



SAN FRANCISCO PLANNING DEPARTMENT

February 14th, 2019

City Planning Commissioners
City and County of San Francisco
City Hall, Room 400

**Re: Rereferral of Case #: 2019-000592PCA (previously Case #: 2018-011057PCA)
C-3 Retail to Office Conversion
Board File 190030 (previously Board File No. 180916)**

1650 Mission St.
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CA 94103-2479

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Dear Commissioners:

On October 18, 2018, you considered the proposed Ordinance that would change zoning controls for Non-Retail Sales and Service Uses in the C-3-R Downtown Retail Zoning District, and amend the Planning and Administrative Codes to create the Union Square Park, Recreation, and Open Space Fund and Fee. At the hearing the Planning Commission recommended approval with modifications. The modifications were as follows:

1. Amend the applicability of the proposed Union Square Park, Recreation, and Open Space Fee to apply to office development over 5,000 square feet only. *This amendment was not adopted by the Board.*
2. Amend Table 210.2 (2) in the proposed Ordinance to clarify that Non-Retail Sales and Service Uses under 5,000 square feet are Permitted in the C-3-R. *This amendment was adopted by the Board.*
3. Allow Non-Retail Sales and Service Uses (Office Uses) on the 3rd floor with Conditional Use authorization. *This amendment was adopted by the Board.*
4. Grandfather all pending applications proposing to convert Retail to Non-Retail uses in the C-3-R District to be subject to the current controls. *This amendment was not adopted by the Board.*

The Ordinance was heard at the January 7th, 2019 Land Use and Transportation Committee hearing. At the hearing, Supervisor Peskin stated that the Board of Supervisors had reviewed the Nexus Study and found that the study supports a finding that new office use creates a park use factor of 2.62 park users per 1,000 square feet. The Board of Supervisors found through review of the Nexus Study that the study supports a maximum nexus fee of \$12.95 per gross square feet for office uses. Due to this new information, Supervisor Peskin recommended that the file be duplicated and that the duplicated file include a fee of \$6 rather than \$4.

Commissioners, the version you reviewed contained a \$4 per square foot fee. The proposed change by Supervisor Peskin would be a \$2 increase. The change in the amount of the impact fee required rereferral to the Planning Commission for recommendation. This ordinance is being brought back to you at this time so that you can make a recommendation to the Board on that \$2 increase.

Original Board File

Unlike the duplicated file, the original file with modifications did not need rereferral to the Commission to move forward. The original file was approved by the Board of Supervisors on February 5th, 2019.

The version that passed the Board contained Conditional Use findings for office use on the third floor. These findings have already been adopted by the Board but are included in the ordinance before you today. While the findings did not require rereferral back to the Planning Commission and have already been adopted, you may also propose modifications to these findings for the Board to consider when they consider the fee increase; however, Staff finds that the findings are sufficient and we are not proposing any modifications to them at this time. The adopted findings are as follows:

1. The proposed use would not require modification of the location that would negatively impact existing architectural, historic and aesthetic features, or otherwise inhibit the conversion back to a principally-permitted use in the future;
2. The proposed use would not have an actual or potential adverse impact on adjacent zoning districts in which non-retail sales and services uses are not permitted;
3. The proposed use will not result in the development of non-retail sales and services uses such that the District's primary function is no longer an area for comparison shopper retailing and direct consumer services *and* as the proposed use relates to this shopper atmosphere, whether the proposed use would complement or support principally-permitted uses in the District, and whether the site of the proposed use is not conducive to any principally-permitted uses in the District by virtue of physical limitations, including but not limited to the size and orientation of the floor plate and the nature of independent access to the third floor.

Department's Recommendation

The Department recommends that the Commission **approve** the proposed amendment to change the Downtown Parks and Open Space fee from \$4 per square foot to \$6 per square foot. The amendment recommends a fee that is supported by the Nexus Study which states that that new office use creates a park use factor of 2.62 park users per 1,000 square feet and therefore a fee of up to \$12.95 is feasible to support the increased impacts on parks and public open space.

Please find attached documents relating to the actions of the Commission and Land Use and Transportation Committee.

