



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment

HEARING DATE: APRIL 19, 2018

90-DAY DEADLINE: COMMISISON INITIATED, NOT APPLICABLE

Project Name: Hours of Operation for Nonconforming Uses
Case Number: 2018-000681PCA [Board File No. TBD]
Initiated By: Planning Commission
Staff Contact: Aaron Starr, Manager of Legislative Affairs
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Recommendation: **Approve**

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PLANNING CODE AMENDMENT

The proposed ordinance would amend Section 186 of the Planning Code to allow limited nonconforming uses in specified zoning districts to operate between the hours of 10:00 p.m. and 12:00 a.m. with Conditional Use authorization.

The Way It Is Now:

Limited nonconforming uses are only permitted to be open to the public during the period between 6:00 a.m. and 10:00 p.m. in RH, RM, RTO, and RED Districts.

The Way It Would Be:

Limited nonconforming uses would be allowed to operate between the hours of 10:00 p.m. and 12:00 a.m. with Conditional Use authorization in RH, RM, RTO, and RED Districts.

BACKGROUND

The idea for this ordinance came from a Conditional Use authorization hearing for the legalization of a non-conforming event and performance art venue located at 3359 Cesar Chavez Street (dba Chicken John's). The applicant wanted the ability to stay open until midnight, but the Code did not permit the hours of operation to extend beyond 10:00 p.m. During the hearing, the Commission asked the Department to consider allowing for the extension of hours of operation for limited nonconforming uses.

In this specific case, the venue proposed to have nighttime event and art performances, which typically go beyond 10:00 p.m. The Commission considered the existing permitted hours of operations to be an undue restriction on the proposed use. Amending the Planning Code to provide a pathway for the extension of hours for limited nonconforming uses from 10:00 p.m. to 12:00 a.m. would serve to meet the Commission's directive. It will also provide a means for the Commission to review the extension of hours on a case-by-case basis via the Conditional Use authorization process.

The Planning Commission initiated this ordinance on March 8, 2018.

ISSUES AND CONSIDERATIONS

Limited Nonconforming Uses

A Nonconforming Use is a use that was created legally with appropriate permits, but due to changes in the Planning Code, has since become a use that would not be permitted in its zoning district. Limited Nonconforming Uses are nonconforming uses of a limited commercial or industrial character, which are beneficial to, and can be accommodated within, defined residential areas. These uses tend to be small in scale, and provide desirable convenience goods and services to residents within a short walk of their homes.

There is an underlying presumption in the Planning Code that nonconforming uses should be eliminated over time because they are contrary to regulatory goals in the Code. Generally, nonconforming uses are given time limits to change to a conforming use and/or cease operating; however, in residential districts (with some exceptions), neighborhood-serving Limited Nonconforming Uses are not subject to termination and may continue for an indefinite period, and may also change their use to other commercial uses as specified in the Planning Code. Changes of use for Limited Nonconforming Uses must conform to the zoning controls of the NC-1 (Neighborhood Commercial Cluster) District or the controls of a more restrictive named NC (Neighborhood Commercial) District when the site is within ¼ mile of that district.

In NC-1 Districts, hours of operation can be extended by means of Conditional Use authorization, and can even be extended beyond 12:00 a.m. to 2:00 a.m. Similarly, the legislative changes proposed in this Planning Code amendment would provide a regulatory pathway for desirable Limited Nonconforming Uses to extend hours of operation to 12:00 a.m. by means of Conditional Use authorization.

General Plan Compliance

On balance, the proposed ordinance complies with the following Goals and Policies of the General Plan:

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.

The proposed ordinance will expand opportunities for businesses designated as limited nonconforming uses by allowing them to remain open past 10:00 PM with Conditional Use authorization. This change will help to retain existing and attract new commercial activity to the City.

Implementation

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

RECOMMENDATION

The Department recommends that the Commission *approve* the proposed Ordinance and adopt the attached Draft Resolution to that effect.

BASIS FOR RECOMMENDATION

The Department supports the proposed ordinance because it will allow the Commission more flexibility with regards to Limited Nonconforming Uses in the city, while still ensuring that sufficient review and conditions can be placed on these uses to preserve the quality of life in the neighborhoods where they are located. Further, the proposed change is consistent with how the Code regulates Limited Nonconforming Uses. Limited Nonconforming Uses are controlled by NC-1 District use controls, which allow businesses to be open past 10:00 AM.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

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.

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Proposed Ordinance