

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Jonas Ionin, Commission Secretary, Historic Preservation Commission
Maggie Weiland, Executive Director, Entertainment Commission
Tom Decaigny, Director of Cultural Affairs, Arts Commission
Susan Pontious, Director of Public Art Program, Arts Commission

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: March 12, 2019

SUBJECT: SUBSTITUTE LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed substitute legislation, introduced by Supervisor Haney on March 5, 2019:

File No. 181153-2

Ordinance amending the Planning Code to allow Arts Activities as a principally permitted use in the RCD (Regional Commercial District), to conditionally permit Nighttime Entertainment uses within the RCD in historic buildings and buildings that contribute to a historic district, to exempt Nighttime Entertainment in the RCD from the 200-foot buffer requirement, and to require a Preservation, Rehabilitation and Maintenance Plan for uses within the Folsom Street Neighborhood Commercial Transit and RCD Districts; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting findings of public necessity, convenience, and general welfare under Planning Code, Section 302.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: erica.major@sfgov.org.

c: Crystal Stewart, Entertainment Commission
Rebekah Krell, Arts Commission
Sharon Page Ritchie, Arts Commission

1 [Planning Code - Regional Commercial and Folsom Street Neighborhood Commercial Transit
2 Districts, Arts Activities and Nighttime Entertainment Uses]

3 **Ordinance amending the Planning Code to allow Arts Activities as a Principally**
4 **Permitted Use in in the RCD (Regional Commercial District), to conditionally permit**
5 **Nighttime Entertainment uses within the RCD in historic buildings and buildings that**
6 **contribute to a historic district, to exempt Nighttime Entertainment in the RCD from the**
7 **200-foot buffer requirement, and to require a Preservation, Rehabilitation and**
8 **Maintenance Plan for uses within the Folsom Street Neighborhood Commercial Transit**
9 **and RCD Districts; affirming the Planning Department's determination under the**
10 **California Environmental Quality Act; making findings of consistency with the General**
11 **Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting**
12 **findings of public necessity, convenience, and general welfare under Planning Code,**
13 **Section 302.**

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

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

22 Section 1. Findings.

23 (a) The Planning Department has determined that the actions contemplated in this
24 ordinance comply with the California Environmental Quality Act (California Public Resources
25 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of

1 Supervisors in File No. 181153 and is incorporated herein by reference. The Board affirms
2 this determination.

3 (b) On February 6, 2019, the Historic Preservation Commission considered this
4 ordinance at a duly noticed public hearing and in Resolution No. 1020 recommended approval
5 with modifications. A copy of said Resolution is on file with the Clerk of the Board of
6 Supervisors in File No. 181153.

7 (c) On February 21, 2019, the Planning Commission, in Resolution No. 20389,
8 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
9 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
10 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
11 the Board of Supervisors in File No. 181153, and is incorporated herein by reference.

12 (c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this
13 ordinance will serve the public necessity, convenience, and general welfare for the reasons
14 stated in Planning Commission Resolution No. 20389 .

15
16 Section 2. Article 7 of the Planning Code is hereby amended by revising Sections
17 703.9, 758, and 823, to read as follows:

18 **SEC. 703.9. PRESERVATION OF HISTORIC BUILDINGS WITHIN THE FOLSOM STREET**
19 **NCT AND RCD DISTRICTS.**

20 The following controls are intended to support the economic viability of buildings of
21 historic importance within the Folsom NCT and RCD Districts.

22 (a) This ~~subsection (a)~~ Section 703.9 applies only to buildings that are a designated
23 landmark building per Article 10 of the Planning Code, buildings designated as Category I-IV
24 pursuant to Article 11 of this Code and located within the Extended Preservation District, or a
25 building listed in or determined individually eligible for or contributory to a district listed on the

1 National Register of Historic Places or the California Register of Historical Resources by the
2 State Office of Historic Preservation.

