



SAN FRANCISCO PLANNING DEPARTMENT

September 8, 2014

Ms. Angela Calvillo, Clerk
Honorable Supervisor Campos
Board of Supervisors
City and County of San Francisco
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**Re: Transmittal of Planning Department Case Number 2014.1107T
Nighttime Entertainment and Uses Greater than 25,000 Square Feet in Western
SOMA
Board File No. 140724
Planning Commission Recommendation: Approval with Modifications**

Dear Ms. Calvillo and Supervisor Kim,

On September 5, 2014, the Planning Commission conducted a duly noticed public hearing at regularly scheduled meetings to consider the proposed Ordinance that would amend Planning Code Section 744.21, the Regional Commercial District, and Planning Code Section 823, the Western SOMA Special Use District, introduced by Supervisor Kim. At the hearing, the Planning Commission recommended approval with modifications.

The proposed modifications include:

- Modifying Planning Code Section 744.21 to exempt only Elementary Schools, as defined in Planning Code Section 217(f), Secondary Schools, as defined in Planning Code Section 217(g) and Child Care, as defined in Planning Code Sections 790.50(b) and 790.51(a), from the from the 25,000 square foot Non-Residential Use Size prohibition. The amendment to Planning Code Section 744.21 and the Regional Commercial District Zoning Control Table would be as follows:

No.	Zoning Category	§ References	Regional Commercial Controls
**** COMMERCIAL AND INSTITUTIONAL STANDARDS AND USES ****			
744.21	Use Size [Non-Residential]	§§ <u>121.2</u> , <u>790.130</u>	P up to 10,000 sq. ft.; C above; NP above 25,000 sq. ft. <u>except for Elementary and Secondary Schools as</u>

****			<u>defined in Planning Code Section 217(f) and (g) and Child Care as defined in Planning Code Sections 790.50(b) and 790.51(a).</u>
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- Amending Planning Code Section 823(c)(9)(A) of the Western SOMA Special Use District as follows:

(A) Nighttime Entertainment. No portion of a nighttime entertainment use, as defined in Section 102.17 of this Code, shall be permitted within 200 linear feet of any property within a RED or RED-MX District. This buffer shall not apply to any nighttime entertainment use within the WMUO District where a nighttime entertainment use that was established with a building permit application or a permit from the Entertainment Commission or San Francisco Police Department was in operation within five years prior to submission of a building permit application to re-establish a nighttime entertainment use.

- Amending Planning Code Section 845.56, WSOMA Mixed Use- Office zoning district, to principally permit nighttime entertainment uses. The Zoning Control Table is amended as follows:

No.	Zoning Category	§ References	Mixed Use – Office District Controls
****	Assembly, Recreation, Arts and Entertainment		

845.56 ****	Nighttime Entertainment	§§102.17, 181(f), 803.5(b), 823	€ P

The proposed amendments to the Planning Code have been reviewed and found exempt from CEQA per Sections 15060(c)(2) and 15378.

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

Please find attached documents relating to the actions of the Planning Commission. If you have any questions or require further information please do not hesitate to contact me.

Transmittal Materials

CASE NO. 2014.1107T
Nighttime Entertainment Uses and Uses Greater
than 25,000 Square Feet in Western SOMA

Sincerely,

A handwritten signature in black ink, appearing to read 'AM-Rodgers', with a long horizontal line extending to the right.

