



SAN FRANCISCO PLANNING DEPARTMENT

November 29, 2016

Ms. Angela Calvillo, Clerk
Honorable Supervisor Wiener
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

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**Re: Transmittal of Planning Department Case Number 2014.1267T:
Fees in Lieu of Open Space in the Downtown
Support Special Use District Board File No. 140877-2
Planning Commission Recommendation: *Approval with modifications***

Dear Ms. Calvillo and Supervisor Kim,

On November 17, 2016, the Planning Commission conducted duly noticed public hearings at regularly scheduled meetings to consider the proposed Ordinance that would amend the Planning Code to amend the Downtown Support Special Use District to authorize a monetary contribution (in lieu fee) to the requirements for privately-owned public open space (POPOS), exclude certain features from floor area ratio and gross floor area calculations, and dedicate the monetary contribution for lighting and safety improvements at Victoria Manolo Draves Park.

The Commission recommends approval of the proposed Ordinance with the following modifications:

1. Clarify that all development impact fees typically due in relation to increased Floor Area Ratio (FAR) should be paid by the project sponsor.
2. Replace the proposed findings authorizing the in lieu fee payment with more limited findings to discourage additional property owners from proposing privatization of additional, existing POPOS. Specifically, the Commission recommends the following findings:
"While the Board holds that maintaining the public nature of POPOS spaces are the responsibility of the property owner, in this case the Board finds and determines the following:
 - a) that the Commission's original approval noted the poor quality of the open space;
 - b) that alternative, suitable open space sites cannot be acquired within the neighborhood of the project; and
 - c) that improvements to the quality of the existing open space are neither feasible nor appropriate; and
 - d) that while the City should always strive to maintain requirements associated with development approvals, in this instance the alternative in-lieu payment provides greater public benefit than the original open space requirement."

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c)(2) and 15378 because they do not result in a physical change in the environment.

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,

AnMarie Rodgers
Senior Policy Advisor

cc:
Jon Givner, Deputy City Attorney
April Ang, Aide to Supervisor Kim

Attachments:
Planning Commission Resolution
Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 19779

HEARING DATE: NOVEMBER 17, 2016

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Project Name: Fees in Lieu of Open Space in the Downtown
Support Special Use District
Case Number: 2014.1267T [Board File No. 140877-2]
Initiated by: Supervisor Kim/ V1 Introduced on July 29, 2014
V2 Introduced on July 29, 2016
Reviewed by: AnMarie Rodgers, Senior Policy Advisor
anmarie.rodgers@sfgov.org, 415-558-6395
Recommendation: Recommend Approval, with Modifications

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO AMEND THE DOWNTOWN SUPPORT SPECIAL USE DISTRICT TO AUTHORIZE A MONETARY CONTRIBUTION (IN LIEU FEE) TO THE REQUIREMENTS FOR PRIVATELY-OWNED PUBLIC OPEN SPACE (POPOS), EXCLUDE CERTAIN FEATURES FROM FLOOR AREA RATIO AND GROSS FLOOR AREA CALCULATIONS, AND DEDICATE THE MONETARY CONTRIBUTION FOR LIGHTING AND SAFETY IMPROVEMENTS AT VICTORIA MANOLO DRAVES PARK; AFFIRM THE PLANNING DEPARTMENT'S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; AND MAKE FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE SECTION 101.1, AND FINDINGS OF PUBLIC NECESSITY, CONVENIENCE, AND WELFARE UNDER PLANNING CODE SECTION 302.

