

[Planning Code - Modifying Conditional Use Authorizations and Nonconforming Uses]

Ordinance amending the Planning Code to allow modification and revocation of certain Conditions of Approval for Non-Residential Uses administratively where the applicable zoning no longer requires a Conditional Use authorization, subject to Planning Commission delegation, clarify when enlargement or intensification of a Nonconforming Use does not require a new Conditional Use authorization, and delegate limited authority to the Planning Director to administratively approve requests to modify certain Conditions of Approval imposed through a Conditional Use authorization; 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 public necessity, convenience, and welfare findings under Planning Code, Section 302.

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

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

Section 1. Environmental and Land Use Findings.

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 251212 and is incorporated herein by reference. The Board affirms

1 this determination.

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

7 (c) Pursuant to Planning Code Section 302, this Board finds that these Planning Code
8 amendments will serve the public necessity, convenience, and welfare for the reasons set
9 forth in Planning Commission Resolution No. _____, and the Board adopts such reasons
10 as its own. A copy of said resolution is on file with the Clerk of the Board of Supervisors in File
11 No. _____ and is incorporated herein by reference.

12 (d) Fast, predictable, and less discretionary permitting processes will help to create
13 new jobs, businesses, and homes in San Francisco, as well as facilitate the City's economic
14 recovery from the COVID-19 pandemic. Commonly referred to as "PermitSF," the City's effort
15 to reform permitting consists of improving the customer experience by streamlining approval
16 processes; promoting governmental accountability to provide certainty about the delivery of
17 government services; and centralizing technology to create a single point of permitting
18 access.

19
20 Section 2. The Planning Code is hereby amended by revising Sections 174, 178,
21 186.1, and 303, to read as follows:

22 **SEC. 174. COMPLIANCE WITH CONDITIONS, STIPULATIONS, AND SPECIAL**
23 **RESTRICTIONS REQUIRED.**

24 Every condition, stipulation, special restriction, and other limitation imposed by
25 administrative actions pursuant to this Code, whether such actions are discretionary or

1 ministerial, shall be complied with in the development and use of land and structures. All such
2 conditions, stipulations, special restrictions, and other limitations shall become requirements
3 of this Code, and failure to comply with any such condition, stipulation, special restriction, or
4 other limitation shall constitute a violation of the provisions of this Code. ~~Such conditions,~~
5 ~~stipulations, special restrictions, and other limitations shall include but not be limited to the following:~~

6 (a) Such conditions, stipulations, special restrictions, and other limitations shall include but
7 not be limited to the following:

8 (a)——(1) Conditions prescribed by the Zoning Administrator and the City Planning
9 Commission, and by the Board of Permit Appeals and the Board of Supervisors on appeal, in
10 actions on permits, licenses, conditional uses and variances, and in other actions pursuant to
11 their authority under this Code;

12 (b)——(2) Stipulations upon which any reclassification of property prior to May 2, 1960,
13 was made contingent by action of the City Planning Commission, where the property was
14 developed as stipulated and the stipulations as to the character of improvements are more
15 restrictive than the requirements of this Code that are otherwise applicable. Any such
16 stipulations shall remain in full force and effect under this Code;

17 (c)——(3) Special restrictions prescribed by the Zoning Administrator in actions on
18 permits pursuant to the authority prescribed by this Code, and in the performance of other
19 powers and duties to secure compliance with this Code.

20 (b) Non-Residential Uses No Longer Subject to Conditional Use authorization

21 **Requirement.** A Non-Residential Use subject to Conditions of Approval associated with a Conditional
22 Use authorization that is no longer required for such a Use, or a Use Characteristic that no longer
23 meets the definition of a Conditional Use, may have the Conditions of Approval that were adopted
24 through a prior Conditional Use authorization removed pursuant to subsection (b)(1) below if all the
25 following conditions are met: (i) the existing Use is a Non-Residential Use or a Use Characteristic

1 associated with a Non-Residential Use, as defined by Section 102; (ii) the applicable zoning no longer
2 requires a Conditional Use authorization for the Non-Residential Use or Use Characteristic; (iii) the
3 existing Non-Residential Use or Use Characteristic was established pursuant to a Conditional Use
4 authorization that was required for that specific Use or Use Characteristic at the time of approval; (iv)
5 the existing Non-Residential Use or Use Characteristic was not established pursuant to a Conditional
6 Use authorization required pursuant to a Development Agreement; and (v) the existing Non-Residential
7 Use or Use characteristic was not established pursuant to a Conditional Use authorization that was
8 appealed to and approved by the Board of Supervisors.