Sincerely,



Audrey Butkus

Legislative Planner

Attachments :

Planning Commission Transmittal Documents

Minutes on Board File No. 180916 from the January 7th Land Use & Transportation Committee



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 20317

HEARING DATE OCTOBER 18, 2018

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Project Name: **Planning, Administrative Codes - Zoning Controls and Fees in the C-3-R (Downtown Retail) District**
Case Number: **2018-011057PCA [Board File No. 180916]**
Initiated by: **Supervisor Peskin / Introduced September 18, 2018**
Staff Contact: **Audrey Butkus, Legislative Affairs**
audrey.butkus@sfgov.org, (415) 575-9129
Reviewed by: **Aaron Starr, Manager of Legislative Affairs**
aaron.starr@sfgov.org, 415-558-6362

RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD TO CHANGE ZONING CONTROLS FOR NON-RETAIL SALES AND SERVICE USES IN THE C-3-R DOWNTOWN RETAIL ZONING DISTRICT; AMENDING THE PLANNING AND ADMINISTRATIVE CODES TO CREATE THE UNION SQUARE PARK, RECREATION, AND OPEN SPACE FUND AND FEE; 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 September 18, 2018 Supervisor Peskin introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 180916, which would change zoning controls for Non-Retail Sales and Service Uses in the C-3-R Downtown Retail Zoning District, and amend the Planning and Administrative Codes to create the Union Square Park, Recreation, and Open Space Fund and Fee;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on October 18, 2018; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Acts Sections 15060(c)(2) 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 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.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

The proposed Ordinance, with recommended modifications, will successfully aid in implementing the intention of the Downtown Area Plan, which aims to foster a strong retail core, while providing appropriate avenues for office uses. The Downtown Area Plan created the C-3-R Downtown Retail Zoning District (C-3-R District) to prioritize the concentration of retail uses within the district. Although the retail landscape was different in the 1980's when the Downtown Plan was crafted, the rapid growth of office uses and the diminishing supply of available space led to concern about office encroachment into traditional retail areas. The concern was born out of conversions to office in spaces such as the former Livingston's and the Sloan Building. The Downtown Plan specifically identified the ease of converting upper story retail space for office users able to pay higher rents. Accordingly, the plan created the C-3-R District, which represented the retail core and in which regulations were crafted to protect against retail conversions.

The Downtown Plan also recognized that too much retail space in other scattered locations could weaken the strength of a concentrated retail district. The loss of retail space in the C-3-R District will diminish the existing character of the Union Square area by reducing the number of retailers. This in turn may cause some shoppers to leave sooner than they might otherwise if a greater density of retailers were present. To ensure that the City does not lose the existing character of the C-3-R District, it is necessary to maintain regulations that will foster a strong retail core on the lower floors, while providing avenues for Non-Retail Sales and Services to occupy the upper floors.

The conversion of retail to office space in the C-3-R District brings with it new impacts on the public realm. When a space converts from retail to office, there are generally more office workers per square foot than in retail. Public facilities, such as parks and open spaces, will be more heavily used throughout the day. This results in a more intense use for public facilities due to the larger worker population. The stress on these public facilities and the need for new and improved open space amenities and infrastructure necessitates the need for an impact fee to offset these costs.

Recommended Modifications:

1. Amend the applicability of the proposed Union Square Park, Recreation, and Open Space Fee to apply to office development over 5,000 square feet *only*.
2. Amend Table 210.2 (2) in the proposed Ordinance to clarify that Non-Retail Sales and Service Uses under 5,000 square feet are Permitted in the C-3-R.
3. Allow Non-Retail Sales and Service Uses (Office Uses) on the 3rd floor with Conditional Use authorization.
4. Grandfather all pending applications proposing to convert Retail to Non-Retail uses in the C-3-R District to be subject to the current controls.

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

General Plan Priorities:

The proposed Ordinance is consistent with the following objectives and policies of the General Plan:

DOWNTOWN AREA PLAN

OBJECTIVE 1

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

Policy 1.1

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

The proposed Ordinance ensures that the retail core in the Downtown is preserved, while also accommodating for Non-Retail uses on the upper floors. Geary Blvd.