WHEREAS, on July 29, 2014 and July 29, 2016 Supervisor Kim introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 140877, amend the Downtown Support Special Use District to authorize a monetary contribution (in lieu fee) to the requirements for Privately-Owned Public Open Space (POPOS), exclude certain features from floor area ratio and gross floor area calculations, and dedicate the monetary contribution for lighting and safety improvements at Victoria Manolo Draves Park; and

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on November 17, 2016; and

WHEREAS, the proposed Ordinance has been determined to be not defined as a project under California Environmental Quality Act ("CEQA") Guidelines Section 15378 and 15080(c)(2) because it does not result in a physical change in the environment; 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 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve with modifications** the proposed ordinance. Specifically, the Commission recommends the following modifications:

1. Clarify that all development impact fees typically due in relation to increased Floor Area Ratio (FAR) should be paid by the project sponsor.
2. Replace the proposed findings authorizing the in lieu fee payment with more limited findings to discourage additional property owners from proposing privatization of additional, existing POPOS. Specifically, the Commission recommends the following findings:
"While the Board holds that maintaining the public nature of POPOS spaces are the responsibility of the property owner, in this case the Board finds and determines the following:
 - a. that the Commission's original approval noted the poor quality of the open space;
 - b. that alternative, suitable open space sites cannot be acquired within the neighborhood of the project; and
 - c. that improvements to the quality of the existing open space are neither feasible nor appropriate; and
 - d. that while the City should always strive to maintain requirements associated with development approvals, in this instance the alternative in-lieu payment provides greater public benefit than the original open space requirement."

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:

1. The Commission's strong preference is to not allow a project sponsor to opt out of providing onsite usable open space by paying an in-lieu fee. This preference to uphold open space and POPOS requirements is held both during the original approvals and is maintained against retroactive in-lieu payments.
2. The open space requirement in Planning Code Section 138 helps ensure that there is suffice open space for people who live and work in the downtown area. This concept was pioneered by the Downtown Plan and remains critical to a functional high-density district.
3. These specific elevated terraces within the Intercontinental Hotel that were created to satisfy the POPOS requirement were noted by the Commission to be subpar at the approval hearing. The Intercontinental Hotel has complicated the matter by closing the POPOS to hold private events from time to time. The Planning Department has an active enforcement complaint dating back to

3/13/2008 for "Failure to abide by Conditions of Approval per Motion No. #16421 for the following: Open Space, Pedestrian Streetscape Improvements, Childcare Requirement, G. First Source Hiring: Occupancy Program".

4. That said, the Victoria Manalo Draves Park provides the community with accessible amenities for both active and passive recreation. Given that the park is open from 5am to midnight, lighting and safety improvements at this park could offer the community a more usable resource than the maintenance of the elevated terraces as open spaces.
5. Supervisor Kim's Office reports that although this park is popular for residents there is a strong desire for longer hours and enhanced safety. For more than two years, the project sponsor worked with the Supervisors office and Planning Department staff to find space for the creation of a new park. Unfortunately, no suitable space could be found.
6. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

DOWNTOWN AREA PLAN

OBJECTIVE 9

PROVIDE QUALITY OPEN SPACE IN SUFFICIENT QUANTITY AND VARIETY TO MEET THE NEEDS OF DOWNTOWN WORKERS, RESIDENTS, AND VISITORS.

Policy 9.1

Require usable indoor and outdoor open space, accessible to the public, as part of new downtown development.

Policy 9.2

Provide different kinds of open space downtown.

Policy 9.3

Give priority to development of two categories of highly valued open space; sunlit plazas and parks.

Policy 9.5

Improve the usefulness of publicly owned rights-of-way as open space.

Policy 10.3

Keep open space facilities available to the public.

Policy 10.4

Provide open space that is clearly visible and easily reached from the street or pedestrian way.

Policy 10.5

Address the need for human comfort in the design of open spaces by minimizing wind and maximizing sunshine.

The proposed Ordinance will exchange an ill-designed Privately-Owned Public Open Space for improvements to a highly valued and sunlit park. The Department, the District Board Member, and the Project Sponsor searched unsuccessfully for two years for an opportunity to purchase land for a new park and/or improve a publically owned right-of-way. After much deliberation, the Commission has determined that the in lieu payment has been determined to provide more public benefit than non-visible, aboveground terraces.