9 (1) **Removal of Conditions.** Conditions of Approval meeting the criteria in this
10 subsection (b) may be removed pursuant to the following:

11 (A) Upon the filing of a complete Development Application to remove the
12 previously adopted Conditions of Approval, the Planning Department shall review the proposed project
13 for compliance with the Planning Code currently in effect and any applicable design guidelines,
14 policies, or standards approved by the Planning Commission.

15 (B) Provided that the Planning Commission has delegated the authority, the
16 Planning Director may determine if the removal of the Conditions of Approval meets the requirements
17 in this subsection (b) and approve, conditionally approve, or deny the application.

18 (2) **Replacement with New Conditions.** If the Planning Director removes one or more
19 conditions pursuant to this subsection (b), the Planning Director may also impose one or more new
20 conditions to bring the project into compliance with the Planning Code, any applicable design
21 guidelines, policies, or standards approved by the Planning Commission, or the General Plan.

23 **SEC. 178. CONDITIONAL USES.**

24 The following provisions shall apply to conditional uses:

25 (a) **Definition.** For the purposes of this Section, a ~~permitted~~ Conditional Use shall

1 refer to:

2 (1) Any U~~se~~ or feature authorized as a C~~e~~onditional U~~se~~ pursuant to Article 3
3 of this Code, provided that such U~~se~~ or feature was established within the time limits
4 specified as a Condition of Approval or, if no time limit was specified, within a reasonable time
5 from the date of authorization; or

6 (2) Any U~~se~~ or feature that is classified as a C~~e~~onditional U~~se~~ in the district in
7 which it is located and that lawfully existed either on the effective date of this Code, or on the
8 effective date of any amendment imposing new C~~e~~onditional U~~se~~ requirements upon such
9 U~~se~~ or feature; or

10 (3) Any U~~se~~ deemed to be a permitted C~~e~~onditional U~~se~~ pursuant to Section
11 179 of this Code.

12 (b) **Continuation.** Except as provided for temporary uses in Section 205 of this Code,
13 and except where time limits are otherwise specified as a Condition of Approval, any ~~permitted~~
14 C~~e~~onditional U~~se~~ may continue in the form in which it was authorized, or in the form in which
15 it lawfully existed either on the effective date of this Code or the effective date of any
16 amendment imposing new C~~e~~onditional U~~se~~ requirements upon such U~~se~~ or feature, unless
17 otherwise provided in this ~~Section or in Article 2 of this~~ Code.

18 (c) **Enlargement, Alteration, or Intensification.**

19 (1) A permitted C~~e~~onditional U~~se~~ may not be significantly ~~altered~~, enlarged, or
20 intensified, except upon approval of a new C~~e~~onditional U~~se~~ authorization application pursuant
21 to the provisions of Article 3 of this Code. For purposes of this Section 178, the following types of
22 changes shall not be considered significant enlargements or intensifications:

23 (A) A Non-Residential Use, previously approved as a Conditional Use, that fails
24 to meet the Non-Residential Use Size requirements of this Code may be divided into smaller uses sizes,
25 consistent with Sections 121.2 and 121.5.

1 (B) A Non-Residential Use, previously approved as a Conditional Use, may add
2 a Non-Residential Use pursuant to the zoning controls in the applicable Zoning District.

3 (C) A Conditional Use may add the lesser of: up to 500 square feet of Gross
4 Floor Area or 25% of the existing Gross Floor Area associated with the Conditional Use.

5 (D) The addition of an ABC license or exchange of an ABC license type.

6 * * * *

7
8 **SEC. 186.1. EXEMPTION OF NONCONFORMING USES IN NEIGHBORHOOD**
9 **COMMERCIAL DISTRICTS.**

10 The purpose of this Section is to provide for the further continuance ~~in NC Districts~~ of
11 nonconforming Uses in NC Districts ~~created by adoption of Ordinance No. 69-87, as herein~~
12 ~~described, and subsequent ordinances that change the uses allowed in NC Districts~~, which are
13 beneficial to, or can be accommodated within the neighborhood commercial areas in which
14 they are located.

