

BOARD of SUPERVISORS



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April 18, 2018

File No. 180086-2

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

Dear Ms. Gibson:

On April 10, 2018, Supervisor Kim introduced the following substitute legislation:

File No. 180086-2

Ordinance amending the Planning Code to allow the owner of premises leased to the City and County of San Francisco for a public safety-related use to resume a pre-existing Self-Storage use after the City vacates the property without regard to whether that Self-Storage use was established with benefit of permit; 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 adopting findings of public necessity, convenience, and general welfare under Planning Code, Section 302.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

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

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

Attachment

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

1 [Planning Code - Legitimization and Reestablishment of Certain Self-Storage Uses]

2
3 **Ordinance amending the Planning Code to allow the owner of premises leased to the**
4 **City and County of San Francisco for a public safety-related use to resume a pre-**
5 **existing Self-Storage use after the City vacates the property without regard to whether**
6 **that Self-Storage use was established with benefit of permit; affirming the Planning**
7 **Department's determination under the California Environmental Quality Act; making**
8 **findings of consistency with the General Plan, and the eight priority policies of**
9 **Planning Code, Section 101.1; and adopting findings of public necessity, convenience,**
10 **and general welfare under Planning Code, Section 302.**

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

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

19 Section 1. Environmental and Land Use Findings.

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

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

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

4 (c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this
5 ordinance will serve the public necessity, convenience, and general welfare for the reasons
6 stated in Planning Commission Resolution No. _____ and the Board adopts said reasons
7 herein by reference.

8
9 Section 2. The Planning Code is hereby amended by revising Section 183, to read as
10 follows:

11 **SEC. 183. NONCONFORMING USES: DISCONTINUANCE AND ABANDONMENT.**

12 (a) **Discontinuance and Abandonment of a Nonconforming Use, Generally.**

13 Whenever a nonconforming use has been changed to a conforming use, or discontinued for a
14 continuous period of three years, or whenever there is otherwise evident a clear intent on the
15 part of the owner to abandon a nonconforming use, such use shall not after being so
16 changed, discontinued, or abandoned be reestablished, and the use of the property thereafter
17 shall be in conformity with the use limitations of this Code for the district in which the property
18 is located. Where no enclosed building is involved, discontinuance of a nonconforming use for
19 a period of six months shall constitute abandonment. Where a Massage Establishment is
20 nonconforming for the reason that it is within 1,000 feet of another such establishment or
21 because it is no longer permitted within the district, discontinuance for a continuous period of
22 three months or change to a conforming use shall constitute abandonment.

23 * * * *

24 (c) **Discontinuance or Abandonment of Self-Storage Use Due to City and County**
25 **Occupancy. An existing nonconforming Self-Storage use or a Self-Storage use that is legitimized**

1 pursuant to subsection (c)(4) below, that in either case is changed to a public safety-related use due
2 solely to occupancy by the City and County of San Francisco acting through any of its departments,
3 shall not be considered discontinued or abandoned for purposes of subsection (a) above or any other
4 provision of this Code and the property owner may resume use of the premises as a Self-Storage use
5 after the City vacates the property, provided that: (i) the City's occupancy was for a public safety-
6 related purpose classified as a Public Use under Section 890.80 of the Planning Code and (ii) the
7 property owner resumes the Self-Storage use within two years from the later of (I) the date the City
8 vacated the property or (II) the date the City's lease for the property was terminated. The property
9 owner shall apply for and obtain any permits required to resume the Self-Storage use within one year
10 from the date the City vacates the property.

11 (1) **Notice and Discretionary Review of the Building Permit.** If a building permit is
12 required to resume the pre-existing Self-Storage use and the permit application is limited to its
13 reestablishment, the permit shall not be subject to the notification requirements of Section 312 or other
14 notification requirements of this Code, and no requests for discretionary review of the building permit
15 shall be accepted by the Planning Department or heard by the Planning Commission.

16 (2) **Extensions of Time.**

17 (A) If a permit to resume the pre-existing Self-Storage use is issued but
18 delayed due to an action before the Board of Appeals or other City agency, or a case in any court of
19 competent jurisdiction, the time to resume such pre-existing use shall be extended by the amount of time
20 final action on the permit was delayed.

21 (B) The Zoning Administrator may grant one or more extensions of the time
22 within which the pre-existing Self-Storage use must be resumed if the owner or owners of the property
23 have made a good-faith effort to comply but are unable to do so for reasons that are not within their
24 control.

1 (3) Notice. The Planning Department shall provide written notice to the owner of
2 record of any property that is within the scope of Section 183(c) of any proposed ordinance to
3 substantively amend this Section 183(c) prior to a hearing thereon by the Planning Commission,
4 provided that the property owner has sent a written request for said notice to the Zoning Administrator.

