

BOARD of SUPERVISORS



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MEMORANDUM

LAND USE AND TRANSPORTATION COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Myrna Melgar, Chair, Land Use and Transportation Committee

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

DATE: May 18, 2021

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**
Tuesday, May 4, 2021

The following file should be presented as a **COMMITTEE REPORT** at the Board meeting, Tuesday, May 18, 2021. This item was acted upon at the Committee Meeting on Monday, May 17, 2021, at 1:30 p.m., by the votes indicated.

Item No. 15 **File No. 210287**

Ordinance amending the Planning Code to provide that temporary closure of liquor stores in the Polk Street Neighborhood Commercial District (NCD) as a result of a major capital improvement project is not an abandonment of such use, and that relocation of such use to another location in the Polk Street NCD does not require a new Conditional Use permit; 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 convenience, necessity, and welfare under Planning Code, Section 302.

Member Peskin requested this matter be DUPLICATED

RECOMMENDED AS A COMMITTEE REPORT

Vote: Supervisor Myrna Melgar - Aye
Supervisor Dean Preston - Aye
Supervisor Aaron Peskin - Aye

c: Board of Supervisors
Angela Calvillo, Clerk of the Board
Alisa Somera, Legislative Deputy
Anne Pearson, Deputy City Attorney
Kristen Jensen, Deputy City Attorney

1 [Planning Code - Temporary Closure of Liquor Stores in Polk Street Neighborhood
2 Commercial District]

3 **Ordinance amending the Planning Code to provide that temporary closure of liquor**
4 **stores in the Polk Street Neighborhood Commercial District (NCD) as a result of a**
5 **major capital improvement project is not an abandonment of such use, and that**
6 **relocation of such use to another location in the Polk Street NCD does not require a**
7 **new Conditional Use permit; affirming the Planning Department’s determination under**
8 **the California Environmental Quality Act; and making findings of consistency with the**
9 **General Plan, and the eight priority policies of Planning Code, Section 101.1, and**
10 **findings of public convenience, necessity, and welfare under Planning Code, Section**
11 **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. 210287 and is incorporated herein by reference. The Board affirms
25 this determination.

(b) On May 13, 2021, the Planning Commission, in Resolution No. 20916, adopted findings that the actions contemplated in this ordinance are consistent, on balance, with the City’s General Plan and eight priority policies of Planning Code Section 101.1. The Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No. 210287, and is incorporated herein by reference.

(c) On May 13, 2021, the Planning Commission, in Resolution No. 20916, approved this ordinance, recommended it for adoption by the Board of Supervisors, and adopted findings that it will serve the public necessity, convenience, and welfare. Pursuant to Planning Code Section 302, the Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No. 210287, and is incorporated herein by reference.

Section 2. The Planning Code is hereby amended by revising Section 723, to read as follows:

SEC. 723. POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT.

* * * *

**Table 723. POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT
ZONING CONTROL TABLE**

* * * *

Zoning Category	§ References	Controls
* * * *		
NON-RESIDENTIAL STANDARDS AND USES (7)		
* * * *		

Sales and Service Use Category				
Retail Sales and Service Uses*	§§ 102, 202.2(a), 202.3	P	P	NP
* * * *				
Liquor Store	§102	C(9)	NP	NP
* * * *				

* Not listed below

* * * *

(9) Temporary closures of up to three years, measured from the effective date of the ordinance in Board of Supervisors File No. 210287 enacting this note, of existing liquor stores located in the Polk Street Neighborhood Commercial District, during construction of a development project on the site of the existing liquor store, shall not be considered an abandonment of such use pursuant to Section 178 of this Code, unless the original liquor store elects to relocate somewhere else permanently. Temporary relocation of liquor stores in the Polk Street Neighborhood Commercial District to another location in the Polk Street Neighborhood Commercial District during construction of a development project on the site of said liquor stores shall not require a new Conditional Use Permit for the duration of up to three years, measured from the effective date of the ordinance in Board of Supervisors File No. 210287 enacting this note, of interim relocation.

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.

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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: Peter R. Miljanich /s/
PETER R. MILJANICH
Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning Code - Temporary Closure of Liquor Stores in Polk Street Neighborhood Commercial District]

Ordinance amending the Planning Code to provide that temporary closure of liquor stores in the Polk Street Neighborhood Commercial District (NCD) as a result of a major capital improvement project is not an abandonment of such use, and that relocation of such use to another location in the Polk Street NCD does not require a new Conditional Use permit; 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 convenience, necessity, and welfare under Planning Code, Section 302.

Existing Law

Currently, liquor stores are allowed in the Polk Street Neighborhood Commercial District with a Conditional Use Permit. Additionally, conditional uses that are abandoned for 18 months or more require a new Conditional Use Permit to reopen in this district.

