

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Tom DeCaigny, Director of Cultural Affairs, Arts Commission  
Susan Pontious, Director of Public Art Program, Arts Commission

FROM: *AS* Alisa Somera, Legislative Deputy Director  
Land Use and Transportation Committee

DATE: April 24, 2017

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Land Use and Transportation Committee has received the following substitute legislation, introduced by Supervisor Kim on April 18, 2017:

**File No. 161014**

**Ordinance amending Planning Code, Section 202.8 to exempt certain designated historic landmarks from obtaining conditional use authorization to remove certain Production, Distribution, and Repair, Institutional Community, and Arts Activities Uses, and providing replacement space for such uses; 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.**

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: [alisa.somera@sfgov.org](mailto:alisa.somera@sfgov.org).

c: Rebekah Krell, Arts Commission  
Sharon Page Ritchie, Arts Commission

1 [Planning Code - Exempting Certain Historic Landmarks from Requirement to Obtain  
2 Conditional Use and Replace Production, Distribution, and Repair, Institutional Community,  
3 and Arts Activities Uses]

4 **Ordinance amending Planning Code, Section 202.8 to exempt certain designated**  
5 **historic landmarks from obtaining conditional use authorization to remove certain**  
6 **Production, Distribution, and Repair, Institutional Community, and Arts Activities Uses,**  
7 **and providing replacement space for such uses; affirming the Planning Department's**  
8 **determination under the California Environmental Quality Act; and making findings of**  
9 **consistency with the General Plan, and the eight priority policies of Planning Code,**  
10 **Section 101.1.**

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. 1610141 and is incorporated herein by reference. The Board affirms  
24 this determination.

25 (b) On January 19, 2017, the Planning Commission, in Resolution No. 19837, adopted  
findings that the actions contemplated in this ordinance are consistent, on balance, with the

1 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board  
2 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the  
3 Board of Supervisors in File No. 1610141, and is incorporated herein by reference.

4 (c) Pursuant to Planning Code Section 302, this Board finds that the Planning Code  
5 and Zoning Map amendments will serve the public necessity, convenience, and welfare for  
6 the reasons set forth in Planning Commission Resolution No. 19837, and the Board  
7 incorporates such reasons herein by reference.

8  
9 Section 2. The Planning Code is hereby amended by revising Section 202.8, to read  
10 as follows:

11 **SEC. 202.8. LIMITATION ON CONVERSION OF PRODUCTION, DISTRIBUTION,**  
12 **AND REPAIR USE, INSTITUTIONAL COMMUNITY USE, AND ARTS ACTIVITIES USE.**

13 The following controls shall apply in the following Eastern Neighborhoods Plans Areas:  
14 Mission; Eastern SoMa; Western SoMa; and, if adopted, Central SoMa. Notwithstanding any  
15 other provision of this Code, conversion of building space where the prior use in such space  
16 was a Production, Distribution, and Repair (PDR) use of at least 5,000 square feet, an  
17 Institutional Community use of at least 2,500 square feet, or an Arts Activities use, all as  
18 defined in Section 102, through change in use or any other removal, including but not limited  
19 to demolition of a building that is not unsound, shall be subject to the following requirements:

20 (a) To preserve the existing stock of building space suitable for PDR, Institutional  
21 Community, and Arts Activities uses, such conversion shall, if located within the following  
22 zoning districts, require conditional use authorization under Section 303 and the space  
23 proposed for conversion shall be replaced in compliance with the following criteria:

1 (1) In the areas that, as of July 1, 2016, are zoned SALI, the replacement space  
2 shall include one square foot of PDR, Institutional Community, or Arts Activities use for each  
3 square foot of the use proposed for conversion.

4 (2) In the areas that, as of July 1, 2016, are zoned UMU, MUO, or SLI, the  
5 replacement space shall include 0.75 square foot of PDR, Institutional Community, or Arts  
6 Activities use for each square foot of the use proposed for conversion.

7 (3) In the areas that, as of July 1, 2016, are zoned MUG or MUR, the  
8 replacement space shall include 0.50 square foot of PDR, Institutional Community, or Arts  
9 Activities use for each square foot of the use proposed for conversion.

10 (4) For any project located in the areas that, as of July 1, 2016, are zoned SALI,  
11 UMU, MUO, SLI, MUG, or MUR, that would convert at least 15,000 square feet of PDR,  
12 Institutional Community, or Arts Activities use, and for which an Environmental Evaluation  
13 application was submitted to the Planning Department by June 14, 2016, the replacement  
14 space shall include 0.4 square foot of PDR, Institutional Community, or Arts Activities use for  
15 each square foot of the use proposed for conversion. Notwithstanding the foregoing sentence,  
16 should the Board of Supervisors overturn any such project's environmental review on appeal,  
17 such project shall provide replacement space as required by subsections (a)(1), (2), or (3)  
18 above, as applicable.

