



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 20593

HEARING DATE: DECEMBER 12, 2019

Project Name: **Code Clean-Up 2019**
Case Number: **2019-013522PCA [Board File No. TBD]**
Initiated by: Planning Commission/ Initiated November 7, 2019
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RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO CORRECT TYPOGRAPHICAL ERRORS, UPDATE OUTDATED CROSS-REFERENCES, AND MAKE NON-SUBSTANTIVE LANGUAGE REVISIONS TO CLARIFY/SIMPLIFY CODE LANGUAGE. THE PROPOSED ORDINANCE WILL ALSO AMEND ARTICLE 4 TO MOVE THE LANGUAGE REGARDING TIMING OF FEE PAYMENTS TO THE BEGINNING OF THE ARTICLE AND CROSS-REFERENCE IT IN THE INDIVIDUAL IMPACT FEE SECTIONS AND TO ADD AN ADDITIONAL FEE WAIVER BASED ON THE REPLACEMENT OF GROSS FLOOR AREA IN BUILDINGS DAMAGED OR DESTROYED BY FIRE OR OTHER CALAMITY; 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.

WHEREAS, on June 16, 2019, the Planning Director requested that amendments be made to the Planning Code under Case Number 2019-013522PCA; and

WHEREAS, on November 7, 2019, the Planning Commission adopted a Resolution to initiate said amendments under R-20559; and

WHEREAS, the proposed Planning Code text changes would amend several sections of the Code as outlined in the draft Ordinance and incorporated herein; and

WHEREAS, due to multiple changes to the Planning Code, over time text has been dropped inadvertently, amendments made by one ordinance are not reflected in subsequent legislation, and citations have become out of date; and

WHEREAS, the proposed legislation is intended to resolve the aforementioned issues; and

WHEREAS, a substantial portion of the proposed changes in the ordinance can be classified as “good government” measures meant to improve the clarity of the Planning Code, and

WHEREAS, such changes are meant to improve the ability of decision makers, Department staff, and the public to understand, interpret, and implement the requirements of the Code, and

WHEREAS, The Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on December 12, 2019; and,

WHEREAS, the proposed Ordinance has been determined not to be a project under California Environmental Quality Act Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment. Therefore, no environmental review is required; 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

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 Modifications are as follows:

- 1) Revise Subsections 155(r)(3)(A) and 155(r)(4) to clarify that Commercial Throughway Streets (as defined by the Better Streets Plan) should also be protected from curb cuts.
- 2) Request that the Board of Supervisors initiate the following clerical changes to the Administrative, Health, and Police Codes:
 - a) Administrative Code:
 - i) Section 2A.54. Planning Commission Evaluation of Medical Cannabis Dispensary Location Regulations. In subsection (a), there’s a cross-reference to repealed Planning Code Sections 209.3(k), 217(k), and 790.141. There is also a cross-reference to Planning Code Section 890.133, which is still in the Code. Section 2A.54 relates to a Planning Commission report due to the Board in 2014. The report mentioned in this Section was completed; therefore, this Section can be repealed in its entirety.
 - ii) Section 29A: Approval of Power Plant; Planning Code Sec. 226.1. In addition to correcting the title, there’s a cross-reference to repealed Planning Code Section 226.1 in subsection (c) that needs to be removed.

- iii) Chapter 41: Residential Hotel Unit Conversion and Demolition. In Sec. 41.4, there's a cross-reference to repealed Planning Code Section 790.46 in the definition of Tourist Hotel. There's also a cross-reference to old Planning Code Section 209.1, which should now be Section 102.
 - iv) Chapter 79: Preapproval Notice for Certain City Projects. This Chapter was added in 1998 by Proposition I and there is a cross-reference to Planning Code Section 102.9 in Section 79.2(d) that is no longer valid.
- b) Health Code
- i) Chapter 22A: Analyzing Soils for Hazardous Waste. In Section 22A.2, the list of Planning Code Sections in the definition of "Industrial Use" have all been repealed and the names of the Uses are outdated. Further, the list of "Industrially Zoned" districts do not include Central SoMa.
- c) Police Code
- i) Section 21: Consuming Alcoholic Beverages on Public Streets, Etc. or on Public Property Open to Public View Prohibited; Penalty. There's a cross-reference to repealed Planning Code Section 790.92 in subsection (a)(2).
 - ii) Section 1036.23: Mechanical Amusement Devices; Location. There's reference in subsection (a) to repealed Planning Code Sec. 790.88. There is also a cross-reference to Section 890.88, which is still in the Code, but will be deleted with the Article 8 reorganization.
 - iii) Article 33: Medical Cannabis Act. There are cross-references to repealed Planning Code Sections 790.46 and 790.47 in the definition of Large Hotel.

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 proposed Ordinance will correct the Planning Code so that it is in line with the City's current practices and adopted budget.
2. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

OBJECTIVE 10

ENSURE A STREAMLINED, YET THOROUGH, AND TRANSPARENT DECISION-MAKING PROCESS.

Policy 10.1

Create certainty in the development entitlement process, by providing clear community parameters for development and consistent application of these regulations.

The proposed Ordinance will bring more consistency to the Planning Code. The proposed Ordinance will serve the General Plan by amending sections of the Planning Code to be consistent, clear, and concise.

These amendments will improve the quality of the Planning Code and thereby make it easier for the objectives and policies of the Code to be carried out.

