



January 25, 2024

Ms. Angela Calvillo, Clerk
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Transmittal of Planning Department Case Number 2023-009168PCA:
Exceptions and Extensions for Existing Uses

Planning Commission Recommendation: **Approval with Modification**

Dear Ms. Calvillo,

On December 14, 2023, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, initiated by the Planning Commission, that would amend the Planning Code to modify offset requirement for heights exceeding 30 feet in the Bernal Heights Special Use District, permit large movie theater signage in the Japantown Special Use District, allow Medical Cannabis Dispensaries to continue operating as Temporary Cannabis Retail Uses until December 31, 2024, clarify eligibility for reduction in Inclusionary Housing requirements, and correct an error in the Zoning Control Table for the Urban Mixed Use District.. At the hearing the Planning Commission recommended approval with modification. All proposed modifications have been added to the attached ordinance.

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information, please do not hesitate to contact me.

Sincerely,

Aaron D. Starr
Manager of Legislative Affairs

cc: Austin Yang, Deputy City Attorney
John Carroll, Office of the Clerk of the Board

Attachments :

Planning Commission Resolution

Planning Department Executive Summary



PLANNING COMMISSION RESOLUTION NO. 21469

HEARING DATE: DECEMBER 14, 2023

Project Name: Exceptions and Extensions for Existing Uses (Code Fix Ordinance)
Case Number: 2023-009168PCA
Staff Contact: Audrey Merlone, Legislative Affairs
Audrey.Merlone@sfgov.org, 628-652-7534
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 628-652-7533

RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD MAKE AMENDMENTS TO THE PLANNING CODE TO MODIFY OFFSEET REQUIREMENTS FOR HEIGHTS EXCEEDING 30 FEET IN THE BERNAL HEIGHTS SPECIAL USE DISTRICT; PERMIT LARGE MOVIE THEATER SIGNAGE IN THE JAPANTOWN SPECIAL USE DISTRICT; ALLOW MEDICAL CANNABIS DISPENSARIES TO CONTINUE OPERATING AS TEMPORARY CANNABIS RETAIL USES UNTIL DECEMBER 31, 2024; CLARIFY ELIGIBILITY FOR REDUCTION IN INCLUSIONARY HOUSING REQUIREMENTS; AND CORRECT AN ERROR IN THE ZONING CONTROL TABLE FOR THE URBAN MIXED USE DISTRICT; AND 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 MAKING FINDINGS OF PUBLIC NECESSITY, CONVENIENCE, AND WELFARE PURSUANT TO PLANNING CODE, SECTION 302.

WHEREAS, the is a living document which changes often and contains many layers; and

WHEREAS, errors are bound to occur on occasion by staff when implementing the Code; and

WHEREAS, the proposed Planning Code text changes would amend several sections of the Code as outlined in the draft Ordinance and incorporated herein; and

WHEREAS, due to multiple changes to the Planning Code, over time text has been dropped inadvertently, amendments made by one ordinance are not reflected in subsequent legislation, and citations have become out of date; and

WHEREAS, due to the complexity of the Planning Code, over time errors in implementation of the Code are bound to occur; and

WHEREAS, the proposed legislation is intended to resolve the aforementioned issues; and

WHEREAS, the proposed changes in the ordinance can be classified as “good government” measures meant to improve the clarity, fairness, and implementation of the Planning Code; and

WHEREAS, the Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider initiation of the proposed Ordinance on December 14, 2023; and

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under California Environmental Quality Act Sections 15378 and 15060(c)(2); and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the Custodian of Records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment:

MOVED, that the Planning Commission hereby **approves with modifications** the proposed ordinance. The Commission’s proposed modifications are as follows:

1. Amend Sec. 607.1 to reference the Japantown *NCD*, rather than the Japantown *SUD*.

Findings

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

The Planning Code is a living document which changes often and contains many layers. As such, errors are bound to occur on occasion by staff when implementing the Code. In this case, two very specific projects (one in Bernal Heights, and one in the Japantown NCD), followed all proper permitting procedures, and received approvals from all appropriate agencies. The Planning Department approved these permits in error, and as such, both projects built or installed approved elements that do not actually meet the Planning Code. The additions or installed elements cannot be reversed without great expense to the project sponsor. As such, the Department proposes to amend the Code to allow these non-compliant elements to remain.

