

BOARD of SUPERVISORS



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MEMORANDUM

TO: Katy Tang, Director
Small Business Commission, City Hall, Room 448

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

DATE: February 23, 2022

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use and Transportation Committee

The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 211092-2

Ordinance amending the Planning Code to increase density on lots with auto-oriented uses where housing is permitted, but which do not currently have any residential use or a legacy business, and remove the Conditional Use requirement to change the use of an Automobile Service Station or Automotive Use to another use, and amend zoning control tables to reflect this change; 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 as required by Planning Code, Section 302.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

No Comment

Recommendation Attached

Chairperson, Small Business Commission

cc: Kerry Birnbach, Senior Policy Analyst/Commission Secretary

1 [Planning Code - Automotive Uses; Housing Density]

2

3 **Ordinance amending the Planning Code to increase density on lots with auto-oriented**
4 **uses where housing is permitted, but which do not currently have any residential use**
5 **or a legacy business, and remove the Conditional Use requirement to change the use**
6 **of an Automobile Service Station or Automotive Use to another use, and amend zoning**
7 **control tables to reflect this change; affirming the Planning Department’s determination**
8 **under the California Environmental Quality Act; making findings of consistency with**
9 **the General Plan, and the eight priority policies of Planning Code, Section 101.1; and**
10 **making findings of public necessity, convenience, and welfare as required by Planning**
11 **Code, Section 302.**

12

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

17

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

19

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. _____ and is incorporated herein by reference. The Board affirms this
25 determination.

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

6 (c) On _____, 2021, the Planning Commission, in Resolution No. _____,
7 recommended this ordinance for adoption by the Board of Supervisors, and adopted findings
8 that it will serve the public necessity, convenience, and welfare, as provided in Planning Code
9 Section 302. The Board adopts these findings as its own. A copy of said Resolution is on file
10 with the Clerk of the Board of Supervisors in File No. _____, and is incorporated herein by
11 reference.

12
13 Section 2. General Background and Findings.

14 This ordinance shall be known as “Cars to Casas,” and is based on the following
15 findings:

16 (a) For the past several years, San Francisco has consistently ranked as the most, or
17 one of the most, expensive housing markets in the country. There are several factors that
18 contribute to these high costs, but two of the main drivers are an increased demand for
19 housing caused by job growth, and a limited supply of housing caused by a lack of new
20 housing construction.

21 (b) Job growth in San Francisco from 2010 to 2019 far exceeded housing produced.
22 The number of workers increased by 225,000 while housing increased by 28,000 units; more
23 than eight workers added for every housing unit added.

24 (c) Compounding the City’s existing lack of housing supply, San Francisco’s Regional
25 Housing Needs Assessment (RHNA) for 2023-2031 is 82,069 units, including 46,598 units at

1 very low, low, and moderate income levels. The 2023-2031 RHNA is nearly triple the previous
2 (2015-2023) RHNA. The annual targets for each income group has increased to amounts
3 higher than what has been approved or permitted in the past, including for above moderate-
4 income levels. In the past, San Francisco has struggled to meet existing RHNA targets for
5 low- and moderate-income households.

6 (d) 41% of the land area that is zoned for housing in San Francisco does not allow
7 more than one unit per lot. Further, an additional 29% of the land zoned for housing in San
8 Francisco is limited to two- and three-unit buildings. San Francisco went through a massive
9 downzoning in the mid-1970s when it created the RH zoning districts. As a result, 70% of
10 land zoned to permit housing in San Francisco does not permit apartment buildings with four
11 or more units. This downzoning makes it difficult for San Francisco to build what is often
12 referred to as “Missing Middle Housing.”

13 (e) Missing Middle Housing offers a greater choice in housing types that still blend into
14 existing single-family neighborhoods, create more affordable housing options, and help reach
15 sustainability goals. Missing middle housing units are usually smaller units than single-family
16 homes because they share a lot with other homes, which results in lower per-unit land costs.
17 Missing middle housing types are also one of the least expensive forms of housing to produce
18 because they are typically low-rise and wood-frame construction, which avoids expensive
19 concrete podiums. Because the construction and building materials are comparatively less
20 complicated than larger mid- and high-rise structures, a larger pool of small-scale and local
21 home builders can participate in the creation of this form of housing.

22 (f) Since the early 2000s, San Francisco has been moving away from numerical caps
23 on units per lot and toward a form-based density; however, a significant area of the City still
24 relies on numerical unit caps.

1 (g) Nearly all new housing, both affordable and market rate, is added in areas with
2 form-based density controls, including the City's commercial areas like Downtown, former
3 redevelopment areas, and form-based density districts like Neighborhood Commercial Transit
4 districts (NCTs) and Urban Mixed Use districts (UMUs). 62% of affordable housing and 79%
5 of all housing is built in these districts, even though they make up just 17% of the city's
6 residential land area.