Amendments to Current Law

This ordinance would amend the Polk Street Neighborhood Commercial District Use Zoning Control Table to add a note to "Liquor Stores." The note sets forth an exception to the Conditional Use requirement for liquor stores and abandonment period in the area. It states that: "Temporary closures of up to three years, measured from the effective date of the ordinance in Board of Supervisors File No. 210287 enacting this note, of existing liquor stores located in the Polk Street Neighborhood Commercial District, during construction of a development project on the site of the existing liquor store, shall not be considered an abandonment of such use pursuant to Section 178 of this Code, unless the original liquor store elects to relocate somewhere else permanently. Temporary relocation of liquor stores in the Polk Street Neighborhood Commercial District to another location in the Polk Street Neighborhood Commercial District during construction of a development project on the site of said liquor stores shall not require a new Conditional Use Permit for the duration of up to three years, measured from the effective date of the ordinance in Board of Supervisors File No. 210287 enacting this note, of interim relocation."

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BOARD of SUPERVISORS



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March 24, 2021

File No. 210287

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

Dear Ms. Gibson:

On March 16, 2021, Supervisor Peskin submitted the following legislation:

File No. 190757

Ordinance amending the Planning Code to provide that temporary closure of liquor stores in the Polk Street Neighborhood Commercial District (NCD) as a result of a major capital improvement project is not an abandonment of such use, and that relocation of such use to another location in the Polk Street NCD does not require a new Conditional Use permit; 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 convenience, necessity, and welfare under Planning Code, Section 302.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

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

Attachment

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

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment.

03/30/2021

A handwritten signature in cursive script, appearing to read "Joy Navarrete".



May 14, 2021

Ms. Angela Calvillo, Clerk
Honorable Supervisor Peskin
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 2021-002990PCA:
Temporary Closure of Liquor Stores in Polk St NCD
Board File No. 210287

Planning Commission Recommendation: Approval with Modification

Dear Ms. Calvillo and Supervisor Peskin,

On May 13, 2021, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Peskin that would amend the Planning Code to provide that a temporary closure of liquor stores in the Polk Street Neighborhood Commercial District (NCD) does not require a new Conditional Use permit under specific conditions. At the hearing the Planning Commission recommended approval with modification.

The Commission's proposed modifications were as follows:

1. Create a new Temporary Use authorization for Legacy Businesses in Planning Code Sec. 205.
 - i. The new Temporary Use permit would allow any Legacy Business (as defined in Admin. Code Sec. 2A.242(b)) that is displaced due to a Demolition and New Construction permit issued by DBI, or due to a force majeure on the site, to temporarily relocate for a period of up to 4 years to:
 1. Any other location if within the same zoning district, or;
 2. Any other location outside the zoning district where the use is Principally or

Conditionally permitted.

- ii. The Temporary Use permit may be extended for additional one-year terms at the discretion of the Planning Director for up to 2 additional years, for a total not to exceed 6 years.
 - iii. All other permits required by other agencies would still be required (i.e. Health, Fire, etc).
 - iv. If the original location is to be rebuilt, and the plan is for the Legacy Business to return to said location, the Legacy Business would *not* abandon their Use at the original location and therefore would not need to seek new zoning approvals or pay impact fees upon returning to the original location.
2. If the Supervisor does not elect to create a new TUA, the Commission recommends the following modifications to the original Ordinance:
- i. Extend the time limit from 3 years to 4 years for both the abandonment provision and the temporary location use permit.
 - ii. Clarify that the temporary Liquor Store location shall revert to its previous use upon termination of the temporary occupation of the Liquor Store.
 - iii. Clarify the entitlement process to exempt Liquor Stores subject to this legislation from Neighborhood Notification and Development Impact Fees for both their temporary location and their original location so long as all movement between the two locations occurs within the 3 (or 4) year time limit.
 - iv. Replace the term “during construction of a development project” for the following language: “due to the issuance of a demolition and new construction permit, or due to a force majeure”.

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.

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission.

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: Peter Miljanich, Deputy City Attorney
Sunny Angulo, Aide to Supervisor Peskin
Erica Major, Office of the Clerk of the Board

Attachments :

Planning Commission Resolution

Planning Department Executive Summary



PLANNING COMMISSION RESOLUTION NO. 20916

HEARING DATE: May 13, 2021

Project Name: Temporary Closure of Liquor Stores in Polk St NCD
Case Number: 2021-002990PCA [Board File No. 210287]
Initiated by: Supervisor Peskin / Introduced March 16, 2021
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, 628-6527533

RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO PROVIDE THAT TEMPORARY CLOSURE OF LIQUOR STORES IN THE POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT (NCD) AS A RESULT OF A MAJOR CAPITAL IMPROVEMENT PROJECT IS NOT AN ABANDONMENT OF SUCH USE, AND THAT RELOCATION OF SUCH USE TO ANOTHER LOCATION IN THE POLK STREET NCD DOES NOT REQUIRE A NEW CONDITIONAL USE PERMIT; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.

