



December 17, 2024

Ms. Angela Calvillo, Clerk
Honorable Supervisor Melgar
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: **Transmittal of Planning Department Case Number 2024-008951PCA:**
Health Service Uses in West Portal Neighborhood Commercial District
Board File No. 240903

Planning Commission Recommendation: Approval

Dear Ms. Calvillo and Supervisor Melgar,

On December 5, 2024, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Melgar. The proposed ordinance would amend the Planning Code's West Portal Avenue Neighborhood Commercial District (NCD) to principally permit Health Services uses and exempt these uses from the district's use size limitation, up to 5,000gsf. At the hearing the Planning Commission adopted a recommendation for approval.

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c)(2) and 15378 because they do not result in a physical change in the environment.

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

Sincerely,

Aaron D. Starr
Manager of Legislative Affairs

cc: Austin Yang, Deputy City Attorney
Michael Farrah, Aide to Supervisor Melgar
John Carroll, Office of the Clerk of the Board

ATTACHMENTS :

Planning Commission Resolution
Planning Department Executive Summary



PLANNING COMMISSION RESOLUTION NO. 21655

HEARING DATE: DECEMBER 5, 2024

Project Name: Health Service Uses in West Portal Neighborhood Commercial District
Case Number: 2024-008951PCA [Board File No. 240903]
Initiated by: Supervisor Melgar / Introduced September 17, 2024
Staff Contact: Audrey Merlone, Legislative Affairs
Audrey.Merlone@sfgov.org, 628-652-7534
Reviewed by: Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 628-652-7533

RESOLUTION ADOPTING A RECOMMENDATION FOR APPROVAL OF A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO PERMIT HEALTH SERVICE USES UP TO 5,000 GROSS SQUARE FEET WITHOUT A CONDITIONAL USE PERMIT IN THE WEST PORTAL NEIGHBORHOOD COMMERCIAL DISTRICT; 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 UNDER PLANNING CODE, SECTION 302.

WHEREAS, on September 17, 2024, Supervisor Melgar introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 240903, which would amend the Planning Code’s West Portal Avenue Neighborhood Commercial District (NCD) to principally permit Health Services uses and exempt these uses from the district’s use size limitation, up to 5,000 gross square feet;

WHEREAS, the Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on December 5, 2024; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 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 49 South Van Ness Avenue, Suite 1400, San Francisco; and

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

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby adopts a **recommendation for approval** of the proposed ordinance.

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:

The Department supports the Ordinance's goal, which seeks to help a small business expand and grow.

General Plan Compliance

The proposed Ordinance is 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 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

OBJECTIVE 6

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 6.1

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

The proposed Ordinance ensures an existing, local, small business can expand operations while staying within the city. The additional flexibility within the West Portal Avenue NCD helps address storefront vacancies and responds to the Commerce and Industry Element's Objective of maintaining a diverse economic base.

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:

1. 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 would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

2. 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 would not have a negative effect on housing or neighborhood character.

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

The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.

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

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

5. 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 would 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.

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

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

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from

development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

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 ADOPTS A RECOMMENDATION FOR APPROVAL of the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on December 5, 2024.



Jonas P. Ionin
Commission Secretary

Jonas P Ionin

Digitally signed by Jonas P Ionin
Date: 2024.12.11 09:57:08
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AYES: Williams, Braun, Campbell, Imperial, Moore, So
NOES: None
ABSENT: McGarry
ADOPTED: December 5, 2024



EXECUTIVE SUMMARY

PLANNING CODE TEXT AMENDMENT

HEARING DATE: December 5, 2024

90-Day Deadline: December 24, 2024

Project Name: Health Service Uses in West Portal Neighborhood Commercial District
Case Number: 2024-008951PCA [Board File No. 240903]
Initiated by: Supervisor Melgar / Introduced September 17, 2024
Staff Contact: Audrey Merlone, Legislative Affairs
Audrey.Merlone@sfgov.org, 628-652-7534
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 628-652-7533
Environmental Review: Not a Project Under CEQA

RECOMMENDATION: Adopt a Recommendation for Approval with Modifications

Planning Code Amendment

The proposed Ordinance would amend the Planning Code’s West Portal Avenue Neighborhood Commercial District (NCD) to principally permit Health Services uses and exempt these uses from the district’s use size limitation, up to 5,000gsf.

The Way It Is Now:

The West Portal Avenue NCD requires Conditional Use authorization for non-residential uses over 2,500sqft and prohibits non-residential uses greater than 4,000sqft.