7 (h) Because form-based zoning is present in only certain neighborhoods, housing
8 production is heavily focused in just eight neighborhoods, reducing housing opportunities in
9 the rest of the City. Indeed, 85% of new housing is constructed in those eight neighborhoods:
10 Downtown/South Beach, SoMa, Mission Bay, Potrero Hill/ Dogpatch, Bayview Hunters Point,
11 the Mission, the Tenderloin, and Hayes Valley. Similarly, 82% of all new affordable housing
12 has been built in these eight neighborhoods.

13 (i) Personal vehicles are a major cause of global warming. Collectively, cars and trucks
14 account for nearly one-fifth of all U.S. emissions, emitting around 24 pounds of carbon dioxide
15 and other global-warming gases for every gallon of gas.

16 (j) In San Francisco, 47% of carbon dioxide emissions come from transportation and
17 41% come from buildings. San Francisco has been able to reduce its carbon emissions by
18 41% from 1990 levels, but most of that reduction has come from reducing emissions from
19 buildings; emissions from transportation has remained relatively stable.

20 (k) In 2016, the Paris Climate Agreement committed national governments to pursue
21 efforts to limit temperature rises to 1.5 degrees Celsius. In 2018, the Intergovernmental Panel
22 on Climate Change (IPCC) issued a special report on the impacts of global warming and the
23 need to significantly reduce global greenhouse gas emissions well before 2030 to reduce the
24 most detrimental impacts to ecosystems and to human health.

25

1 (l) In 2018, the United States' Fourth National Climate Assessment made clear
2 that climate change will wreak havoc across the United States, and that the current pace and
3 scale of national climate action are not sufficient to avert substantial damage to the
4 environment, human health, and economy. According to the San Francisco Department of
5 Public Health's Climate and Health Adaptation Framework (2017), the direct and indirect
6 impacts of climate change will disproportionately affect San Francisco communities least able
7 to prepare for, cope with, and recover from those impacts. Those communities include
8 communities of color, low-income communities, and other vulnerable populations.

9 (m) San Francisco, the Bay Area, and the State of California are already suffering the
10 effects of climate change in the form of droughts, air pollution, extreme heat, frequent
11 wildfires, flooding, and much more.

12 (n) At the 2018 Global Climate Action Summit, San Francisco committed to meet the
13 Paris Agreement by achieving a net zero city by 2050. The City joined in a Climate Equity
14 Pledge to ensure that the City's 2020 Climate Action Strategy update achieves the dual goals
15 of advancing racial equity and decreasing carbon emissions.

16 (o) San Francisco's climate commitments and climate action strategy are framed by
17 the City's "0-80-100-Roots" framework, which defines climate and sustainability goals in four
18 key areas: zero waste ("0% zero waste"), transportation ("80% low-carbon trips"), energy
19 ("100% renewable energy"), and carbon sequestration ("Roots").

20 (p) One of the City's fundamental goals in implementing the 0-80-100-Roots Climate
21 Action Framework is to promote equity by ensuring that implementation reflects and responds
22 to the economic, and social needs of different San Francisco vulnerable communities.

23 (q) Achieving the "0-80-100-Roots" goals in the City will mean cleaner air, fewer
24 vehicles on the road, more reliable transit systems, more bike lanes and pedestrian-friendly
25 networks, highly efficient homes and businesses powered by 100% clean electricity, a robust

1 urban tree canopy, plentiful green spaces, improved soil health, and a regenerative
2 ecosystem.

3 (r) Meaningful climate solutions will require increasing supplies of high-quality housing
4 affordable to households at all income levels and located near local and regional transit
5 services. These solutions will also require well-coordinated land use and transportation
6 planning and investments to support low-carbon trips using efficient travel modes such as
7 transit, walking, and biking, to reduce vehicle miles traveled and associated emissions.

8 (s) In 2019, the Board of Supervisors unanimously adopted Resolution No. 160-19,
9 declaring a climate emergency in San Francisco, and advocating for immediate action to
10 address the climate crisis, limit global warming to 1.5 degrees Celsius, and eliminate
11 greenhouse gas emissions.

12 (t) The Department of the Environment's 2019 report titled "Focus 2030: A Pathway to
13 Net Zero Emissions" shows that achieving accelerated emissions reductions by 2050 will
14 require an ongoing commitment that builds upon and surpasses San Francisco's past
15 successes and increases resources accordingly to continue to reduce emissions all the way to
16 net zero.

