

1 [Planning Code - Authorizing Interim Activities at Development Sites]

2

3 **Ordinance amending the Planning Code to enable the use of development project sites**
4 **during the project approval and entitlement process by authorizing the Planning**
5 **Department to authorize certain interim activities at development project sites as**
6 **Temporary Uses for up to 36 months, subject to extension at the discretion of the**
7 **Planning Director in increments for up to a maximum possible total of 3624 additional**
8 **months; adopting the Planning Department’s determination under the California**
9 **Environmental Quality Act; making findings of public convenience, necessity, and**
10 **welfare under Planning Code, Section 302; and making findings of consistency with the**
11 **General Plan, and the eight priority policies of Planning Code, Section 101.1.**

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.

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

18

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. 190355 and is incorporated herein by reference. The Board adopts
24 these findings as its own.

25

1 (b) On April 25, 2019, the Planning Commission, in Resolution No. 20434, adopted
2 findings that the actions contemplated in this ordinance are consistent, on balance, with the
3 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board
4 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
5 Board of Supervisors in File No. 190355, and is incorporated herein by reference.

6 (c) Pursuant to Planning Code Section 302, this Board finds that these Planning Code
7 amendments will serve the public necessity, convenience, and welfare for the reasons set
8 forth in Planning Commission Resolution No. 20434, and the Board of Supervisors
9 incorporates such reasons herein by reference.

10 Section 2. Findings and Purpose.

11 During the process of seeking development approvals and entitlements for land or
12 buildings, such land or buildings may become underutilized, vacant, and economically
13 unproductive for prolonged time periods. Occupying and activating such land or buildings with
14 temporary activities, and creating an active and vital street frontage, would help generate
15 economic activity, create jobs, deter crime and nuisance activities, and enhance the vitality of
16 the public realm near or within such land or buildings. The authorization of temporary uses for
17 such land or buildings will also help ensure the proper upkeep and maintenance of such land
18 and buildings, while encouraging property owners to provide invaluable and scarce space for
19 arts activities, light industrial uses, retail or institutional uses, and other land uses.

20 Section 3. Article 2 of the Planning Code is hereby amended by revising Sections 205.1
21 and 205.2 and adding Section 205.5, to read as follows:

22 **SEC. 205. TEMPORARY USES, GENERAL.**

23 (a) The temporary uses listed in Sections 205.1 through 205.45, where not otherwise
24 permitted in the district, may be authorized as provided therein and in this Section 205, up to the
25 time limits indicated. Further time for such uses may be authorized only by action upon a new

1 application, subject to all the requirements for the original application, unless otherwise
2 indicated in Sections 205.1 through 205.45.

3 (b) Action upon such uses may be authorized by the ~~Zoning Administrator~~Planning
4 Director without a public hearing.

5 (c) Wherever a use exists at the effective date of this Code or of an amendment
6 thereto under which such use is classified as a temporary use, or wherever a use is being
7 conducted under a temporary use authorization given prior to such a date, such use may be
8 continued for the maximum term specified therefor~~e~~, calculated from said effective date or
9 date of authorization. No such use shall continue thereafter unless a temporary use
10 authorization ~~shall have~~ has been sought and obtained under a new application. Continuance
11 of a temporary use beyond the date of expiration of the period authorized therefor~~e~~, or failure
12 to remove a structure for such temporary use within 10 days thereafter, shall constitute a
13 violation of this Code.

14 (d) The time periods referenced in Sections 205.1 through 205.3 and Section 205.5 are
15 consecutive hours or consecutive calendar days; they are not the total number of hours or
16 days that the use is in operation. Therefore, a 24-hour authorization that begins at 6:00 a.m.
17 expires at 6:00 a.m. the following day, even if the use was in operation only eight hours of that
18 24-hour period. Similarly, a 60-day authorization expires after 60 calendar days even though
19 the use may only have been open for business three days per week during that 60-day period.
20 Hours or days of unused authorization cannot be stored or credited.

21 (e) Any temporary uses authorized pursuant to this Section 205 and Sections 205.1 through
22 205.5 shall not be required to comply with any Planning Code requirements that are not expressly
23 applicable to such temporary uses under this Section 205 and Sections 205.1 through 205.5, provided,
24 however, any temporary uses authorized pursuant to this Section 205 and Sections 205.1 through 205.5
25

1 shall be subject to all applicable initiative ordinances approved by the voters of the City and County of
2 San Francisco.