The Way It Would Be:

Health Services uses at a specific lot/block¹ within the West Portal Avenue NCD would be allowed to exceed the non-residential use size limit up to 5,000gsf and would not require Conditional Use authorization.

Background

The subject parcel is a one-story, two-unit commercial building. The building previously contained a nail salon and title company. The nail salon's lease expired earlier this year, and the business has relocated to a different location within the NCD. The space formerly occupied by the title company has been vacant since September 2023. In January 2024, a Conditional Use authorization (CUA) application was filed to operate an eye clinic out of both commercial units at the site. At the time, the CUA was required for Health Service uses. The Board subsequently made Health Service uses Principally permitted in the district and the applicant withdrew the CUA application. In September 2024, a building permit was filed to merge the two commercial units into one commercial unit. In October 2024, a building permit was filed to create an ophthalmology clinic that also provides cosmetic services and has a retail component.



Location of Assessor's Parcel 2989B/017 (red outline) within the West Portal Avenue NCD (blue shaded parcels).



The building at Assessor's Parcel 2989B/017.

¹ The parcel listed in the proposed Ordinance is incorrect. The Ordinance lists the parcel as Block 2989 Lot 17. This is not a known Assessor's parcel. The correct parcel is Block 2989B Lot 17. The Supervisor intends to substitute the Ordinance to correct this error.

Issues and Considerations

The West Portal Avenue NCD

The West Portal Avenue Neighborhood Commercial District spans three blocks along West Portal Avenue, from Ulloa Street to 15th Avenue, and one block east along Ulloa. West Portal Avenue offers goods and services mainly for residents from nearby single-family neighborhoods. Small-scale retail is frequently broken up by large financial institutions and ground floor medical or professional offices.



Map of the West Portal Avenue Neighborhood Commercial District.

Zoning regulations aim to preserve West Portal’s family-friendly, village atmosphere. Building heights are capped at 26 feet and two stories to preserve rear yard patterns. The Code mandates that new development respect the area’s small-scale character. Nonresidential uses over 2,500sqft require Conditional Use authorization, and no use may exceed 4,000sqft with the stated aim of upholding the small-scale use standard.

Use Size Limits

Conditional Use authorization is required in most NCDs for businesses over 2,500 square feet to ensure they support neighborhood-serving uses instead of regional needs. However, the West Portal Avenue NCD

imposes stricter rules by capping non-residential uses at 4,000 square feet. Businesses exceeding this size cannot request larger spaces, even in exceptional circumstances.

| Hard caps on use sizes do not allow for flexibility in reimagining existing large spaces.

Maximum non-residential use size limits are rare in the Planning Code. There are only five NCDs that contain a maximum non-residential use size limit of 4,000 sq. ft.: West Portal Avenue, North Beach, Castro Street, Pacific Avenue, and Polk Street. The only other district that has a maximum use size limit is the RCD, which is 25,000 sq. ft. The Department has seen at least six proposed ordinances in recent years creating carve-outs to exempt specific businesses from maximum use size limits in the Castro, Polk and now West Portal. These one-off ordinances clearly signal a larger issue with hard caps on use size limitations. We know from these past ordinances that there are often circumstances where creating a larger commercial space is desirable for the neighborhood; however, maximum non-residential use size limits do not allow for this flexibility. In fact, they remove the Commission's ability to have discretion over whether a *new* larger space would be appropriate at a particular location.

Nonconforming Use Size

A legal, nonconforming space may remain indefinitely if its Use Size is not expanded or intensified; however, this nonconformity applies only to one Use Size, not multiple uses on the parcel. Subdivision of the space is only allowed if it does not create additional "noncompliant" spaces. Due to these restrictions, when a space exceeding the maximum size limit becomes vacant in an NCD with a hard cap it is often challenging to fill.

A prime example of this is the former Lombardi Sports (Lombardi) storefront at 1600 Jackson Street in the Polk Street NCD, which has been vacant for over ten years. This commercial space is more than 32,000 square feet in size, and it has been difficult to find a tenant to fill the entire space. Some prospective tenants have reached out to the District 3 Supervisor's Office and the Planning Department; however, those proposals never came to fruition because the proposed use was unable to fill the entire space or was Formula Retail use. Alternatively, this space could be subdivided into smaller commercial spaces. However, because there is an absolute Use Size limit of 4,000 square feet, all but one subdivided tenant space would need to be 4,000 square feet or smaller (to not increase the number of non-conforming spaces). In this case and in the cases of other large vacant spaces in NCDs with hard caps, it has been difficult to attract enough small businesses to subdivide the large space into smaller code-complying spaces all at once.

