CONTROL TABLE**

*Ocean Avenue NCT*

<b>Zoning Category</b>	<b>§ References</b>	<b>Controls</b>
<b>BUILDING STANDARDS</b>		
* * * *		
<b>Street Frontage and Public Realm</b>		
* * * *		
Ground Floor Commercial	§ 145.4	Required on Ocean Avenue within the District, except on the north side of Ocean Avenue between Plymouth and Brighton Avenues. <u>(2)</u>
* * * *		
<b>Miscellaneous</b>		
* * * *		
Lot <del>Merger</del> <i>Consolidation</i>	§ <del>121.6</del> <u>121.7</u>	<u><i>Certain exceptions permitted by § 121.7. Not Permitted except to create corner lots</i></u>
* * * *		
<b>NON-RESIDENTIAL STANDARDS AND USES</b>		
* * * *		
		<b>Controls by Story</b>
		1st                      2nd                      3rd+

<b>Entertainment, Arts and Recreation Use Category</b>				
<b>Entertainment, Arts and Recreation Uses*</b>	<b>§ 102</b>	NP	NP	NP
<i>Arts Activities</i>	<i>§ 102</i>	<i>P</i>	<i>P</i>	<i>NP</i>
* * * *				

\* \* \* \*

(2) ~~[Note deleted.]~~ *In the Ocean Avenue NCT District, Arts Activities, Nighttime Entertainment, and Institutional Community Uses are considered to be "active uses," as described in Section 145.4 of this Code.*

\* \* \* \*

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

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

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

By:   
AUSTIN M. YANG  
Deputy City Attorney

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**LEGISLATIVE DIGEST**

[Planning Code - Lot Mergers, Neighborhood Notice, and Zoning Controls]

**Ordinance amending the Planning Code to require consideration of smaller commercial spaces when creating large lots, limiting lot frontages to 50 feet on Ocean Avenue, creating an exception from neighborhood notices for certain uses in the Ocean Avenue Neighborhood Commercial Transit District, and adding Arts Activity as a use to the Ocean Avenue Neighborhood Commercial Transit District; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.**

Existing Law

Planning Code Sections 121.1 and 121.7 provide certain controls for the development of large lots. Pursuant to the code, in certain instances the Zoning Administrator is authorized to grant an exception to the lot merger limitations. In other instances, exceptions must be granted by the Planning Commission in the form of a conditional use authorization.

Section 311 provides neighborhood notice to when certain uses are established. There is an existing exception for certain neighborhood commercial districts.

Pursuant to Section 145.4, ground floor uses are generally required to be active uses. Arts Activities is a defined use pursuant to Section 102. Arts Activity is not currently permitted in the Ocean Avenue Neighborhood Commercial Transit District.

Amendments to Current Law

This ordinance would require approval from either the zoning administrator or the Planning Commission for proposed lot mergers greater than 50 feet.

The ordinance would also create an exception to the neighborhood notice requirements of Section 311 for certain uses in the Ocean Avenue Neighborhood Commercial Transit District.

The ordinance would authorize Arts Activities as a use in the Ocean Avenue Neighborhood Commercial Transit District.