



June 3, 2021

Ms. Angela Calvillo, Clerk  
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 2020-006803PCA:  
2020 Code Corrections Ordinance  
Board File No. TBD

Planning Commission Recommendation: **Approval**

Dear Ms. Calvillo,

On February 25, 2021, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, initiated by the Planning Commission, titled the 2020 Code Corrections Ordinance. At the hearing the Planning Commission recommended approval.

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) 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,

Aaron D. Starr  
*Manager of Legislative Affairs*

cc: Andrea Ruiz-Esquide, Deputy City Attorney  
Erica Major, Office of the Clerk of the Board  
Jen Low, Aide to Supervisor Melgar  
Lee Hepner, Aide to Supervisor Peskin  
Kyle Smealie, Aide to Supervisor Preston

**Attachments :**

Planning Commission Resolution

Planning Department Executive Summary



# PLANNING COMMISSION RESOLUTION NO. 20861

**HEARING DATE: FEBRUARY 25, 2021**

**Project Name:** Code Correction 2020  
**Case Number:** 2020-006803PCA [Board File No. TBD]  
**Initiated by:** Planning Commission  
**Staff Contact:** Diego Sanchez, Zoning and Compliance Division  
diego.sanchez@sfgov.org, 628-652-7523  
**Reviewed by:** Aaron D Starr, Manager of Legislative Affairs  
aaron.starr@sfgov.org, (628) 652-7533

**RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD CORRECT TYPOGRAPHICAL ERRORS, UPDATE OUTDATED CROSS-REFERENCES, AND MAKE NON-SUBSTANTIVE REVISIONS TO CLARIFY OR SIMPLIFY CODE LANGUAGE; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.**

WHEREAS, on January 21, 2021 the Planning Commission (hereinafter “Commission”) initiated a Resolution No. 20836 to correct typographical errors, update outdated cross-references, and make non-substantive revisions to clarify or simplify Planning Code language;

WHEREAS, The Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on February 25, 2021; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c) and 15378; 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** the proposed ordinance.

## 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. With repeated amendments, minor typographical errors and other omissions gradually creep into the Planning Code. These inadvertent errors unnecessarily burden project review times and worsen the Planning Code's implementation. It makes sense to periodically update the Planning Code and make these non-substantive changes for the sake of fundamental housekeeping and upkeep
2. The applicability and limits of the Planning Code are in constant contention. The Board of Appeals and the California State Courts are two bodies that periodically limit or expand the Planning Department's or Planning Commission's application of the Planning Code. Amending the Planning Code in response to these decisions facilitates the legal implementation of the Code

## General Plan Compliance

The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

### COMMERCE AND INDUSTRY ELEMENT

#### OBJECTIVE 6

**MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.**

#### Policy 6.2

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to economic and technological innovation in the marketplace and society.

*By rectifying errors and omissions in the Article 7 of the Planning Code, the proposed Ordinance helps entrepreneurs and other stakeholders efficiently understand the business opportunities in the City's neighborhood commercial districts. This promote the City's neighborhood commercial district, fostering small businesses creation and expansion.*

### HOUSING ELEMENT

#### OBJECTIVE 5

**ENSURE THAT ALL RESIDENTS HAVE EQUAL ACCESS TO AVAILABLE UNITS.**

Policy 5.4

Provide a range of unit types for all segments of need, and work to move residents between unit types as their needs change.

*Through clarifying the Dwelling Unit Mix requirement, the proposed Ordinance ensures that community stakeholders and project sponsors know that the Planning Code requires a range of unit types in housing development.*

**TRANSPORTATION ELEMENT**

**OBJECTIVE 17**

**DEVELOP AND IMPLEMENT PARKING MANAGEMENT PROGRAMS IN THE DOWNTOWN THAT WILL PROVIDE ALTERNATIVES ENCOURAGING THE EFFICIENT USE OF THE AREA'S LIMITED PARKING SUPPLY AND ABUNDANT TRANSIT SERVICES.**

Policy 17.1

Discourage the provision of new long-term parking downtown and near major employment centers.