17 (u) In 2021, the Board of Supervisors adopted Ordinance No. 117-21, which
18 established the following targets for reducing San Francisco Greenhouse Gas Emissions: (1)
19 by 2030, a reduction in Sector-Based Greenhouse Gas Emissions of at least 61% compared
20 to 1990 levels; (2) by 2030 a reduction in Consumption Based Greenhouse Gas Emissions to
21 30 mtCO₂e per household or less, equivalent to a 40% reduction compared to 1990 levels; (3)
22 by 2040 achievement of Net Zero Sector-Based Greenhouse Gas Emissions by reducing
23 such emissions by at least 90% compared to 1990 levels and sequestering any residual
24 emissions; and (4) by 2050, a reduction in Consumption-Based Greenhouse Gas Emissions
25

1 to 10 mtCO2e per household or less, equivalent to an 80% reduction compared to 1990
2 levels.

3 (v) In 2014, San Francisco adopted Vision Zero as City Policy, which seeks to
4 eliminate traffic deaths on our streets by 2024.

5 (w) Between 2014 and 2021, the City had on average 28 traffic deaths a year, or 223
6 deaths in total.

7 (x) In addition to designing better roads and improving enforcement, traffic deaths can
8 be reduced by discouraging private automobile travel within the City and encouraging public
9 transit and active forms of transportation like walking and biking.

10 (y) With less space dedicated to the automobile, more space can be used for housing
11 as well as creating a more livable and vibrant city by reducing noise and air pollution,
12 expanding green space, and creating more people-oriented spaces.

13

14 Section 3. The Planning Code is hereby amended by revising Sections 102 and 207,
15 to read as follows:

16 **SEC. 102. DEFINITIONS.**

17 * * * *

18 **Automotive Service Station.** A Retail Automotive Use that provides motor fuels and
19 lubricating oils directly into motor vehicles and minor auto repairs (excluding engine repair,
20 rebuilding, or installation of power train components, reconditioning of badly worn or damaged
21 motor vehicles, collision service, or full body paint spraying) and services that remain
22 incidental to the principal sale of motor fuel. Repairs shall be conducted within no more than
23 three enclosed service bays in buildings having no openings, other than fixed windows or
24 exits required by law, located within 40 feet of any R District. It may include other incidental
25 services for automobiles including, but not limited to, accessory towing, if the number of

1 towing vehicles does not exceed one, and all towed vehicles stored on the premises are
2 limited to those vehicles that are to be repaired on the premises. This use is subject to the
3 controls in Sections 187.1; and 202.2(b), ~~and 202.5~~.

4 * * * *

5 **SEC. 207. DWELLING UNIT DENSITY LIMITS.**

6 * * * *

7 (c) **Exceptions to Dwelling Unit Density Limits.** An exception to the calculations
8 under this Section 207 shall be made in the following circumstances:

9 * * * *

10 **(8) Replacing Auto-Oriented Uses with Housing.**

11 (A) **Purpose.** The purpose of this subsection (c)(8) is to encourage housing
12 development on parcels that are being used for Auto-Oriented Uses, with the goal of easing the City's
13 housing shortage while addressing the adverse impacts that automobiles have on climate change,
14 pedestrian safety, and livability.

15 (B) **Definition.** For the purposes of this subsection (c)(8), an Auto-Oriented Use
16 shall mean any parcel that has, or had as its last permitted use, an accessory parking lot or garage, or
17 any use defined as an Automotive Use in Planning Code Section 102.

18 (C) **Applicability.** This subsection (c)(8) shall apply to all properties (i) with an
19 Auto-Oriented Use on which a residential use is permitted as a Principal Use but does not contain a
20 Residential Use, and which also (ii) have not had a Legacy Business, as defined in Administrative Code
21 Section 2A.242(b), on the site for four years prior to submittal of an application under this subsection
22 (c)(8). Sites that contain a business that has been nominated for inclusion in the Legacy Business
23 Registry shall be ineligible for this subsection (c)(8), unless the Small Business Commission finally
24 determines that such business does not meet the criteria for a Legacy Business under Administrative
25 Code section 2A.242(b).

1 (D) **Density Controls.** Notwithstanding any other provision of this Code,
2 eligible properties shall be subject to the following density controls:

3 (i) **Eligible Sites in RH Zoning Districts:** Four Dwelling Units per lot as
4 a Principally Permitted use.

5 (ii) **Eligible Sites in Other Zoning Districts:** Density shall be regulated
6 by the permitted height and bulk, and required setbacks, exposure, open space, and any adopted design
7 standards or guidelines for each parcel as a Principally Permitted Use. Notwithstanding any contrary
8 provision of this Code, projects using this subsection (c)(8) may also seek a density bonus under
9 Section 206.6.