AnMarie Rodgers
Senior Policy Advisor

cc:

Judith A. Boyajian, Deputy City Attorney
April Veneracion, Aide to Supervisor Kim
Andrea Ausberry, Office of the Clerk of the Board

Attachments

Planning Commission Resolution
Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution 19227

HEARING DATE SEPTEMBER 4, 2014

Project Name: **Nighttime Entertainment and Uses Greater than 25,000 Square Feet in Western SoMa**

Case Number: 2014.1107T [Board File No. 140724]

Initiated by: Supervisor Kim / Introduced June 24, 2014

Staff Contact: Diego R Sánchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082

Reviewed by: Aaron Starr, Acting Manager Legislative Affairs
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RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD 1) AMEND PLANNING CODE SECTION 744.21 TO ELIMINATE THE PROHIBITION ON NON-RESIDENTIAL USES EXCEEDING 25,000 SQUARE FEET IN SIZE FOR ELEMENTARY AND SECONDARY SCHOOLS IN THE REGIONAL COMMERCIAL DISTRICT, 2) AMEND PLANNING CODE SECTION 823 TO ALLOW NIGHTTIME ENTERTAINMENT USES IN THE WESTERN SOMA MIXED USE-OFFICE ZONING DISTRICT WITHIN 200 LINEAR FEET OF ANY PROPERTY WITHIN A RESIDENTIAL ENCLAVE OR RESIDENTIAL ENCLAVE MIXED ZONING DISTRICT WHERE THE NIGHTTIME ENTERTAINMENT USE WAS ESTABLISHED WITH A BUILDING PERMIT APPLICATION, AN ENTERTAINMENT COMMISSION PERMIT OR A POLICE DEPARTMENT PERMIT AND NOT MORE THAN FIVE YEARS ELAPSED SINCE THE NIGHTTIME ENTERTAINMENT USE WAS IN OPERATION PRIOR TO SUBMISSION OF A BUILDING PERMIT APPLICATION TO RE-ESTABLISH THE NIGHTTIME ENTERTAINMENT USE AND 3) AMEND PLANNING CODE SECTION 845.56 TO PRINCIPALLY PERMIT NIGHTTIME ENTERTAINMENT USES IN THE WSOMA MIXED USE-OFFICE ZONING DISTRICT; AND 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 June 24, 2014, Supervisors Kim introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 140724, which would amend Planning Code Section 744.21 to eliminate the prohibition on non-residential uses exceeding 25,000 square feet in the Regional Commercial District and amend Planning Code Section 823 to allow nighttime entertainment uses in the Western SoMa Mixed Use-Office zoning district within 200 linear feet of any property within a Residential Enclave or Residential Enclave Mixed zoning district where a nighttime entertainment use existed within five years prior to an application to re-establish the use;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on September 4, 2014; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Sections 15378 and 15060(c)(2); 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 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors *approve with modifications* the proposed ordinance and adopts the Draft Resolution to that effect.

The Commission recommended modifications would (1) only allow elementary schools, secondary schools and child care uses to be exempted from the 25,000 square foot prohibition on non-residential uses, (2) exempt particular nighttime entertainment uses from the 200 linear foot buffer around RED an RED-MX zoning districts and (3) principally permit Nighttime Entertainment uses within the WSOMA Mixed Use-Office zoning district.

Specifically, the Commission recommends

- 1) Amend Planning Code Section 744.21 and the Regional Commercial District Zoning Control Table to exempt Elementary and Secondary Schools, as defined in Planning Code Section 217(f) and (g), and Child Care uses, as defined in Planning Code Section 790.50(b) and 790.51(a), from the 25,000 square foot Non-Residential Use size limit.

The amendment to the Regional Commercial District Zoning Control Table would be as follows:

No.	Zoning Category	§ References	Regional Commercial Controls
****	COMMERCIAL AND INSTITUTIONAL STANDARDS AND USES		

744.21	Use Size [Non-Residential]	§§ 121.2 , 790.130	P up to 10,000 sq. ft.; C above; NP above 25,000 sq. ft. <i>except for Elementary and Secondary Schools as defined in Planning Code Section 217(f) and (g) and Child Care as defined in Planning Code Sections 790.50(b) and</i>

			<u>790.51(a).</u>
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- 2) Amend Planning Code Section 823(c)(9)(A) to include the following underlined language:

(A) Nighttime Entertainment. No portion of a nighttime entertainment use, as defined in Section 102.17 of this Code, shall be permitted within 200 linear feet of any property within a RED or RED-MX District. This buffer shall not apply to any nighttime entertainment use within the WMUO District where a nighttime entertainment use that was established with a building permit application or a permit from the Entertainment Commission or San Francisco Police Department was in operation within five years prior to submission of a building permit application to re-establish a nighttime entertainment use

- 3) Amend Planning Code Section 845.56, WSOMA Mixed Use- Office zoning district, to principally permit nighttime entertainment uses. The Zoning Control Table is amended as follows:

No.	Zoning Category	§ References	Mixed Use – Office District Controls
****	Assembly, Recreation, Arts and Entertainment		

845.56 ****	Nighttime Entertainment	§§102.17, 181(f), 803.5(b), 823	€ P

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:

1. The Regional Commercial District is located in the Western SoMa area and the Eastern Neighborhoods Plan Area. These are locations in San Francisco that are experiencing increased residential development. Given existing requirements that many residential developments provide family sized units of two or three bedroom size, it is reasonable to expect an increased number of school age children residing in these areas.
2. The prohibition on Non-Residential Uses in excess of 25,000 square feet within the Regional Commercial District affects not only retail uses, but also other uses that meet community needs including institutional, educational and social service uses.
3. As a result of the prohibition on Non-Residential Uses in excess of 25,000 square feet within the Regional Commercial District a community serving need such as an elementary or secondary

school that wished to establish facilities or expand facilities beyond 25,000 square feet would be prohibited from doing so.

4. The inability, due to Planning Code proscriptions, to augment the City's primary and secondary educational facilities in areas experiencing residential growth harms the quality of life and can be perceived as an incentive to reside elsewhere.
5. The Western SoMa area has a history of being a desired location for nighttime entertainment uses. Often nighttime entertainment uses are, or have been, located in relative proximity to residential uses.
6. To help manage potential incompatibilities between nighttime entertainment uses and existing and forthcoming residences, the Western SOMA Special Use District requires a minimum distance between new nighttime entertainment uses and zoning districts primarily designated for residential use.
7. In the case of longstanding nighttime entertainment venues found within the newly created buffer regulations, the management of potential incompatibilities between residential and nighttime entertainment uses depends upon the possible enactment of additional, specifically tailored, operating conditions as well as the enforcement of existing good neighbor policies.
8. **General Plan Compliance.** The proposed Ordinance is, on balance, consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 2:

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR 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 Ordinance will help maintain a favorable social and cultural climate in San Francisco as it augments the cultural and recreational activities available to the employees of existing and future firms by expanding the allowed locations of specific nighttime entertainment uses.

COMMUNITY FACILITIES ELEMENT

OBJECTIVE 8:

ASSURE THAT PUBLIC SCHOOL FACILITIES ARE DISTRIBUTED AND LOCATED IN A MANNER THAT WILL ENHANCE THEIR EFFICIENT AND EFFECTIVE USE.

Policy 8.1

Provide public school facilities for education in accordance with the need for such facilities as defined by the Unified School District and Community College District. Locate such facilities according to the Public School Facilities Plan and, wherever possible, make available for community use.

The proposed Ordinance will allow for the establishment or expansion of public school facilities within the Western SoMa Area; this may assist the planning efforts of San Francisco the Unified School District.

WESTERN SOMA AREA PLAN

OBJECTIVE 1.1:

BUILD ON AN EXISTING MIXED-USED CHARACTER THAT ENCOURAGES PRODUCTION OF RESIDENTIAL USES IN AREAS MOST APPROPRIATE FOR NEW HOUSING WITH A PROXIMATE MIX OF USES AND SERVICES SERVING LOCAL NEEDS AND THEREBY DEVELOPING A COMPLETE NEIGHBORHOOD.

