

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Todd Rufo, Director, Office of Economic and Workforce Development

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

DATE: April 11, 2018

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Land Use and Transportation Committee has received the following substitute legislation, introduced by Supervisor Peskin on April 4, 2018:

**File No. 180243**

**Resolution imposing interim zoning controls for 18 months to require a Conditional Use Permit, information to be submitted, and specified findings for any conversion of Retail Use to Non-Retail Sales and Service Use in the C-3-R Downtown Retail Zoning District; and affirming the Planning Department's determination under the California Environmental Quality Act.**

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](mailto:Erica.Major@sfgov.org).

c: Ken Rich, Office of Economic and Workforce Development  
Lisa Pagan, Office of Economic and Workforce Development

1 [Interim Zoning Controls - Conversion of Retail to Non-Retail Sales and Service Use in the  
2 C-3-R Zoning District]

3 **Resolution imposing interim zoning controls for 18 months to require a Conditional**  
4 **Use Permit, information to be submitted, and specified findings for any conversion of**  
5 **Retail Use to Non-Retail Sales and Service Use in the C-3-R Downtown Retail Zoning**  
6 **District; and affirming the Planning Department's determination under the California**  
7 **Environmental Quality Act.**

8  
9 WHEREAS, Planning Code, Section 306.7 authorizes the Board of Supervisors to  
10 impose interim zoning controls to allow time for the orderly completion of a planning study and  
11 for the adoption of appropriate legislation, which are necessary to ensure that the legislative  
12 scheme that may be ultimately adopted is not undermined during the planning and legislative  
13 process by the approval or issuance of permits authorizing changes of use that could conflict  
14 with that scheme; and

15 WHEREAS, The Planning Department and Commission have been studying ongoing  
16 trends and changes in the retail market in San Francisco and in the C-3-R Downtown Retail  
17 Zoning District, and considering potential zoning amendments or policy approaches to  
18 respond to any changes in that retail market; and

19 WHEREAS, In response to applications submitted to convert existing retail space to  
20 office use within the C-3-R Downtown Retail Zoning District, the Planning Commission held  
21 hearings to discuss retail to office conversions in the C-3-R Downtown Retail Zoning District  
22 on March 16, 2017, and February 22, 2018; and

23 WHEREAS, At the March 16, 2017, the Office of Economic and Workforce  
24 Development (OEWD) presented analysis of trends within the C-3-R Downtown Retail Zoning  
25 District as compared to the rest of the City and to regional and national retail trends; and

1           WHEREAS, At the March 16, 2017, hearing, Planning Department staff outlined three  
2 potential approaches to reviewing retail to office conversions in the C-3-R Zoning District,  
3 which included continuing to review projects seeking upper level retail to office space  
4 conversions on a case-by-case basis; adopting a policy that provides specific additional  
5 criteria that projects must meet in order for approval; or initiating changes to the Planning  
6 Code to codify the criteria that projects must meet in order for approval; and

7           WHEREAS, Since the March 16, 2017, Planning Commission hearing, OEWD has  
8 conducted additional research and analysis related to lease rates, vacancies, and tenant  
9 space sizes specific to the C-3-R Downtown Retail Zoning District and found, in pertinent part,  
10 that Union Square retail lease rates have surpassed Citywide lease rates, and that Union  
11 Square has higher lease rates than any part of the City in all classes of office; and

12           WHEREAS, On February 22, 2018, the Planning Commission held another public  
13 hearing on retail to office space conversion within the C-3-R Downtown Retail Zoning District,  
14 at which OEWD cited dramatic changes in the retail landscape over the past 40 years in San  
15 Francisco and ongoing major restructuring in the national retail industry; and

16           WHEREAS, OEWD also found that although San Francisco's retail economy has  
17 somewhat slowed, San Francisco's many competitive advantages for retail and restaurants  
18 have nevertheless insulated the City's retail from national trends, including the City's strong  
19 local economy, significant regional and international tourism, and granular approach to zoning  
20 controls aimed at enhancing the City's existing retail corridors and zoning districts; and

21           WHEREAS, The Union Square area, most of which is zoned C-3-R, is a world-class  
22 retail destination that draws both tourists and Bay Area residents with its combination of  
23 walkable shopping and dining, excellent transit access, and top-tier hospitality, and a 2016  
24 study showed that Union Square merchants generate approximately 37% of San Francisco's  
25 sales tax in General Consumer Goods, and 15% of all City sales tax dollars; and

