



June 13, 2024

Ms. Angela Calvillo, Clerk  
Honorable Supervisor Peskin  
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 2024-003930PCA:  
Polk Street Neighborhood Commercial District  
Board File No. 240411

**Planning Commission Recommendation: Approval with Modification**

Dear Ms. Calvillo and Supervisor Peskin,

On June 13, 2024, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Peskin. The ordinance would amend the Planning Code to create an exception to allow storefront mergers and large uses for certain Limited Restaurant Uses designated as Legacy Businesses in the Polk Street Neighborhood Commercial District (NCD). At the hearing the Planning Commission recommended approval with modification.

The Commission's proposed modifications were as follows:

1. Remove the prohibition on storefront mergers and rely on the non-residential use size limits to maintain the fine-grained character of the neighborhood.
2. Conditionally permit Use Sizes 2,500 square feet or greater and remove the 4,000 square-foot non-residential Use Size cap.

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission.

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,

A handwritten signature in black ink, appearing to read "Aaron D. Starr". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Aaron D. Starr  
*Manager of Legislative Affairs*

cc: Austin Yang, Deputy City Attorney  
Sunny Angulo, Aide to Supervisor Peskin  
Nate Horrell, Aide to Supervisor Peskin  
John Carroll, Office of the Clerk of the Board

**Attachments :**

Planning Commission Resolution  
Planning Department Executive Summary



# PLANNING COMMISSION RESOLUTION NO. 21572

**HEARING DATE: JUNE 13, 2024**

**Project Name:** Polk Street Neighborhood Commercial District  
**Case Number:** 2024-003930PCA [Board File No. 240411]  
**Initiated by:** Supervisor Peskin / Introduced April 22, 2024  
**Staff Contact:** Veronica Flores, Legislative Affairs  
Veronica.Flores@sfgov.org, 628-652-7525  
**Reviewed by:** Aaron Starr, Manager of Legislative Affairs  
aaron.starr@sfgov.org, 628-652-7533

**RESOLUTION APPROVING WITH MODIFICATION A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO CREATE AN EXCEPTION TO ALLOW STOREFRONT MERGERS AND LARGE USES FOR CERTAIN LIMITED RESTAURANT USES DESIGNATED AS LEGACY BUSINESSES IN THE POLK STREET 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 April 23, 2024 Supervisor Peskin introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 240411, which would Planning Code to create an exception to allow storefront mergers and large uses for certain Limited Restaurant Uses designated as Legacy Businesses in the Polk Street Neighborhood Commercial District;

WHEREAS, the Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on June 13, 2024; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Sections 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 **approves with modifications** the proposed ordinance. The Commission's proposed recommendations are as follows:

1. Remove the prohibition on storefront mergers and rely on the non-residential use size limits to maintain the fine-grained character of the neighborhood.
2. Conditionally permit Use Sizes 2,500 square feet or greater and remove the 4,000 square-foot non-residential Use Size cap.

## 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 proposed Ordinance will support a local, family-run business relocate and expand within the Polk Street NCD.

Zoning should not be based on a specific tenant or Legacy Business status, but in land use policy instead.

## General Plan Compliance

The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

### COMMERCE AND INDUSTRY ELEMENT

#### OBJECTIVE 1

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

##### Policy 1.1

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

##### Policy 1.3

Locate commercial and industrial activities according to a generalized commercial and industrial land use 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.

### Policy 2.3

Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

## 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 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 retaining an existing local, family-owned small business 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. Additionally, the additional flexibility within the Polk Street NCD helps address storefront vacancies and responds to the Commerce and Industry Element's Objective of maintaining a diverse economic base. The proposed Ordinance would conveniently allow a longstanding retail use to remain in the Polk Street NCD. This has net benefits to the neighborhood because this retail use is a source of fiscal and employment benefits.*

*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. Allowing storefront mergers or uses greater than 2,500 square feet through the CUA process provides more business opportunities that otherwise would not be realized. In 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.*

## 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 APPROVES WITH MODIFICATIONS the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on June 13, 2024.