10 (E) **Conditional Use.** Any other Conditional Use required by this Code that is
11 not related to permitted residential density shall continue to apply.

12 **(F) Parking Requirements.**

13 (i) **Residential Parking.** Proposed projects using the density
14 exception in this subsection (c)(8) are subject to the following parking controls:

15 P: up to 0.25 parking spaces per residential unit

16 C: up to 0.5 parking spaces per unit

17 NP: above 0.5 spaces per unit

18 (ii) **Non-Residential Parking.** Notwithstanding any other provision of
19 this Code, up to 75% of Non-Residential Parking otherwise allowed by this Code shall be permitted for
20 projects using the density exception in this subsection (c)(8).

21 **(G) Review of Program and Limit on Number of Residential Units.** The

22 Planning Department shall include the number and location of projects using this subsection (c)(8) and
23 number of units provided in such projects in the Housing Inventory Report. This subsection (c)(8) shall
24 remain in effect until the Planning Department approves a total of 5,000 residential units under the
25 authority of this subsection (c)(8). When the Planning Director certifies in writing that the Planning

1 Department has approved 5,000 residential units under this subsection 207(c)(8), the subsection shall
2 expire by operation of law, and the City Attorney shall cause the subsection to be removed from the
3 Planning Code.

4
5 Section 4. The Planning Code is hereby amended by deleting Section 202.5 in its
6 entirety, as follows:

7
8 **~~SEC. 202.5. CONVERSION OF AUTOMOTIVE SERVICE STATIONS.~~**

9 ~~—(a) Findings.~~

10 ~~—(1) The recent trend toward conversion of service stations to non-service station use has~~
11 ~~resulted in the curtailment of essential services, including automobile refueling and emergency~~
12 ~~services, and is contrary to the public health, safety, peace and general welfare.~~

13 ~~—(2) To address this problem, the Board of Supervisors adopted Resolution No. 759-89 to~~
14 ~~impose interim controls on the conversion of service stations and to create a task force to study this~~
15 ~~problem and make recommendations to this Board regarding how to address this problem.~~

16 ~~—(3) In the 17 months since Resolution 759-89, 11 more service stations have been~~
17 ~~converted to other uses. The Service Station Conversion Task Force has recommended that the Board~~
18 ~~of Supervisors adopt permanent legislation to address this problem.~~

19 ~~—(4) The Board of Supervisors recognizes that service station operators and those who own~~
20 ~~property on which such stations are located are entitled to earn a fair rate of return on their~~
21 ~~investment. Where a fair rate of return is being earned, the Board finds that service stations should be~~
22 ~~allowed to convert to other uses only where it is determined that the conversion would benefit the~~
23 ~~public.~~

24 ~~—(b) Definitions. Whenever used in this Section, unless a different meaning clearly appears~~
25 ~~from the context.~~

1 ~~—(1) "Automotive Service Station" or "service station" shall mean a retail automotive~~
2 ~~service use as defined in Section 102 of this Code.~~

3 ~~—(2) "Conversion" shall mean to change the use of a property from a service station use to a~~
4 ~~different type of use.~~

5 ~~—(3) "Return on investment" shall mean:~~

6 ~~—(A) where the property owner does not own the Automotive Service Station business, the~~
7 ~~before income tax total annual rent and other compensation received from the service station business~~
8 ~~for the lease of the land and buildings, less the expenses of the lessor, on a cash basis.~~

9 ~~—(B) where the property owner also owns the Automotive Service Station business, the~~
10 ~~before income tax profit on the sale of all goods and services at the service station, including the sale of~~
11 ~~gasoline, less the cost of goods sold and operating costs, on a cash basis.~~

12 ~~—(4) "Total investment in the property" shall mean the fair market value of the property at~~
13 ~~the time the application is filed with the Zoning Administrator.~~

14 ~~—(5) "Demolition" shall mean the physical removal of underground, and/or surface tanks~~
15 ~~used in storage and dispensing of gasoline and/or any building or canopy without the replacement of~~
16 ~~such equipment or structures to allow continued operation of the service station.~~

17 ~~—(c) Limitation on Conversions:~~

18 ~~—(1) No owner of a property used as an Automotive Service Station shall change the use of~~
19 ~~the property to a different type of use without first applying for and receiving either a Conditional Use~~
20 ~~authorization from the City Planning Commission, or a conversion determination from the Zoning~~
21 ~~Administrator. Such authorizations shall be in addition to any other permit or authorization required~~
22 ~~for a proposed service station conversion under any applicable City, State or federal law or regulation.~~
23 ~~Automotive Service Stations which front on Primary Transit Streets or Citywide Pedestrian Network~~
24 ~~Streets, as designated in the General Plan, shall be exempt from the conversion limitations of this~~