5 (4) Legitimization of Existing Use. In the case of a Self-Storage use that was
6 established and has been operating without the benefit of a required permit, the owner of such Self-
7 Storage use may seek and be granted such permit notwithstanding the limitations of Section 846.48 of
8 this Code and pursuant to the provisions set forth above in subsection (c)(1) of this Section 183, so long
9 as such permit:

10 (A) is filed for a property located within (i) the Service/Arts/Light Industrial
11 Zoning District and (ii) 1,000 feet of the South Of Market Special Hall Of Justice Legal Services
12 District; and

13 (B) relates to a Self-Storage use which the Zoning Administrator determines
14 (i) existed as of the date of the application for the required permit, (ii) would have been principally
15 permitted or permitted with Conditional Use authorization under the provisions of the Planning Code
16 that were effective at the date of the establishment of the Self-Storage use, (iii) has been regularly
17 operating or functioning on a continuous basis for no less than five years prior to the effective date of
18 this subsection (c)(4); and (iv) is not accessory to any other use; and

19 (C) is issued subsequent to the owner's payment of any and all fees that
20 would have been due at the time of the original establishment of the existing Self-Storage use, including
21 but not limited to the Transit Impact Development Fee required by Planning Code Section 411 et seq.;
22 and

23 (D) is issued prior to the earlier of both (i) commencement of occupancy by
24 the City for a public-safety related purpose or (ii) issuance of any required building permit to establish
25 the public-safety related use. In the case that the permit required to "legitimize" the Self-Storage use is

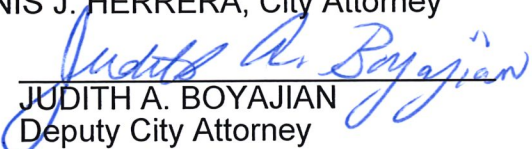
1 not issued as set forth in this subsection (c)(4), the existing Self-Storage use shall be deemed
2 irrevocably abandoned.

3
4 Section 3. Effective Date. This ordinance shall become effective 30 days after
5 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
6 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
7 of Supervisors overrides the Mayor's veto of the ordinance

8
9 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
10 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
11 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
12 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
13 additions, and Board amendment deletions in accordance with the "Note" that appears under
14 the official title of the ordinance.

15
16 APPROVED AS TO FORM:
17 DENNIS J. HERRERA, City Attorney

18 By:


19 JUDITH A. BOYAJIAN
20 Deputy City Attorney

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REVISED LEGISLATIVE DIGEST
(Substituted, 4/10/2018)

[Planning Code - Legitimization and Reestablishment of Certain Self-Storage Uses]

Ordinance amending the Planning Code to allow the owner of premises leased to the City and County of San Francisco for a public safety-related use to resume a pre-existing Self-Storage use after the City vacates the property without regard to whether that Self-Storage use was established with benefit of permit; 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 adopting findings of public necessity, convenience, and general welfare under Planning Code, Section 302.

Existing Law

Planning Code Section 183 provides that “[w]henver a nonconforming use has been changed to a conforming use, or discontinued for a continuous period of three years, or whenever there is otherwise evident a clear intent on the part of the owner to abandon a nonconforming use, such use shall not after being so changed, discontinued or abandoned be reestablished, and the use of the property thereafter shall be in conformity with the use limitations of this Code for the district in which the property is located.”

Amendments to Current Law

The proposed ordinance would amend Section 183 to allow the owner of an existing nonconforming Self-Storage use that is changed to a conforming public safety-related use due solely to the City’s occupancy to resume the Self-Storage use after the City vacates the property, provided that (1) the pre-existing use is resumed within two years after the City vacates the property or the lease is terminated and (2) the property owner applies for and obtains any permits required to resume the Self-Storage use. If a building permit is required to resume the pre-existing Self-Storage use and the permit application is limited to its reestablishment, the permit is not subject to the notification requirements of Planning Code Section 312 or other notification requirements of the Code.

In the case of an existing Self-Storage use that has operated without the benefit of a required permit, the owner may “legitimize” the existing use by seeking and being granted a permit for such use so long as the permit:

- is filed for a property located within the Service/Arts/Light Industrial Zoning District and 1,000 feet of the South of Market Special Hall Of Justice Legal Services District; and

- relates to a Self-Storage use that the Zoning Administrator determines (1) existed as of the date of application for the required permit, (2) would have been permitted under the Planning Code in effect when the use was established, (3) has been regularly operating or functioning on a continuous basis for no less than five years prior to the effective date of this ordinance, and (4) is not accessory to any other use.

Prior to issuance of the permit to “legitimize” the existing Self-Storage use, the owner must pay all fees that would have been due at the time of the original establishment of said use including but not limited to the Transit Impact Development Fee. Said permit must be issued prior to the earlier of (1) commencement of the City’s occupancy of the property or (2) issuance of any required permit to establish the City’s use. If the permit to “legitimize” the Self-Storage use is not issued, the existing Self-Storage use shall be deemed irrevocably abandoned.

Background Information

The City intends to lease property for the storage of Police Department evidence currently located at the Hall of Justice. The lease term is 10 years and, if the City exercises its options, could be as long as 20 years. The Board of Supervisors has approved a letter of intent to lease property at 6th Street and Brannan for this purpose and the Department of Real Estate is currently in lease negotiations with the property owner.

The Brannan Street property is an existing Self-Storage use in the SALI zoning district. The owners of the property are willing to lease the property to the City for the City’s intended purpose, but have stated that a condition precedent to execution of the lease is the owner’s right to resume use of the property as a Self-Storage use after the City vacates the property.

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