Jonas P. Ionin  
Commission Secretary

**Jonas P Ionin**

Digitally signed by Jonas P Ionin  
Date: 2024.06.13 15:38:10 -07'00'

AYES: So, Braun, Koppel, Diamond

NOES: Williams, Imperial, Moore

ABSENT: None

ADOPTED: June 13, 2024



# EXECUTIVE SUMMARY

## PLANNING CODE TEXT AMENDMENT

**HEARING DATE: June 13, 2024**

**90-Day Deadline: July 31, 2024**

**Project Name:** Polk Street Neighborhood Commercial District  
**Case Number:** 2024-003930PCA [Board File No. 240411]  
**Initiated by:** Supervisor Peskin / Introduced April 22, 2024  
**Staff Contact:** Veronica Flores, Legislative Affairs  
Veronica.Flores@sfgov.org, 628-652-7525  
**Reviewed by:** Aaron Starr, Manager of Legislative Affairs  
aaron.starr@sfgov.org, 628-652-7533  
**Environmental Review:** Not a Project Under CEQA

**Recommendation:** Approval with Modifications

### Planning Code Amendment

The proposed Ordinance would amend the Planning Code to create an exception to allow storefront mergers and large uses for certain Limited Restaurant Uses designated as Legacy Businesses in the Polk Street Neighborhood Commercial District (NCD).

The Way It Is Now:	The Way It Would Be:
Non-Residential Uses generally require Conditional Use Authorization (CUA) for Use Sizes between 2,000 square feet and 3,999 square feet within the Polk Street NCD.	The CUA for Use Size is waived for any Limited Restaurant use that relocates within the Polk Street NCD and is designated as a Legacy Business.
Storefront mergers are generally prohibited within the Polk Street NCD.	In addition to the existing exceptions, a Limited Restaurant use that relocates within the Polk Street NCD and is designated as a Legacy Business may merge storefronts.



## Background

Bob's Donuts and Pastries' (Bob's Donuts) lease at 1621 Polk Street expired and they were unable to renew their lease. They identified a new location one block away at 1720 Polk Street at the former "Lotta's Bakery". The building application for interior renovations for this new space was issued in February 2024 and construction is currently underway to realize their relocation plans. The adjacent storefront at 1722 Polk Street also recently became vacant and the business owners now want to merge the two storefronts to expand their dining area; however, storefront mergers are prohibited within the Polk Street NCD, and the resulting site is greater than the principally permitted Use Size of 2,000 square feet.

### Polk Street NCD

Additional restrictions were recently enacted within the Polk Street and Pacific Avenue NCDs under Ordinance No. 205-17. One amendment in the Polk Street NCD included decreasing the Use Size limit from 2,500 square feet to 2,000 square feet. This was also the same Ordinance which prohibited storefront mergers within the Polk Street NCD. During Department review, staff did not recommend against the 2,000 square feet CUA threshold; however, the department did recommend against the 4,000 square feet cap. In the staff report<sup>1</sup> the Department expressed concerns that a prohibition on larger spaces would eliminate opportunities for larger neighborhood serving retail uses such as grocery or hardware stores. The Planning Commission did not take the staff's recommendations and instead recommended approval with modifications related to other aspects of the legislation.

## Issues and Considerations

### **Polk Street NCD**

The Polk Street NCD spans the Nob Hill, Russian Hill, and Pacific Heights neighborhoods. The NCD extends from Filbert Street to the north through Post Street to the south, with an additional segment along Larkin Street from California Street to Post Street. Polk Street NCD is a dense neighborhood of mixed-use buildings with residential units above ground-floor commercial uses. Polk Street is pedestrian-oriented, focuses on small-scale commercial spaces, and is highly accessible by public transportation.