Policy 1.1.6

Limit commercial development of retail uses to no more than 25,000 square feet throughout the Western SOMA SUD. These larger retail uses shall be allowed to locate without restriction south of Harrison Street and be permitted only on large development sites (LDS = one acre or larger) north of Harrison Street.

The proposed Ordinance does not allow for the establishment or expansion of retail uses that are 25,000 square feet or larger in size.

OBJECTIVE 2.2:

PROMOTE APPROPRIATE NEW NEIGHBORHOOD BUSINESS OPPORTUNITIES THAT CREATIVELY RESPOND TO NEIGHBORHOOD, CITYWIDE AND REGIONAL ECONOMIC NEEDS AND TRENDS.

Policy 2.2.2

Prohibit new retail uses in excess of 25,000 square feet throughout the Western SOMA SUD.

Policy 2.2.3

Limit retail uses south of Harrison Street to no more than 25,000.

The proposed Ordinance maintains the prohibition on retail uses in excess of 25,000 square feet throughout the Western SOMA Special Use District, including south of Harrison Street.

OBJECTIVE 9.1:

PROVIDE ESSENTIAL COMMUNITY SERVICES AND FACILITIES.

Policy 9.1.1

Support the siting of new facilities to meet the needs of a growing community and to provide opportunities for residents of all age levels.

Policy 9.1.2

Encourage appropriate location and expansion of essential neighborhood-serving community and human services activities throughout Western SoMa, exclusive of the residential enclave districts.

Policy 9.1.9

Identify a potential area in Western SoMa that could be appropriate for a neighborhood middle school, taking into consideration a number of factors, including pedestrian safety, noise and air quality conditions, and the feasibility of being co-located with another public works project (e.g., park, historic/cultural center, or City-sponsored childcare).

The proposed Ordinance allows for the establishment or expansion of an elementary and/or secondary school, an essential neighborhood serving community service, in the Western SoMa area.

9. **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:

- a. 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 will not have a negative impact on neighborhood serving retail uses and will not impact opportunities for resident employment in and ownership of neighborhood-serving retail as the proposed Ordinance seeks to ease restrictions on educational and nighttime entertainment uses.

- b. 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 will enrich the cultural and economic diversity of City's neighborhood as it facilitates the establishment or expansion of educational and nighttime entertainment uses.

- c. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance will not have an adverse effect on the City's supply of affordable housing as the proposed Ordinance is exclusively concerned with educational and nighttime entertainment uses.

- d. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

- e. 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 will 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 given that the proposed Ordinance concerns itself with educational and nighttime entertainment uses.

- f. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance will not have an impact on City's preparedness against injury and loss of life in an earthquake.

- g. That the landmarks and historic buildings be preserved;

The proposed Ordinance will not have an adverse impact on the preservation of the City's Landmarks and historic buildings.

- h. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance will not have an adverse impact on the City's parks and open space and their access to sunlight and vistas because the proposed Ordinance concerns itself with educational and nighttime entertainment uses.

- 8. **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 recommends that the Board ADOPT the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on September 4, 2014.

Jonas P. Ionin
Commission Secretary

AYES: Commissioners Antonini, Fong, Hillis, Johnson, Moore, Richards and Wu

NOES:

ABSENT:

ADOPTED: September 4, 2014



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change

HEARING DATE: SEPTEMBER 4, 2014

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Project Name: **Nighttime Entertainment and Uses Greater than 25,000 Square Feet in Western SoMa**

Case Number: 2014.1107T [Board File No. 140724]

Initiated by: Supervisor Kim / Introduced June 24, 2014

Staff Contact: Diego R Sánchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082

Reviewed by: Aaron Starr, Acting Manager Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362

Recommendation: **Recommend Approval with Modifications**

PLANNING CODE AMENDMENT

The proposed Ordinance would amend Planning Code Section 744.21 (Use Size Controls in the Regional Commercial District) to delete the prohibition against non-residential uses exceeding 25,000 square feet and amend Planning Code Section 823 (Western SOMA Special Use District) to exempt nighttime entertainment uses within the Western SOMA Mixed Use-Office (WMUO) zoning district from the prohibition on locating within 200 linear feet of any property within the Residential Enclave (RED) or the Residential Enclave-Mixed (RED-MX) zoning districts if that nighttime entertainment use existed within five years prior to an application to re-establish the use.