*The proposed Ordinance will clarify that the circumstances under which temporary parking lots may be approved or continued within the C-3 Districts. This helps clarify the General Plan's policy to discourage the provision of new long-term parking downtown.*

**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 because it proposes only to correct typographical errors, update outdated cross references and other non-substantive revisions to clarify the Planning Code.*

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 because the Planning Code amendments it proposes are non-substantive changes such as correcting typographical errors and outdated cross-references.*

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*

*because it only proposes to correct typographical errors and make other similar non-substantive changes to the Planning Code.*

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 as it only proposes revisions to the Planning Code that correct outdated cross references or typographical errors.*

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 because the proposed Ordinance seeks to correct typographical errors or make other non-substantive revisions to the Planning Code.*

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 because the proposed Ordinance would only make non-substantive corrections to the Planning Code.*

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 as it seeks to make non-substantive revisions to the Planning Code for the sake of clarity or ease of use.*

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 because the Ordinance proposes to correct typographical errors in the Planning Code.*

### **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 the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on February 25, 2021.



Jonas P. Ionin  
Commission Secretary

AYES: Chan, Diamond, Fung, Koppel, Moore

NOES: Imperial

ABSENT: Tanner

ADOPTED: February 25, 2021



# Executive Summary

## Planning Code Text Amendment

**HEARING DATE: FEBRUARY 25, 2021**

**Project Name:** Code Correction 2020  
**Case Number:** 2020-006803PCA [Board File No. TBA]  
**Initiated by:** Planning Commission  
**Staff Contact:** Diego Sanchez, Zoning and Compliance Division  
diego.sanchez@sfgov.org, 628-652-7523  
**Reviewed by:** Aaron Starr, Manager of Legislative Affairs  
aaron.starr@sfgov.org, 628-652-7533

**Recommendation:** Approval

### Planning Code Amendment

The proposed Ordinance would amend the Planning Code to correct typographical errors, update outdated cross-references, and make non-substantive revisions to clarify or simplify Code language.

The Way It Is Now	The Way It Would Be
<b>Typographical Errors, Omissions and Clarifications</b>	
Section 121.1 indicates when Conditional Use authorization is required for development on larger lots within the Neighborhood Commercial Districts (NCDs). The table in Section 121.1 is meant to comprehensively list all NCDs but current omits the following NCDs: Cole Valley, Lakeside Village, Bayview, Cortland, Geary Boulevard, Inner Balboa Street, Inner Taraval Street, Lower Haight Street, Lower Polk Street, Mission Bernal, Outer Balboa Street, and San Bruno Avenue.	The table in Section 121.1 would be amended to include reference to all NCDs by including the following omitted NCDs: Cole Valley, Lakeside Village, Bayview, Cortland, Geary Boulevard, Inner Balboa Street, Inner Taraval Street, Lower Haight Street, Lower Polk Street, Mission Bernal, Outer Balboa Street, and San Bruno Avenue.