WHEREAS, on March 16, 2021 Supervisor Peskin introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 210287, which would amend the Planning Code to provide that temporary closure of liquor stores in the Polk Street Neighborhood Commercial District (NCD) as a result of a major capital improvement project is not an abandonment of such use, and that relocation of such use to another location in the Polk Street NCD does not require a new Conditional Use permit;

WHEREAS, The Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on May 13, 2021; and,

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

MOVED, that the Planning Commission hereby **approves with modifications** the proposed ordinance.

Those modifications include the following:

1. Create a new Temporary Use authorization for Legacy Businesses in Planning Code Sec. 205.
 - i. The new Temporary Use permit would allow any Legacy Business (as defined in Admin. Code Sec. 2A.242(b)) that is displaced due to a Demolition and New Construction permit issued by DBI, or due to a force majeure on the site, to temporarily relocate for a period of up to 4 years to:
 1. Any other location if within the same zoning district, or;
 2. Any other location outside the zoning district where the use is Principally or Conditionally permitted.
 - ii. The Temporary Use permit may be extended for additional one-year terms at the discretion of the Planning Director for up to 2 additional years, for a total not to exceed 6 years.
 - iii. All other permits required by other agencies would still be required (i.e. Health, Fire, etc).
 - iv. If the original location is to be rebuilt, and the plan is for the Legacy Business to return to said location, the Legacy Business would not abandon their Use at the original location and therefore would not need to seek new zoning approvals or pay impact fees upon returning to the original location.
2. If the Supervisor does not elect to create a new TUA, the Commission recommends the following modifications to the original Ordinance:
 - i. Extend the time limit from 3 years to 4 years for both the abandonment provision and the temporary location use permit.
 - ii. Clarify that the temporary Liquor Store location shall revert to its previous use upon termination of the temporary occupation of the Liquor Store.
 - iii. Clarify the entitlement process to exempt Liquor Stores subject to this legislation from

Neighborhood Notification and Development Impact Fees for both their temporary location and their original location so long as all movement between the two locations occurs within the 3 (or 4) year time limit.

- iv. Replace the term “during construction of a development project” for the following language: “due to the issuance of a demolition and new construction permit, or due to a force majeure”.

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:

Policy 1.1 of the Commerce and Industry Element is to encourage development which provides substantial net benefits and minimizes undesirable consequences and discourage development which has substantial undesirable consequences that cannot be mitigated. Policy 6.1 is to ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts. The proposed Ordinance would conveniently allow a long-standing retail use to remain in the Polk Street NCD. This has net benefits to the neighborhood as the retail use is a source of fiscal and employment benefits.

The proposed Ordinance, *with* the Commission's first option for recommended modifications, would take these policies a step further by assisting businesses the City has previously determined provide substantial net benefits to the City. Legacy Businesses are especially important to the livelihood of San Francisco's economic success and identity and should be supported whenever possible. In addition, with these recommendations adopted, the Ordinance would serve the first priority policy of the General Plan “*that existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced.*”. The essential character of the City's various districts should be maintained by encouraging and protecting uses such as the Legacy Businesses, which have been determined to be compatible in scale or type with the district in which they are to be located. Often, a district's character is defined by certain established businesses which have been serving the neighborhood residents and businesses for an extensive period. Loss of such businesses could undermine that district's distinctive character.

In the City's FY 12-13 budget, responsibility for providing strategic direction, planning and oversight of early care and education programs was consolidated in the new agency, OECE

The proposed Ordinance will correct the Planning Code so that it is in line with the City's current practices and adopted budget.

General Plan Compliance

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

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 1

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.1

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

The proposed Ordinance would conveniently allow a long-standing retail use to remain in the Polk Street neighborhood. This has net benefits to the neighborhood as the retail use is a source of fiscal and employment benefits.

OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

Policy 2.3

Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

The proposed amendments to the Planning Code help retain a long-standing retail use in the City's Polk Street neighborhood by easing regulations on relocation in the Polk Street NCD.

OBJECTIVE 3

PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.

Policy 3.1

Promote the attraction, retention, and expansion of commercial and industrial firms which provide employment improvement opportunities for unskilled and semi-skilled workers

The proposed Ordinance would conveniently allow a long-standing retail use to remain in the Polk Street NCD. This has net benefits to the neighborhood as the retail use is a source of fiscal and employment benefits.

OBJECTIVE 6

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

Policy 6.1

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

The Planning Code amendments in the proposed Ordinance help to retain a retail use that provides neighborhood-serving goods to the Polk Street community.

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 May 13, 2021.