The Polk Street NCD has strict Non-Residential Use Size limitations, a prohibition on storefront mergers, and a CU requirement to replace existing Legacy Businesses. The proposed Ordinance achieves an approval path for Bob's Donuts proposed expansion by including very specific and tailored exceptions to allow Bob's Donuts to combine storefronts. Additionally, the proposed Ordinance waives the CUA requirement for Use Sizes greater than 2,000 square feet for Bob's Donuts.

### **Recent Amendments to the Polk Street NCD**

Recently, there have been several project and site-specific Planning Code amendments within and outside Polk Street NCD. The need for multiple and often project specific code amendments suggesting the need for a more holistic look at the regulation in our NCDs. Most recently, an exception was created in Polk Street NCD to allow for a storefront merger if it was for a Legacy Business General Grocery being replaced by another General Grocery

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<sup>1</sup> [Case No. 2017-005182PCA](#)

expanding into a building on the same lot. This was specifically adopted for Bi-Rite to be able to expand their business at 2140 Polk Street. The Planning Commission heard this Ordinance on December 1, 2022 and recommended approval with modifications (see [Case No. 2022-009701PCA](#)). The Commission suggested broadening the amendments so that other businesses may benefit too. The subject ordinance highlights similar issues raised less than two years ago and strengthens the rationale for the Planning Commission's recommended modifications at that time.

Another recent relocation example includes the Jugg Shop, a Liquor Store previously located at 1590 Pacific Avenue proposed for demolition. The Jugg Shop temporarily relocated to 1648 Pacific Avenue, with the intention of operating out of this location until the mixed-use development project at 1590 Pacific Avenue is complete. Unlike some other districts, Liquor Stores require a CUA within the Polk Street NCD. To provide a seamless transition for the Jugg Shop, legislation was introduced to waive the CUA requirement for a Liquor Store temporarily relocating within the district during a major capital improvement.<sup>2</sup> The same Ordinance also waived the CUA to reestablish the Liquor Store at the original location once the capital improvement project was complete. The Planning Commission heard this item on May 13, 2021 and recommended creating a Temporary Use Authorization for qualifying Uses, rather than specifically tying the exception only to Liquor Stores (see [Case No. 2021-002990PCA](#)). Portions of this recommendation were incorporated into a duplicate file: Board File No. 210562; however, this duplicate Ordinance was filed pursuant to Board Rule 3.41 due to inactivity and the Planning Commission's broader recommended modifications were never implemented.

### Storefront Mergers

Storefront mergers are generally allowed provided the resulting Use Size is permitted within the zoning district.; however, storefront mergers are prohibited in the Polk Street NCD. The North Beach NCD/SUD is the only other district that also prohibits storefront mergers. This is intended to retain fine-grain, small storefronts in the respective districts; however most other districts accomplish this with non-residential use-size limits. Two other districts currently require CUAs for storefront mergers resulting in a certain size or larger. One district is the Calle 24 Special Use District (SUD), which requires a CUA for storefront mergers that would result in a first story commercial space greater than 799 gross square feet. Until very recently, the Mission Street NCT prohibited storefront mergers resulting in a combined storefront greater than 1,500 square feet. The Mission Street NCT now allows storefront mergers resulting in a combined storefront greater than 1,500 square feet with a CUA.<sup>3</sup>

### Use Size Limits

Non-residential Use Size limits in NCDs are listed in Sec. 121.2. Uses proposing a Use Size greater than these listed limits are required to submit a CUA request. Polk Street has a particularly small principally permitted Use Size limit of 2,000. Only a few other districts include this same limit, including Castro Street, North Beach, and Pacific Avenue. All other districts principally permit Use Sizes up to 2,500 square feet or greater. Further, the Polk Street NCD recently implemented a hard cap of 4,000 square feet under Ordinance No. 205-17. This means that Uses proposing a Use Size greater than 4,000 square feet are not allowed to make the request for a larger space within the Polk St NCD, even if there are extenuating circumstances.