Similarly, to the complexity of the Planning Code, the volume of legislative actions and complexity of the Code as a legal, living document ensures that errors will inadvertently arise. The result of these mistakes can lead to conflicts in implementation between agencies (as is the case with the temporary use for cannabis retail), or

make it impossible to use the program the ordinance established (as is the case with the inclusionary reduction ordinance). The proposed amendments will ensure that there is consistency across city codes in implementation of the cannabis temporary use authorization, and that the temporary reduction in inclusionary program can be utilized. It will also make two amendments that can be considered corrective in nature, which will make the code more consistent, accurate and easier to use.

General Plan Compliance

The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

POLICY 40:

ENFORCE AND IMPROVE PLANNING PROCESSES AND BUILDING REGULATIONS TO ENSURE A HEALTHY ENVIRONMENT FOR NEW HOUSING DEVELOPMENTS, ESPECIALLY IN ENVIRONMENTAL JUSTICE.

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 6:

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

The proposed Ordinance will make both substantive and non-substantive corrections that were due to staff processing error and that if not corrected would harm housing production, a neighborhood commercial district, and make the Planning Code more difficult to implement.

Planning Code Section 101 Findings

The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing or neighborhood character.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

Planning Code Section 302 Findings.

The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES WITH MODIFICATIONS the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on December 14, 2023.


Jonas P. Ionin
Commission Secretary

Jonas P Ionin Digitally signed by Jonas P Ionin
Date: 2024.01.03 10:45:29 -08'00'

AYES: Braun, Ruiz, Diamond, Imperial, Koppel, Moore, Tanner

NOES: None

ABSENT: None

ADOPTED: December 14, 2023



EXECUTIVE SUMMARY PLANNING CODE TEXT AMENDMENT

HEARING DATE: November 16, 2023

Project Name: Exceptions and Extensions for Existing Uses (Code Fix Ordinance)
Case Number: 2023-009168PCA
Staff Contact: Audrey Merlone, Legislative Affairs
Audrey.Merlone@sfgov.org, 628-652-7534
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 628-652-7533

Recommendation: Approval with Modification

Planning Code Amendment

The proposed Ordinance would amend the Planning Code to modify offset requirement for heights exceeding 30 feet in the Bernal Heights Special Use District, permit large movie theater signage in the Japantown Special Use District, allow Medical Cannabis Dispensaries to continue operating as Temporary Cannabis Retail Uses until December 31, 2024, clarify eligibility for reduction in Inclusionary Housing requirements, and correct an error in the Zoning Control Table for the Urban Mixed Use District.

The Way It Is Now:

1. The Bernal Heights Special Use District (SUD) contains a height limit for most dwellings of 30 feet.
2. The Japantown Special Use District (SUD) does not regulate signage. The Japantown Neighborhood Commercial District (NCD) limits Wall Signs two square feet per foot of street frontage occupied by the use measured along the wall to which the Signs are attached, or 100 square feet for each street frontage, whichever is less. The Height of any Wall Sign may not exceed 24 feet, or the height of the wall to which it is attached, or the height of the lowest of any residential windowsill on the wall to which the Sign is attached, whichever is lower.
3. Various sections of Articles 1.7 and 2 in the Planning Code state that the temporary use authorization for a medical cannabis dispensary to operate as a retail establishment expires on January 1, 2024.
4. Recently passed Ordinance No. 230769 added Section 415A which offers administrative reduction in

inclusionary rates for qualifying projects that have been Finally Approved prior to November 1, 2023. "Final Approval" is defined as (1) approval of a project's first Development Application, unless such approval is appealed; or (2) if a project only requires a building permit, issuance of the first site or building permit, unless such permit is appealed.

5. Table 838 states the zoning controls for the Urban Mixed Use (UMU) District. Wireless Telecommunications Facilities are listed as Conditionally permitted, with a footnote. The footnote states: "*P up to 3,999 gross sq. ft. per use; C for 4,000 gross sq. ft. or greater per use. Not subject to 3:1 ratio.*"

The Way It Would Be:

1. The Bernal Heights Special Use District (SUD) would be amended to state that the 30' height limit shall not apply to building permits for structures erected on Lots 055, 056, and 057 in Block 5526 approved before January 8, 2020.
2. Section 607.1, which regulates signage in the Japantown NCD would be amended to state that a Wall Sign for a Movie Theater located within the Japantown SUD (i) shall not be higher than the height of the wall to which it is attached, (ii) shall have an area not to exceed 150 square feet, if it is located at a height of 30 feet or lower, (iii) shall have an area not to exceed 70 square feet, if it is located at a height of greater than 30 feet, and (iv) may be located on any building face so long as the total number of such Signs does not exceed the total number of streets on which the parcel containing the Movie Theater has frontage.
3. Various sections of Articles 1.7 and 2 in the Planning Code would be amended state that the temporary use authorization for a medical cannabis dispensary to operate as a retail establishment expires on December 31, 2024.
4. Section 415A(2) would be amended to state that "Final Approval" is defined as if a project only requires a building permit, *approval* of the first site or building permit, unless such permit is appealed.
5. Table 838 would be amended to delete footnote 3 from Wireless Telecommunications Facilities.