The Way It Is Now:

The Regional Commercial District requires Conditional Use Authorization for the establishment of a Non-Residential Use¹ greater than 10,000 square feet in size and prohibits Non-Residential Uses greater than 25,000 square feet.

The Western SOMA Special Use District prohibits the establishment of nighttime entertainment uses in the Western SOMA Mixed Use-Office (WMUO) zoning district from locating within 200 linear feet of any property within the Residential Enclave (RED) or the Residential Enclave-Mixed (RED-MX) zoning districts.

The Way It Would Be:

The proposed Ordinance would eliminate the prohibition on Non-Residential Uses greater than 25,000 square feet within the Regional Commercial District and thereby maintain the requirement for Conditional Use Authorization for any Non-Residential Use greater than 10,000 square feet in size.

¹ Planning Code Section 790.130 defines Non-Residential Use Size as the permitted gross floor area allowed each individual nonresidential use.

The proposed Ordinance would also exempt nighttime entertainment uses that existed within the last five years within the Western SOMA Mixed Use-Office (WMUO) zoning district from the prohibition on locating within 200 linear feet of any property within the Residential Enclave (RED) or the Residential Enclave-Mixed (RED-MX) zoning districts.

ISSUES AND CONSIDERATIONS

Accommodation of Community Serving Needs. The proposed Ordinance was introduced by Supervisor Kim in response to the need to accommodate two community serving uses: the expansion of the Presidio Knolls School (PKS) at 250 10th Street and the establishment of the T-Shack nightclub at 298 11th Street.

PKS currently serves children in Pre-School to Second Grade and features a Mandarin Immersion educational program. Founded in 2008 as a Pre-School, its student population has grown rapidly and PKS is seeking a subsequent expansion to include students through the Eighth Grade. To properly accommodate this expansion, PKS must augment its classroom facilities and include amenities such as a gymnasium and a music hall. Under these plans, the PKS campus would total approximately 80,000 square feet. Current regulations for Non-Residential Uses, as outlined above, do not allow for such an expansion.

The T-Shack is considered by many to be a cornerstone nightlife institution within the LGBT community, having been in operation for approximately two decades. It is seeking to relocate within the Western SoMa neighborhood to a property that is in relative proximity to an RED zoning district and that has been the location of other nighttime entertainment venues in the recent past.² Current regulations within the Western SoMa Special Use District, as mentioned above, would prohibit the establishment of T-Shack at said location due to its proximity to an RED zoning district, and because the previous nighttime entertainment use ceased operations at that location more than 3 years ago.

Impacts of Non-Residential Use Size Limit. The prohibition on Non-Residential Uses in excess of 25,000 square feet within the Regional Commercial District affects not only retail uses, but also other uses that meet community needs including institutional, educational and social service uses. In practice, a community serving use within the Regional Commercial District that wished to expand its facilities to a size greater than 25,000 square feet is prohibited from doing so under current regulations.

Western SoMa Area Plan Policies. Policies 1.1.6, 2.2.2 and 2.2.3 explicitly seek to limit retail uses to no more than 25,000 square feet.³ However, there are no Plan Area Policies that seek to limit the sizes of other non-retail, non-residential uses in such manner.

² The proposed location is approximately 93 feet from the nearest RED zoning district. The Planning Department has records indicating that the proposed location has been used as a nighttime entertainment use since at least 2001.