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<sup>2</sup> [Ordinance No. 76-21](#).

<sup>3</sup> [Ordinance No. 249-23](#).

This hard cap has created barriers in filling large spaces even when there is interest in filling the vacant storefront. A prime example of this is the former Lombardi Sports (Lombardi) storefront at 1600 Jackson Street, which has been vacant for about 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 Supervisor's Office and the Planning Department; however, those proposals never came to fruition because the proposed use was unable to fill the large space or was Formula Retail use. Alternatively, this space could be subdivided into smaller commercial spaces. Yet, because there is an absolute Use Size limit of 4,000 square feet, each subdivided tenant space would need to be 4,000 square feet or smaller.

### Nonconforming Use Size

The former Lombardi space has a legal, nonconforming Use Size since it is larger than 4,000 square feet. A legal, nonconforming Use Size may remain in perpetuity if the Use Size is not intensified or enlarged; however, this nonconformity only applies to one Use Size, not to all Uses on the parcel. In the example of the former Lombardi space, the nonconforming Use Size can remain in place, but only for one tenant space. If the property owner were to subdivide the existing space into multiple tenant spaces, all other Uses would need to comply with the Code requirements. For the Polk Street NCD, only one of the resulting tenant spaces could result in a space larger than 4,000 square feet; however, it has been difficult to attract enough small businesses to subdivide the large space into smaller code-complying spaces all at once.

### **Legacy Businesses**

In 2013, San Francisco Heritage created an online guide of "Legacy Bars and Restaurants" which highlighted iconic establishments that contribute to the culture, character, and lore of San Francisco. This guide included 100 restaurants and bars that had been in business for at least 40 years, possessed distinctive architecture or interior design, and/or contributed to a sense of history in the surrounding neighborhood. This initiative also promoted businesses that have been local institutions, but do not qualify for formal historic designation.

The [Legacy Business Registry](#) was first created in March 2015. To be eligible, businesses must be at least 30 years old, have been nominated by a member of the Board of Supervisors or Mayor, and appear in front of the Small Business Commission to prove they have made a significant impact on the history or culture of their neighborhood. If a Legacy Business closes, they remain on the Registry for four years after closing.

In response to the increasing number of small business closures and escalating commercial rents, then Supervisor Campos formalized the "Legacy Bars and Restaurants" initiative, which ultimately transformed into the Legacy Business Program as we know it today. As commercial rents continue to rise, protecting small businesses and preserving these Legacy Businesses from displacement is even more imperative. One way to do so is to discourage landlords from evicting Legacy Businesses to replace them or develop the site into other, potentially more lucrative, uses. Some NCDs, including the Polk Street NCD, have an additional layer of protection for Legacy Businesses by requiring a CUA to remove or replace a Legacy Business. The Office of Small Business offers further protection by providing relocation assistance for Legacy Businesses that decide to close their physical location but keep their business registration open.

The Department recognizes the importance of Legacy Businesses and the efforts to honor local establishments contributing to the San Francisco culture; however, rules or exceptions contingent on Legacy Business status

bases zoning on specific businesses, not land use policy. The Department does not want to discount Legacy Businesses' contributions to San Francisco and fully support Bob's Donuts' application to become a Legacy Business; however, it is important to highlight that zoning should be based on how different land uses are (or are not) compatible with each other in any given neighborhood.

### Bob's Donuts

Bob's Donuts recently submitted a Legacy Business application to the Office of Small Business. The Historic Preservation Commission heard the Legacy Business application on June 5, 2024 and adopted a resolution to recommend approval. This application is also scheduled to appear in front of the Small Business Commission on June 24, 2024. Staff anticipates that Bob's Donuts will be officially listed on the Legacy Business Registry shortly thereafter.

### **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 retaining an existing local, family-owned small business 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. Additionally, the additional flexibility within the Polk Street NCD helps address storefront vacancies and responds to the Commerce and Industry Element's Objective of maintaining a diverse economic base. The proposed Ordinance would conveniently allow a longstanding retail use to remain in the Polk Street NCD. This has net benefits to the neighborhood because this retail use is a source of fiscal and employment benefits.

