

BOARD of SUPERVISORS



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April 10, 2019

File No. 190355

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On April 2, 2019, Mayor Breed introduced the following legislation:

File No. 190355

Ordinance amending the Planning Code to enable the use of development project sites during the project approval and entitlement process by authorizing the Planning Department to authorize certain interim activities at development project sites as Temporary Uses for up to 36 months, subject to extension at the discretion of the Planning Director in increments for up to a maximum possible total of 36 additional months; adopting 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 convenience, necessity, and welfare under Planning Code, Section 302.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

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

Attachment

c: Joy Navarrete, Environmental Planning
Laura Lynch, Environmental Planning

1 [Planning Code - Authorizing Interim Activities at Development Sites]

2
3 **Ordinance amending the Planning Code to enable the use of development project sites**
4 **during the project approval and entitlement process by authorizing the Planning**
5 **Department to authorize certain interim activities at development project sites as**
6 **Temporary Uses for up to 36 months, subject to extension at the discretion of the**
7 **Planning Director in increments for up to a maximum possible total of 36 additional**
8 **months; adopting the Planning Department's determination under the California**
9 **Environmental Quality Act; making findings of consistency with the General Plan, and**
10 **the eight priority policies of Planning Code, Section 101.1; and making findings of**
11 **public convenience, necessity, and welfare under Planning Code, Section 302.**

12 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
13 **Additions to Codes** are in *single-underline italics Times New Roman font*.
14 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
15 **Board amendment additions** are in double-underlined Arial font.
16 **Board amendment deletions** are in ~~strikethrough Arial font~~.
17 **Asterisks (* * * *)** indicate the omission of unchanged Code
18 subsections or parts of tables.

19 Be it ordained by the People of the City and County of San Francisco:

20 Section 1. Environmental and Land Use Findings.

21 (a) The Planning Department has determined that the actions contemplated in this
22 ordinance comply with the California Environmental Quality Act (California Public Resources
23 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
24 Supervisors in File No. ____ and is incorporated herein by reference. The Board adopts these
25 findings as its own.

1 (b) On _____, the Planning Commission, in Resolution No. _____,
2 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
3 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
4 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
5 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

6 (c) Pursuant to Planning Code Section 302, this Board finds that these Planning Code
7 amendments will serve the public necessity, convenience, and welfare for the reasons set
8 forth in Planning Commission Resolution No. _____, and the Board of Supervisors
9 incorporates such reasons herein by reference.

10
11 Section 2. Findings and Purpose.

12 During the process of seeking development approvals and entitlements for land or
13 buildings, such land or buildings may become underutilized, vacant, and economically
14 unproductive for prolonged time periods. Occupying and activating such land or buildings with
15 temporary activities, and creating an active and vital street frontage, would help generate
16 economic activity, create jobs, deter crime and nuisance activities, and enhance the vitality of
17 the public realm near or within such land or buildings. The authorization of temporary uses for
18 such land or buildings will also help ensure the proper upkeep and maintenance of such land
19 and buildings, while encouraging property owners to provide invaluable and scarce space for
20 arts activities, light industrial uses, retail or institutional uses, and other land uses.

21
22 Section 3. Article 2 of the Planning Code is hereby amended by revising Section 205
23 and adding Section 205.5, to read as follows:
24
25

1 **SEC. 205. TEMPORARY USES, GENERAL.**

2 (a) The temporary uses listed in Sections 205.1 through 205.45, where not otherwise
3 permitted in the district, may be authorized as provided ~~therein~~ and in this Section 205, up to the
4 time limits indicated. Further time for such uses may be authorized only by action upon a new
5 application, subject to all the requirements for the original application, unless otherwise
6 indicated in Sections 205.1 through 205.45.

7 (b) Action upon such uses may be authorized by the ~~Zoning Administrator~~ Planning
8 Director without a public hearing.