<p>Planning Code Sections 209.3 and 210.3 list Philanthropic Administrative Services as a use type allowed in the Residential Commercial and the Production, Distribution and Repair zoning districts, respectively, despite the use type being eliminated by Ordinance No. 182-19 from the Planning Code in 2019.</p>	<p>Planning Code Sections 209.3 and 210.3 would be amended to eliminate reference to the Philanthropic Administrative Services use type.</p>
<p>The Taraval Street Restaurant Subdistrict is intended to cover the portion of Taraval Street formerly zoned Small Scaled Neighborhood Commercial District (NC-2) and renamed the Inner Taraval Neighborhood Commercial District under Ordinance No. 7-20. That Ordinance inadvertently omitted an update to the Planning Code language to make this clarification.</p>	<p>Planning Code Section 745, Inner Taraval Neighborhood Commercial District, would be amended to clarify that Taraval Street Restaurant Subdistrict applies to the Inner Taraval Neighborhood Commercial District. Planning Code Section 781.1 Taraval Street Restaurant Subdistrict would be amended to clarify application to the Inner Taraval Neighborhood Commercial District.</p>
<p>The Planning Code regulations indicating the permissibility of an Intermediate Length Occupancy (ILO) Use Characteristic are primarily listed in Section 202.10. However, many of the zoning control tables also list when ILO is principally permitted or requires Conditional Use authorization. These table do not indicate when ILO is not permitted.</p>	<p>The zoning control tables that list the permissibility of ILO would be amended to indicate that the ILO Use Characteristic is not permitted in buildings with three or fewer Dwelling Units, in accordance with the existing controls in Planning Code Section 202.10.</p>
<p>The amount of permitted accessory Off-Street Parking for the Telegraph Hill - North Beach Residential Special Use District listed in Planning Code Section 249.49 is inconsistent with what is listed in Table 151.1 Off-Street Parking Permitted as Accessory and in Section 249.49 .</p>	<p>The amount of permitted accessory Off-Street Parking for the Telegraph Hill - North Beach Residential Special Use District listed in Planning Code Section 249.49 would be amended to align with that found in Table 151.1.</p>
<p>The Planning Code contains two primary Dwelling Unit Mix requirements. Generally, one Dwelling Unit Mix requirement applies to properties in the NCT, RCD, RTO and the Pacific Avenue and Polk Street NC Districts, and another Dwelling Unit Mix requirement applies to properties in other zoning districts. Currently the zoning control tables for zoning districts where this requirement applies list both Dwelling Unit Mix requirements.</p>	<p>The Planning Code would be amended so that only the applicable Dwelling Unit Mix requirement is listed in the zoning control table.</p>
<p>Planning Code Section 156(f) allows temporary parking lots in the C-3 zoning district with Conditional Use authorization. However, Zoning Control Table 210.2 for the C-3 zoning district does not indicate this permissibility for temporary parking lots.</p>	<p>Zoning Control Table 210.2 would be amended to include a note indicating that pursuant to Planning Code Section 156(f), temporary parking lots may be established in the C-3 zoning district with Conditional Use authorization.</p>

<p>Planning Code Section 121.2 limits non-residential use sizes in the neighborhood commercial districts, requiring Conditional Use authorization to exceed specified limits, establishing maximum use sizes in certain NCDs and providing exceptions for certain uses in specific NCDs. These controls are cross referenced in the zoning control tables for each NCD. In the Polk Street NCD a Movie Theater may exceed the established use size maximum for that district. However, the Polk Street NCD zoning control table does not cross reference this exception.</p>	<p>Planning Code Section 723 (Polk Street NCD) would be amended to include the use size exception for Movie Theater uses.</p>
<p><b>Implementation Improvements</b></p>	
<p>The Planning Code requires Hotel or Office Developments in excess of 25,000 gross square feet in size to meet a Childcare requirement. Project Sponsors have multiple options in which to meet this requirement, including the provision of an on-site childcare facility. When electing this option, the Planning Code requires the Project Sponsor to record a document indicating the provision of an on-site facility against the title of each participating building. The Planning Code does not explicitly require sending this document to the Planning Department for its records and as means to assure compliance for the life of the development.</p>	<p>Planning Code Section 414.6 would be amended to require Project Sponsors to send the recorded document indicating the buildings providing the on-site childcare facilities to the Planning Department.</p>
<p><b>Alignment with Appellate Body and Judicial Decisions</b></p>	
<p>As part of its review of requests for Conditional Use authorization for (1) the expansion or alteration of a nonconforming Dwelling Unit; (2) the installation of a new garage in the Broadway NCD or the Chinatown Mixed Use Districts; or (3) for the merger of a Dwelling Unit, the Planning Commission considers whether a tenant in the subject property was evicted pursuant to the Ellis Act.</p>	<p>The Planning Code would be amended to exclude tenant evictions pursuant to the Ellis Act as a consideration for the granting of a Conditional Use authorization for specific projects.</p>
<p>Planning Code Section 311 establishes the notification requirements for the change of use of certain non-residential uses. It also establishes areas of the City where specific non-residential uses are exempted from the notification requirements. Section 311 does not provide guidance as to whether a Limited Commercial Use (LCU) qualifies for an exemption from the notification requirements.</p>	<p>Planning Code Section 311 would be amended to explicitly list LCUs as exempt from the notification requirements if they are in the areas provided those exemptions.</p>

## Background

On January 21, 2021, the Planning Commission heard the proposed Ordinance and voted unanimously to initiate the Ordinance and schedule an adoption hearing no sooner than February 11, 2021. Resolution No. 20836 memorializing that action is attached as an exhibit.