1 ~~Section. The procedures for service station conversion applications shall be as described in Sections~~
2 ~~306 and 306.1 of this Code for conditional use and variance actions.~~

3 ~~—(2) Either the Planning Commission or the Zoning Administrator shall determine at a~~
4 ~~public hearing whether an applicant is entitled to convert the service station, depending on the grounds~~
5 ~~on which the permit is sought. The Planning Commission shall make Conditional Use authorization~~
6 ~~determinations based on the criteria set forth in Subsection (d). The Zoning Administrator shall make~~
7 ~~service station conversion determinations under the grounds set forth in Subsection (e). An applicant~~
8 ~~may, but need not, apply to the Planning Commission for a Conditional Use authorization pursuant to~~
9 ~~Subsection (d) and apply to the Zoning Administrator for a conversion authorization pursuant to~~
10 ~~Subsection (e), provided that if either one approves the application at the first hearing held on it, no~~
11 ~~hearing shall be necessary before the other. The procedures for service station conversion hearings~~
12 ~~shall be as described in Sections 306 through 306.5 and 306.8 of this Code for conditional use action~~
13 ~~(Planning Commission hearings) and variance action.~~

14 ~~—(d) Criteria for Planning Commission Conditional Use Authorization. In acting on any~~
15 ~~application for Conditional Use authorization for conversion, the Commission shall consider the~~
16 ~~following criteria in lieu of the criteria set forth in Section 303(e) of this Code.~~

17 ~~—(1) The Planning Commission shall approve the application and authorize the service~~
18 ~~station conversion if it determines from the facts presented that the reduction in availability of~~
19 ~~automotive goods and services resulting from the service station conversion would not be unduly~~
20 ~~detrimental to the public because either:~~

21 ~~—(A) Comparable automotive goods and services are available at other reasonably~~
22 ~~accessible locations; or~~

23 ~~—(B) The benefits to the public of the service station conversion would outweigh any~~
24 ~~reduction in automotive goods and services availability because the proposed new use is more~~
25 ~~necessary or desirable for the neighborhood or community than continued service station use.~~

1 ~~—(2) In making determinations under Subsection (1)(A), the Planning Commission shall~~
2 ~~consider the following factors:~~

3 ~~—(A) The types of services offered by the service station sought to be converted and the~~
4 ~~hours and days during which such goods and services are available;~~

5 ~~—(B) The volume of gasoline and other motor fuel sold and the number of vehicles serviced~~
6 ~~at such service station during each of the 24 months preceding the filing of the conditional use~~
7 ~~authorization application;~~

8 ~~—(C) Whether the volume of gasoline and other motor fuel sold and the number of vehicles~~
9 ~~serviced each month has increased or decreased during the 24-month period immediately preceding the~~
10 ~~conditional use authorization;~~

11 ~~—(D) The accessibility of comparable automotive goods and services offered by other~~
12 ~~service stations and repair garages which serve the same geographic area and population segments~~
13 ~~(e.g., neighborhood residents, in town or out of town commuters, tourists) as the service station sought~~
14 ~~to be converted.~~

15 ~~—(3) In making determinations under Subsection (1)(B), the Planning Commission shall~~
16 ~~consider the following factors:~~

17 ~~—(A) If the proposed use is a Residential use, the total number of units to be provided and~~
18 ~~the number of those units that are affordable units;~~

19 ~~—(B) If the proposed new use is a Commercial use, the types of goods and services to be~~
20 ~~offered and the availability of comparable products and services in the vicinity;~~

21 ~~—(C) The importance of the street on which the service station fronts to walking, cycling,~~
22 ~~and public transit, and the impact of automobile access and egress to the service station and of the~~
23 ~~proposed new uses and structures on the safety and comfort of pedestrians, cyclists, and transit riders;~~

24 ~~—(D) The relative environmental dangers posed by the current and proposed uses,~~
25 ~~including but not limited to the quality and character of waste generated, noxious or offensive~~

1 ~~emissions, fire and explosion hazards and noise, and whether the service station conversion would~~
2 ~~facilitate the cleanup of existing contamination at the property;~~

3 ~~——(E) The relative employment opportunities offered by the service station and the~~
4 ~~proposed new use;~~

5 ~~——(F) The relative amount of taxes or other revenues to be received by the City or other~~
6 ~~governmental bodies from service station use and the proposed new use;~~

7 ~~——(G) The compatibility of the existing service station and of the proposed new use or~~
8 ~~structure with the General Plan and area plan urban design policies and the street frontage standards~~
9 ~~of this Code;~~