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.

4. **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 December 12, 2019.



Jonas P. Ionin
Commission Secretary

AYES: Diamond, Fung, Johnson, Koppel, Melgar, Moore

NOES: None

ABSENT: Richards

ADOPTED: December 12, 2019



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment Initiation ADOPTION HEARING DATE: DECEMBER 12, 2019

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Reviewed by: Aaron Starr, Manager of Legislative Affairs
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Recommendation: **Approval with Modifications**

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PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code to correct typographical errors, update outdated cross-references, and make non-substantive language revisions to clarify/simplify Code language. The proposed Ordinance will also amend Article 4 to move the language regarding timing of fee payments to the beginning of the Article and cross-reference it in the individual impact fee sections and to add an additional fee waiver based on the replacement of gross floor area in buildings damaged or destroyed by fire or other calamity.

The Way It Is Now:

The Planning Code contains multiple grammatical and syntactical errors, unintentional cross-references and accidental additions and deletions that undermine the legitimacy and enforceability of the Planning Code as a regulatory document.

The Way It Would Be:

The proposed Ordinance seeks to correct these errors and improve the overall quality and readability of the Code.

BACKGROUND

The Planning Code experiences frequent amendments. Although individual ordinances are reviewed by the Planning Department and the City Attorney's Office, the volume of legislative actions and complexity of the Code as a legal, living document ensure that errors will inadvertently arise. The Planning Department actively collects these reported errors and presents them as a Code Corrections Ordinance.

ISSUES AND CONSIDERATIONS

Substantive Changes

The vast majority of the proposed changes in this ordinance are not substantive. However, this ordinance does contain changes that could be considered substantive, but for the reasons identified below are included in this ordinance as amendments that would correct conflicting or missing information. The following is a list of amendments the Department believes to be substantive:

- **Amendment to Article 4, Timing of Fee Payments.** A new subsection is proposed under Section 402 to clarify impact fee collection. Currently, almost each impact fee includes its own discussion regarding the timing of fee payments. However, the language across different code sections vary in language and specificity. This change is proposed to 1) make the language consistent throughout Article 4, 2) clarify that all impact fees are to be collected at the time of, and in no event later than, issuance of the “first construction document”, and 3) clarify that the potential fee deferral option under the Building Code expired in 2013, and is not currently available unless and until the Board of supervisors re-authorizes such deferral option.
- **Amendment to Section 406, Waiver Based on Calamity.** A new subsection is proposed under Section 406 regarding a fee waiver based on calamity. The proposed subsection clarifies that replacement buildings meeting all the provisions of Planning Code Section 188(b) shall **not** be subject to a new impact fee. This fee waiver assumes that the replacement building includes the same land use and is the same size or smaller than the original building. The Planning Code is currently silent on required fees for such replacement buildings meeting the provisions of Planning Code Section 188(b); therefore, the code would seem to charge relevant impact fees to these replacement buildings. However, project sponsors should not be charged if there is no nexus (i.e. no new impact). If this situation were to occur today, the only option for the property owner would be to appeal to the Board of Supervisors per Planning Code Section 406(a) “based upon the absence of any reasonable relationship or nexus between the impact of development and either the amount of the fee charged or the on-site requirement”. The proposed Ordinance resolves this concern.

Publisher Comments

After every ordinance, the code publisher sends the City Attorney’s Office a list of errors they encountered in the process of publishing the Code. These usually include outdated section references, missing words, typos and the like. This Ordinance includes many of these types of corrections.

Additional Changes

After the Initiation Hearing on November 7, 2019, additional typos, cross-references, and other clarifying language were identified. The attached Exhibit C includes a summary of these additional changes for convenience.

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. Request that the Board of Supervisors initiate the following clerical changes to the Administrative, Health, and Police Codes:
 - a. Administrative Code:
 - i. Section 2A.54. Planning Commission Evaluation of Medical Cannabis Dispensary Location Regulations. In subsection (a), there's a cross-reference to repealed Planning Code Sections 209.3(k), 217(k), and 790.141. There is also a cross-reference to Planning Code Section 890.133, which is still in the Code. Section 2A.54 relates to a Planning Commission report due to the Board in 2014. The report mentioned in this Section was completed; therefore, this Section can be repealed in its entirety.
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BASIS FOR RECOMMENDATION

This Ordinance is intended to correct identified errors in the Code. Although these are considered minor errors, they cannot be corrected without a legislative change. Adopting this Ordinance will make the code more consistent, accurate and easier to use.

Recommendation 1: Request that the Board of Supervisors initiate the listed clerical changes to the Administrative, Health, and Police Codes.

Since the Planning Commission can only initiate changes to the Planning Code, the Department recommends the Commission recommend the Board of Supervisors to initiate an ordinance to correct Planning Code references in the Administrative, Health, and Police Codes. These changes are also considered non-substantive and should be made to ensure the other City Codes referencing the Planning Code are consistent and accurate.

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.

ENVIRONMENTAL REVIEW

The proposal to amend the Planning Code has been determined not to be a project under California Environmental Quality Act Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment. Therefore, no environmental review is required.

PUBLIC COMMENT

As of the date of this report, the Planning Department has received two letters with general comments and questions on Code language. The submitted suggestions were reviewed and incorporated into the Ordinance as appropriate.

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Proposed Ordinance
- Exhibit C: Appendix: Changes Since Initiation Ordinance