OBJECTIVE 3

IMPROVE DOWNTOWN SAN FRANCISCO'S POSITION AS THE REGION'S PRIME LOCATION FOR SPECIALIZED RETAIL TRADE.

Policy 3.1

Maintain high quality, specialty retail shopping facilities in the retail core.

Policy 3.3

Preserve retail service businesses in upper floor offices in the retail district.

The proposed Ordinance fosters continued development of Retail uses on the first three floors of buildings in the C-3-R District by not permitting Non-Retail Sales and Service uses unless they provide on-site services to the general public.

OBJECTIVE 5

RETAIN A DIVERSE BASE OF SUPPORT COMMERCIAL ACTIVITY IN AND NEAR DOWNTOWN.

Policy 5.1

Provide space to support commercial activities within the downtown and in adjacent areas.

The strength of the prime office activities concentrated downtown is dependent upon a wide range of support commercial activities nearby. The proposed Ordinance reconfigures controls to better accommodate an appropriate amount of Retail uses and Non-Retail Sales and Service uses that provide on-site services to

the general public. In accordance with the Downtown Plan, these uses on lower floors serve to benefit Non-Retail and Office uses on upper floors.

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.

The proposed Ordinance's impact fee will contribute to the development of adequate open space; which directly contributes to the desirability of downtown San Francisco as a place to visit, work, and live.

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 1

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

Policy 1.3

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

The proposed Ordinance follows the directives laid out in the Downtown Area Plan, to improve and preserve the Downtown as San Francisco's primer location for retail and commercial activity, while also fostering office development where appropriate.

OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

The proposed Ordinance ensures the preservation of highly valued retail space in the Downtown, while also loosening some restrictions for certain types of Non-Retail Sales and Service uses in order to encourage their development on higher floors.

2. **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.

3. **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 October 18, 2018.



Jonas P. Ionin
Commission Secretary

AYES: Fong, Hillis, Johnson, Koppel, Melgar

NOES: Moore

ABSENT: Richards

ADOPTED: October 18, 2018



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment

HEARING DATE: OCTOBER 18, 2018
EXPIRATION DATE: DECEMBER 17, 2018

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Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Recommendation: **Recommend Approval with Modifications**

PLANNING CODE AMENDMENT

The Ordinance would amend the Planning Code to change zoning controls for Non-Retail Sales and Service Uses in the C-3-R (Downtown Retail) Zoning District. The Ordinance would additionally amend the Planning and Administrative Codes to create the Union Square Park, Recreation, and Open Space Fund and Fee.

The Way It Is Now:

In the C-3-R Zoning District:

1. Non-Retail Sales and Service Uses are Permitted¹ (P) on the ground floor if they offer on-site services to the general public. Non-Retail Sales and Services are Not Permitted (NP) on the ground floor if they do *not* offer on-site services to the general public.
2. On the second floor and above, Non-Retail Sales and Services require a Conditional Use authorization.
3. Non-Retail Sales and Services that offer on-site services to the general public with a use size over 5,000 sq. ft. on any floor require a Conditional Use authorization.
4. Section 412 of the Planning Code established a Downtown Park Fee for new office development in the C-3-R. There is not currently an open space fee for new office development in the C-3-R.

The Way It Would Be:

In the C-3-R Zoning District:

1. Non-Retail Sales and Service Uses² would be Permitted (P) on floors one through three if they offer on-site services to the general public. Non-Retail Sales and Services would be Not Permitted (NP) on the ground floor if they do *not* offer on-site services to the general public.

¹ Except for Catering, Laboratory, and Wholesale Sales, which are Principally Permitted with no conditions. Commercial and Wholesale Storage are Not Permitted.