Jonas P. Ionin
Commission Secretary

Jonas P Ionin
Digitally signed
by Jonas P Ionin
Date: 2021.05.14
10:00:14 -07'00'

AYES: Tanner, Chan, Diamond, Fung, Imperial, Moore, Koppel

NOES: None

ABSENT: None

ADOPTED: May 13, 2021



Executive Summary

Planning Code Text Amendment

HEARING DATE: May 13, 2021

90-Day Deadline: June 22, 2021

Project Name: Temporary Closure of Liquor Stores in Polk St NCD
Case Number: 2021-002990PCA [Board File No. 210287]
Initiated by: Supervisor Peskin / Introduced March 16, 2021
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, 628-6527533

Recommendation: Approval with Modifications

Planning Code Amendment

The proposed Ordinance would amend the Planning Code to provide that temporary closure of a liquor store in the Polk Street Neighborhood Commercial District (NCD) that is the result of a major capital improvement project is not an abandonment of such use. It also allows the temporary relocation of the liquor store to another location in the Polk Street NCD without requiring a new Conditional Use authorization.

The Way It Is Now:

In the Polk Street NCD, a Liquor Store requires Conditional Use Authorization (CUA).

The Way It Would Be:

The proposed Ordinance would allow existing Liquor Stores within the Polk Street NCD that are displaced due to major capital improvement projects to vacate their original location for up to three years without having to seek a CUA to reestablish at the original location. Additionally, the legislation would allow said Liquor Stores to temporarily locate to another location within the Polk Street NCD for a period of up to three years, without requiring a CUA.

Background

On December 3, 2020 the Planning Commission unanimously approved a CUA for the demolition of an existing commercial building located at 1590 Pacific Avenue that is currently occupied by The Jug Shop. In its place, the CUA also approved the construction of a 6-story, 65 ft tall mixed-use building with 53 dwelling units and ~7,264sqft of ground floor commercial space (*Exhibit C*). Included in the Conditions of Approval was the requirement that the developer create a new space within the project's ground floor for the Jug Shop to occupy upon completion of construction. The project is scheduled to break ground in July of 2021.

The Jug Shop is a Legacy Business. It is an independent, family-owned operation established in 1965. The Jug Shop has signed a lease with a vacant space previously used as an event rental space at 1648 Pacific Avenue, with the intention of operating out of this location until the project at 1590 Pacific Avenue is complete. It is considered an "A" Historic Resource. Their pending CUA application states no proposed exterior changes.

Issues and Considerations

Locational and Operational Conditions on Liquor Stores

The Planning Code treats conditionally authorized uses differently than principally permitted uses. While principally permitted uses are considered routine and appropriate for a neighborhood, conditional uses must be found necessary or desirable, and compatible with a neighborhood. Planning Department staff must notice adjacent property owners of the proposal and the Planning Commission must grant authorization via a public hearing.¹

Given the special treatment of conditionally authorized uses, their operation and continuity are often limited or conditioned. For example, conditionally authorized uses cannot be discontinued for more than three years without the City ceasing to recognize the right to operate at that location.² These limits are a way to incentivize principally permitted uses over potentially less desirable conditionally authorized ones. The Planning Code has standard conditions of approval outlining allowed operating practices for specific uses requiring Conditional Use authorization. Uses with these conditions of approval include massage establishments and nighttime entertainment uses.³

In this vein, the Planning Code also applies locational and operating conditions to certain uses, many of which often require Conditional Use authorization.⁴ Eating and Drinking uses, Cannabis uses, and Motel uses, among others, all have additional operating constraints or requirements. These are in place to assure that adjacent properties or residents are not inconvenienced or harmed by the use-of-concern.

The Polk Street Neighborhood Commercial District (NCD)

Sitting in the gulch between Nob and Russian Hills and Pacific Heights, the Polk Street Neighborhood Commercial District extends for a mile as a north-south linear strip and includes a portion of Larkin Street between Post and California Streets. Polk Street's dense mixed-use character consists of buildings with

¹ Planning Code Section 303

² Planning Code Section 178(d)

³ Planning Code Section 303

⁴ Planning Code Section 202.2

residential units above ground-story commercial uses. The district has an active, pedestrian-oriented, and continuous commercial frontage along Polk Street for almost all of its length. Larkin Street and side streets in the district have a greater proportion of residences than Polk Street itself. California Street and Hyde Street also have active, pedestrian-oriented, and commercial frontage that is small in scale. The district is well served by transit and includes the historic California Cable Car.

Many retail uses require a Conditional Use authorization to establish themselves in the Polk Street NCD, including Liquor Stores.

To preserve and maintain the district's small-scale, fine grain storefronts, the consolidation or merger of existing retail or commercial spaces or storefronts is prohibited and lot mergers are controlled. The district provides convenience goods and services to the residential communities in the Polk Gulch neighborhood and to the residents on the west slopes of Nob and Russian Hills. It has many apparel and specialty stores, as well as some automobile uses, which serve a broader trade area. Commercial uses also include offices, restaurants, and bars which keep the district active into the evening. Many of these retail uses require a Conditional Use authorization to establish themselves in the Polk Street NCD, including Liquor Stores.