9 (c) Wherever a use exists at the effective date of this Code or of an amendment
10 thereto under which such use is classified as a temporary use, or wherever a use is being
11 conducted under a temporary use authorization given prior to such a date, such use may be
12 continued for the maximum term specified therefore, calculated from said effective date or
13 date of authorization. No such use shall continue thereafter unless a temporary use
14 authorization ~~shall have~~ has been sought and obtained under a new application. Continuance
15 of a temporary use beyond the date of expiration of the period authorized therefore, or failure
16 to remove a structure for such temporary use within 10 days thereafter, shall constitute a
17 violation of this Code.

18 (d) The time periods referenced in Sections 205.1 through 205.3 and Section 205.5 are
19 consecutive hours or consecutive calendar days; they are not the total number of hours or
20 days that the use is in operation. Therefore, a 24-hour authorization that begins at 6:00 a.m.
21 expires at 6:00 a.m. the following day, even if the use was in operation only eight hours of that
22 24-hour period. Similarly, a 60-day authorization expires after 60 calendar days even though
23 the use may only have been open for business three days per week during that 60-day period.
24 Hours or days of unused authorization cannot be stored or credited.

1 (e) Any temporary uses authorized pursuant to this Section 205 and Sections 205.1 through
2 205.5 shall not be required to comply with any Planning Code requirements that are not expressly
3 applicable to such temporary uses under this Section 205 and Sections 205.1 through 205.5, provided,
4 however, any temporary uses authorized pursuant to this Section 205 and Sections 205.1 through 205.5
5 shall be subject to all applicable initiative ordinances approved by the voters of the City and County of
6 San Francisco.

7 (f) The decision of the Planning Director to authorize or deny authorization of any temporary
8 use pursuant to this Section 205 and Sections 205.1 through 205.5 may be appealed to the Board of
9 Appeals within 15 days after the date of the decision by filing a written notice of appeal with that body.

10
11 **SEC. 205.5. TEMPORARY USES: INTERIM ACTIVITIES ON DEVELOPMENT SITES.**

12 (a) Upon the satisfaction of the requirements in this Section 205.5, an Interim Activity on an
13 Eligible Development Site located in an Eligible Area may be authorized as a temporary use for an
14 initial period not to exceed 36 months (“Initial Period”).

15 (b) Definitions. For purposes of this Section 205.5, the following definitions shall apply:

16 “Development Project” has the meaning set forth in the definition of Eligible Development Site.

17 “Eligible Area” means the Commercial (C), Residential-Commercial (RC), Downtown
18 Residential (DTR), and Neighborhood Commercial Transit (NCT) Districts, and, within the area
19 bounded by Market Street, 13th Street/Duboce Avenue, Division Street, and King Street, in Mixed Use
20 and Neighborhood Commercial (NC) Districts.

21 “Eligible Development Site” means a legal lot on which: (1) an application has been submitted
22 either to permit demolition of an existing structure, or to permit alterations sufficiently extensive to be
23 considered, in the judgment of the Planning Director, tantamount to demolition for the purposes of this
24 Section 205.5; (2) applications and the associated fees have been submitted to obtain all required land
25 use and permit entitlements for an associated development project that, if approved and completed,

1 would result in greater residential density than the residential density existing as of the time both the
2 land use and permit entitlement applications were submitted to the City (“Development Project”); and
3 (3) applications and the associated fees have been submitted to evaluate compliance of the
4 Development Project with the California Environmental Quality Act (California Public Resources
5 Code Sections 21000 et seq.) pursuant to Administrative Code Section 31.22.

6 “Interim Activity” means any Entertainment, Arts and Recreation Use; any Arts Activities Use;
7 any Entertainment, General Use; any Social Service or Philanthropic Facility Use; any Homeless
8 Shelter Use; any Agriculture/Beverage Processing I, Light Manufacturing, or Metal Working Use
9 permitted either Conditionally or Principally within a PDR-I-D District; any Retail or Institutional
10 Use regardless of Use size; any Use Principally or Conditionally permitted in the subject zoning
11 district; and/or any Office Use, so long as such Office space is less than 5,000 gross square feet and an
12 equal or greater square footage of space is established within a building on the same Eligible
13 Development Site and dedicated for Arts Activities Use and/or Light Manufacturing Use. In addition,
14 in order for Office Use to constitute an Interim Activity, such Arts Activities Use and/or Light
15 Manufacturing Use occupancies or activities must commence on the Eligible Development Site prior to
16 or simultaneously with the Office Use occupancies or activities, and the Arts Activities Use and/or
17 Light Manufacturing Use occupancies or activities must continue for the full duration of the Office Use
18 occupancies or activities.