2. Non-Retail Sales and Services would be Not Permitted on the second and third floors unless they provide on-site services to the general public. On the fourth through sixth floors Non-Retail Sales and Services would require a Conditional Use authorization.
3. Non-Retail Sales and Service Uses with a footprint smaller than 5,000 sq. ft. would be Permitted on the fourth through sixth floors. Non-Retail Sales and Services with a use size over 5,000 sq. ft. on floors four through 6 would require a Conditional Use authorization.
4. A new fund and fee would be created that will apply to any development in the C-3-R District proposing to add or create new office space.

THE WAY IT IS		THE WAY IT WOULD BE
Non-Retail Sales Uses of any size (P)	7TH + FLOOR	Non-Retail Sales Uses of any size (P)
Non-Retail Sales Uses UNDER or OVER 5,000sqft (C)	4TH - 6TH FLOORS	Non-Retail Sales Uses UNDER 5,000sqft (P) & Non-Retail Sales Uses OVER 5,000sqft (C)
Non-Retail Sales Uses UNDER or OVER 5,000sqft (C)	2ND & 3RD FLOORS	Non-Retail Sales Uses who provide on-site services to public (P)
Non-Retail Sales Uses who provide on-site services to public (P) If over 5,000sqft (C)	(1ST) GROUND	Non-Retail Sales Uses who provide on-site services to public (P)

BACKGROUND

In 2017, the Mayor's Office of Economic and Workforce Development (OEWD) wrote a memo to the Planning Commission on the state of the retail sector. The report found that (1) rents for retail spaces in the C-3-R District had outpaced citywide rates, (2) space available for rent was at an all-time low, (3) the C-3-R District continued to contribute a large portion of City sales tax revenue to the economy, and (4)

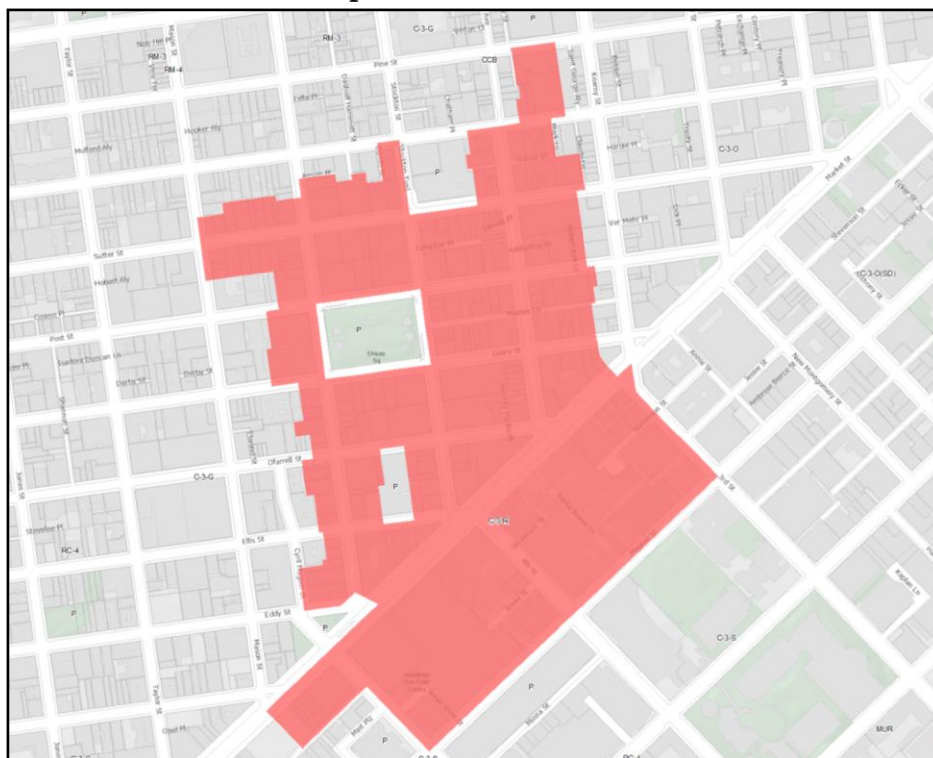
² Except for Catering, Laboratory, and Wholesale Sales, which are Principally Permitted with no conditions. Commercial and Wholesale Storage are Not Permitted.

over the last 5 years, sales of General Consumer Goods had in fact grown both in the C-3-R District and citywide. The 2017 OEWD memo also identified trends in the retail industry, among them: (1) a shift away from the general department store model, (2) a general desire for smaller “footprints”, and (3) an increase in retailers seeking to provide a more targeted “lifestyle specific” consumer experience.