3 (f) The decision of the Planning Director to authorize or deny authorization of any temporary
4 use pursuant to this Section 205 and Sections 205.1 through 205.5 may be appealed to the Board of
5 Appeals within 15 days after the date of the decision by filing a written notice of appeal with that body.
6

7 **SEC. 205.2. TEMPORARY USES: ONE TO FOUR-YEAR LIMIT.**

8 A temporary use may be authorized for a period not to exceed two years, or in the case
9 of a Temporary Cannabis Retail Use, for a period not to exceed four years, for any of the
10 following uses:

11 (a) Temporary structures and uses incidental to the construction of a group of
12 buildings on the same or adjacent premises;

13 (b) Rental or sales office incidental to a new residential development, not including the
14 conduct of a general real estate business, provided that it be located within the development,
15 and in a temporary structure or part of a dwelling. A temporary use may be authorized for a
16 period not to exceed one year (including any extensions) for the following year.

17 (c) In any M-1 or M-2 District, an Automobile Wrecking use as defined in Section 102
18 of this Code, provided if the operation would be a conditional use in the district in question,
19 that the ~~Zoning Administrator~~Planning Director determines the operation will meet within 90
20 days of commencing operation all conditions applicable to such use in that district.

21 (d) Temporary Wireless Telecommunications Services (WTS) Facilities for a period of
22 up to one year if the following requirements are met:

23 (1) the ~~Zoning Administrator~~Planning Director determines that the Temporary
24 WTS Facility shall be sited and constructed so as to:
25

- 1 (A) avoid proximity to residential dwellings to the maximum extent
2 feasible;
- 3 (B) comply with the provisions of Article 29 of the Police Code;
- 4 (C) be no taller than needed;
- 5 (D) be screened to the maximum extent feasible; and
- 6 (E) be erected for no longer than reasonably required.

7 (2) Permits in excess of 90 days for Temporary WTS Facilities operated for
8 commercial purposes shall be subject to Section 311 and 312 of this Code, where applicable.

9 (3) The Planning Department may require, where appropriate, notices along
10 street frontages abutting the location of the Temporary WTS Facility indicating the nature of
11 the facility and the duration of the permit.

12 (e) Temporary Cannabis Retail Use for a period of up to four years, as provided by
13 Section 191, to be authorized no earlier than January 1, 2018 and to expire on January 1,
14 2022. This is the only type of Temporary Use allowed for the sale of cannabis or cannabis
15 products.

16
17 **SEC. 205.5. TEMPORARY USES: INTERIM ACTIVITIES ON DEVELOPMENT SITES.**

18 *(a) Upon the satisfaction of the requirements in this Section 205.5, an Interim Activity on an*
19 *Eligible Development Site located in an Eligible Area may be authorized as a temporary use for an*
20 *initial period not to exceed 36 months (“Initial Period”).*

21 *(b) Definitions. For purposes of this Section 205.5, the following definitions shall apply:*

22 *“Development Project” has the meaning set forth in the definition of Eligible Development Site.*

23 *“Eligible Area” means the Commercial (C), Residential-Commercial (RC), Downtown*
24 *Residential (DTR), and Neighborhood Commercial Transit (NCT) Districts, and Mixed Use and*
25 *Neighborhood Commercial (NC) Districts within the area bounded by Market Street, 13th*

1 Street/Duboce Avenue, Division Street, and King Street, in Mixed Use and Neighborhood
2 Commercial (NC) Districts.

3 “Eligible Development Site” means a legal lot on which all of the following requirements
4 have been satisfied: (1) an application has been submitted and accepted either to permit demolition
5 of an existing structure, or to permit alterations sufficiently extensive to be considered, in the judgment
6 of the Planning Director, tantamount to demolition for the purposes of this Section 205.5; (2)
7 applications and the associated fees have been submitted and accepted to obtain all required land use
8 and permit entitlements for an associated development project that, if approved and completed,
9 would result in greater residential density than the residential density existing as of the time
10 both the land use and permit entitlement applications were submitted to the City
11 (“Development Project”); (3) provided that a Development Project proposes to include
12 residential uses, it would result in greater residential density than the residential density
13 existing as of the time both the land use and permit entitlement applications were submitted to
14 the City; and (34) applications and the associated fees have been submitted and accepted to evaluate
15 compliance of the Development Project with the California Environmental Quality Act (California
16 Public Resources Code Sections 21000 et seq.) pursuant to Administrative Code Section 31.22.

17 “Interim Activity” means any Entertainment, Arts and Recreation Use; any Arts Activities
18 Use; any Entertainment, General Use; any Social Service or Philanthropic Facility Use; any
19 Homeless Shelter Use; any Agriculture/Beverage Processing 1, Light Manufacturing, or Metal
20 Working Use permitted either Conditionally or Principally within a PDR-1-D District; any Retail or
21 Institutional Use regardless of Use size; and/or any Use Principally or Conditionally permitted in
22 the subject zoning district and/or any Office Use, so long as such Office space is less than 5,000
23 gross square feet and an equal or greater square footage of space is established within a
24 building on the same Eligible Development Site and dedicated for Arts Activities Use and/or
25 Light Manufacturing Use. In addition, in order for Office Use to constitute an Interim Activity,