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. Allowing storefront mergers or uses greater than 2,500 square feet through the CUA process provides more business opportunities that otherwise would not be realized. 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.

### **Implementation**

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

### **Recommendation**

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

1. Remove the prohibition on storefront mergers and rely on the non-residential use size limits to maintain the fine-grained character of the neighborhood.
2. Conditionally permit Use Sizes 2,500 square feet or greater and remove the 4,000 square-foot non-residential Use Size cap.

### **Basis for Recommendation**

The Department endorses this proposed Ordinance which will facilitate Bob's Donuts' relocation and storefront merger plans. The Department cautions this is another site/project-specific amendment based on a tenant and Legacy Business status, not land use policy. The Department recognizes the proposed Ordinance supports a local, family-owned and operated business and that Bob's Donuts is in the process of attaining Legacy Business status. The Department supports allowing this exception to assist Bob's Donuts in their expansion plans; however, the Department believes some Polk Street NCD controls should be reconsidered in a post-pandemic context. Further, the Department believes that a business like Bob's, regardless of its Legacy Business status, should be allowed as of right in all of our NCDs. As such, the Department suggests taking a more wholistic view on the neighborhood context, rather than singling out this one business. This approach would hopefully reduce the number of barriers to fill storefront vacancies. Therefore, the Department recommends the following modifications:

#### **Recommendation 1: Remove the prohibition on storefront mergers and rely on the non-residential use size limits to maintain the fine-grained character of the neighborhood.**

Currently, only one other district prohibits storefront mergers, and two other districts require a CUA for storefront mergers resulting in a certain size or greater. The vast majority of the over 50 neighborhood commercial districts in San Francisco do not require a CUA for storefront mergers. Instead, these districts rely on non-residential use size limits to maintain neighborhood scale. The Department strongly believes that a business like Bob's Donuts, a small, Non-Formula Retail bakery of less than 2,500 square feet, should be principally permitted regardless of what neighborhood commercial district it chooses to locate. Further, such a business should be able to establish within an NCD regardless of its legacy business status. New businesses should also have the opportunity to add vibrancy to our commercial corridors.

The current storefront merger prohibition has already created barriers for prospective businesses within the Polk Street NCD. This is the second storefront merger exception created within the district in the past two years. The Planning Commission recommended allowing storefront mergers for General Grocery Stores up to 5,000 square feet. The Commission recommendation was focused only on General Grocery, but the intent was to broaden the proposed amendment so that other businesses may also benefit. That intent also applies here keeping with the general scale of the neighborhood. The CUA process for Non-Residential Use Size limits already allows the Planning Commission and the public to vet larger commercial spaces through a public forum.

#### **Recommendation 2: Conditionally permit Use Sizes 2,500 square feet or greater and remove the 4,000 square-foot non-residential Use Size cap.**

The Department recommends increasing the Use Size limit within the Polk Street NCD back to 2,500 square feet with a CUA. Most other NCDs have principally permitted Use Sizes of 2,500 square feet or greater. Only Castro, North Beach, Pacific Avenue, and Polk Street NCDs are 2,000 square feet. Increasing the principally permitted Use Size to 2,500 square feet still yields smaller storefronts and provides an avenue for other uses to make a request

for larger spaces. Bob's Donuts' proposed project would result in a combined commercial storefront of 2,400 square feet. This Use Size in and of itself is principally permitted in the majority of other NCDs.

The Department notes that the Polk Street NCD Use Size limitations were previously 2,500 square feet. This was reduced to 2,000 square feet in 2017.<sup>4</sup> At the time, the Department did not recommend against the 2,000 square feet CUA threshold, but we did recommend against the 4,000 square feet cap. This was also the same Ordinance that prohibited storefront mergers within the Polk Street NCD. Had that Ordinance not been enacted, the proposed Use Size and storefront merger for Bob's Donuts' relocation would not be an issue today. In fact, the permit could have been approved over the counter already. The additional restrictions within Polk Street NCD create undue barriers and challenges for businesses opening, relocating, or expanding within the district.