Background

Initiation

On November 16, 2023, the Planning Commission, during their regularly scheduled hearing, voted unanimously to initiate and schedule this ordinance for adoption on or after December 6, 2023.

Bernal Heights SUD

The subject property at 420 Precita (Lots 055, 056, 057 in Block 5526) received approval in error on August 26, 2019, from the Department to construct a 213 square foot, one-story vertical addition at an existing two-story residential building. The approved addition was 10 feet 8 inches tall, resulting in an overall building height of approximately 38 feet 3 inches (Building Permit Application #201812067573). However, the Bernal Heights Special Use District (SUD) provides that no portion of any dwelling may exceed a height of 30 feet. The associated permits had been issued and construction had already commenced when the Department realized

that the project was approved in error. Retroactive compliance with the Bernal Heights SUD's height controls would cause an undue burden to the property owner, who followed the permit approval process appropriately and commenced construction only upon receiving approvals from all permit-reviewing agencies. The current 38-foot 3-inch building height will be controlled and memorialized with a Notice of Special Restrictions (NSR) on the property.

Signage in the Japantown NCD

The subject property at 1881 Post Street (d.b.a AMC Theatres) received an over-the-counter Department approval in 2017 for three "AMC" branded wall signs, which did not comply with the Planning Commission's Performance-Based Design Guidelines (Commission Guide for Formula Retail) and, in part, Planning Code 607.1(f)(2) for Wall Signs within certain Neighborhood Commercial and Residential-Commercial Districts. The three signs, affixed to the building's North (Post St.), East (Webster St) and West (Fillmore St.) facades, were installed with permit approval in August 2017 however, they did not adhere to the material specifications outlined in the Formula Retail Guide. Furthermore, the Post Street sign at 144 square feet, exceeds the 100 square foot maximum face area for signs within the Japantown Neighborhood Commercial Zoning District, and the east-facing sign technically does not have frontage directly on Webster. The Formula Retail Use received Conditional Use Authorization by the Planning Commission in March 2023. The proposed amendments will allow the AMC movie theater to retain its previously approved signage, which does not comply by being 1. Located on a façade that technically has no street frontage, and 2. Is higher than what current code allows.

Temporary Use Authorization for Medical Cannabis Dispensaries

There are currently four categories of cannabis business operators in San Francisco: Equity cannabis businesses, Incubators, Medical Cannabis Dispensaries, and operators permitted through the Amnesty program (former illicit operators granted temporary permits during the legalization process). These businesses are broadly governed by two sections of the City code: the Health Code (Article 33) and the Police Code (Article 16). Article 33 governs pre-existing Medical Cannabis Dispensaries, while Article 16 governs Equity businesses, Incubators, and Amnesty cannabis businesses. Currently the Office of Cannabis is working to transition Medical Cannabis Dispensaries from Article 33 to Article 16 compliance, thus consolidating all cannabis businesses under the authority of Article 16.

In 2022, the Board of Supervisors extended the authorities under Article 33 and Article 16 to allow Medical Cannabis Dispensaries to continue operations until December 31, 2024. This extension was intended to facilitate a longer runway for businesses to come into full compliance under Article 16. It is also important to note that Medical Cannabis Dispensaries were granted the right to sell adult-use cannabis in addition to medicinal cannabis after the legalization of adult-use cannabis in the State of California.

All cannabis businesses are also required to work with the Planning Department to ensure they are appropriately zoned and have the correct land-use. Previously, Medical Cannabis Dispensaries were zoned to sell only medicinal cannabis. To facilitate adult-use sales for Medical Cannabis Dispensaries, the Planning Department created the "temporary cannabis retail use," under which all Medical Cannabis Dispensaries currently operate.

In 2022, the Board of Supervisors passed Ordinance 221002, which extended the sunset date for provisions governing Medical Cannabis Dispensaries from December 31, 2022, to December 31, 2024. This ordinance amended Article 33 of the Health Code and Article 16 of the Police Code.

Later that year, the Board of Supervisors passed Ordinance 220542, which amended the Planning Code to extend the date the “temporary cannabis retail use” designation could apply to Medical Cannabis Dispensaries; however, that Ordinance 220542 only extended that date to January 1, 2024.