15 It is hereby found and declared that certain Uses which traditionally have been
16 permitted to locate in neighborhood commercial areas can be beneficial to a neighborhood
17 commercial area in small or limited numbers, but which if allowed to proliferate, can disrupt
18 the balanced mix of neighborhood-serving retail stores and services. It is further found and
19 declared that ~~in order~~ to prevent undesirable over concentrations of such Uses, the controls in
20 Article 7 for NC Districts shall establish the appropriate concentrations of such Uses ~~establishment of~~
21 ~~additional such uses shall be prohibited pursuant to controls governing uses in NC Districts~~. At the
22 same time, however, it is desirable to provide for the further continuance, expansion,
23 enlargement, alteration, changes, discontinuance, and relocation of such existing uses, which
24 are nonconforming as a result of zoning controls governing uses in NC Districts.

25 The following provisions shall govern with respect to nonconforming Uses and

1 features located in ~~Neighborhood Commercial~~ NC Districts to the extent that there is a conflict
2 between the provisions of this Section and other Sections contained in this Article 1.7.

3 (a) **Expansion.** A nonconforming U~~se~~ may expand in floor area as provided in
4 ~~Subsection (b) below~~, but may not expand beyond the L~~ot~~ which it occupies, nor may the
5 boundaries of such L~~ot~~ be expanded for purposes of expanding the U~~se~~; nor may the U~~se~~
6 expand upward above the S~~tory~~ or S~~stories~~ which it lawfully occupies, except as provided in
7 Section 186.2 ~~below~~.

8 (b) **Enlargements or Alteration.**

9 (1) Except as specified in subsection (b)(4), A nonconforming U~~se~~ may not be
10 significantly ~~altered~~; enlarged or intensified, except upon approval of a Conditional Use
11 ~~authorization application~~ pursuant to the provisions of Section 303 of this Code, provided that
12 the U~~se~~ not have or result in a greater height, bulk, or floor area ratio, less required rear yard
13 or open space, or less required ~~off-street parking space or~~ loading space than permissible under
14 the limitations set forth in this Code for the district or districts in which such U~~se~~ is located.

15 (2) A nonconforming U~~se~~ may expand to include public sidewalk space
16 provided that such space is only occupied with tables and chairs as permitted by this
17 Municipal Code.

18 (3) No existing U~~se~~ or structure which fails to meet the requirements of this
19 Code in any manner as described ~~above~~ in this subsection (b) shall be constructed,
20 reconstructed, enlarged, altered, or relocated so as to increase the discrepancy, or to create a
21 new discrepancy, at any level of the structure, between existing conditions on the L~~ot~~ and the
22 required standards for new construction set forth in this Code.

23 (4) Permitted Expansions and Intensifications of Nonconforming Uses. For purposes
24 of this Section 186.1, the following types of changes shall not be considered significant enlargements or
25 intensifications of a noncomplying Use:

1 (A) A noncomplying ~~However, a~~ Non-Residential Use that fails to meet the
2 Non-Residential Use Size requirements of this Code may be divided into smaller uses sizes,
3 consistent with Sections 121.2 and 121.5.

4 (B) A noncomplying Non-Residential Use may add a Non-Residential Use
5 pursuant to the zoning controls in the applicable Zoning District.

6 (C) A noncomplying Use may add the lesser of: up to 500 square feet of Gross
7 Floor Area or 25% of the existing Gross Floor Area associated with the noncomplying Use.

8 (D) The addition of an ABC license or exchange of an ABC license type.

9 * * * *

10
11 **SEC. 303. CONDITIONAL USES.**

12 * * * *

13 (c) **Determination.** After its hearing on the application, ~~or upon the recommendation of~~
14 ~~the Director of Planning that no hearing is required,~~ the Planning Commission shall approve the
15 application and authorize a Conditional Use if the facts presented are such to establish that:

16 * * * *

17 (d) **Conditions.** When considering an application for a Conditional Use as provided
18 herein with respect to applications for development of “dwellings” as defined in Chapter 87 of
19 the Administrative Code, the Commission shall comply with that Chapter which requires,
20 among other things, that the Commission not base any decision regarding the development of
21 “dwellings” in which “protected class” members are likely to reside on information which may
22 be discriminatory to any member of a “protected class” (as all such terms are defined in
23 Chapter 87 of the Administrative Code). In addition, when authorizing a Conditional Use as
24 provided herein, the Planning Commission, or the Board of Supervisors on appeal, shall
25 prescribe such additional conditions, beyond those specified in this Code, as are in its opinion