The market for leasing office space throughout San Francisco continues to thrive, presenting external pressure on the competitiveness of retail space within the C-3-R District. According to the Jones Lang Lasalle Office Outlook Report for Q1 2018, leasing activity maintained its strong momentum from previous years, with tenants rushing to lease space in new office developments in the City, even before construction is finished. That report also found that San Francisco office tenants value spaces with that possess creative and flexible build-outs that are move-in ready, meaning building owners may be incentivized to convert existing C-3-R retail sales and service spaces to General Office Use under the current market conditions.

In March of 2017, OEWD and the Planning Department reported to the Planning Commission on the trends in the C-3-R District compared to local, regional, and national trends. At that hearing, the Planning Department recommended three approaches for reviewing retail to office conversions in the C-3-R District: 1) Continuing to review projects seeking upper level retail-to-office conversions on a case-by-case basis through the CU authorization process; 2) Adopting a policy that provides specific additional criteria that such projects must meet in order for approval, or; 3) Initiate changes to the Code to codify the criteria that projects in the C-3-R must meet in order to be approved. After the initial hearing, OEWD conducted additional analysis which it presented to the Planning Commission in February 2018, at a second informational hearing about C3R retail to office conversion policy, and found that union Square lease rates have surpassed Citywide lease rates, and that Union Square has higher lease rates than any part of the City in all classes of office.

Map of the C-3-R District



ISSUES AND CONSIDERATIONS

Interim Controls in the C-3-R:

On May 22, 2018, the Board of Supervisors passed interim controls, sponsored by Supervisor Peskin, requiring applications to convert Retail to Non-Retail Uses to make additional findings regarding the viability of the proposed conversion. The applicant must also provide information regarding the vacancy and rental rates for Retail and Non-Retail Sales and Service Uses, and any other relevant information regarding neighborhood development, economic or demand changes in the C-3-R District. The interim controls became effective on June 1, 2018, and will expire 18 months from that date, or until the Board of Supervisors adopts permanent legislation.

The C-3-R Downtown District:

The District is described in the Code as *“a regional center for comparison shopper retailing and direct consumer services. It covers a compact area with a distinctive urban character, consists of uses with cumulative customer attraction and compatibility, and is easily traversed by foot. Like the adjacent Downtown Office District, this District is well-served by City and regional transit, with automobile parking best located at its periphery. Within the District, continuity of retail and consumer service use is emphasized, with encouragement of pedestrian interest and amenities and minimization of conflicts between shoppers and motor vehicles.”*

The C-3-R District is one of the more compact Downtown C-3 Zoning Districts and encompasses the Union Square neighborhood, with boundaries extending from Bush Street to the North, Kearny Street to the East, Mission Street to the South and Powell Street to the West. The District prioritizes the concentration of retail uses within the district while recognizing that too much retail space in other scattered locations could weaken the strength of a concentrated retail district. A 2016 study showed that Union Square merchants generate approximately 37% of San Francisco’s sales tax in general consumer goods, and 15% of all City sales tax dollars. The C-3-R District represents a retail core, and in spite of some decentralization and fragmentation of retail uses over the years, the retail environment of Union Square has remained strong.

Mayor’s Office of Economic and Workforce Development C-3-R Survey :

At the February 2018 Informational Hearing about C3R retail sales and services office conversion policy, the Planning Commission voiced opposition to vote on the Planning Department staff policy recommendations for retail to office conversion without further data analysis on what uses are located on the second and third floors within buildings in the C3R zone. Following the February 2018 informational hearing OEWD contracted with the Union Square Business Improvement District (USBID) to provide additional use mix data through a field survey of the 2nd and 3rd floors of buildings located on all C-3-R parcels. USBID worked through the summer to survey and classify the use of the 605 parcels located within the C-3-R zone. The results of the survey are attached as Exhibit B. The survey found that 73.8% of available C-3-R 2nd and 3rd floor space is occupied by Retail Sales & Services or other uses open to the general public: 78.9% on 2nd floors and 67.7% on 3rd floors. The amount of total square footage dedicated to these types of uses on the 2nd and 3rd floors in the C-3-R District is 2,556,601 square feet across 226 parcels. The overall vacancy rate on the 2nd and 3rd floors was a low 8.2%: The vacancy rates average 7.7% on floor 2 and 8.8% on floor 3 within the C3R zone. These rates are within a healthy commercial vacancy range between 5%-10%.