Within the Polk Street NCD where an immediately prior use was a Legacy Business, (as defined under Administrative Code Section 2A.242), the controls require any new Non-Residential Use to obtain Conditional Use authorization; this requirement does not apply where: (A) the subject non-residential space had no occupant and had not been open to the public for three or more years from the date the application for the new use is filed, or (B) where the Legacy Business removed itself or has been otherwise removed from the Legacy Business Registry.

Legacy Businesses

A 2014 report by the City's Budget and Legislative Analyst's Office showed the closure of small businesses had reached record numbers in San Francisco. Commercial rents in most neighborhoods had risen significantly. The report drew connections between the city's high level of commercial evictions and skyrocketing rents. While rent control laws shield many residents from exorbitant rent hikes, no such laws exist for businesses. State law does not allow restrictions on commercial leases. An alternative effort to assist the city's longstanding businesses was needed.

A September 2014 report by San Francisco Architectural Heritage entitled "Sustaining San Francisco's Living History: Strategies for Conserving Cultural Heritage Assets,"⁵ found that long-operating businesses in San Francisco foster civic engagement and pride as neighborhood gathering spots and contribute to San Francisco's cultural identity. According to a 2014 study by the San Francisco Office of Economic Analysis (OEA) report "Expanding Formula Retail Controls: Economic Impact Report" the uniqueness of San Francisco's neighborhoods is based on a combination of unique visual characteristics and a sense of community fostered by small merchants and resident relationships.⁶

⁵ https://default.sfplanning.org/meetingarchive/planning_dept/sf-planning.org/ftp/files/Commission/cpcpackets/Cultural-Heritage-Assets.pdf

⁶ https://sfcontroller.org/sites/default/files/FileCenter/Documents/5119-130788_economic_impact_final.pdf

In San Francisco's current economic climate, many otherwise successful, long-operating businesses are at risk of displacement, despite continued value to the community and a record of success. In recent years, San Francisco has witnessed the loss of many long-operating businesses because of increased rents or lease terminations. To the extent that property owners have little incentive to retain longstanding tenants, a long-operating business that does not own its commercial space or have a long-term lease is particularly vulnerable to displacement.

The Board of Supervisors unanimously passed legislation in March of 2015 which created the San Francisco Legacy Business Registry. The registry is open to businesses that are 30 years or older, have been nominated by a member of the Board of Supervisors or Mayor and, in a hearing before the Small Business Commission, prove they have made a significant impact on the history or culture of their neighborhood. Only 300 business can be nominated annually, and all applicants must agree to maintain the historical name and essential business operations, physical features, craft, and traditions of their businesses.

As the City continues to evolve and its aging building stock require major renovations or replacement, it is important to ensure that our Legacy Businesses who may face the threat of displacement from said buildings are able to remain in their original neighborhoods whenever possible, or at the very least within the City.

