



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment ADOPTION HEARING DATE: APRIL 19, 2018

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Project Name: 2018 Code Corrections Ordinance
Case Number: 2017-014297PCA
Initiated by: Planning Commission
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Recommendation: **Recommend Approval with Modifications**

PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code to correct multiple errors and make clarifying amendments. Except as identified below, the corrections are intended to be for textual clarification purposes and are not considered substantive.

The Way It Is Now:

The Planning Code contains multiple grammatical and syntactical errors, unintentional cross-references and accidental additions and deletions that undermine the legitimacy and enforceability of the Planning Code as a regulatory document.

The Way It Would Be:

The proposed Ordinance seeks to correct these errors and improve the overall quality and readability of the Code.

BACKGROUND

The Planning Code experiences frequent amendments. Although individual ordinances are reviewed by the Planning Department and the City Attorney's Office, the volume of legislative actions and complexity of the Code as a legal, living document ensure that errors will inadvertently arise. The Planning Department actively collects these reported errors and presents them as a Code Corrections Ordinance.

ISSUES AND CONSIDERATIONS

Substantive Changes

The vast majority of the proposed changes in this ordinance are not substantive. However, this ordinance does contain changes that could be considered substantive, but for the reasons identified below are

included in this ordinance as amendments that would correct conflicting or missing information. The following is a list of amendments the Department believes to be substantive:

- **Amendment to Section 145.4, Ground Floor Commercial Use Requirements:** The proposed amendment would allow an exception to the ground floor commercial use requirement in the C-2 and C-3 (Commercial) Zoning Districts. This item is being included in this ordinance as a correction, because the Code explicitly identifies whether or not this rule can be modified in all districts where this rule applies except for Commercial Districts. For example, in Neighborhood Commercial (NC) Districts this requirement can be waived through CU authorization; however, in Downtown Residential (DTR) Districts the Code explicitly states that this rule cannot be modified at all. There is no such language that explicitly permits or prohibits this waiver in Commercial Districts. This amendment would add an exception that would allow the Ground Floor Commercial Use Requirement in Commercial Districts to be waived with Conditional Use authorization, similar to the provision in NC Districts.
- **Section 415: Inclusionary Rents and Sales Price.** This proposed amendment was requested by the Mayor's Office of Housing and Community Development (MOHCD). The amendment would change the word "Median" to "Market" Rate Housing. The goal of this provision is to ensure that Inclusionary Units at the higher income tiers (110% for rental and 130% for ownership) are sufficiently below market to make a difference for low- and moderate-income households; however, referencing "median" rents as the benchmark does not accomplish this goal. The City needs to measure inclusionary rent or sale prices against what a renter or buyer faces in the market. If the City was actually to measure "median" in any particular neighborhood, it would be evaluating all properties in that neighborhood, including rent-controlled buildings. This is not a valid standard for the problem this provision is trying to solve for. Unfortunately, the highlighted language was added at the last minute, and MOHCD was not able to correct it before the ordinance was adopted. The proposed amendment would correct this error in drafting.
- **Section 202.2: Duplicative Noticing Requirements and Mandatory Discretionary Review Requirement for all Medical Cannabis Dispensaries.** San Francisco recently adopted land use regulation for cannabis related businesses, and most changes in this ordinance related to that ordinance are clean-up. The more substantive correction is in Sec. 202.2(e)(1). This section is being amended to 1) clarify that Medical Cannabis Dispensaries are subject to Planning Code Section 312 and not the previous "custom" notification requirements; and 2) only require Mandatory Discretionary Review when the MCD is located in NC Zoning Districts. These changes are consistent with the intent of the Cannabis Ordinance; however, the provisions in questions were not deleted as part of the adopted ordinance, creating overlapping and inconsistent controls.

Code Reorganization Project

The Code Reorganization project was started in 2014 and is divided into three main phases. The first phase focused on Article 2, the second phase on Article 7, and the third will focus on Article 8. Several of the amendments in this ordinance correct errors or oversights from Phases 1 and 2 of this project. The changes either fix clerical errors or replace provisions that were inadvertently deleted or not carried forward into the new zoning table format. The following are the more substantive corrections:

- In Section 102, the definition of Notice of Special Restriction (NSR) is being broadened to include more than just projects associated with inclusionary housing. NSRs are used for a variety of reasons, and the definition is being amended to reflect that.
- In Section 102, Power Plant was left out of the definition of Utility and Infrastructure Uses. It is being added to that definition.
- Section 121.2 is being amended to clarify that NC-3 and NCT-3 Districts have a non-residential use size limit of 6000 sq. ft. A drafting error in the Article 7 ordinance created an inconsistency between Section 121.2 and the zoning control table for NCT and NCT-3 Districts.
- In Section 121.6, Hotels and Motels are being excluded from the city-wide retail size limits. They were not included in this cap prior to Phase 1 of the Code Reorganization Project.
- Section 202.2 is being amended to clarify that Design Professionals are required to be open to the public if located on the ground floor in NC Districts. This is consistent with the original controls in Article 7.
- Section 209.2 and 209.3 are being amended to put back a provision that allows a minimum of three units on any RM or RC zoned property. This provision was not carried over to the new format during Phase 1 of the Code Corrections ordinance.
- Section 210.1 is being amended to allow Outdoor Entertainment uses in C-2 Districts. This use was allowed in C-2 Districts prior to Phase 1 of the Code Reorganization project.
- Section 710, NC-1 District, is being amended to add a reference to the Taraval Street Restaurant Subdistrict. This reference was not carried over into the new format.
- Various References to old Article 7 definitions (Section 790) are being removed and replaced with the new Section 102 reference. There are also some clerical errors in the tables that are being corrected.

Publisher Corrections

After every ordinance, the code publisher sends the City Attorney's Office a list of errors they encountered in the process of publishing the Code. These usually include outdated section references, missing words, typos and the like. This ordinance includes many of these types of corrections.

RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance.

The Department's proposed recommendation is as follows:

Recommendation 1: Limited Conforming Uses in Residential Transit Oriented (RTO) Districts

Amend Section 186.3 and Section 209.4 to allow non-residential uses in Landmark Buildings in RTO Districts.

BASIS FOR RECOMMENDATION

This Ordinance is intended to correct identified errors in the Code. Although these are considered minor errors, they cannot be corrected without a legislative change. Adopting this ordinance will make the code more consistent, accurate and easier to use.

Recommendation 1: Limited Conforming Uses in Residential Transit Oriented (RTO) Districts.

Limited Commercial Uses were considered to be conditionally permitted uses in historic buildings in RTO and RTO-M Zoning Districts subject to Planning Code Section 186.3. Article 2 reorganization mistakenly removed this provision from the code and the recommendation is to reinstate it. Section 186.3 and Table 209.4 are being amended to reflect this change.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection or adoption with modifications to the Board of Supervisors.

IMPLEMENTATION

The Department determined that this Ordinance will improve our current implementation procedures because it will reduce errors and inconsistencies in the Planning Code.

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.

RECOMMENDATION:	Recommendation of Approval with Modifications
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Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Initiated Code Corrections Ordinance
- Exhibit C: Recommendation #1