10 ~~——(H) Whether the service station use and the proposed use are permitted principal uses,~~
11 ~~conditional uses or nonconforming uses.~~

12 ~~—(e) Criteria for Zoning Administrator Conversion Determination. The Zoning Administrator~~
13 ~~shall approve the application and authorize the service station conversion if the Zoning Administrator~~
14 ~~determines from the facts presented that the owner of the subject property is not earning a Fair Return~~
15 ~~on Investment, as defined in Section 102. The owner shall bear the burden of proving that the owner is~~
16 ~~not earning a Fair Return on Investment.~~

17 ~~——(1) Application. A property owner's application under this Section shall be signed by the~~
18 ~~owner or an authorized representative of the owner and, under penalty of perjury, declared to contain~~
19 ~~true and correct information. The application shall be accompanied by:~~

20 ~~——(A) An independent appraisal of the property stating its value;~~

21 ~~——(B) A written statement from an independent Certified Public Accountant summarizing~~
22 ~~the applicant's financial records, including the property appraisal and stating the return on investment~~
23 ~~calculated pursuant to Section 102;~~

24 ~~——(C) A certified statement from the Certified Public Accountant identifying the owner of~~
25 ~~the property and the owner of the service station business;~~

1 ~~—(D) Such other financial information as the Zoning Administrator may reasonably~~
2 ~~determine is necessary to make the determination provided for in this Section.~~

3 ~~—(2) Rebuttable Presumption. There shall be a rebuttable presumption that the property~~
4 ~~owner is earning a Fair Return on Investment if the property owner has earned at least a 9% return on~~
5 ~~the property owner's total investment in the property for the 24-month period immediately preceding~~
6 ~~the filing of the application, or in the case of a service station business that ceased operations after~~
7 ~~October 12, 1989, for the 24-month period immediately preceding the date the service station ceased~~
8 ~~operations. The property owner may rebut this presumption by offering evidence demonstrating that~~
9 ~~because of special facts regarding his or her property the property owner is not earning a Fair Return~~
10 ~~on Investment or that because of special demonstrated circumstances the applicant would not earn a~~
11 ~~fair return on investment from service station use during that 12-month period after the filing of the~~
12 ~~service station conversion application.~~

13 ~~—(3) Notice of Hearing. Prior to conducting the hearing required by subsection (c)(1), the~~
14 ~~Zoning Administrator shall provide public notification of the hearing pursuant to the requirements of~~
15 ~~Section 333 of this Code.~~

16 ~~—(4) Determination. The Zoning Administrator shall render written determination within 60~~
17 ~~days of the hearing.~~

18 ~~—(5) Consultation With Other City Departments. If necessary, the Zoning Administrator~~
19 ~~shall have the authority to consult with or retain the assistance of the staffs of the Department of Public~~
20 ~~Works, Real Estate Department, and Mayor's Office of Workforce and Economic Development in the~~
21 ~~review of applications for service station conversion.~~

22 ~~—(f) Demolition and Tank Removal.~~

23 ~~—(1) No service station shall be demolished except to enable a new service station to be~~
24 ~~constructed on the property, unless:~~

1 ~~—(A) The property owner has first obtained a conditional use authorization from the~~
2 ~~Planning Commission pursuant to Subsection (d) above or a conversion determination from the Zoning~~
3 ~~Administrator pursuant to Subsection (e) above; or~~

4 ~~—(B) The Department of Building Inspection and the Bureau of Fire Prevention and Public~~
5 ~~Safety determines that the building is unsafe or dangerous and that demolition is the only feasible~~
6 ~~means to secure the public safety.~~

7 ~~(2) Notwithstanding subsections (f)(1)(A) and (f)(1)(B) above, if a service station is owned~~
8 ~~by a lessee of the property and the property lease was signed prior to the effective date of Ordinance~~
9 ~~288-91, which lease permits or requires the lessee to remove the service station from the property~~
10 ~~before or after the expiration or termination of the lease, and the lease has expired or terminated or~~
11 ~~will do so within 60 days, the lessee may cease operation of the service station as permitted or required~~
12 ~~in the lease. Nothing in this provision, however, shall relieve the property owner from continued use of~~
13 ~~property as an Automotive Service Station as defined by Sections 102 and 890.18 of this Code or the~~
14 ~~requirements of subsection (f)(1)(A) above.~~