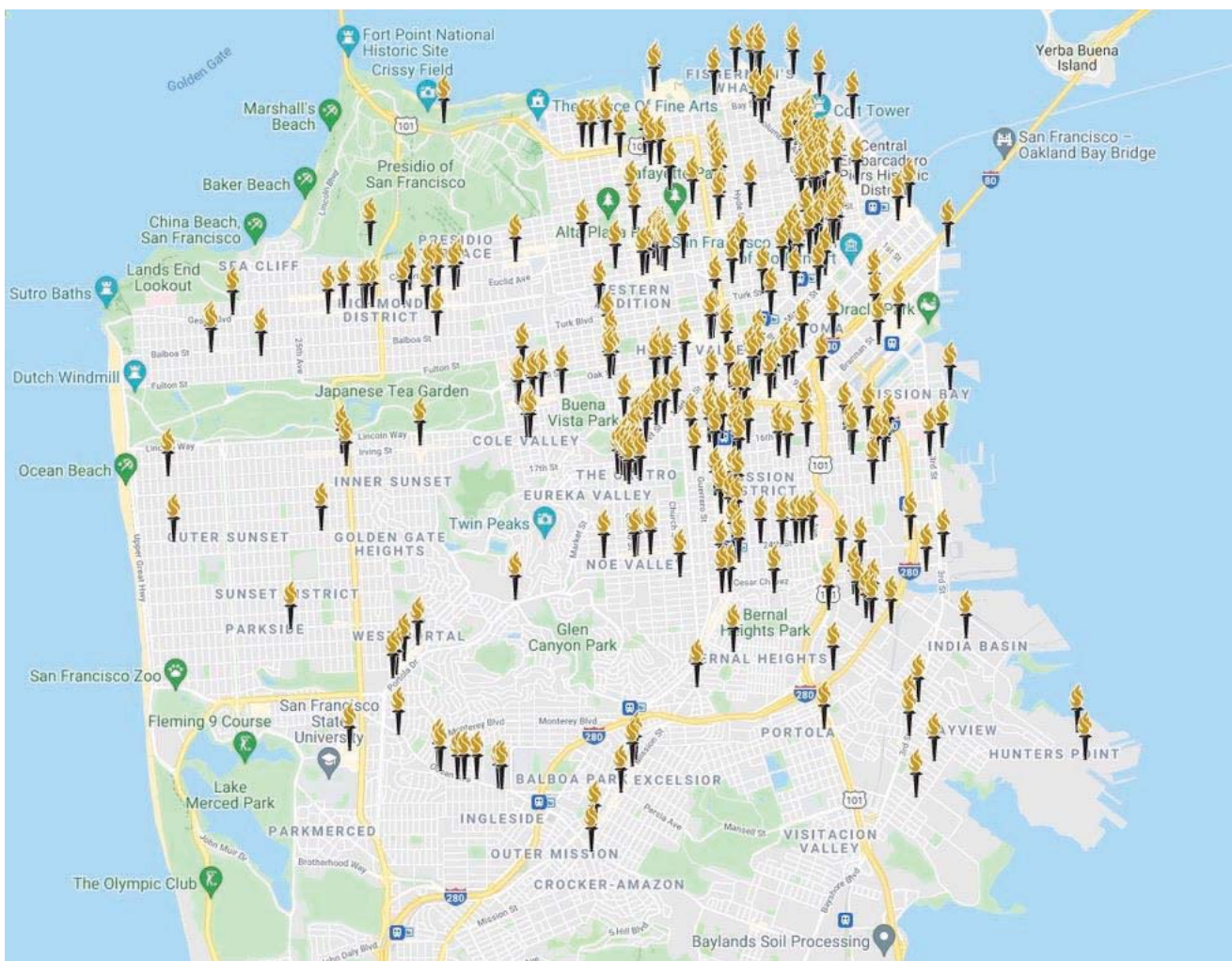


Figure 1 Map of Legacy Businesses via www.legacybusinesses.org

As of April 1, 2021, there were 268 registered Legacy Businesses in the City, ranging from Restaurants to Production, Distribution, and Repair (PDR) uses. These Legacy Businesses are spread across the entire City and nearly all zoning districts.

General Plan Compliance

Policy 1.1 of the Commerce and Industry Element is to encourage development which provides substantial net benefits and minimizes undesirable consequences and discourage development which has substantial undesirable consequences that cannot be mitigated. Policy 6.1 is to ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts. The proposed Ordinance would conveniently allow a long-standing retail use to remain in the Polk Street NCD. This has net benefits to the neighborhood as the retail use is a source of fiscal and employment benefits.

The proposed Ordinance, *with* all staff recommended modifications, would take these policies a step further, by assisting businesses the City has previously determined provide substantial net benefits to the City. Legacy Businesses are especially important to the livelihood of San Francisco's economic success and identity and should be supported whenever possible. In addition, with all staff recommendations adopted, the Ordinance would serve the first priority policy of the General Plan "*that existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced.*". The essential character of the City's various districts should be maintained by encouraging and protecting uses such as the Legacy Businesses, which have been determined to be compatible in scale or type with the district in which they are to be located. Often, a district's character is defined by certain established businesses which have been serving the neighborhood residents and businesses for an extensive period. Loss of such businesses could undermine that district's distinctive character.

Racial and Social Equity Analysis

Understanding the benefits, burdens and opportunities to advance racial and social equity that proposed Planning Code and Zoning Map amendments provide is part of the Department's Racial and Social Equity Initiative. This is also consistent with the Mayor's Citywide Strategic Initiatives for equity and accountability and with the forthcoming Office of Racial Equity, which will require all Departments to conduct this analysis.

The proposed amendments cannot be directly tied to a negative or positive impact in advancing the City's racial and social equity. There is not enough data to support the claim for the small number of businesses that it will affect. The proposed Ordinance will at least provide an easier permitting route for a small group of businesses in the Polk Street NCD (or a larger number of Legacy Businesses if staff's first recommended modification is adopted). Further, the Ordinance is helping to preserve businesses within the neighborhood commercial corridor. These types of businesses frequently hire from the adjacent neighborhood, serving a source of employment for the neighborhood's youth, entry level workers, and immigrants.

To further racial and social equity, the controls on retail uses in the Polk Street NCD should be reexamined. This examination should look at whether the multiple layers of controls and the high application costs are preventing marginalized communities from opening a business in the district.

Implementation

The Department has determined that this Ordinance will not significantly impact our current implementation procedures. The Ordinance is limited in scope. Although there are there are four other Liquor Stores in the Polk Street NCD, all four are in larger mixed-use buildings with residential units; making “major capital improvement” projects that require vacation of businesses and residents unlikely. One potential complication with implementation, however, will be with the building permit under the proposed Ordinance. A building permit will still need to be filed for the Liquor Store to operate at their temporary location, however building permits are usually permanent. A special condition will need to be placed on the permit that states the time limit for the use and the Department will need to coordinate with the Department of Building Inspection on how to craft a time-limited building permit.