RECREATION & OPEN SPACE ELEMENT

Policy 1.4

Maintain and repair recreational facilities and open spaces to modern maintenance standards.

Policy 1.10

Ensure that open space is safe and secure for the City's entire population.

Policy 1.11

Encourage private recreational facilities on private land that provide a community benefit, particularly to low and moderate-income residents.

The proposed Ordinance will result in a net loss of open space and a loss of open space on private land. That said, the Commission has determined that more public benefit will result from safety and upkeep improvements to a park well-loved by residents, particularly low and moderate-income residents.

7. **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.

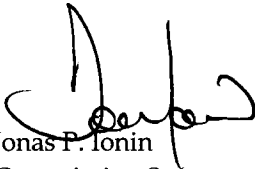
8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas. The proposed Ordinance will exchange an ill-designed Privately-Owned Public Open Space for improvements to a highly valued and sunlit park. The Department, the District Board Member, and the Project Sponsor searched unsuccessfully for two years for an opportunity to purchase land for a new park and/or improve a publically owned right-of-way. After much deliberation, the Commission has determined that the in lieu payment has been determined to provide more public benefit than non-visible, aboveground terraces. The proposed Ordinance will result in a net loss of open space and a loss of open space on private land. That said, the Commission has determined that more public benefit will result from safety and upkeep improvements to a park well-loved by residents, particularly low and moderate-income residents.

8. **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 recommends that the Board ADOPT the proposed Ordinance, with modifications as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on November 17, 2016



Jonas P. Ionin
Commission Secretary

AYES: Fong, Johnson, Hillis, Koppel, Richards, Melgar, Moore

NOES: None

ABSENT: None

ADOPTED: November 17, 2016



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change HEARING DATE: NOVEMBER 17, 2016

Project Name: Fees in Lieu of Open Space in the Downtown Support Special Use District

Case Number: 2014.1267T [Board File No. 140877-2]

Initiated by: Supervisor Kim/ V1 Introduced on July 29, 2014
V2 Introduced on July 29, 2016

Reviewed by: AnMarie Rodgers, Senior Policy Advisor
anmarie.rodgers@sfgov.org, 415-558-6395

Recommendation: **Recommend Approval, with Modifications**

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PLANNING CODE AMENDMENT

Supervisor Kim introduced the first version of this proposed Ordinance in 2014. This case report focuses on the current draft, Version 2 which was introduced on July 29, 2016. This Version 2 of the proposed Ordinance would amend the Downtown Support Special Use District to authorize a monetary contribution (in lieu fee) for the Privately-Owned Public Open Space (POPOS) requirements; would exclude certain features from floor area ratio and gross floor area calculations; and would dedicate the monetary contribution for lighting and safety improvements at Victoria Manolo Draves Park. This ordinance would also make the standard affirmations of the Planning Department's California Environmental Quality Act determination; and findings of consistency with the General Plan and the eight priority policies of Planning Code as described in Section 101.1.

The Way It Is Now:

1. The Downtown Support Special Use District (DS-SUD), Planning Code Section 247, was established in order to allow a certain area within the C-3-S (Downtown, Support) District to be able to be developed for hotel use with an increased basic floor area ratio of 7.5 to 1 (see Exhibit C for map). The standard FAR in C-3-S is 5.0 to 1.
2. Section 138 establishes requirements for Privately-Owned Public Open Space (POPOS). The DSSUD does not currently allow property owners to pay a fee in lieu of the open space required in Section 138.
3. Per Section 102.9(b)(9) of the Planning Code, balconies, porches, roof decks, terraces, courts and similar features are exempt from FAR calculations provided that they are open to the sky.

The Way It Would Be:

The proposed legislation would:

1. Rename the Downtown Support Special Use District (DS-SUD) to the Downtown Support Open Space Demonstration Special Use District (DSOSD-SUD).