1           WHEREAS, It is necessary to consider the effects of conversions from Retail to Office  
2 use in the C-3-R Downtown Retail Zoning District that may occur while the City considers  
3 permanent controls and guidance for such conversions, to assure that the City does not lose  
4 the opportunity to preserve neighborhoods and areas of mixed uses and the existing  
5 character of such neighborhoods and areas, and to continue to develop and conserve the  
6 economic vitality of the City; and

7           WHEREAS, The Planning Department has determined that the actions contemplated in  
8 this Resolution comply with the California Environmental Quality Act (California Public  
9 Resources Code, Sections 21000 et seq.), which determination is on file with the Clerk of the  
10 Board of Supervisors in File No. \_\_\_\_\_ and is incorporated herein by reference, and the  
11 Board affirms this determination; now therefore be it

12           RESOLVED, That any proposed conversion of Retail Sales and Service use to Non-  
13 Retail Sales and Service use in the C-3-R Downtown Retail Zoning district shall require  
14 conditional use authorization while these Interim Controls are in effect; and, be it

15           FURTHER RESOLVED, That an applicant proposing any such conversion shall  
16 provide information and data to the Planning Department about current Retail and Non-Retail  
17 use vacancy rates in the C-3-R Downtown Retail Zoning District; current (as of the time of the  
18 application) rental rates for Retail and Non-Retail Sales and Service uses based on  
19 knowledge of existing lease rental rates and advertised rental rates for both Retail and/or  
20 Non-Retail use categories and their sub-categories as set forth in Section 102 of the Planning  
21 Code; a list of other properties in the C-3-R Downtown Retail Zoning District either owned or  
22 managed by the applicant, and available information about comparable and relevant rental  
23 rates, the principally permitted use(s) of such properties, any vacancies at those other  
24 properties, and, to the extent that vacancies exist, any evidence that the property owner or  
25 manager has advertised a lease at that property for an existing principally permitted use or

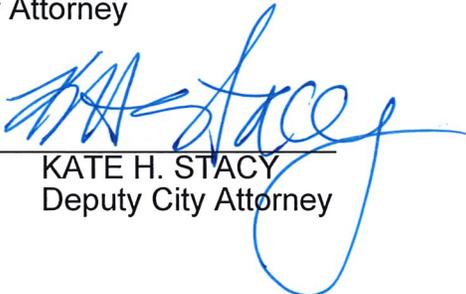
1 any other use, including any publicly advertised terms of that rental; and any other relevant  
2 neighborhood development, economic or demand changes in the C-3-R Downtown Retail  
3 Zoning District; and, be it

4 FURTHER RESOLVED, In addition to the findings required under Planning Code,  
5 Section 303, the City must make the following findings in order to approve any conditional use  
6 permit authorizing conversion of Retail use to Non-Retail Sales and Service use in the C-3-R  
7 Downtown Retail Zoning District: (1) the change in use from Retail to Non-Retail Sales and  
8 Service will not detract from the area's primary function as an internationally renowned  
9 destination for comparison shopper retailing and direct consumer services; (2) a Retail or  
10 other principally-permitted use is not feasible at the site proposed for conversion, based on  
11 evidence that the applicant has openly advertised and solicited rental applications for a Retail  
12 or principally-permitted use at the location for a period of at least 18 months and no suitable  
13 lessees submitted an application or other response indicating a desire to use the space for a  
14 principally-permitted use; (3) any application for a proposed Non-Retail Sales and Service use  
15 of the site includes specific calculation of the gross floor area of the proposed Non-Retail use  
16 and how any necessary independent and non-public access would be provided to the  
17 proposed Non-Retail use; (4) there is a lack of availability of property that is principally  
18 permitted for Non-Retail Sales and Service use citywide, including prospective availability of  
19 property principally permitted for Non-Retail uses based on five- and ten-year estimates of  
20 anticipated new construction, such that the supply of Office space is so constrained as to  
21 warrant the applied-for conversion; and (5) whether rental rates for Non-Retail uses are  
22 comparable to rental rates for Retail uses within the C-3-R Downtown Retail Zoning District;  
23 and be it

1 FURTHER RESOLVED, that these Interim Controls shall remain in effect for a period  
2 of 18 months from the date of imposition, unless they are extended or otherwise amended in  
3 accordance with the provisions of Planning Code Section 306.7, or until the adoption of  
4 permanent legislation regulating conversions from Retail use to Non-Retail Sales and Service  
5 (Office) use in the C-3-R Downtown Retail Zoning District, whichever first occurs.  
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8 APPROVED AS TO FORM:

9 DENNIS J. HERRERA,  
City Attorney

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11 By   
12 KATE H. STACY  
Deputy City Attorney  
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