Proposals to Convert Retail to Office in the C-3-R:

A chart summarizing the recent proposals the Department has received to convert retail space to office in the C-3-R is included in this report as Exhibit C. The chart shows that between the ten proposals, approximately 268,268 square feet of retail would be converted to office (*please note that as each project evolves, these numbers may change*). An example of one of these projects is described below:

The building at 77 Geary currently contains legal, existing office occupancy for the entirety of the 4th and 5th floors. There are additional existing office uses at 6th and 7th floors. The property owner is seeking to create office uses at the entirety of the 2nd and 3rd floors. The current proposal would lease all but 5,000 square feet of the 2nd floor to a company called “Mulesoft”. Mulesoft currently occupies a fully built-out office space at the 3rd floor, and uses the 2nd floor as an employee break area/lounge. The space at the 2nd floor is currently without much tenant improvement. Floors 2 and 3 are the subject of an active enforcement case for converting retail space to office use without a Conditional Use authorization.

The remaining 5,000sf of office space at the 2nd floor is currently leased by Nespresso, who is also the ground-floor retail tenant. The Planning Department was unable to consider the Nespresso offices on the 2nd floor an accessory space to the retail at the ground floor because the offices are physically separate from the floor below.

Protecting Class B and Small Office Space:

Class B office space is middle-grade office space. The space is usually older, with technological capacities that are sufficient to run a typical non-retail business, but do not usually offer the newest technological office features. The buildings tend to attract rents that are average for the market, and usually host a large variety of business types.

In their initial 2017 study of the C-3-R District’s retail health, MOEWD found that Union Square contained approximately 10% of the City’s overall Class B office space. The study also found that although the vacancy rates of Class B office space in Union Square were slightly higher than average, so too were the average rent prices compared to other Class B offices in the rest of the city. This type of office is typically considered extremely desirable to local, and smaller office tenants, as Class B offices tend to be in prime market areas while being more affordable than Class A office space. It is this type of office that the city should seek to protect and encourage and Union’s Square’s larger than average concentration of Class B office space should be considered when formulating new regulations.

The Proposed Union Square Park, Recreation, and Open Space Fee:

The proposed fee is to provide funding to increase the supply of park, recreation, and open space facilities to serve the needs attributable to new office development in the C-3-R District. As new office development occurs, additional park, recreation, and open space facilities are needed to maintain the quality of urban experience that makes downtown San Francisco an attractive place to be. Open space will become increasingly important as the number of people in downtown increases. Meeting the demand for additional open space in the face of intense competition for land requires both private and public-sector action. The Union Square Park, Recreation, and Open Space Fee would apply to any proposed project in the C-3-R District that proposes to build or expand office space. The fee would be \$4 per every square foot of development, and would function to offset the increased impacts that office development brings.

Implementation:

The Department determined that this Ordinance will impact our current implementation procedures; Tenant Improvement permits allow the demolition of interior walls. Currently, these types of permits are usually approved over the counter. Under the proposed Ordinance, potential mergers of space may result in suites with square footages of over 5,000sqft. The legislation states that Non-Retail Sales and Services Uses over 5,000sqft require Conditional Use authorization. The proposed Ordinance will likely cause Planning staff to route all Tenant Improvement permits on floors four through six in the C-3-R to a staff planner for further review. The additional review will be needed to ensure the proposed Tenant Improvements do not result in the creation of an individual suite for Non-Retail Sales and Service that is over 5,000sqft. Additionally, this may impact the Department's Enforcement Division, as tracking when a Non-Retail space has been illegally merged to create a space over 5,000 square feet can prove difficult due to the lack of public access to these types of spaces.