19 (5) The replacement requirements of subsections (a)(1), (2), (3), and (4) may be  
20 reduced by 0.25 square feet (e.g. a 1:1 replacement requirement becomes a 1:0.75 replacement  
21 requirement) for any project subject to any contract or agreement meeting the requirements of  
22 California Civil Code Section 1954.28(d), including but not limited to a development  
23 agreement approved by the City under California Government Code Section 65864 et seq. if,  
24 as part of the terms of such agreement, the required replacement space is rented, leased, or  
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1 sold at 50% below market rate for such commercial space for a period of not less than 55  
2 years and is subject to a deed restriction.

3 (6) Replacement space for PDR and Arts Activities use may be used for either  
4 PDR or Arts Activities use, regardless of which of those uses is proposed for conversion.  
5 Replacement space for Institutional Community use shall be used for Institutional Community  
6 use.

7 (b) **Definitions.** For the purposes of this Section 202.8, the following definitions shall  
8 apply:

9 "Prior use" shall mean the prior permanent and permitted use and shall not include any  
10 approved temporary uses such as "pop-up" eating establishments, craft fairs, or other  
11 seasonal uses.

12 "Replacement space" shall mean newly developed building space and shall not include  
13 building space that was previously used for PDR, Institutional Community, or Arts Activities.

14 "Unsound" shall mean a building for which rehabilitation to comply with City Codes for  
15 continued use as PDR, Institutional Community, or Arts Activities use, as applicable, would  
16 cost 50% or more of the cost to construct a comparable building.

17 (c) The amount of replacement space required under subsection (a)(1) may be  
18 reduced by the amount that is necessary to provide building entrances and exits;  
19 maintenance, mechanical, and utilities facilities; and on-site open space and bicycle facilities  
20 required under this Code; provided that no reduction shall be permitted for non-car-share  
21 vehicle parking spaces.

22 (d) **Undeveloped property.** The requirements of this Section 202.8 shall only apply to  
23 those portions of a site that are developed with building space where the prior use in such  
24 space was PDR use of at least 5,000 square feet, an Institutional Community use of at least  
25 2,500 square feet, or an Arts Activities use.

1 (e) In determining whether to grant Conditional Use authorization, in addition to  
2 making the required findings under Section 303, the Planning Commission shall consider the  
3 suitability of the replacement space for the use proposed for conversion.

4 (f) **Exemptions.** The following shall be exempt from the requirements of this Section  
5 202.8:

6 (1) Any property under the jurisdiction of the Port of San Francisco or the  
7 Recreation and Park Commission; all Redevelopment Plan Areas in effect as of July 1, 2016;  
8 and any parcel zoned P (Public) on or after July 1, 2016.

9 (2) Any project where the PDR use, Institutional Community use, or Arts  
10 Activities use subject to conversion commenced after June 14, 2016.

11 (3) Any project that has been approved by the Planning Department or Planning  
12 Commission by June 14, 2016, provided that, if subsequently appealed, such approval is  
13 upheld.

14 (4) Any project that would convert less than 15,000 square feet of PDR,  
15 Institutional Community, or Arts Activities use and for which an Environmental Evaluation  
16 application was submitted to the Planning Department by June 14, 2016,

17 (5) Any public transportation project.

18 (6) Any project that receives affordable housing credits associated with  
19 retention of affordable units at the South Beach Marina Apartments, pursuant to Board of  
20 Supervisors Resolution No. 197-16.

21 (7) Any project where all of the residential units with the exception of the  
22 manager's unit are affordable housing units, as that term is defined in Section 406(b)(1). If  
23 feasible, such projects shall make efforts to replace any converted PDR, Institutional  
24 Community, and Arts Activities uses.

1 (8) Any property in the Western SoMa Plan Area if the actual use functioning on  
2 the property as of September 8, 2014, as determined by the Zoning Administrator, was  
3 principally permitted, and not a PDR, Institutional Community, or Arts Activities use, such that  
4 a legal conversion could have been approved prior to October 9, 2014. This exemption  
5 applies only to conversions of uses smaller than 25,000 square feet.

6 (9) Any project that proposes to convert no more than 50% of the property's PDR,  
7 Institutional Community, or Arts Activities space, provided that such space is located within a  
8 landmark designated under Article 10 of the Planning Code or individually listed on the National  
9 Register of Historic Places and that no more than 49,999 square feet is converted to office use.  
10 Additionally, any such project that is also subject to a contract or agreement meeting the requirements  
11 of California Civil Code Section 1954.28(d), which, as part of the terms of such contract or agreement,  
12 rents, leases, or sells at 50% below market rate the property's remaining PDR, Institutional  
13 Community, or Arts Activities space, may convert an additional 25% of the property's PDR,  
14 Institutional Community, or Arts Activities space exempt from the requirements of this Section 202.8,  
15 for a total of 75% exempted conversion. The City department negotiating the contract or agreement  
16 shall determine the market rate using accepted best practices for this purpose. Such below market rate  
17 rental, lease, or sale shall be for a period of not less than 55 years and subject to a deed restriction.  
18 The exemptions set forth in this subsection 202.8(f)(9) may be approved through multiple project  
19 applications so long as no more than a total of 50% (or 75% if restricting the commercial rent of the  
20 property as set forth herein) of the property's PDR, Institutional Community, or Arts Activities space is  
21 converted under this exemption.