19 (c) Application. The property owner or the property owner’s authorized agent (“Applicant”)
20 shall submit an application for temporary use to the Planning Department, on a form prepared by the
21 Planning Department. The application shall be accompanied by the applicable fees pursuant to
22 Planning Code Section 350 and shall include an affidavit signed by the Applicant and, as applicable,
23 each tenant occupying any portion of the Eligible Development Site for the Interim Activity, or each
24 tenant’s authorized agent, acknowledging that the use of the Eligible Development Site for the Interim
25 Activity is temporary and subject to the time limits set forth in this Section 205.5 and acknowledging

1 that the Applicant has to pay any outstanding fees, invoices, or penalties owed to City agencies, and is
2 in compliance with all requirements of the Municipal Code, including any requirements to file Updates
3 to Institutional Master Plans and abate any Code or Building Code violations. The Applicant shall not
4 be required to pay additional fees set forth in Article 4 of the Planning Code as a prerequisite to
5 obtaining temporary use authorization pursuant to this Section 205.5.

6 (d) New, Additional, or Modified Temporary Uses. New, additional, or modified temporary
7 uses that were not previously approved by the Planning Director shall be reviewed through the filing of
8 a new application and submittal of a new application fee.

9 (e) New Tenants. Additional or different tenants (each a "New Tenant") may commence
10 occupancy within and use of the Eligible Development Site in question without additional applications
11 or fees, provided that each New Tenant submits a completed affidavit to the Department attesting to the
12 truthfulness and correctness of the previously submitted application and declaring that the New Tenant
13 will not discontinue, add to, or modify the approved Interim Activity.

14 (f) No Conversion, Change, Discontinuance, or Abandonment of Use. The approval or
15 commencement of an Interim Activity as a temporary use as authorized under this Section 205.5 shall
16 not be considered a conversion, discontinuance, abandonment, or change of use for purposes of this
17 Code, notwithstanding Sections 182 and 183 of this Code. Any property for which the Interim Activity
18 is authorized shall retain its authorized land use(s). Such authorized land uses, including any
19 nonconforming uses, shall become operative upon the expiration, termination, or abandonment of such
20 temporary use authorization.

21 (g) Fenestration, Transparency, and Visibility Requirements. Construction proposed in
22 connection with the Interim Activity shall not cause noncompliance or exacerbate existing
23 noncompliance with respect to fenestration, transparency, or any other visibility requirement of Section
24 145.1 of this Code. Further, no film, adhesive, blinds, or other treatment may be applied to any
25 existing fenestration.

1 (h) Information To Be Available To Public. The Department shall make available to the public
2 in the Planning Department's main office and on its website a list of all applications approved under
3 this Section 205.5, along with applicable time frames and any additional information the Planning
4 Department deems useful for or relevant to the continued and successful activation of those spaces in
5 the Eligible Area.

6 (i) Extension of Initial Period. Upon the Planning Director's determination that permits for
7 the Development Project are being and have been diligently pursued, and that the Interim Activity has
8 been consistent with public convenience, necessity, or the general welfare of the City, the Planning
9 Director is authorized to permit the Interim Activity to exceed the Initial Period for an additional
10 period not to exceed 12 months. The Planning Director is authorized to extend the Initial Period up to
11 three times (the first time being the extension referenced in the previous sentence) such that each
12 extension of the Initial Period may be up to 12 months, each extension shall require a separate
13 determination of the Planning Director according to this Section 205.5(i), and the authorization of the
14 Interim Activity may not exceed a total duration of 72 months.


15 (j) Other Temporary Uses. Authorization of an Interim Activity pursuant to this Section 205.5
16 shall not preclude the authorization of any other temporary uses recognized in Sections 205.1 through
17 205.4.