General Plan Priorities:

The proposed Ordinance is consistent with the following objectives and policies of the General Plan:

DOWNTOWN AREA PLAN

OBJECTIVE 1

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

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The proposed Ordinance ensures that the retail core in the Downtown is preserved, while also accommodating for Non-Retail uses on the upper floors.

OBJECTIVE 3

IMPROVE DOWNTOWN SAN FRANCISCO'S POSITION AS THE REGION'S PRIME LOCATION FOR SPECIALIZED RETAIL TRADE.

Policy 3.1

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The proposed Ordinance fosters continued development of Retail uses on the first three floors of buildings in the C-3-R District by not permitting Non-Retail Sales and Service uses unless they provide on-site services to the general public.

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RETAIN A DIVERSE BASE OF SUPPORT COMMERCIAL ACTIVITY IN AND NEAR DOWNTOWN.

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The strength of the prime office activities concentrated downtown is dependent upon a wide range of support commercial activities nearby. The proposed Ordinance reconfigures controls to better accommodate an appropriate amount of Retail uses and Non-Retail Sales and Service uses that provide on-site services to the general public. In accordance with the Downtown Plan, these uses on lower floors serve to benefit Non-Retail and Office uses on upper floors.

OBJECTIVE 9

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

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

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Provide different kinds of open space downtown.

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

Policy 1.3

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

The proposed Ordinance follows the directives laid out in the Downtown Area Plan, to improve and preserve the Downtown as San Francisco's primer location for retail and commercial activity, while also fostering office development where appropriate.

OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

The proposed Ordinance ensures the preservation of highly valued retail space in the Downtown, while also loosening some restrictions for certain types of Non-Retail Sales and Service uses in order to encourage their development on higher floors.

RECOMMENDATION

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

Recommended Modifications:

1. Amend the applicability of the proposed Union Square Park, Recreation, and Open Space Fee to apply to office development over 5,000 square feet *only*.
2. Amend Table 210.2 (2) in the proposed Ordinance to clarify that Non-Retail Sales and Service Uses under 5,000 square feet are Permitted in the C-3-R.

BASIS FOR RECOMMENDATION

The proposed Ordinance, with recommended modifications, will successfully aid in implementing the intention of the Downtown Area Plan, which aims to foster a strong retail core, while providing appropriate avenues for office uses. The Downtown Area Plan created the C-3-R Downtown Retail Zoning District (C-3-R District) to prioritize the concentration of retail uses within the district. Although the retail landscape was different in the 1980's when the Downtown Plan was crafted, the rapid growth of office uses and the diminishing supply of available space led to concern about office encroachment into traditional retail areas. The concern was born out of conversions to office in spaces such as the former Livingston's and the Sloan Building. The Downtown Plan specifically identified the ease of converting upper story retail space for office users able to pay higher rents. Accordingly, the plan created the C-3-R District, which represented the retail core and in which regulations were crafted to protect against retail conversions.

The Downtown Plan also recognized that too much retail space in other scattered locations could weaken the strength of a concentrated retail district. The loss of retail space in the C-3-R District will diminish the existing character of the Union Square area by reducing the number of retailers. This in turn may cause some shoppers to leave sooner than they might otherwise if a greater density of retailers were present. To ensure that the City does not lose the existing character of the C-3-R District, it is necessary to maintain regulations that will foster a strong retail core on the lower floors, while providing avenues for Non-Retail Sales and Services to occupy the upper floors.

The conversion of retail to office space in the C-3-R District brings with it new impacts on the public realm. When a space converts from retail to office, there are generally more office workers per square foot than in retail. Public facilities, such as parks and open spaces, will be more heavily used throughout the day. This results in a more intense use for public facilities due to the larger worker population. The stress on these public facilities and the need for new and improved open space amenities and infrastructure necessitates the need for an impact fee to offset these costs.