Several spaces in the West Portal Avenue NCD exceed 4,000 square feet, many of which are financial institutions. With the rise of online banking, brick-and-mortar financial institutions are closing, and West Portal is no exception. These closures leave behind large, expensive spaces that small businesses often cannot afford or utilize. As with the Lombardi Sports example, it will also be difficult to subdivide many of these larger units due to the hard use size cap.

The West Portal Avenue NCD is also home to an approximately 13,000-square-foot vacant movie theater. The theater closed in early 2021 due to the pandemic² and has yet to find a permanent new tenant. The building is almost 13,000sqft. Under the current size cap however, the option to subdivide is extremely limited. Any subdivision proposal must ensure that only one space exceeds 4,000 square feet. Alternatively, removing the maximum uses size limit would provide greater flexibility for adaptive reuse. The proposed subdivision would still need to go to the Planning Commission to determine if the proposed subdivision and new use is necessary and desirable³.

The proposed Ordinance only allows one building in the West Portal Avenue NCD to exceed the size cap but restricts its use to a Health Service under 5,000 square feet. While this enables the current owner to open a Health Service use, it may cause future challenges. The building is already approximately 5,000 square feet, so the business cannot expand without relocating. If the clinic closes, the space can only be occupied by another Health Service use. This restriction risks leaving the space vacant again if a new Health Service tenant cannot be found.

General Plan Compliance

The proposed Ordinance supports the Commerce and Industry Element's goals of maintaining and supporting the economic growth of San Francisco. The proposed amendments respond directly to Policy 2.1 by ensuring an existing, local, small business can expand operations while staying within the city. This is further echoed in Policy 6.1, which encourages the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts.

The proposed Ordinance with staff recommended modifications would take these policies a step further by broadening the amendment so that other businesses may benefit as well. Removing the hard cap of 4,000sqft while retaining the Conditional Use requirement for uses greater than 2,500sqft provides more business opportunities that otherwise would not be realized. Additionally, the additional flexibility within the West Portal Avenue NCD helps address storefront vacancies and responds to the Commerce and Industry Element's Objective of maintaining a diverse economic base. If incorporated into the final legislation, these recommended modifications could better maintain a favorable social and cultural climate in the city as described in Policy 2.3.

Racial and Social Equity Analysis

The proposed amendments cannot be directly tied to a negative or positive impact in advancing the City's racial and social equity. However, the Department believes that expanding this proposed Ordinance would be more equitable if changes to more permissive Use controls are applied throughout the district.

² <https://www.sfgate.com/sf-culture/article/historic-West-Portal-SF-movie-theater-closes-15943642.php>

³ Due to the historic status of this building and its former use as a movie theater, any proposals to subdivide the building or change of use would also be subject to Historic Preservation review and approval in addition to conditional use approval at the Planning Commission for the loss of the movie theater.

Implementation

The Department has determined that this ordinance will not impact our current implementation procedures.

Recommendation

The Department recommends that the Commission ***adopt a recommendation for approval with modifications*** of the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. Modify the Ordinance to remove the maximum use size limit of 4,000sqft for the entire West Portal Avenue NCD.

Basis for Recommendation

The Department supports the Ordinance's goal, which seeks to help a small business expand and grow. However, this is yet another project-specific amendment that is based on a tenant rather than on sound land use policy. Rather than singling out this one business, the Department believes that a more wholistic approach is warranted and is recommending the following amendment to that effect.

Recommendation 1: Modify the Ordinance to remove the maximum use size limit of 4,000sqft for the entire West Portal Avenue NCD. This recommended modification recognizes the limitations placed on Neighborhood Commercial Districts when maximum use size limits are imposed. It is a more holistic approach that doesn't single out special exemptions for just one business. It offers all existing and prospective businesses in the West Portal Avenue NCD the same flexibility already permitted in most other NCDs. This change will also provide existing large spaces, like the vacant movie theater, more flexibility in finding new uses. Further, maintaining a CUA for businesses exceeding 2,500 square feet provides oversight, ensuring larger tenants align with the neighborhood's identity.

Required Commission Action

The proposed Ordinance is before the Commission so that it may adopt a recommendation of approval, disapproval, or approval with modifications.

Environmental Review

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c)(2) 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.