1 necessary to secure the objectives of the Code. Once any portion of the Conditional Use
2 authorization is utilized, all such conditions pertaining to such authorization shall become
3 immediately operative. The violation of any condition so imposed shall constitute a violation of
4 this Code and may constitute grounds for revocation of the Conditional Use authorization.
5 Such conditions may include time limits for exercise of the Conditional Use authorization;
6 otherwise, any exercise of such authorization must commence within a reasonable time.

7 (e) **Modification of Conditions.** Authorization of a change in any condition
8 previously imposed in the authorization of a Conditional Use shall be subject to the same
9 procedures as a new Conditional Use, except that, provided the Planning Commission has
10 delegated authority to the Planning Director, following submission of the appropriate type of
11 Development Application, the Planning Director may, in the discretion of the Director, approve of the
12 following modifications to Conditions of Approval imposed through a Conditional Use authorization:
13 (i) extensions of the performance period for the project; or (ii) changes in the project such that the
14 number of residential units or square footage of construction changes by 20% or less, provided the
15 requested changes are consistent with all applicable design guidelines and do not reduce by more than
16 10% the number of affordable units required to be provided under Sections 415.1 et seq. of this Code,
17 unless permitted under 415A et seq., and subject to any increase in the number of affordable units or
18 in-lieu fee applicable to any increase in the number of approved units under Sections 415.1 et seq. of
19 this Code. The Planning Director may not approve modifications to a Conditional Use authorization
20 where such approval was issued to correct a violation of the Municipal Code, in connection with an
21 enforcement action by the Planning Department or following an appeal of the Conditional Use
22 authorization to the Board of Supervisors. Such procedures shall also apply to applications for
23 modification or waiver of conditions set forth in prior stipulations and covenants relative
24 thereto continued in effect by the provisions of Section 174 of this Code.

25 (f) **Conditional Use Abatement.** The Planning Commission may consider the

possible revocation of a Conditional Use or the possible modification of or placement of additional conditions on a Conditional Use when the Planning Commission determines, based upon substantial evidence, that the applicant for the Conditional Use had submitted false or misleading information in the application process that could have reasonably had a substantial effect upon the decision of the Commission or the Conditional Use is not in compliance with a Condition of Approval, is in violation of law if the violation is within the subject matter jurisdiction of the Planning Commission, or operates in such a manner as to create hazardous, noxious, or offensive conditions enumerated in Section 202(c) if the violation is within the subject matter jurisdiction of the Planning Commission and these circumstances have not been abated through administrative action of the Director, the Zoning Administrator or other City authority. Such consideration shall be the subject of a public hearing before the Planning Commission but no fee shall be required of the applicant or the subject Conditional Use operator.

* * * *

(4) **Appeals.** A decision by the Planning Commission to revoke a Conditional Use, to modify conditions or ~~to~~ place additional conditions on a Conditional Use, or a decision by the Planning Commission refusing to revoke or amend a Conditional Use, or a decision by the Planning Director to modify or refuse to modify Conditions of Approval, may be appealed to the Board of Supervisors within 30 days after the date of action by the Planning Commission or the Director pursuant to the provisions of Section 308.1(b). The Board of Supervisors may disapprove the action of the Planning Commission in an abatement matter by the same vote necessary to overturn the Commission's approval or denial of a Conditional Use. The Planning Commission's action on a Conditional Use abatement issue shall take effect when the appeal period is over or, upon appeal, when there is final action on the appeal.

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2 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
3 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
4 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
5 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
6 additions, and Board amendment deletions in accordance with the “Note” that appears under
7 the official title of the ordinance.

8
9 Section 4. Effective Date. This ordinance shall become effective 30 days after
10 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
11 ordinance unsigned or does not sign the ordinance within 10 days of receiving it, or the Board
12 of Supervisors overrides the Mayor’s veto of the ordinance.

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15 APPROVED AS TO FORM:
16 DAVID CHIU, City Attorney

17 By: Austin Yang /s/
18 AUSTIN M. YANG
19 Deputy City Attorney

20 4934-2796-9920, v. 1
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