As a result, the two sunset provisions are inconsistent and would cause the Medical Cannabis Dispensaries’ land-use to expire on January 1, 2024, ceasing their ability to sell adult-use cannabis. It appears that the discrepancy in these sunset dates may have been an administrative error and not intentional. While the Office of Cannabis is making considerable progress converting these permits, it is unlikely that all operators will complete the conversion before January 1, 2024. The proposed amendments will not only give operators enough time to complete their conversions to retail, but also ensure the Planning Code is consistent with the Health Code.

Temporary Reduction in Inclusionary Requirements Ordinance

Ordinance No. 230769 added Section 415A which offers administrative reduction in inclusionary rates for qualifying projects that have been Finally Approved prior to November 1, 2023. "Final Approval" is defined as (1) approval of a project’s first Development Application, unless such approval is appealed; or (2) if a project only requires a building permit, issuance of the first site or building permit, unless such permit is appealed.

Section 415A.2 defines a "Pipeline Project" as a residential or live/work project that is (1) subject to the Inclusionary Affordable Housing Ordinance...and (2) was Finally Approved prior to November 1, 2023, and (3) has not been issued a First Construction Document prior to November 1, 2023.

If a project only requires a building permit, then that is also considered the first construction document for the project. In practice, this means that the time a project may meet the definition of a "Pipeline Project," is the same moment that the project becomes ineligible for the reduction. A project that only requires a building could never meet the eligibility criteria to be considered a "Pipeline Project" under Section 415A and could never be eligible for reductions.

In part, ordinance No. 230769 was intended to improve the feasibility of residential development. This error creates barriers for code-compliant projects that do not require discretionary action, especially considering that the choice to pursue a building permit instead of a site permit may expedite the overall permitting and construction process. Changing the word “issuance” to “Planning approval” in 415A.2(2) ensures projects are not disqualified in the same moment that they become qualified.

General Plan Compliance

Policy 40 of the Housing Element is to “Enforce and improve planning processes and building regulations to ensure a healthy environment for new housing developments, especially in environmental justice.” Objective 6 of the Commerce and Industry Element is to “Maintain and strengthen viable neighborhood commercial areas easily accessible to city residents”. The proposed Ordinance will make both substantive and non-substantive corrections that were due to staff processing error and that if not corrected would harm housing production, a neighborhood commercial district, and make the Planning Code more difficult to implement.

Recommendation

The Department recommends that the Commission recommend approval with modifications of the resolution to initiate the Planning Code amendments for consideration on or after December 6, 2023. The Department's recommended modification is:

1. Amend Sec. 607.1 to reference the Japantown *NCD*, rather than the Japantown SUD.

Basis for Recommendation

The Planning Code is a living document which changes often and contains many layers. As such, errors are bound to occur on occasion by staff when implementing the Code. In this case, two very specific projects (one in Bernal Heights, and one in the Japantown NCD), followed all proper permitting procedures, and received approvals from all appropriate agencies. The Planning Department approved these permits in error, and as such, both projects built or installed approved elements that do not actually meet the Planning Code. The additions or installed elements cannot be reversed without great expense to the project sponsor. As such, the Department proposes to amend the Code to allow these non-compliant elements to remain.

Similarly, to the complexity of the Planning Code, the volume of legislative actions and complexity of the Code as a legal, living document ensures that errors will inadvertently arise. The result of these mistakes can lead to conflicts in implementation between agencies (as is the case with the temporary use for cannabis retail), or make it impossible to use the program the ordinance established (as is the case with the inclusionary reduction ordinance). The proposed amendments will ensure that there is consistency across city codes in implementation of the cannabis temporary use authorization, and that the temporary reduction in inclusionary program can be utilized. It will also make two amendments that can be considered corrective in nature, which will make the code more consistent, accurate and easier to use.

Recommendation One: Although the Movie Theater in question is in both the Japantown SUD and Japantown NCD, the amendment would be made in the section of the Planning Code that controls for Signs in the Japantown NCD. The SUD is not proposed to be amended. Additionally, this amendment is meant to be for a specific building, and the NCD is a smaller area than the SUD.

Required Commission Action

The proposed Ordinance is before the Commission so that it may initiate the proposed Ordinance and schedule a time for the Ordinance to be heard for adoption.

Environmental Review

The proposal to amend the Planning Code is anticipated to result in no physical impact on the environment. Evaluation under CEQA will be complete prior to the adoption hearing.

Public Comment

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.