15 ~~(3) This Section shall not limit the removal of any underground storage tank at a service~~
16 ~~station where removal of the tank is required to comply with any other local, State or federal law or~~
17 ~~regulation or where the Director of Public Health or a State or federal regulatory agency with~~
18 ~~jurisdiction over underground storage tanks determines that the tank poses, or removal of the tank is~~
19 ~~necessary to mitigate, a threat to public health or safety, including but not limited to waters of the~~
20 ~~State. All appropriate permits (other than the authorizations required by this Section for conversions)~~
21 ~~shall be obtained prior to such authorized tank removals. The removal of an underground tank~~
22 ~~pursuant to this Section does not otherwise exempt a property owner from the requirement of obtaining~~
23 ~~conditional use authorization to convert an Automotive Service Station.~~

1 Section 5. PLANNING CODE AMENDMENTS TO ZONING CONTROL TABLES TO
2 CONFORM TO DELETION OF PLANNING CODE SECTION 202.5.

3 Consistent with Section 4 of this ordinance, which deletes Section 202.5, “Conversion
4 of Automotive Service Stations,” from the Planning Code:

5
6 (a) The following Zoning Control Tables in Planning Code Article 2 are revised to
7 delete the cross-reference to Planning Code Section 202.5 where “Automotive Service
8 Station” is listed in the tables:

9 Table 210.1 (C-2 Districts: Community Business)

10 Table 210.2 (C-4 Districts: Downtown Commercial)

11 Table 210.3 (PDR Districts)

12
13 (b) The following Neighborhood Commercial and Neighborhood Commercial Transit
14 Zoning Control Tables in Planning Code Article 7 are revised to delete the cross-reference to
15 Planning Code Section 202.5 where “Automotive Service Station” is listed in the tables:

16 Table 731, Noriega Street Neighborhood Commercial District

17 Table 732, Irving Street Neighborhood Commercial District

18 Table 733, Taraval Street Neighborhood Commercial District

19 Table 734, Judah Street Neighborhood Commercial District

20 Table 751, NC-2 – Small Scale Neighborhood Commercial Transit District

21 Table 753, SOMA Neighborhood Commercial Transit District

22 Table 754, Mission Street Neighborhood Commercial Transit District

23 Table 755, Ocean Avenue Neighborhood Commercial Transit District

24 Table 756, Glen Park Neighborhood Commercial Transit District

25 Table 759, Divisadero Street Neighborhood Commercial Transit District

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(c) The following Neighborhood Commercial and Neighborhood Commercial Transit Zoning Control Tables in Planning Code Article 7 are revised to delete the cross-reference to Planning Code Section 202.5, where “Automotive Use” is listed in the table:

- Table 712, Moderate-Scale Neighborhood Commercial District NC-3
- Table 714, Broadway Neighborhood Commercial District
- Table 715, Castro Street Neighborhood Commercial District
- Table 716, Inner Clement Street Neighborhood Commercial District
- Table 717, Outer Clement Street Neighborhood Commercial District
- Table 718, Upper Fillmore Street Neighborhood Commercial District
- Table 719, Haight Street Neighborhood Commercial District
- Table 720, Excelsior Outer Mission Neighborhood Commercial District
- Table 721, Japantown Neighborhood Commercial District
- Table 722, North Beach Neighborhood Commercial District
- Table 723, Polk Street Neighborhood Commercial District
- Table 724, Sacramento Street Neighborhood Commercial District
- Table 725, Union Street Neighborhood Commercial District
- Table 726, Pacific Avenue Neighborhood Commercial District
- Table 728, 24th Street – Noe Valley Neighborhood Commercial District
- Table 729, West Portal Avenue Neighborhood Commercial District
- Table 730, Inner Sunset Neighborhood Commercial District
- Table 737, Bayview Neighborhood Commercial District
- Table 739, Geary Boulevard Neighborhood Commercial District
- Table 740, Mission Bernal Neighborhood Commercial District
- Table 744, Lower Polk Street Neighborhood Commercial District

- 1 Table 750, NCT-1 – Neighborhood Commercial Transit Cluster District
- 2 Table 752, NCT-3 – Moderate Scale Neighborhood Commercial Transit District
- 3 Table 757, Folsom Street Neighborhood Commercial Transit District
- 4 Table 758, Regional Commercial District
- 5 Table 760, Fillmore Street Neighborhood Commercial Transit District
- 6 Table 761, Hayes-Gough Neighborhood Commercial Transit District
- 7 Table 762, Valencia Street Neighborhood Commercial Transit District
- 8 Table 763, 24th Street-Mission Neighborhood Commercial Transit District
- 9 Table 764, Upper Market Street Neighborhood Commercial Transit District

10
 11 Section 6. The Planning Code is hereby amended by revising Sections 810, 811, 812,
 12 and 899, to read as follows:

13 **SEC. 810. CHINATOWN COMMUNITY BUSINESS DISTRICT.**

14 * * * *

15 **TABLE 810**

16 **CHINATOWN COMMUNITY BUSINESS DISTRICT ZONING CONTROL TABLE**

Zoning Category	§ References	Controls		
NON-RESIDENTIAL USES		Controls by Story		
		1st	2nd	3rd+
* * * *	* * * *	* * * *		
Automotive Use Category				
Automotive Uses*	§§ 102, 202.4	NP	NP	NP
* * * *	* * * *	* * * *		

24 * * * *

25 **SEC. 811. CHINATOWN VISITOR RETAIL DISTRICT.**

1 * * * *

2 **TABLE 811**

3 **CHINATOWN VISITOR RETAIL DISTRICT**

Zoning Category	§ References	Controls		
NON-RESIDENTIAL USES		Controls by Story		
		1st	2nd	3rd+
* * * *	* * * *	* * * *		
Automotive Use Category				
Automotive Uses*	§§ 102, 202.4	NP	NP	NP
* * * *	* * * *	* * * *		

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13 **SEC. 812. CHINATOWN RESIDENTIAL NEIGHBORHOOD COMMERCIAL DISTRICT.**

14 * * * *

15 **TABLE 812**

16 **CHINATOWN RESIDENTIAL NEIGHBORHOOD COMMERCIAL DISTRICT**

Zoning Category	§ References	Controls		
NON-RESIDENTIAL USES		Controls by Story		
		1st	2nd	3rd+
* * * *	* * * *	* * * *		
Automotive Use Category				
Automotive Uses*	§§ 102, 202.4	NP	NP	NP
* * * *	* * * *	* * * *		

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1 **SEC. 899. OTHER APPLICABLE SECTIONS OF THE PLANNING CODE.**

2 Certain sections of the Planning Code in Articles other than this Article also apply to
3 Mixed Use Districts. Such sections and their titles are listed below. The following listing is set
4 forth for convenience; in the event of any omission of a provision, that provision shall
5 nevertheless still apply.

6

7 * * * *

8 **Uses**

9 * * * *

10 ~~Section 202.5~~ ————— ~~Conversion of Automotive Service Stations~~

11 * * * *

12

13 Section 7. Effective Date. This ordinance shall become effective 30 days after
14 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
15 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
16 of Supervisors overrides the Mayor's veto of the ordinance

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LEGISLATIVE DIGEST
(Substituted, 02/15/2022)

[Planning Code - Automotive Uses; Housing Density]

Ordinance amending the Planning Code to increase density on lots with auto-oriented uses where housing is permitted, but which do not currently have any residential use or a legacy business, and remove the Conditional Use requirement to change the use of an Automobile Service Station or Automotive Use to another use, and amend zoning control tables to reflect this change; 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 as required by Planning Code, Section 302.

Existing Law

Under existing Planning Code requirements, changing the use of an automotive service station to another use requires a conditional use permit and adoption of specified findings.

The Planning Code contains different density controls and limits for residential uses, depending on the particular zoning district. Density may also be controlled by floor area ratio, or by height and bulk restrictions. The Planning Code also regulates the amount of parking for different uses.

Amendments to Current Law

The proposed legislation would eliminate the requirement to procure a conditional use permit for a conversion of an automotive service station to another use.

The proposed legislation also creates a new program in the Planning Code that allows parcels currently used for auto-oriented uses, (defined as accessory parking lots or garages or any use defined as an Automotive Use), to be developed as housing at densities greater than otherwise allowed. Eligible parcels must (1) not currently contain a residential use; and (2) must not have contained a Legacy Business for the previous 4 years. Sites with properties that have been nominated for a Legacy Business are also ineligible, unless the Small Business Commission finally determines that the business does not meet the criteria for a Legacy Business.

The program allows eligible sites in RH zoning districts to develop up to four dwelling units per lot as a principally permitted use. In other zoning districts, density would be regulated by the permitted height and bulk, and required setbacks, exposure, open space, and any adopted design standards or guidelines for each parcel. Any other conditional use requirement not related to permitted residential density would continue to apply. The proposed legislation

FILE NO. 211092

would apply reduced parking requirements for the sites, and would allow no more than 75% of otherwise allowed parking for non-residential uses.

The Planning Department must monitor and report on the number of units that are approved using the program. The program expires after 5000 units have been approved.

Background

This legislation substitutes for legislation introduced on October 17, 2021. This version amends the original legislation to clarify that an Automobile Use must be the last legal use and that the program can be combined with the density bonus programs in Section 206.6. The substitute legislation also reduces the number of years in which a site must not have a Legacy Business (from 10 to 4), and adds a Planning Department monitoring and reporting program.

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