3 (b) Non-Retail Professional Services, Retail Professional Services, Philanthropic
4 Administrative Services, Financial Services, Fringe Financial Services, Gyms, Limited
5 Financial Services, Health Services, Personal Services and Instructional Services, as defined
6 in Section 102, are Principally Permitted as-of-right. In the RCD District only, in addition to the
7 above uses, Arts Activities as defined in Section 102 are Principally Permitted and Nighttime
8 Entertainment uses as defined in Section 102 require Conditional Use authorization. For all uses listed
9 above, provided that prior to the issuance of any necessary permits, the Zoning Administrator,
10 with the advice of the Historic Preservation Commission, shall determines that allowing the
11 use will enhance the feasibility of preserving the building. The project sponsor must also submit a
12 Preservation, Rehabilitation, and Maintenance Plan that describes any proposed preservation and
13 rehabilitation work and that guarantees the maintenance and upkeep of the historic resource for
14 approval by the Department. This Plan shall include:

15 (i) a plan for the ongoing maintenance of the subject property;

16 (ii) information regarding the nature and cost of any rehabilitation, restoration, or
17 preservation work to be conducted at the subject property, including information about any required
18 seismic, life safety, or disability access work;

19 (iii) a construction schedule; and

20 (iv) such other information as the Department may require in order to determine
21 compliance with this subsection 703.9(b).

22 (c) The Historic Preservation Commission shall review the proposed project for
23 compliance with the Secretary of the Interior's Standards; (36 C.F.R. § 67.7 (2001)) and any
24 applicable provisions of the Planning Code.
25

1 **SEC. 758. REGIONAL COMMERCIAL DISTRICT.**

2 The Regional Commercial District (RCD) is located along the 9th Street and 10th Street
3 corridors, generally running from Mission Street to Harrison Street, and provides for a wide
4 variety of commercial uses and services to a population greater than the immediate
5 neighborhood. While providing convenience goods and services to the surrounding
6 neighborhood, the RCD corridors are also heavily trafficked thoroughfares into and out of the
7 City that serve shoppers from other neighborhoods and cities.

8 Large-scale lots and buildings and wide streets distinguish the RCD from smaller-
9 scaled neighborhood commercial streets, although the district also includes small as well as
10 moderately scaled lots. Buildings typically range in height from two to four stories with
11 occasional taller structures.

12 A diverse commercial environment is encouraged for the RCD. Eating and drinking
13 establishments, general retail, office, certain auto uses, and production, distribution, and
14 repair uses generally are permitted with certain limitations at the first and second stories. Arts
15 ~~a~~Activities are encouraged on all floors, ~~but~~ and ~~n~~Nighttime ~~e~~Entertainment uses are ~~prohibited~~
16 allowed on the First and Second Stories in historic building with Conditional Use authorization.

17 Housing development is encouraged at the second story and above, and permitted on
18 the ground floor on smaller lots. Student housing is not permitted, and existing residential
19 units are protected by limitations on demolitions and conversions. Accessory Dwelling Units
20 are permitted within the district pursuant to subsection 207(c)(4) of this Code.

21 **Table 758. REGIONAL COMMERCIAL DISTRICT**
22 **ZONING CONTROL TABLE**

23

		Regional Commercial District
--	--	-------------------------------------

24

Zoning Category	§ References	Controls		
* * * *				
NON-RESIDENTIAL STANDARDS AND USES				
* * * *				
		Controls by Story		
		1st	2nd	3rd+
* * * *				
Entertainment, Arts and Recreation Use Category				
Entertainment, Arts and Recreation Uses*	§§ 102, 202.4	NP	NP	NP
<i>Arts Activities</i>	<u>§ 102</u>	<u>P</u>	<u>P</u>	<u>P</u>
<i>Entertainment, Nighttime</i>	<u>§ 102</u>	<u>NP(3)</u>	<u>NP(3)</u>	<u>NP</u>
* * * *	* * * *	* * * *	* * * *	* * * *

* Not listed below.

* * * *

(3) ~~Note deleted.~~ C on First and Second Story in historic buildings per Section 703.9 and subject to the Good Neighbor Policies for Nighttime Entertainment activities in Planning Code Section 803.5(b).

SEC. 823. WESTERN SOMA SPECIAL USE DISTRICT.

* * * *

(c) **Controls.** All provisions of the Planning Code shall apply except as otherwise provided in this Section.