If the Commission adopts all the proposed modifications, staff believes the TUA will in fact remove additional process and review time. Without the TUA, other Legacy Businesses that are not Liquor Stores in the Polk Street NCD would need to file multiple permits when attempting to relocate temporarily due to displacement from major construction.

Recommendation

The Department recommends that the Commission *approve with modifications* the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department’s proposed recommendations are as follows:

1. Create a new Temporary Use authorization for Legacy Businesses in Planning Code Sec. 205.
 - i. The new Temporary Use permit would allow any Legacy Business (as defined in Admin. Code Sec. 2A.242(b)) that is displaced due to a Demolition and New Construction permit issued by DBI, or due to a Force Majeure on the site, to temporarily relocate for a period of up to 4 years to:
 1. Any other location if within the same zoning district, or;
 2. Any other location outside the zoning district where the use is Principally or Conditionally permitted.
 - ii. The Temporary Use permit may be extended for additional one-year terms at the discretion of the Zoning Administrator for up to 2 additional years, for a total not to exceed 6 years.
 - iii. All other permits required by other agencies would still be required (i.e. Health, Fire, etc).
 - iv. If the original location is to be rebuilt, the Legacy Business would not abandon their Use at the original location through the filing of this Temporary Use permit and therefore have a right to return if within the time limit of the permit without needing to seek new zoning approvals or pay impact fees.
2. If the Supervisor does not elect to create a new TUA, staff recommends the following modifications to

the original Ordinance:

- i. Extend the time limit from 3 years to 4 years for both the abandonment provision and the temporary location use permit.
- ii. Clarify that the temporary Liquor Store location shall revert to its previous use upon termination of the temporary occupation of the Liquor Store.
- iii. Clarify the entitlement process to exempt Liquor Stores subject to this legislation from Neighborhood Notification and Development Impact Fees for both their temporary location and their original location so long as all movement between the two locations occurs within the 3 (or 4) year time limit.
- iv. Replace the term “during construction of a development project” for the following language: “due to the issuance of a demolition and new construction permit, or due to a force majeure”:

Temporary relocation of liquor stores in the Polk Street Neighborhood Commercial District to another location in the Polk Street Neighborhood Commercial District ~~during construction of a development project~~ due to the issuance of a demolition and new construction permit, or due to a force majeure on the site of said liquor stores shall not require a new Conditional Use Permit . . .

Basis for Recommendation

The Department supports the overall goals of the proposed Ordinance; however, we also believe our recommended modifications to create a TUA for Legacy Businesses would further the policy goals of the legislation. The Department also understands that there is an immediate need for legislation that will assist the Jug Shop in establishing at their temporary location, and that an amendment to create a TUA may need additional time for review and discussion. The Jug Shop is a beloved Legacy Business who’s continued operation should be supported. This neighborhood support was clearly displayed at the CUA hearing to approve the mixed-use development. The legislation as currently drafted will allow The Jug Shop to remain in operation without extraneous and unnecessary hurdles to temporarily establish itself at a nearby location during construction of the new building. The original legislation should move forward with the recommended modifications so that the Jug Shop is able to relocate to their temporary location as soon as possible. However, the Department also believes that as the City continues to evolve and its aging building stock needs major renovations or replacement, it is important to ensure that our Legacy Businesses who may face the threat of displacement from said buildings are able to remain in their original neighborhoods whenever possible, or at the very least within the City. As such, the Department recommends that the Commission additionally recommend the creation of a TUA that would allow Legacy Businesses to move to new locations temporarily when displaced by demolition or a force majeure.

1. The Commission recommends a new Temporary Use authorization for Legacy Businesses be created in

Planning Code Sec. 205.

- i. The new Temporary Use permit would allow any Legacy Business (as defined in Admin. Code Sec. 2A.242(b)) that is displaced due to a Demolition and New Construction permit issued by DBI, or due to a force majeure on the site, to temporarily relocate for a period of up to 4 years to:
 1. Any other location if within the same zoning district, or;
 2. Any other location outside the zoning district where the use is Principally or Conditionally permitted.
- ii. The Temporary Use permit may be extended for additional one-year terms at the discretion of the Zoning Administrator for up to 2 additional years, for a total not to exceed 6 years.
- iii. All other permits required by other agencies would still be required (i.e. Health, Fire, etc).
- iv. If the original location is to be rebuilt, the Legacy Business would not abandon their Use at the original location through the filing of this Temporary Use permit and therefore have a right to return if within the time limit of the permit without needing to seek new zoning approvals or pay impact fees.