2. Allow the project sponsor of 888 Howard Street to make a payment of \$2.5 million in lieu of providing terraces on the 4th and 6th floors that were required POPOS as part of the 2002 entitlement of the hotel.
3. Allow balconies, porches, roof decks, terraces, courts and similar features to still be exempt from FAR calculations even if this space is covered by a retractable canopy and support structures. This space would still be used to calculate Gross Floor Area where fees are concerned.

ISSUES AND CONSIDERATIONS

Intercontinental Hotel

This Ordinance is being proposed because of the difficulty that the Intercontinental Hotel has experienced in maintaining its requirements for Privately-Owned Public Open Space (POPOS), consistent with the project's conditions of approval. Located at 888 Howard Street, the Intercontinental Hotel was approved by the Planning Commission on June 6, 2002. The proposal approved by the Commission was to remove the existing 100-space parking lot and construct a 31-story hotel building, approximately 320 feet tall, with approximately 430,000 gross square feet, and 572 guest rooms. The project included up to 30,000 square feet of below-grade parking (space for 73 cars or approximately 115 if operated on a valet basis) and a second below-grade level for mechanical equipment and storage. The proposed project provided approximately 12,600 square feet of publicly-accessible open space in the form of two terraces, one on the 3rd floor and one on the 5th floor, located between the 31-story hotel tower and the adjacent 7-story building. The 3rd floor terrace contains approximately 7,430 square feet and the 5th floor terrace contains approximately 5,170 square feet. At the time of approval, the newly-formed DS-SUD enabled in lieu payments to satisfy requirements of public art and open space. A public art fee payment was made to San Francisco Museum and Historical Society for approximately \$1.2 M to go toward the payment of the preservation of a Landmark Building in the C-3 and an additional payment to supplement the project's open space provision was made to Friends of Mint Plaza with a \$194,000 payment, which helped enable the creation of Mint Plaza.

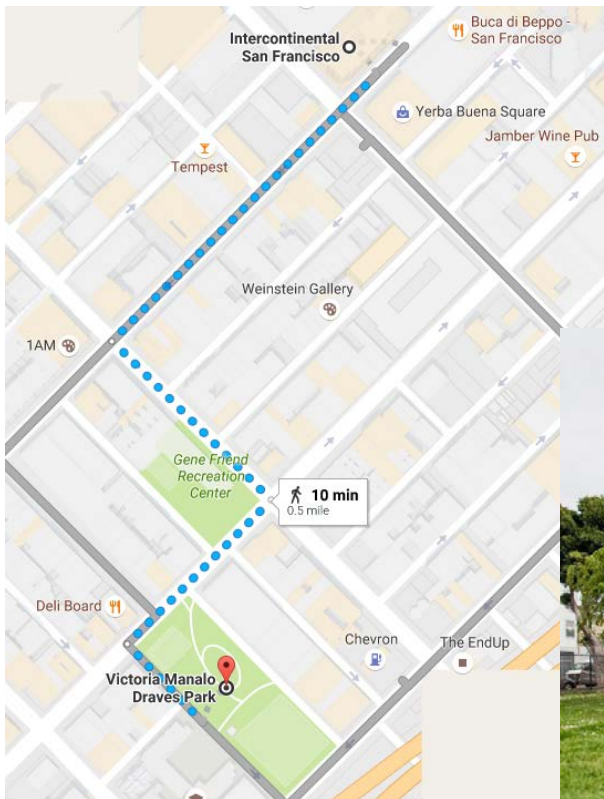
According to the motion, the Planning Code requirements for the hotel's POPOS equaled approximately 8,600 square feet. That said, the Commission's resolution (Motion No. 16421) recorded that "although the area proposed (12,6000 square feet total) is approximately 4000 square feet greater than the minimum required (8600 square feet)" the Commission had considerable "concerns about the utility and quality of the terraces" adding that "in San Francisco's climate, shaded open spaces are much less desirable than those that receive direct sunlight". For this reason the Motion continued,