18
19 Section 4. Effective Date. This ordinance shall become effective 30 days after
20 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
21 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
22 of Supervisors overrides the Mayor's veto of the ordinance.

23
24 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
25 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,

1 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
2 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
3 additions, and Board amendment deletions in accordance with the "Note" that appears under
4 the official title of the ordinance.

5
6 APPROVED AS TO FORM:
7 DENNIS J. HERRERA, City Attorney

8 By: 
9 CHRISTOPHER T. TOM
Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning Code - Authorizing Interim Activities at Development Sites]

Ordinance amending the Planning Code to enable the use of development project sites during the project approval and entitlement process by authorizing the Planning Department to authorize certain interim activities at development project sites as Temporary Uses for up to 36 months, subject to extension at the discretion of the Planning Director in increments for up to a maximum possible total of 36 additional months; adopting 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 convenience, necessity, and welfare under Planning Code, Section 302.

Existing Law

Currently, the Planning Code allows the Zoning Administrator to authorize certain temporary uses for time periods ranging from up to sixty days, for uses such as open air sale of agriculturally produced seasonal decorations (e.g., Christmas trees and Halloween pumpkins), to up to two years, for uses such as temporary structures and uses incidental to the construction of a group of buildings on the same or adjacent premises. In addition, the Zoning Administrator may authorize certain temporary uses for a period not to exceed twenty-four hours per event, once a month, and for up to twelve events per year per premises for uses such as performances, exhibitions, dances, or festivals that require City permits. The Zoning Administrator may also authorize certain intermittent outdoor activities including mobile food facilities, farmers markets, and open-air craft markets.

Amendments to Current Law

This legislation would make substantive changes to the authorization of temporary uses under the Planning Code, as described below.

First, temporary uses would be authorized by the Planning Director rather than the Zoning Administrator. The Planning Director’s decision to authorize or deny authorization of any temporary use would be appealable to the Board of Appeals.

Second, certain development sites could be eligible for the authorization of a new category of temporary uses (“Interim Activities”) for up to thirty-six months(the “Initial Period”), after the project developer has submitted all applications and fees for the required land use and permit entitlements and for the completion of environmental review. Planning Director may extend the Initial Period in increments for up to a maximum possible total of thirty-six additional months. Interim Activities would include the following uses, as defined in the Planning Code and subject to restrictions in the legislation: Entertainment, Arts and Recreation Use; Arts

Activities Use; Entertainment, General Use; Social Service or Philanthropic Facility Use; Homeless Shelter Use; Agriculture/Beverage Processing 1, Light Manufacturing, or Metal Working Uses permitted either Conditionally or Principally within a PDR-1-D District; Retail or Institutional Use; Use Principally or Conditionally permitted in the subject zoning district; and certain Office Use, provided that the Office space would be less than 5,000 gross square feet and an equal or greater square footage of space would be established within a building on the same development site and dedicated for Arts Activities Use and/or Light Manufacturing Use. For Office Use to constitute an Interim Activity, such Arts Activities Use and/or Light manufacturing Use occupancies or activities would be required to commence onsite prior to or simultaneously with the Office Use occupancies or activities, and the Arts Activities Use and/or Light Manufacturing Use occupancies or activities would be required to continue for the full duration of the Office Use occupancies or activities.

To be eligible for the authorization of an Interim Activity, a development site would need to be located in the Commercial (C), Residential-Commercial (RC), Downtown Residential (DTR), or Neighborhood Commercial Transit (NCT) Districts, or, within the area bounded by Market Street, 13th Street/Duboce Avenue, Division Street, and King Street, in Mixed Use and Neighborhood Commercial (NC) Districts. In addition, the development site would need to be a legal lot on which: (1) an application has been submitted either to permit demolition of an existing structure, or to permit alterations tantamount to demolition; (2) applications and the associated fees have been submitted to obtain all required land use and permit entitlements for an associated development project that, if approved and completed, would result in greater residential density than the residential density existing as of the time both the land use and permit entitlement applications were submitted to the City; and (3) applications and the associated fees have been submitted to evaluate compliance of the proposed development project with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) pursuant to Administrative Code Section 31.22.

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