1 ~~such Arts Activities Use and/or Light Manufacturing Use occupancies or activities must~~
2 ~~commence on the Eligible Development Site prior to or simultaneously with the Office Use~~
3 ~~occupancies or activities, and the Arts Activities Use and/or Light Manufacturing Use~~
4 ~~occupancies or activities must continue for the full duration of the Office Use occupancies or~~
5 ~~activities.~~

6 (c) Application. The property owner or the property owner’s authorized agent (“Applicant”)
7 shall submit an application for temporary use to the Planning Department, on a form prepared by the
8 Planning Department. The application shall be accompanied by the applicable fees pursuant to
9 Planning Code Section 350 and shall include an affidavit signed by the Applicant and, as applicable,
10 each tenant occupying any portion of the Eligible Development Site for the Interim Activity, or each
11 tenant’s authorized agent, acknowledging that the use of the Eligible Development Site for the Interim
12 Activity is temporary and subject to the time limits set forth in this Section 205.5 and acknowledging
13 that the Applicant has to pay any outstanding fees, invoices, or penalties owed to City agencies, and is
14 in compliance with all requirements of the Municipal Code, including any requirements to file Updates
15 to Institutional Master Plans and abate any Code or Building Code violations. The Applicant shall not
16 be required to pay additional fees set forth in Article 4 of the Planning Code as a prerequisite to
17 obtaining temporary use authorization pursuant to this Section 205.5.

18 (d) New, Additional, or Modified Temporary Uses. New, additional, or modified temporary
19 uses that were not previously approved by the Planning Director shall be reviewed through the filing of
20 a new application and submittal of a new application fee.

21 (e) New Tenants. Additional or different tenants (each a “New Tenant”) may commence
22 occupancy within and use of the Eligible Development Site in question without additional applications
23 or fees, provided that each New Tenant submits a completed affidavit to the Department attesting to the
24 truthfulness and correctness of the previously submitted application and declaring that the New Tenant
25 will not discontinue, add to, or modify the approved Interim Activity.

1 (f) No Conversion, Change, Discontinuance, or Abandonment of Use. The approval or
2 commencement of an Interim Activity as a temporary use as authorized under this Section 205.5 shall
3 not be considered a conversion, discontinuance, abandonment, or change of use for purposes of this
4 Code, notwithstanding Sections 182 and 183 of this Code. Any property for which the Interim Activity
5 is authorized shall retain its authorized land use(s). Such authorized land uses, including any
6 nonconforming uses, shall become operative upon the expiration, termination, or abandonment of such
7 temporary use authorization.

8 (g) Fenestration, Transparency, and Visibility Requirements. Construction proposed in
9 connection with the Interim Activity shall not cause noncompliance or exacerbate existing
10 noncompliance with respect to fenestration, transparency, or any other visibility requirement of Section
11 145.1 of this Code. Further, no film, adhesive, blinds, or other treatment may be applied to any
12 existing fenestration.

13 (h) Information To Be Available To Public. The Department shall make available to the public
14 in the Planning Department's main office and on its website a list of all applications approved under
15 this Section 205.5, along with applicable time frames and any additional information the Planning
16 Department deems useful for or relevant to the continued and successful activation of those spaces in
17 the Eligible Area.

18 (i) Extension of Initial Period. Upon the Planning Director's determination that permits for
19 the Development Project are being and have been diligently pursued, and that the Interim Activity has
20 been consistent with public convenience, necessity, or the general welfare of the City, the Planning
21 Director is authorized to permit the Interim Activity to exceed the Initial Period for an additional
22 period not to exceed 12 months. The Planning Director is authorized to extend the Initial Period up to
23 three ~~two~~ times (the first time being the extension referenced in the previous sentence) such that each
24 extension of the Initial Period may be up to 12 months, each extension shall require a separate
25

1 determination of the Planning Director according to this Section 205.5(i), and the authorization of the
2 Interim Activity may not exceed a total duration of ~~72~~ 60 months.

3 (j) Other Temporary Uses. Authorization of an Interim Activity pursuant to this Section 205.5
4 shall not preclude the authorization of any other temporary uses recognized in Sections 205.1 through
5 205.4.

6 Section 4. Effective Date. This ordinance shall become effective 30 days after
7 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
8 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
9 of Supervisors overrides the Mayor’s veto of the ordinance.

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

16 Section 6. Ordinance No. 274-19, which will be effective December 28, 2019, revised
17 the text of Planning Code Section 205.2. The text of Section 205.2, as it appears in this
18 ordinance, includes the revisions made in Ordinance No. 274-19.

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

22 By: _____
23 CHRISTOPHER T. TOM
24 Deputy City Attorney

25 n:\legana\as2020\1900067\01422563.docx