Legacy Businesses are long-standing neighborhood institutions that have contributed to the history and identity of their communities. They ensure the traditions, practices, and art forms that make up San Francisco's identity are preserved and continue to flourish. They are an invaluable asset which strengthen the neighborhood commercial districts and beyond. Any legislative effort that will assist Legacy Businesses to remain in the City should be supported.

2. If the Supervisor does not elect to create a new TUA, staff recommends the following modifications to the original Ordinance:
 - i. Extend the time limit from 3 years to 4 years for both the abandonment provision and the temporary location use permit.

The developer for the project hopes to break ground in July 2021 and complete the project in 20 months, however construction timelines can often face unforeseen hurdles that can cause completion deadlines to become delayed by months or even years. If the project faces delays, it could require The Jug Shop to seek a CUA to reestablish at its original location, and a CUA to continue operating at its temporary location.

- ii. Clarify that the temporary Liquor Store location shall revert to its previous use upon

termination of the temporary occupation of the Liquor Store.

- iii. Clarify the entitlement process to exempt Liquor Stores subject to this legislation from Neighborhood Notification and Development Impact Fees for both their temporary location and their original location so long as all movement between the two locations occurs within the 3 (or 4) year time limit.

The Jug Shop previously filed a CUA to establish at 1648 Pacific Avenue. The current use of the building is vacant (previously a private event space). If the legislation passes, the Jug Shop will be able to establish the use with a building permit instead of a CUA. As currently written, the temporary location could retain its Liquor Store use without having to seek CU approval if the original Liquor Store vacates the location before the 3 (or 4) year time limit expires.

- iv. Replace the term “during construction of a development project” for the following language: “due to the issuance of a demolition and new construction permit, or due to a force majeure”.

“Major capital improvement” project is not defined in the Planning, Administrative, or Building Code. It is therefore open to interpretation and abuse. The Department recommends replacing the term with “Demolition and new construction permit issued by DBI or due to a force majeure on the site” to be more specific and prevent abuse.

Required Commission Action

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

Environmental Review

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.

Public Comment

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

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 210287
- Exhibit C: Conditional Use Authorization Commission Packet for Case No. 2018-008259CUA

BOARD of SUPERVISORS



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

March 24, 2021

File No. 210287

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

Dear Ms. Gibson:

On March 16, 2021, Supervisor Peskin submitted the following legislation:

File No. 190757

Ordinance amending the Planning Code to provide that temporary closure of liquor stores in the Polk Street Neighborhood Commercial District (NCD) as a result of a major capital improvement project is not an abandonment of such use, and that relocation of such use to another location in the Polk Street NCD does not require a new Conditional Use permit; 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 convenience, necessity, and welfare under Planning Code, Section 302.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

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

Attachment

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

BOARD of SUPERVISORS



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March 24, 2021

Planning Commission
Attn: Jonas Ionin
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Commissioners:

On March 16, 2021, Supervisor Peskin introduced the following legislation:

File No. 210287

Ordinance amending the Planning Code to provide that temporary closure of liquor stores in the Polk Street Neighborhood Commercial District (NCD) as a result of a major capital improvement project is not an abandonment of such use, and that relocation of such use to another location in the Polk Street NCD does not require a new Conditional Use permit; 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 convenience, necessity, and welfare under Planning Code, Section 302.

The proposed ordinance is being transmitted pursuant to Planning Code, Section 302(b), for public hearing and recommendation. The ordinance is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

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

c: Rich Hillis, Director
Corey Teague, Zoning Administrator
Scott Sanchez, Deputy Zoning Administrator
Lisa Gibson, Environmental Review Officer
Devyani Jain, Deputy Environmental Review Officer
Adam Varat, Acting Director of Citywide Planning
Aaron Starr, Manager of Legislative Affairs
Andrea Ruiz-Esquide, Deputy City Attorney
Joy Navarrete, Major Environmental Analysis

BOARD of SUPERVISORS



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MEMORANDUM

TO: William Scott, Police Chief, Police Department
Kate Sofis, Director, Office of Economic and Workforce Development

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

DATE: March 24, 2021

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Peskin on March 16, 2021:

File No. 210287

Ordinance amending the Planning Code to provide that temporary closure of liquor stores in the Polk Street Neighborhood Commercial District (NCD) as a result of a major capital improvement project is not an abandonment of such use, and that relocation of such use to another location in the Polk Street NCD does not require a new Conditional Use permit; 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 convenience, necessity, and 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.

cc: Rowena Carr, William Scott, Police Chief
Lili Gamero, William Scott, Police Chief
Diana Oliva-Aroche, William Scott, Police Chief
Sgt Stacy Youngblood, William Scott, Police Chief
J'Wel Vaughn, Office of Economic and Workforce Development
Anne Taupier, Office of Economic and Workforce Development
Lisa Pagan, Office of Economic and Workforce Development