

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Tom DeCaigny, Director of Cultural Affairs, Arts Commission  
Susan Pontious, Director of Public Art Program, Arts Commission

FROM: *AS*  
*SP* Alisa Somera, Legislative Deputy Director  
Land Use and Transportation Committee

DATE: September 27, 2016

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Kim on, September 20, 2016:

**File No. 161014**

**Ordinance amending Planning Code, Section 202.8, included in the November 8, 2016, General Election as Proposition X, to exempt certain designated historic landmarks from obtaining conditional use authorization to remove certain Production, Distribution, and Repair, Institutional Community, and Arts Activities Uses, and providing replacement space for such uses; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: [alisa.somera@sfgov.org](mailto:alisa.somera@sfgov.org).

c: Rebekah Krell, Arts Commission  
Sharon Page Ritchie, Arts Commission

1 [Planning Code - Exempting Certain Historic Landmarks From November 2016 Ballot  
2 Measure Requiring Conditional Use Authorization to Replace Production, Distribution, and  
3 Repair, Institutional Community, and Arts Activities Uses]

4 **Ordinance amending Planning Code, Section 202.8, included in the November 8, 2016,**  
5 **General Election as Proposition X, to exempt certain designated historic landmarks**  
6 **from obtaining conditional use authorization to remove certain Production,**  
7 **Distribution, and Repair, Institutional Community, and Arts Activities Uses, and**  
8 **providing replacement space for such uses; affirming the Planning Department's**  
9 **determination under the California Environmental Quality Act; and making findings of**  
10 **consistency with the General Plan, and the eight priority policies of Planning Code,**  
11 **Section 101.1.**

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  
25 affirms this determination.

(b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_,  
adopted findings that the actions contemplated in this ordinance are consistent, on balance,

1 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The  
2 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of  
3 the Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.

4 Section 2. Background and Effective Date.

5 (a) On August 2, 2016, the Board of Supervisors approved Motion No. M16-105,  
6 ordering an initiative ordinance entitled "Initiative Ordinance - Planning Code - Requiring  
7 Conditional Use Authorization for Replacement of Production, Distribution, Repair, Institutional  
8 Community, and Arts Activities Uses," be submitted to the voters at the November 8, 2016  
9 general election. Motion No. M16-105, including the initiative ordinance, is found in Board File  
10 No. 160698. The initiative ordinance is designated Proposition X on the November 8, 2016,  
11 ballot.

12 (b) Proposition X adds Section 202.8 to the Planning Code. Subsection 202.8(i)  
13 provides that the Board of Supervisors "by ordinance and by at least a two-thirds vote of all its  
14 members" may amend Section 202.8 "at any time after its effective date." This ordinance  
15 amends Section 202.8.

16 (c) If Proposition X is adopted by the voters at the November 8, 2016 general election,  
17 this ordinance shall become law if it is both finally passed by at least two-thirds of the Board of  
18 Supervisors and is enacted by the City, after the effective date of Proposition X. In that event,  
19 the effective date of this ordinance shall be 30 days after its enactment. Enactment occurs  
20 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not  
21 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the  
22 Mayor's veto of the ordinance.

23 (d) If Proposition X is not adopted by the voters, this ordinance shall be withdrawn  
24 from consideration by the Board of Supervisors.

1 Section 3. The Planning Code is hereby amended by revising proposed Section 202.8,  
2 to read as follows:

3 **SEC. 202.8. LIMITATION ON CONVERSION OF PRODUCTION, DISTRIBUTION,**  
4 **AND REPAIR USE, INSTITUTIONAL COMMUNITY USE, AND ARTS ACTIVITIES USE.**

5 The following controls shall apply in the following Eastern Neighborhoods Plans Areas:  
6 Mission; Eastern SoMa; Western SoMa; and, if adopted, Central SoMa. Notwithstanding any  
7 other provision of this Code, conversion of building space where the prior use in such space  
8 was a Production, Distribution, and Repair (PDR) use of at least 5,000 square feet, an  
9 Institutional Community use of at least 2,500 square feet, or an Arts Activities use, all as  
10 defined in Section 102, through change in use or any other removal, including but not limited  
11 to demolition of a building that is not unsound, shall be subject to the following requirements:

12 (a) To preserve the existing stock of building space suitable for PDR, Institutional  
13 Community, and Arts Activities uses, such conversion shall, if located within the following  
14 zoning districts, require conditional use authorization under Section 303 and the space  
15 proposed for conversion shall be replaced in compliance with the following criteria:

16 (1) In the areas that, as of July 1, 2016, are zoned SALI, the replacement space  
17 shall include one square foot of PDR, Institutional Community, or Arts Activities use for each  
18 square foot of the use proposed for conversion.

19 (2) In the areas that, as of July 1, 2016, are zoned UMU, MUO, or SLI, the  
20 replacement space shall include 0.75 square foot of PDR, Institutional Community, or Arts  
21 Activities use for each square foot of the use proposed for conversion.

22 (3) In the areas that, as of July 1, 2016, are zoned MUG or MUR, the  
23 replacement space shall include 0.50 square foot of PDR, Institutional Community, or Arts  
24 Activities use for each square foot of the use proposed for conversion.

1 (4) For any project located in the areas that, as of July 1, 2016, are zoned SALI,  
2 UMU, MUO, SLI, MUG, or MUR, that would convert at least 15,000 square feet of PDR,  
3 Institutional Community, or Arts Activities use, and for which an Environmental Evaluation  
4 application was submitted to the Planning Department by June 14, 2016, the replacement  
5 space shall include 0.4 square foot of PDR, Institutional Community, or Arts Activities use for  
6 each square foot of the use proposed for conversion. Notwithstanding the foregoing sentence,  
7 should the Board of Supervisors overturn any such project's environmental review on appeal,  
8 such project shall provide replacement space as required by subsections (a)(1), (2), or (3)  
9 above, as applicable.

10 (5) The replacement requirements of subsections (a)(1), (2), (3), and (4) may be  
11 reduced by 0.25 for any project subject to any contract or agreement meeting the  
12 requirements of California Civil Code Section 1954.28(d), including but not limited to a  
13 development agreement approved by the City under California Government Code Section  
14 65864 et seq. if, as part of the terms of such agreement, the required replacement space is  
15 rented, leased, or sold at 50% below market rate for such commercial space for a period of  
16 not less than 55 years and is subject to a deed restriction.

17 (6) Replacement space for PDR and Arts Activities use may be used for either  
18 PDR or Arts Activities use, regardless of which of those uses is proposed for conversion.  
19 Replacement space for Institutional Community use shall be used for Institutional Community  
20 use.

21 (b) Definitions. For the purposes of this Section 202.8, the following definitions shall  
22 apply:

23 "Prior use" shall mean the prior permanent and permitted use and shall not include any  
24 approved temporary uses such as "pop-up" eating establishments, craft fairs, or other  
25 seasonal uses.

1           “Replacement space” shall mean newly developed building space and shall not include  
2 building space that was previously used for PDR, Institutional Community, or Arts Activities.

3           “Unsound” shall mean a building for which rehabilitation to comply with City Codes for  
4 continued use as PDR, Institutional Community, or Arts Activities use, as applicable, would  
5 cost 50% or more of the cost to construct a comparable building.

6           (c) The amount of replacement space required under subsection (a)(1) may be  
7 reduced by the amount that is necessary to provide building entrances and exits;  
8 maintenance, mechanical, and utilities facilities; and on-site open space and bicycle facilities  
9 required under this Code; provided that no reduction shall be permitted for non-car-share  
10 vehicle parking spaces.

11           (d) Undeveloped property. The requirements of this Section 202.8 shall only apply to  
12 those portions of a site that are developed with building space where the prior use in such  
13 space was PDR use of at least 5,000 square feet, an Institutional Community use of at least  
14 2,500 square feet, or an Arts Activities use.