³ Policy 1.1.6: Limit commercial development of retail uses to no more than 25,000 square feet throughout the Western SoMa SUD. These larger retail uses shall be allowed to locate without restriction south of Harrison Street and be permitted only on large development sites (LDS = one acre or larger) north of Harrison Street; Policy 2.2.2: Prohibit new retail uses in excess of 25,000 square feet throughout the Western SoMa SUD; and Policy 2.2.3: Limit retail uses south of Harrison Street to no more than 25,000.

Policies 9.1.1, 9.1.2 and 9.1.9 seek to promote the accommodation of new community serving uses including Elementary and Secondary Schools irrespective of their size.⁴ For the purposes of the Planning Code, Elementary and Secondary Schools are non-retail, non-residential uses.

Balancing Uses. The Western SoMa area has a history of being a desired location for nighttime entertainment uses. It also is home to many San Francisco residents and is currently the focus of increased residential development. Often nighttime entertainment uses are, or have been, located in relative proximity to residential uses. Managing the potential incompatibilities between nighttime entertainment uses and residential uses often requires special regulatory consideration. For example, the Western SOMA Special Use District requires a minimum distance between new nighttime entertainment uses and zoning districts primarily designated for residential use. In the case of longstanding nighttime entertainment locations that were encompassed by the newly created buffer regulations, the management of potential incompatibilities between residential and nighttime entertainment uses depends upon the enforcement of existing good neighbor policies and the possible enactment of additional, specifically tailored, operating conditions where the nighttime entertainment use seeks new or additional entitlements or permit approvals.⁵

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.

RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* to the proposed Ordinance. Department Staff recommends the following modifications:

1. **Limit the uses that are allowed over 25,000 sq. ft. in the Regional Commercial District to Elementary and Secondary Schools.** Rather than eliminating the use size prohibition for all non-residential uses, the Department recommends an amendment to Planning Code Section 744.21 which would exempt Elementary and Secondary Schools, as defined in Planning Code Section 217(f) and (g) from the use size prohibition. Elementary and Secondary Schools of any size over 10,000 square feet would require Conditional Use Authorization.

⁴ Policy 9.1.1: Support the siting of new facilities to meet the needs of a growing community and to provide opportunities for residents of all age levels; Policy 9.1.2: Encourage appropriate location and expansion of essential neighborhood-serving community and human services activities throughout Western SoMa, exclusive of the residential enclave districts; and Policy 9.1.9: Identify a potential area in Western SoMa that could be appropriate for a neighborhood middle school, taking into consideration a number of factors, including pedestrian safety, noise and air quality conditions, and the feasibility of being co-located with another public works project (e.g., park, historic/cultural center, or City-sponsored childcare).

⁵ Planning Code Section 845.56 requires Conditional Use Authorization to establish nighttime entertainment uses in the WMUO zoning district; the Planning Commission may apply additional operating conditions beyond the standard Conditions of Approval as part of granting Conditional Use Authorization. Further, Planning Code Section 803.5(b) outlines specific Good Neighbor Policies to which all projects within Mixed Use Districts, such as the WMUO zoning district, must conform.

The amendment to Planning Code Section 744.21 and the Regional Commercial District Zoning Control Table would be as follows:

744.21	Use Size [Non-Residential]	§§ <u>121.2,</u> <u>790.130</u>	P up to 10,000 sq. ft.; C above; NP above 25,000 sq. ft. <i>except for Elementary and Secondary Schools as defined in Planning Code Section 217(f) and (g).</i>
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2. **Add language to the proposed Ordinance clarifying that the nighttime entertainment use must have been legally established in order to be reinstated.** Modify the proposed language that amends Planning Code Section 823(c)(9)(A) to include the following underlined language (italicized language is already proposed in the Ordinance):

(A) Nighttime Entertainment. No portion of a nighttime entertainment use, as defined in Section 102.17 of this Code, shall be permitted within 200 linear feet of any property within a RED or RED-MX District. *This buffer shall not apply to any nighttime entertainment use within the WMUO District where a nighttime entertainment use that was established with a building permit application or a permit from the Entertainment Commission or San Francisco Police Department was in operation within five years prior to submission of a building permit application or an application for Conditional Use Authorization to re-establish a nighttime entertainment use.*

BASIS FOR RECOMMENDATION

The Department supports the proposed Ordinance, with the specified modifications, because the changes are narrow in scope yet accomplish a number of policy goals for the Western SoMa area and the City, and satisfy community needs for expanded or relocated educational and cultural institutions.