22 (g) This Section 202.8 shall not authorize a change in use if the new use or uses are  
23 otherwise prohibited.

24 (h) **In Lieu Fee and Off-Site Replacement.** The Board of Supervisors may enact an  
25 ordinance adopting an in lieu fee and/or regulating an off-site replacement option to meet the

1 ~~replacement requirements set forth in subsection (a)~~. The proceeds from any such in lieu fee shall  
2 be used for the preservation and rehabilitation of existing PDR, Institutional Community, and  
3 Arts Activities spaces in the area plan area where the project paying the fee is located.

4 (i) The Board of Supervisors by ordinance and by at least a two-thirds vote of all its  
5 members may amend this Section 202.8 at any time after its effective date.

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7 Section 3. Background and Two-Thirds Vote Approval Requirement.

8 (a) On August 2, 2016, the Board of Supervisors approved Motion No. M16-105,  
9 ordering an initiative ordinance entitled "Initiative Ordinance - Planning Code - Requiring  
10 Conditional Use Authorization for Replacement of Production, Distribution, Repair, Institutional  
11 Community, and Arts Activities Uses," be submitted to the voters at the November 8, 2016  
12 general election. Motion No. M16-105, including the initiative ordinance, is found in Board File  
13 No. 160698. The initiative ordinance was designated Proposition X on the November 8, 2016,  
14 ballot.

15 (b) Proposition X added Section 202.8 to the Planning Code. Subsection 202.8(i)  
16 provides that the Board of Supervisors "by ordinance and by at least a two-thirds vote of all its  
17 members" may amend Section 202.8 "at any time after its effective date." This ordinance  
18 amends Section 202.8.

19  
20 Section 4. Effective Date. This ordinance shall become effective 30 days after  
21 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
22 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
23 of Supervisors overrides the Mayor's veto of the ordinance.



1 Section 5. 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 APPROVED AS TO FORM:  
9 DENNIS J. HERRERA, City Attorney

10 By:   
11 MARLENA BYRNE  
12 Deputy City Attorney

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**REVISED LEGISLATIVE DIGEST**

(Substitute, 4/18/17)

[Planning Code - Exempting Certain Historic Landmarks from Conditional Use Authorization Requirement to Replace Production, Distribution, and Repair, Institutional Community, and Arts Activities Uses]

**Ordinance amending Planning Code, Section 202.8, included in the November 8, 2016 general election as Proposition X, to exempt certain designated historic landmarks from obtaining conditional use authorization to remove certain Production, Distribution, and Repair, Institutional Community, and Arts Activities Uses, and providing replacement space for such uses; 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.**

Existing Law

Planning Code Section 202.8 requires conditional use authorization and replacement space for removal through conversion or demolition of Production, Distribution, and Repair (PDR), Institutional Community, and Arts Activities uses in certain South of Market zoning districts.

Subsection 202.8(i) provides that the Board of Supervisors "by ordinance and by at least a two-thirds vote of all its members" may amend Section 202.8 "at any time after its effective date." This ordinance amends Section 202.8.

Amendments to Current Law

The proposed legislation would exempt a project from the need to obtain a conditional use permit under Section 202.8(a) and to replace any removed PDR, Institutional Community, or Arts Activities if:

1. No more than 50% of the property's PDR, Institutional Community, or Arts Activities space is converted; and
2. The space to be converted is located within a landmark designated under Article 10 of the Planning Code or individually listed on the National Register of Historic Places.

Additionally, any project that meets the above two requirements and also includes a contract or agreement with the City meeting the requirements of California Civil Code Section 1954.28(d) (such as, for example, a development agreement), which, as part of the terms of that contract, rents, leases, or sells at 50% below market rate the property's remaining PDR,

Institutional Community, or Arts Activities space, may convert an additional 25% of the property's PDR, Institutional Community, or Arts Activities space.

Background Information

On August 2, 2016, the Board of Supervisors approved Motion No. M16-105, ordering an initiative ordinance entitled "Initiative Ordinance - Planning Code - Requiring Conditional Use Authorization for Replacement of Production, Distribution, Repair, Institutional Community, and Arts Activities Uses," be submitted to the voters at the November 8, 2016 general election. Motion No. M16-105, including the initiative ordinance, is found in Board File No. 160698. The initiative ordinance was designated Proposition X on the November 8, 2016, ballot. Proposition X added Section 202.8 to the Planning Code.

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