Recommended Modifications:

1. **Amend the applicability of the proposed Union Square Park, Recreation, and Open Space Fee to apply to office development over 5,000 square feet *only*.**

The proposed Ordinance seeks to protect not only Retail Sales and Services uses, but also small Non-Retail Sales and Service Uses by Permitting (P) Non-Retail Sales and Services under 5,000 square feet to locate on floors four through six. Placing size limits on floors four through six for Non-Retail Sales and Services uses will assist in protecting the smaller and Class B offices that are heavily concentrated in the C-3-R. It is important to keep these types of offices not only accessible, but affordable, as they are the ideal spaces to host smaller, locally-based businesses. To further assist these types of businesses from establishing in the C-3-R, the fee should be waived if the office development proposed is 5,000 square feet or less.

2. **Amend Table 210.2 (2) in the proposed Ordinance to clarify that Non-Retail Sales and Service Uses under 5,000 square feet are Permitted in the C-3-R.**

Due to a drafting error, the legislation currently states a Conditional Use authorization is required for Non-Retail Sales and Service Uses if located on floors four through six and the use is larger than 5,000 gross square feet. This is not the intention of the legislation. The intention of the legislation is to require a Conditional Use authorization on the fourth through sixth floors *only if* the Non-Retail Sales and Service is over 5,000 square feet. Otherwise, the Use shall be Permitted.

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 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.

PUBLIC COMMENT

As of the date of this report, the Planning Department has received one email from the public. The comment is from the Union Square Business Improvement District and is attached as Exhibit D. The letter requests that the proposed Ordinance be amended to be more flexible to allowing Non-Retail Sales and Service Uses on the lower floors.

RECOMMENDATION:	Recommendation of Approval with Modifications
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4. **180916** **[Planning, Administrative Codes - Zoning Controls and Fees in the C-3-R (Downtown Retail) District]**

Sponsor: Peskin

Ordinance amending the Planning Code to change zoning controls for Non-Retail Sales and Service Uses in the C-3-R (Downtown Retail) Zoning District; amending the Planning and Administrative Codes to create the Union Square Park, Recreation, and Open Space Fund and Fee; affirming Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and making findings of public necessity, convenience, and welfare pursuant to Planning Code, Section 302.

09/18/18; ASSIGNED UNDER 30 DAY RULE to Land Use and Transportation Committee, expires on 10/18/2018.

09/26/18; REFERRED TO DEPARTMENT. Referred to the Planning Commission pursuant to Planning Code Section 302, for public hearing and recommendation and the Planning Department for environmental review.

09/27/18; RESPONSE RECEIVED. Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it does not result in a physical change in the environment.

10/16/18; SUBSTITUTED AND ASSIGNED to Land Use and Transportation Committee.

10/19/18; NOTICED. First 10-Day Fee Ad for 10/29/2018 Land Use and Transportation Committee hearing published in the Examiner; per Government Code Section 6062(a).

10/24/18; REFERRED TO DEPARTMENT. Referred to the Planning Commission pursuant to Planning Code Section 302, for public hearing and recommendation and the Planning Department for environmental review.

10/25/18; NOTICED. Second 10-Day Fee Ad for 10/29/2018 Land Use and Transportation Committee hearing published in the Examiner; per Government Code Section 6062(a).

10/25/18; RESPONSE RECEIVED. On October 18, 2018, the Planning Commission conducted a duly noticed public hearing and recommended approval with modifications for the proposed legislation.

10/29/18; CONTINUED. Heard in Committee. Speakers: None.

11/01/18; RESPONSE RECEIVED. Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment.

12/03/18; CONTINUED. Heard in Committee. Speakers: None.

Heard in Committee. Speakers: Audrey Butkus (Planning Department); Jon Givner (Office of the City Attorney); presented information and answered questions raised throughout the discussion. Karin Flood, Executive Director (Union Square Business Improvement District); spoke in support of the hearing matter. Speaker; Tuija Catalano (Reuben, Junius & Rose); Mark Stephen (City Center Realty Partners); spoke on various concerns relating to the hearing matter.

See duplicated File No. 190030.

Member Peskin requested this Ordinance be DUPLICATED.