This recommendation would also eliminate the absolute Use Size limit of 4,000 square feet. If incorporated, this recommended modification also provides more flexibility within the Polk Street NCD afforded to other districts without this cap. A direct example of issues resulting from the hard cap of 4,000 square feet is the former Lombardi location at 1600 Jackson Street. Lombardi closed about ten years ago and still sits vacant today. One of the difficulties in filling this vacant storefront is the sheer size of the space. The obvious alternative is to subdivide the large space into smaller commercial spaces to attract more businesses; however, the Use Size limit of 4,000 square feet presents its own challenges.

The 32,000 square feet space is a legal, nonconforming space because it existed prior to the 4,000 square feet hard cap. This means that if the space is subdivided, only one subdivided space can remain more than 4,000 square feet. For example, if you had two tenants that both wanted a 16,000 square-foot space, this would not be permitted because only one commercial space can remain legal non-conforming. It is difficult to subdivide the large space without knowing the full lineup of what tenants would fill the space and when. Further, under current restrictions, if the property owner subdivided the large storefront into smaller spaces of 4,000 square feet or less, they would not be able to reestablish a legal, nonconforming Use Size in the future. Depending on the future tenant, a larger space may be of interest and could anchor this corner. If this hard cap were eliminated, there would be more flexibility for this property and others within the district.

## **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 Sections 15378 and 15060(c)(2) because they do not result in a physical change in the environment.

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<sup>4</sup> [Ordinance No. 205.17](#).

## 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: Board of Supervisors File No. 240411



# PLANNING COMMISSION DRAFT RESOLUTION

**HEARING DATE: June 13, 2024**

**Project Name:** Polk Street Neighborhood Commercial District  
**Case Number:** 2024-003930PCA [Board File No. 240411]  
**Initiated by:** Supervisor Peskin / Introduced April 22, 2024  
**Staff Contact:** Veronica Flores, Legislative Affairs  
Veronica.Flores@sfgov.org, 628-652-7525  
**Reviewed by:** Aaron Starr, Manager of Legislative Affairs  
aaron.starr@sfgov.org, 628-652-7533

**RESOLUTION APPROVING WITH MODIFICATION A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO CREATE AN EXCEPTION TO ALLOW STOREFRONT MERGERS AND LARGE USES FOR CERTAIN LIMITED RESTAURANT USES DESIGNATED AS LEGACY BUSINESSES IN THE POLK STREET 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 April 23, 2024 Supervisor Peskin introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 240411, which would Planning Code to create an exception to allow storefront mergers and large uses for certain Limited Restaurant Uses designated as Legacy Businesses in the Polk Street Neighborhood Commercial District;

WHEREAS, the Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on June 13, 2024; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Sections 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 **approves with modifications** the proposed ordinance. The Commission's proposed recommendations are as follows:

1. Remove the prohibition on storefront mergers and rely on the non-residential use size limits to maintain the fine-grained character of the neighborhood.
2. Conditionally permit Use Sizes 2,500 square feet or greater and remove the 4,000 square-foot non-residential Use Size cap.

## 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 proposed Ordinance will support a local, family-run business relocate and expand within the Polk Street NCD.

Zoning should not be based on a specific tenant or Legacy Business status, but in land use policy instead.

## General Plan Compliance

The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

### COMMERCE AND INDUSTRY ELEMENT

#### OBJECTIVE 1

**MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.**

##### Policy 1.1

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

##### Policy 1.3

Locate commercial and industrial activities according to a generalized commercial and industrial land use 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.