*"The Commission therefore requires, as a condition of approval, that the Project Sponsor provide, in addition to the 12,600 square feet of space on the two terraces, an additional 4,000 square feet of open space pursuant to Section 138 and the Guidelines for Downtown Open Space." See Conditions of Approval 5.B and 6.A in this Motion. With this additional 4000 square feet of open space the Commission finds that, on balance, the proposed publicly-accessible open spaces, including the terraces on the 3rd and 5th floors of the hotel, comply with Section 138 of the Planning Code and the *Guidelines for Downtown Open Space* in the Downtown Area Plan."*

The additional 4000 sf referenced in this motion was the creation of Mint Plaza, funded by a \$194,000 payment by the hotel's project sponsor.



Existing Terraces on the Intercontinental Hotel at 888 Howard Street. The proposed Ordinance would surrender the POPOS requirement in exchange for a payment to the Recreation & Parks Department for improvements at Victoria Manolo Draves Park.



Victoria Manalo Draves Park. This park, newly opened in 2006, lies between Folsom, Harrison, 6th and 7th Streets. The park offers a playground, softball field, basketball court, community garden, open lawn and picnic areas and is about a 10 minute walk from the Intercontinental Hotel.

Review & Required Findings

The 2014 version of the proposed legislation would have only authorized in-lieu payments and exempted the enclosure of the terraces from FAR limits after findings were made by the Planning Commission. This second 2016 version of the proposed Ordinance authorizes the payment through the legislation without specific approval of the Planning Commission. In the 2014 version of the proposed Ordinance, the Commission may make this determination if the project meets one or more of the following reasons:

- a) the development site has physical constraints;
- b) an existing open space has proven to be little-used;
- c) the project cannot provide safe, convenient access to the public;
- d) the square footage of open space is not sufficient to provide a usable open space; or
- e) such additional reasons as the Commission may determine.

In the revised 2016 version of the proposed Ordinance, the Planning Commission would *not* review the project after enactment of the proposed Ordinance. This Second Version of the Ordinance does require the Board of Supervisors to make the following findings:

- a) the existing open space is cold and shadowed and will have increased shadow when the 5M project across the street is constructed;
- b) the terraces are physically constrained; and
- c) the terraces have been proven to be little used as open space and present s a safety concern for hotel management and guests.

The Amount of Fees and the Amount of Open Space

The first version of the proposed Ordinance established a payment of “\$87.84 for each square foot of gross floor area required by Section 138”. This first version would have equaled \$87.84 x 8600sf of POPOS space for a total payment of \$755,424 into a new Controller’s fund for recreation and open space in the SoMa Area.

This current, second version of the proposed Ordinance would establish a significantly higher square footage fee of \$290.70 per square foot. This per square foot fee multiplied by 8600sf Code requirement for POPOS space equals a total payment of \$2.5 million to the Recreation and Parks Department.

Alternative Analysis

Alternative analysis of a “in lieu fee for POPOS” could suggest that a fee amount should be set at a rate that would enable both acquisition and construction of new open space, equivalent in size to the POPOS requirement. Staff would estimate this fee to be closer to \$500, assuming a \$250/sf acquisition cost in this neighborhood and assuming a \$250/sf improvement costs to the City. A \$500/sf fee applied to the Code Required POPOS (8600sf) would equal \$4.3 million. A further alternative would be to apply the fee amount not only to the Code required open space of 8600sf but also to the total square footage of 12,600sf required by the Commission’s motion. A \$500/sf fee applied to all of the square footage of on-site POPOS space required by the Commission (12,600sf) would equal \$6.3 million.

Privately-owned public open spaces or “POPOS”

Privately-owned public open spaces (POPOS) are publicly accessible spaces in forms of plazas, terraces, atriums, small parks, and even snippets which are provided and maintained by private developers. In San

Francisco, POPOS mostly appear in the Downtown office district area. Prior to 1985, developers provided POPOS under three general circumstances: voluntarily, in exchange for a density bonus, or as a condition of approval. The 1985 [Downtown Plan](#) created the first systemic requirements for developers to provide publicly accessible open space as a part of projects in C-3 Districts. The goal was to “provide in the downtown quality open space in sufficient quantity and variety to meet the needs of downtown workers, residents and visitors.” ([See Planning Code Section 138](#)). Since then, project sponsors for residential projects may provide POPOS instead of their required open spaces in the Downtown Residential (DTR) and Eastern Neighborhoods ([See Planning Code Section 135](#)).

