

BOARD of SUPERVISORS



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MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: *ell*
for Alisa Somera, Legislative Deputy Director
Land Use and Transportation Committee

DATE: September 27, 2016

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use and Transportation Committee

The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

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.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

- No Comment**
- Recommendation Attached**

Chairperson, Small Business Commission

c: Menaka Mahajan, Small Business 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.

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

18 Section 1. Environmental and Land Use Findings.

19 (a) The Planning Department has determined that the actions contemplated in this
20 ordinance comply with the California Environmental Quality Act (California Public Resources
21 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
22 Supervisors in File No. _____ and is incorporated herein by reference. The Board
23 affirms this determination.

24 (b) On _____, the Planning Commission, in Resolution No. _____,
25 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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