### Policy 2.3

Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

## 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 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 retaining an existing local, family-owned small business 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. Additionally, the additional flexibility within the Polk Street NCD helps address storefront vacancies and responds to the Commerce and Industry Element's Objective of maintaining a diverse economic base. The proposed Ordinance would conveniently allow a longstanding retail use to remain in the Polk Street NCD. This has net benefits to the neighborhood because this retail use is a source of fiscal and employment benefits.*

*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. Allowing storefront mergers or uses greater than 2,500 square feet through the CUA process provides more business opportunities that otherwise would not be realized. In 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.*

## 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 APPROVES WITH MODIFICATIONS the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on June 13, 2024

Jonas P. Ionin  
*Commission Secretary*

AYES:

NOES:

ABSENT:

ADOPTED: June 13, 2024

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1 [Planning Code - Polk Street Neighborhood Commercial District]

2

3 **Ordinance amending the Planning Code to create an exception to allow storefront**  
 4 **mergers and large uses for certain Limited Restaurant Uses designated as Legacy**  
 5 **Businesses in the Polk Street Neighborhood Commercial District; affirming the**  
 6 **Planning Department's determination under the California Environmental Quality Act;**  
 7 **making findings of consistency with the General Plan, and the eight priority policies of**  
 8 **Planning Code, Section 101.1; and making findings of public necessity, convenience,**  
 9 **and welfare under Planning Code, Section 302.**

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

14

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

16

Section 1. Environmental and Land Use Findings.

17

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

22

23 (b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_,  
 24 adopted findings that the actions contemplated in this ordinance are consistent, on balance,  
 25 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The

1 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of  
2 the Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.

3 (c) Pursuant to Planning Code Section 302, this Board finds that the Planning Code  
4 amendments in this ordinance will serve the public necessity, convenience, and welfare for  
5 the reasons set forth in Planning Commission Resolution No. \_\_\_\_\_ and the Board  
6 incorporates such reasons herein by reference.

7 (d) The Polk Street NC District (District) has an active, pedestrian-oriented, and  
8 continuous commercial frontage along Polk Street that features small-scale commercial  
9 business.

10 (e) The District has remained largely vibrant during a time when many brick and mortar  
11 businesses have been impacted by economic difficulties.

12 (f) The Legacy Business Program helps preserve local small businesses by providing  
13 assistance to businesses that have been long-standing pillars of our community through  
14 marketing, business assistance, and specialized grants. Legacy Businesses do not need to  
15 remain in their original location.

16 (g) It is reasonable to facilitate relocation of certain Legacy Businesses within the  
17 District. Allowing certain Legacy Businesses allows the businesses to move to more  
18 advantageous locations, and potentially expand their operations. Relaxing certain zoning  
19 standards to permit the relocation of certain Legacy Businesses within the District also  
20 provides assistance during challenging economic times.

21 (h) The District generally prohibits merging storefronts, and places limitations on use  
22 sizes to preserve the district's small-scale, fine grain storefronts, however several narrowly  
23 defined exemptions exist.

24 (i) This legislation adds an additional narrow exemption to the controls in the District to  
25 facilitate the relocation of a Legacy Business. The exemption will allow a limited restaurant

1 Legacy Business to relocate and merge a storefront to continue as a neighborhood serving  
2 business.

3

4 Section 2. Articles 1.2 and 7 of the Planning Code are hereby amended by revising  
5 Sections 121.2 and 723, to read as follows:

6 **SEC. 121.2. NON-RESIDENTIAL USE SIZE LIMITS IN NEIGHBORHOOD**  
7 **COMMERCIAL AND NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICTS.**

8 (a) In order to protect and maintain a scale of development appropriate to each  
9 district, Non-Residential Uses of the same size or larger than the square footage stated in the  
10 table below may be permitted only as Conditional Uses. The use area shall be measured as  
11 the Gross Floor Area for each individual Non-Residential Use.