15           (e) In determining whether to grant Conditional Use authorization, in addition to  
16 making the required findings under Section 303, the Planning Commission shall consider the  
17 suitability of the replacement space for the use proposed for conversion.

18           (f) Exemptions. The following shall be exempt from the requirements of this Section  
19 202.8:

20                   (1) Any property under the jurisdiction of the Port of San Francisco or the  
21 Recreation and Park Commission; all Redevelopment Plan Areas in effect as of July 1, 2016;  
22 and any parcel zoned P (Public) on or after July 1, 2016.

23                   (2) Any project where the PDR use, Institutional Community use, or Arts  
24 Activities use subject to conversion commenced after June 14, 2016.

1 (3) Any project that has been approved by the Planning Department or Planning  
2 Commission by June 14, 2016, provided that, if subsequently appealed, such approval is  
3 upheld.

4 (4) Any project that would convert less than 15,000 square feet of PDR,  
5 Institutional Community, or Arts Activities use and for which an Environmental Evaluation  
6 application was submitted to the Planning Department by June 14, 2016,

7 (5) Any public transportation project.

8 (6) Any project that receives affordable housing credits associated with  
9 retention of affordable units at the South Beach Marina Apartments, pursuant to Board of  
10 Supervisors Resolution No. 197-16.

11 (7) Any project where all of the residential units with the exception of the  
12 manager's unit are affordable housing units, as that term is defined in Section 406(b)(1). If  
13 feasible, such projects shall make efforts to replace any converted PDR, Institutional  
14 Community, and Arts Activities uses.

15 (8) Any property in the Western SoMa Plan Area if the actual use functioning on  
16 the property as of September 8, 2014, as determined by the Zoning Administrator, was  
17 principally permitted, and not a PDR, Institutional Community, or Arts Activities use, such that  
18 a legal conversion could have been approved prior to October 9, 2014. This exemption  
19 applies only to conversions of uses smaller than 25,000 square feet.

20 (9) Any project that proposes to convert no more than 50% of the property's PDR,  
21 Institutional Community, or Arts Activities space, provided that such space is located within a  
22 landmark designated under Article 10 of the Planning Code or individually listed on the National  
23 Register of Historic Places. Additionally, any such project that is also subject to a contract or  
24 agreement meeting the requirements of California Civil Code Section 1954.28(d), which, as part of the  
25 terms of such contract or agreement, rents, leases, or sells at 50% below market rate the property's

1 remaining PDR, Institutional Community, or Arts Activities space, may convert an additional 25% of  
2 the property's PDR, Institutional Community, or Arts Activities space exempt from the requirements of  
3 this Section 202.8. Such below market rate rental, lease, or sale shall be for a period of not less than 55  
4 years and subject to a deed restriction. The exemptions set forth in this subsection 202.8(f)(9) may be  
5 used no more than once every 10 years per property.

6 (g) This Section 202.8 shall not authorize a change in use if the new use or uses are  
7 otherwise prohibited.

8 (h) In Lieu Fee and Off-Site Replacement. The Board of Supervisors may enact an  
9 ordinance adopting an in lieu fee and/or an off-site replacement option to meet the  
10 replacement requirements set forth in subsection (a). The proceeds from any such in lieu fee  
11 shall be used for the preservation and rehabilitation of existing PDR, Institutional Community,  
12 and Arts Activities spaces in the area plan area where the project paying the fee is located.

13 (i) The Board of Supervisors by ordinance and by at least a two-thirds vote of all its  
14 members may amend this Section 202.8 at any time after its effective date.

15 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
16 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
17 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
18 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
19 additions, and Board amendment deletions in accordance with the "Note" that appears under  
20 the official title of the ordinance.

21 APPROVED AS TO FORM:  
22 DENNIS J. HERRERA, City Attorney

23 By:

  
24 MARLENA BYRNE  
Deputy City Attorney

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