Impact Fees Related to the Addition of New Floor Area Ratio

Under the version 2 of the proposed Ordinance it is unclear if the project sponsor would need to pay impact fees for the additional FAR. Planning Code Section 124 establishes Basic Floor Area Ratio (FAR) limits and Maximum Floor Area Ratio (FAR) Limits. In certain instances, the addition of new FAR to an existing building (such as the increase in FAR through the proposed enclosure of terraces) will trigger application of certain development impact fees, as regulated by Article Four of the Planning Code. The fees in Article Four support the delivery of essential services such as transit, open space, and childcare in a proportional manner related to the new demand created by the new FAR.

Improvements to Victoria Manolo Draves Park

According to the Recreation and Parks Department, “this brand new, 2-acre park is a welcome addition to the SOMA neighborhood, next to Bessie Carmichael School. With a softball field, basketball court, dual-level playground, picnic area, community garden and large, grassy field, there’s enough space for everyone to come out and play. The park is named for local diving champion Vicki Manalo Draves, the first Filipina-American to compete in the Olympic games. In 1948, she won two gold medals, in springboard and platform diving.” According to the Recreation and Parks Department website, this park is open 5am to Midnight. The proposed Ordinance would dedicate the in-lieu payment to the Recreation and Parks Department for the purposes of improved lighting and safety features.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATION

Recommend Approval with two modifications:

1. Clarify that all development impact fees typically due in relation to increased FAR should be paid by the project sponsor.
2. Replace the proposed findings authorizing the in lieu fee payment with more limited findings to discourage additional property owners from proposing privatization of additional, existing POPOS.

BASIS FOR RECOMMENDATION

The Department's strong preference is to not allow a project sponsor to opt out of providing onsite usable open space by paying an in-lieu fee. This preference to uphold and space and POPOS requirements is held both during the original approvals and is maintained against retroactive in-lieu payments. The open space requirement in Planning Code Section 138 helps ensure that there is suffice open space for people who live and work in the downtown area. This concept was pioneered by the Downtown Plan and remains critical to a functional high-density district. Ensuring that POPOS or "POPS" as these spaces are often called outside of San Francisco, remain open to the public has been a struggle since their creation in the mid-1980s^{1 2 3}. Locally, the San Francisco Chronicle's John King writes about the virtues and the challenges of such spaces^{4 5 6}.

The elevated terraces within the Intercontinental Hotel that were created to satisfy the POPOS requirement were noted by the Commission to be subpar at the approval hearing. To be sure, the Intercontinental Hotel has complicated the matter by closing the POPOS to hold private events from time to time. The Planning Department has an active enforcement complaint dating back to 3/13/2008 for "Failure to abide by Conditions of Approval per Motion No. #16421 for the following: Open Space, Pedestrian Streetscape Improvements, Childcare Requirement, G. First Source Hiring: Occupancy Program". Still, it remains true that elevated POPOS are discouraged by the Department today.

At the same time, the Victoria Manalo Draves Park provides the community with accessible amenities for both active and passive recreation. Given that the park is open from 5am to midnight, lighting and safety improvements at this park could offer the community a more usable resource than the maintenance of the elevated terraces as open spaces. Supervisor Kim's Office reports that although this park is popular for residents there is a strong desire for longer hours and enhanced safety. For more than two years, the

¹ Garrett, Bardley. "The privatisation of cities' public spaces is escalating," The Guardian. August 4, 2015. Retrieved from: <https://www.theguardian.com/cities/2015/aug/04/pops-privately-owned-public-space-cities-direct-action> on November 8, 2016.