* * * *

1 (9) **Buffers from Nighttime Entertainment and Animal Services.**

2 Additional requirements applicable to ~~#~~Nighttime ~~e~~E~~n~~tertainment uses and ~~k~~Kennels, as
3 defined in Section ~~102 224~~, are as follows:

4 (A) **Nighttime Entertainment.** No portion of a non-accessory
5 ~~#~~Nighttime ~~e~~E~~n~~tertainment use, as defined in Section 102.~~17~~ of this Code, shall be permitted
6 within 200 linear feet of any property within a RED or RED-MX District. This buffer shall not
7 apply to (i) any ~~#~~Nighttime ~~e~~E~~n~~tertainment use within the WMUO District where a ~~#~~Nighttime
8 ~~e~~E~~n~~tertainment use that was established with a building permit application or a permit from the
9 Entertainment Commission or San Francisco Police Department was in operation within five
10 years prior to submission of a building permit application to re-establish a ~~#~~Nighttime
11 ~~e~~E~~n~~tertainment use or(ii) a Nighttime Entertainment Use established within the Regional Commercial
12 District pursuant to Section 703.9(b) of this Code.


13 * * * *

14
15 Section 3. Effective Date. This ordinance shall become effective 30 days after
16 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
17 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
18 of Supervisors overrides the Mayor's veto of the ordinance.

19
20 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
21 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
22 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
23 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
24
25

1 additions, and Board amendment deletions in accordance with the "Note" that appears under
2 the official title of the ordinance.

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

5 By: 
6 JUDITH A. BOYAJIAN
Deputy City Attorney

n:\leganas2018\1900240\01341630.docx

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REVISED LEGISLATIVE DIGEST

(Substituted, 3/5/2019)

[Planning Code - Regional Commercial and Folsom Street Neighborhood Commercial Transit Districts, Arts Activities and Nighttime Entertainment Uses]

Ordinance amending the Planning Code to allow Arts Activities as a principally permitted use in the RCD (Regional Commercial District), to conditionally permit Nighttime Entertainment uses within the RCD in historic buildings and buildings that contribute to a historic district, to exempt Nighttime Entertainment in the RCD from the 200-foot buffer requirement, and to require a Preservation, Rehabilitation and Maintenance Plan for uses within the Folsom Street Neighborhood Commercial Transit and RCD Districts; affirming the Planning Department’s determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting findings of public necessity, convenience, and general welfare under Planning Code, Section 302.

Existing Law

Planning Code Section 703.9 allows specified uses to be permitted as of right in historic buildings that are located within the Folsom Street Neighborhood Commercial Transit District and the Regional Commercial District. Prior to the issuance of any necessary permits, the Zoning Administrator, with the advice of the Historic Preservation Commission, must determine that allowing the use will enhance the feasibility of preserving the building. The Historic Preservation Commission reviews the proposed project for compliance with the Secretary of the Interior’s Standards.

Planning Code Section 823(c)(9) requires a 200-foot buffer in the Western SoMa Special Use District between a non-accessory Nighttime Entertainment use and any property within a RED or RED-MX District. An exemption is provided for any Nighttime Entertainment use within the WMUO District that was established with a building permit application or a permit from the Entertainment Commission or San Francisco Police Department and was in operation within five years prior to submission of a building permit application to re-establish a Nighttime Entertainment use.

Amendments to Current Law

The proposed ordinance will:

- allow Arts Activities as Principal Uses throughout the Regional Commercial District (RCD);
- conditionally permit Nighttime Entertainment uses within the RCD in historic buildings and buildings that contribute to a historic district;

- exempt from the 200-foot buffer requirement Nighttime Entertainment established within the RCD pursuant to Section 703.9; and
- require a Preservation, Rehabilitation and Maintenance Plan for uses within the RCD and the Folsom Street Neighborhood Commercial Transit District.
-

Background Information

Arts Activities and Nighttime Entertainment uses provide multiple benefits to the City. The arts form the basis of the identity of multiple Cultural Districts; these Cultural Districts help make San Francisco an attractive place to live, work, and socialize. Recent studies by the Office of the Controller confirm the Nighttime Entertainment sector's contribution to City revenues and employment growth. Land use regulations should accommodate new Arts Activities and Nighttime Entertainment uses. This can be done by relaxing existing prohibitions on those uses.

n:\legana\as2018\1900240\01341758.docx