District	Use Size Limits
Castro Street	2,000 sq. ft.
North Beach	
Pacific Avenue	
Polk Street*	
* * * *	

12  
13  
14  
15  
16  
17  
18 *\* Conditional Use not required for any Limited Restaurant use that relocates within the Polk*  
19 *Street NCD, and is designated as a Legacy Business as of the effective date of the ordinance in Board*  
20 *File No. \_\_\_\_\_.*

21 **SEC. 723. POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**

22 (a) **Background.** Sitting in the gulch between Nob and Russian Hills and Pacific  
23 Heights, the Polk Street Neighborhood Commercial District extends for a mile as a north-  
24 south linear strip, and includes a portion of Larkin Street between Post and California Streets.  
25 Polk Street’s dense mixed-use character consists of buildings with residential units above



1 ground-story commercial use. The district has an active, pedestrian-oriented, and continuous  
2 commercial frontage along Polk Street for almost all of its length. Larkin Street and side  
3 streets in the district have a greater proportion of residences than Polk Street itself. California  
4 Street and Hyde Street also have active, pedestrian-oriented, and commercial frontage that is  
5 small-scale. The district is well served by transit and includes the historic California Cable Car.  
6 To preserve and maintain the district’s small-scale, fine grain storefronts, the consolidation or  
7 merger of existing retail or commercial spaces or storefronts is generally prohibited and lot  
8 mergers are controlled. The district provides convenience goods and services to the  
9 residential communities in the Polk Gulch neighborhood and to the residents on the west  
10 slopes of Nob and Russian Hills. It has many apparel and specialty stores, as well as some  
11 automobile uses, which serve a broader trade area. Commercial uses also include offices, as  
12 well as movie theaters, restaurants, and bars which keep the district active into the evening.

13 (b) **Controls.**

14 \* \* \* \*

15 (3) **Merger of Storefronts Prohibited.** To preserve and maintain the district’s  
16 small-scale, fine grain storefronts, the consolidation or merger of existing ground floor retail or  
17 commercial spaces or storefronts shall be prohibited, except that two adjacent storefronts may  
18 be consolidated or merged if: (A) the storefronts are for a Legacy Business on a corner lot  
19 within the same building and Block and Lot number, and provided that the consolidation or  
20 merger of storefronts would not result in a use size in excess of the principally permitted use  
21 size within the Polk Street NCD, ~~or~~ (B) the storefronts are merged by a General Grocery use  
22 in association with the replacement of a Legacy Business that is also a General Grocery use,  
23 and the expansion of the General Grocery use is within a building on the same Lot, and is  
24 consistent with the size limitations in Section 121.2, or (C) the storefronts are merged by a Limited  
25

1 Restaurant use that relocates within the Polk Street NCD, and is designated as a Legacy Business as of  
 2 the effective date of the ordinance in Board File No. \_\_\_\_\_.

3 \* \* \* \*

4 **Table 723. POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT**  
 5 **ZONING CONTROL TABLE**

				Polk Street NCD	
Zoning Category		§ References	Controls		
<b>NON-RESIDENTIAL STANDARDS AND USES (7)</b>					
* * * *					
				<b>Controls by Story</b>	
			<b>1st</b>	<b>2nd</b>	<b>3rd+</b>
* * * *					
<b>Sales and Service Use Category</b>					
<b>Retail Sales and Service Uses*</b>		§§ 102, 202.2(a), 202.3	P	P	NP
* * * *					
Restaurant, Limited		§§ 102, <u>121.2,</u> 202.2(a)	P <u>(2)</u>	P	NP

21 \* \* \* \*

22 (2) USE SIZE EXEMPTION: Per Planning Code Section 121.2(a), a Conditional Use  
 23 Authorization is not required for any Limited Restaurant use that relocates within the Polk Street NCD,  
 24 and is designated as a Legacy Business as of the effective date of the ordinance in Board File No. \_\_\_\_\_.

25 Per Planning Code Section 121.2(b), Use Size shall generally not exceed 4,000 square feet