² Kayden, S. Jerold. "Meet Me at the Plaza", The New York Times. October 19, 2011. Retrieved from: <http://www.nytimes.com/2011/10/20/opinion/zuccotti-park-and-the-private-plaza-problem.html> on November 8, 2016.

³ Badger, Emily. "How to Make Privately Owned Public Spaces Truly Open to the Public," The Atlantic, Citylab. December 17, 2012. Retrieved from: <http://www.citylab.com/politics/2012/12/how-make-privately-owned-public-spaces-truly-open-public/4168/> on November 8, 2016.

⁴ King, John. "S.F. making sure high-rise owners ID hidden public spaces," San Francisco Chronicle. February 8, 2015. Retrieved from: <http://www.sfchronicle.com/bayarea/article/S-F-making-sure-high-rise-owners-ID-hidden-6070126.php> on November 8, 2016.

⁵ Mitchell, David. "What Makes a Great Privately Owned Public Space: a review of John King's Lecture", ASLA. January 14, 2013. Retrieved from: <http://www.asla-ncc.org/four-nights-with-three-lectures-part-2/> on November 8, 2016.

⁶ King, John. "Privately owned public spaces: Guidance needed" San Francisco Chronicle. April 9, 2014. Retrieved from: <http://www.sfgate.com/bayarea/place/article/Privately-owned-public-spaces-Guidance-needed-3342258.php> on November 8, 2016.

project sponsor worked with the Supervisors office and Planning Department staff to find space for the creation of a new park. Unfortunately, no suitable space could be found.

For these reasons, the Department recommends support of the proposed Ordinance with two modifications.

1. **Clarify that all development impact fees due in relation to increased FAR should be paid by the project sponsor.** While it is appropriate to allow the enclosure of the terraces to increase functionality, there is no reason that this additional floor area should be exempted from applicable impact fees. The fees have been established by nexus to be related to new demand from the project and therefore should be paid by the project sponsor.
2. **Replace the proposed findings authorizing the in lieu fee payment with more limited findings to discourage additional property owners from proposing privatization of additional, existing POPOS.** This particular case is unusual. Care should be taken that approval of this proposed Ordinance does not encourage other property owners to “fee out” of the POPOS requirement via an in lieu fee. The draft Board findings in the proposed Ordinance cite concern of additional shadows from proposed development; constrained space; light usage by the public; and safety concerns of hotel management and guests. These concerns could be raised by or even manufactured by owners of many POPOS within San Francisco. For this reason, the Department recommends that the Commission suggest additional limiting findings for the Board of Supervisors to make within the proposed Ordinance. Recommended findings include specific conditions that are unlikely to be replicated in the existing conditions of other San Francisco POPOS. Specifically, the Department recommends that the Commission recommend the following findings to the Board of Supervisors:

“That while the Board holds that maintaining the public nature of POPOS spaces are the responsibility of the property owner, in this case the Board finds and determines the following:

- a. that the Commission’s original approval noted the poor quality of the open space;
- b. that alternative, suitable open space sites cannot be acquired within the neighborhood of the project; and
- c. that improvements to the quality of the existing open space are neither feasible nor appropriate; and
- d. that while the City should always strive to maintain requirements associated with development approvals, in this instance the alternative in-lieu payment provides greater public benefit than the original open space requirement.”

ENVIRONMENTAL REVIEW

The proposal ordinance would result in no physical impact on the environment. The Project was determined to be not defined as a project under California Environmental Quality Act (“CEQA”) Guidelines Section 15378 and 15080(c)(2) because it does not result in a physical change in the environment as described in the determination contained in the Planning Department files for this Project.

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any comments about Version 2 of the proposed Ordinance.

RECOMMENDATION: Recommendation of Approval with Modifications

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 140877, Version 2
- Exhibit C: Planning Commission Motion No. 16421 (2002 entitlement for hotel)