The amendment to the Non-Residential Use Size control within the Regional Commercial District is minor and will allow the expansion of an existing elementary educational institution. This expansion serves a growing community need and satisfies multiple General Plan policies regarding the provision and location of essential community facilities.

The scope of the proposed amendment to the Western SOMA Special Use District is also limited, yet will allow a community nightlife institution to operate in a space that has a long history of being a nighttime entertainment venue. Department research indicates that very few WMUO properties (12 properties) are within 200 linear feet of an RED or RED-MX zoned property. The research also indicates that of those WMUO properties, only one has received approval from the City of San Francisco for a nighttime entertainment use and is thus eligible to exercise the proposed exemption. This assures that, in practice, the buffer around the RED and RED-MX zoning districts is not significantly deteriorated. Further any nighttime entertainment use in the WMUO is required to secure Conditional Use Authorization, for which the Planning Commission may impose operating conditions above and beyond the standard Conditions of Approval that apply to all projects securing Conditional Use Authorization.

Recommendation 1: Limit the uses that are allowed over 25,000 sq. ft. in the Regional Commercial District to Elementary and Secondary Schools. The proposed modification maintains the Non-Residential Use Size prohibition for 21 of 23 allowed non-residential uses⁶ in the RCD and does not weaken the intent of the use size prohibition, which was to control big box type retail establishments and the establishment and/or expansion of large post-secondary institutions within the Western SoMa area. In this manner, the proposed modification is in conformity with the three Western SoMa Area Plan Policies (*mentioned above*) that explicitly seek to control large retail uses.

Further, the modification allows for the establishment and/or expansion of primary and secondary educational institutions, which are non-residential uses that serve a community need in the area.⁷ This is also in conformity with the Western SoMa Area Plan Policies focused on the provision of community facilities and services, including educational facilities.

Recommendation 2: Add language to the proposed Ordinance clarifying that the nighttime entertainment use must have been legally established in order to be reinstated. The proposed modification seeks to clarify that only nighttime entertainment uses that were permitted by the City of San Francisco and that have not ceased operation for more than five years are exempted from the 200 linear foot buffer as established under Subsection 823(C)(9)(A).

The clarification is important as it reinforces the need to establish nighttime entertainment uses with permit approval from the City of San Francisco, uses language that removes ambiguity about the uses that may exercise the exemption from the buffer regulation, decreases the number of nighttime entertainment uses that could exercise the exemption given the additional criteria and consequently minimizes the change to the residential buffer from nighttime entertainment uses created the Western SOMA Special Use District.

ENVIRONMENTAL REVIEW

The proposal to amend Planning Code Sections 744.21 and 823 would result in no physical change in the environment. The proposed amendment is exempt from environmental review under Sections 15378 and 15060(c)(2) of the CEQA Guidelines.

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any input from the public in regard to the proposed Ordinance.

⁶ There are 23 non-residential uses within the RCD Zoning Control Table that are either allowed as of right or by Conditional Use Authorization

⁷ There is currently one private elementary school (Presidio Knolls School) which serves grades K to Second and one public secondary school (Five Keys Independence High School Charter) in the Western SoMa Area. One public elementary school (Bessie Carmichael) lies immediately adjacent to the Western SoMa Area and serves grades K to Eighth.

RECOMMENDATION: Recommendation of Approval with Modification
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Attachments:

Exhibit A: Draft Planning Commission Resolution

Exhibit B: Board of Supervisors File No. 140724