## Issues and Considerations

### Periodic Planning Code Upkeep

With repeated amendments, minor typographical errors and other omissions gradually creep into the Planning Code. Planning Department staff tend to find most of these errors, but not all. Project applicants, members of the public and other Planning Code users also highlight confusing or contradictory Planning Code regulations. These inadvertent errors unnecessarily burden project review times and worsen the Planning Code's implementation. In all cases, it makes sense to periodically update the Planning Code and make these non-substantive changes for the sake of fundamental housekeeping and upkeep.

### Aligning the Planning Code with Appellate Body and Judicial Decisions

The applicability and limits of the Planning Code are in constant contention. Often property owners or project applicants seek redress to Planning Department's application of the Planning Code or to the scope of considerations when reviewing entitlement applications. For instance, the Board of Appeals (BOA) is one body that may limit the application of the Planning Code. In a November 13, 2019 decision the Board of Appeals (BOA) overturned a Zoning Administrator (ZA) decision effectively required certain Limited Commercial Uses (LCU) to provide neighborhood notice.<sup>1</sup> The BOA found the ZA had improperly interpreted the extent of the notification requirements and exempted certain LCU for the notice requirements. Another instance is when the California State Court of Appeals circumscribes the breadth of considerations the Planning Commission may make regarding the history of tenant evictions. In two cases the Courts have ruled that tenant evictions pursuant to the Ellis Act may not be a consideration for the granting of an entitlement.<sup>2</sup> Amending the Planning Code in response to these decisions facilitates the legal implementation of the Code.

### General Plan Compliance

The proposed Ordinance aligns with various General Plan Objectives and Policies. For example, by rectifying errors and omissions in Article 7 the proposed Ordinance satisfies policies promoting the City's neighborhood commercial districts. By clarifying the Dwelling Unit Mix requirement, the proposed Ordinance aligns with policies ensuring a wide range of unit types are provided in housing development. In clarifying circumstances under which temporary parking lots may be approved or continued within the C-3 Districts, the proposed Ordinance aligns with policies around the provision of long-term parking downtown.

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<sup>1</sup> Board of Appeals Decision No. 19-119

<https://app.box.com/s/ppgksbfcviqtqcx57i9g5qehlef5ihiy/file/559084228883>

<sup>2</sup> San Francisco Apartment Association, et. al. v. CCSF  
Small Property Owners of San Francisco Institute v. CCSF

## Racial and Social Equity Analysis

Understanding the benefits, burdens and opportunities to advance racial and social equity that proposed Planning Code and Zoning Map amendments provide is part of the Department's Racial and Social Equity Initiative. This is also consistent with the Mayor's Citywide Strategic Initiatives for equity and accountability and with the forthcoming Office of Racial Equity, which will require all Departments to conduct this analysis.

The proposed Ordinance, which seeks to correct errors, omissions, and other typographical errors, makes no substantive policy changes to the Planning Code or to the Planning Department's procedures. In this context, the proposed Ordinance, because of its nature, produces few, if any, opportunities to advance racial and social equity. However, to the extent that the corrected typographical errors and omissions help clarify the possibilities and limits for residential or commercial development to racial and ethnic communities, the proposed Ordinance advances equity. Staff does not foresee any direct or unintended negative consequences from the proposed Ordinance, given its clerical nature

## Implementation

The Department has determined that this Ordinance will improve our current implementation procedures because the proposed amendments aim to correct typographical errors and omission; update outdated cross-references and make non-substantive revisions to clarify or simplify Planning Code language.

## Recommendation

The Department recommends that the Commission *approve* the proposed Ordinance and adopt the attached Draft Resolution to that effect.

## Basis for Recommendation

The Department recommends that the Commission approve the proposed Ordinance because it will allow for identified typographical errors and inadvertent omissions to be corrected. These corrections, all non-substantive, will improve the use of the Planning Code. Further, the Department believes it is necessary for the Planning Code to align with the latest appellate body and other judicial decisions.

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

## Public Comment

As of the date of this report, the Planning Department received one email requesting clarification of the geographic scope entailed in the proposed Planning Code corrections.

### Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Planning Commission Resolution No. 20836
- Exhibit C: Proposed Ordinance